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NO CONCESSIONS IN TAX TREATY SAY BOSSANO AND PICARDO

The Tax Treaty between Gibraltar and Spain is good for Gibraltar and delivers key benefits which the GSD is simply ignoring in the pursuit of narrow party political advantage. It contains no concessions on sovereignty, jurisdiction or control.

The Agreement is a detailed and very technical document which sets out very clearly the terms under which the tax authorities in Gibraltar and Spain will cooperate and the basis upon which determinations will be conducted of the tax residency of people and companies whose place of tax domicile is in dispute.

In fact, any suggestion that the Tax Treaty favours Spain over Gibraltar is nothing more than party political spin typical of the GSD opposition and betrays a lack of comprehension of our territorial system of taxation which taxes on income sources as compared to the Spanish tax system that taxes based on residence.

The GSD's fake concern about the tax treatment of Spanish nationals being unable to shirk Spanish tax residency also exposes the GSD's lack of understanding of these matters. This is not uncommon in international tax law.

The Tax Treaty is a technical document and much of the language of the Agreement has a basis in international law, OECD and other precedents and case law. Those precedents and case law and interpretation provide a backdrop of legal certainty to the Agreement. The Government is working on a model FAQ which will be available, when ready, to provide further guidance. The fact of the matter is that the vast majority of Gibraltar taxpayers are not likely to fall within the scope of the Tax Treaty and those that are will only fall in scope in the event of 'tripping wires' that prompt an investigation by the Spanish tax authorities. Gibraltarians who own genuine holiday / second homes in Spain have nothing to fear from this Tax Treaty. They will not be falling into Spanish taxation as a result.

The historic Tax Treaty between Gibraltar and Spain achieves, amongst other things, the following:

- It provides, for the first time, certainty and clarity in the context of tax in the cross-border context;
- It establishes a mechanism whereby disputes about determinations on tax residence can be properly, safely and sensibly addressed by reference to international interpretations of the language of the Tax Treaty and does not, as the GSD suggests, leave Gibraltarians (or other



nationals for that matter) to fend for themselves. In fact, the direct opposite is true. It is worrying that the GSD have not been able to understand this;

- Importantly, it paves the way for Gibraltar's exclusion from Spain's list of tax havens - it is likely that Gibraltar's exclusion from the few lists of other countries on which remain will follow shortly too;
- It captures, in an international Agreement, Gibraltar's long-stated commitment to tax transparency;
- It turns the page on decades of Spanish propaganda presenting Gibraltar as an opaque and uncooperative tax haven;
- It has already secured Spain's withdrawal of her veto over Gibraltar signing up to the OECD's Base Erosion and Profits Shifting (BEPS) programme, something that enables Gibraltar to join the programme forthwith, thereby joining the top flight of countries complying with international tax transparency requirements and therefore a further blow to those who seek to denigrate us;
- Importantly, it creates to right to the eradication of double taxation for those long and detrimentally affected by the absence of such an agreement; and
- It enables non-Spanish nationals to properly and transparently plan their way out of Spanish tax residency if desirable.

The Minister for Economic Development, and former Chief Minister, the Hon Sir Joe Bossano, commented on the GSD's attack on the Government: "There are no concessions in this Tax Treaty on sovereignty, jurisdiction or control. The GSD would not agree to any concessions. I fought the concessions made in the Brussels Agreement and in the Airport Agreement under the AACR. I fought the concessions made in the Cordoba Agreements by the GSD, especially on the Airport on which the GSD then spent £84m and for which we have not had anything in return. I would not accept any concessions being made by a Government I am a member of. This is an agreement in which Spain recognises the Gibraltarian population, our national competent authorities our laws and our institutions. Under the GSD, we had instead the fictional 'post boxing arrangements' via London because Spain wanted to pretend that we did not exist. So I am satisfied that the GSD are wrong to say anything in this amounts to any concession on sovereignty, jurisdiction or control."

The Chief Minister, the Hon Fabian Picardo QC, MP said: 'It is clear that the GSD is as incompetent as it is lazy. They have not done their research before seeking to scare people on the Tax Treaty. The fact that Spanish nationals remain Spanish tax resident is nothing novel in international tax. For example, nationals of the United States of America remain tax resident in America for up to fifteen years after they depart the United States. These are measures designed to deter tax avoidance and they do not go to the tax sovereignty of the nation to which any such US national may have moved.

Instead of a making a balanced assessment of the Treaty, the GSD have just tried to play politics. In doing so the GSD have issued a statement in which they accept that what the Spanish have been



saying until now about Gibraltar and Gibraltarians is true. The GSD have said that there are Gibraltarians living in Spain who do not pay Spanish taxes. If that is true, then any persons living in that way HAVE ALWAYS BEEN CAUGHT by Spanish taxation, as anyone who lives in Spain is taxable on their worldwide income. People who are in that situation and who are not paying tax in Spain are EVADING Spanish taxation. The GSLP/Liberal Government DOES NOT agree with the GSD that there are people in such a situation and if there are, this Tax Treaty does not prejudice them. In fact, it assists such people by creating a right to the benefit of unilateral relief from double taxation, something which is not the case now.

To be clear, Gibraltar residents will only be taxed in Gibraltar – even if they have a second or holiday home in Spain.

Also to be clear, The Tax Treaty does not make Gibraltarians who live in Spain taxable in Spain. That is already the law. In any event, the Government is already developing more affordable homes so people can move back to Gibraltar if they want to – but it is hard to catch up with the GSD’s failure to develop enough homes in the time they were in office. What the Treaty does is allow Gibraltarians the potential protection of the Gibraltar tax authorities in cases of dispute. Gibraltarians are therefore in a much better position as a result of the Tax Treaty than they were in before.

The Tax Treaty also represents the acknowledgment by the Spanish Government of certain matters of fundamental value - namely the recognition of the concept of ‘the Gibraltarian’, the recognition of the Gibraltarian Status Act and the recognition of Gibraltar’s separate and distinct tax authorities. Spain recognises our Income Tax Act and our laws generally in this Treaty. This is a seminal and important step forward. The GSD chooses to pretend that this recognition is to the detriment of Gibraltar’s position yet nothing could be further from the truth. This is a HUGE step forward for Gibraltar.

It is absolutely ridiculous and undeliverable for the GSD to say that they will be able to terminate the Tax Treaty if they win the election. They will NOT be able to do so just because they want to as a matter of policy. The Government of Gibraltar will be able to terminate the Tax Treaty for cause, that is to say, if Spain fails to keep to its obligations in the Treaty of the inducements that led us to sign up to it. But the GSD will not be able to simply terminate the Tax Treaty as a matter of policy. Mr Azopardi knows this – but he is just playing a cheap, nationalistic card in saying these things, that people will see through. Once this complex Treaty is properly digested and understood, individuals and companies here will see its value. Tax professionals already do so. The GSD risks that its policy of terminating the Treaty will not just be an undeliverable nonsense, it will actually back-fire with the whole of the finance centre industry – which has received the Treaty favourably - being clearly against them on this.

The GSD’s reaction is totally lacking in substance or maturity. They have failed to see that in their press release they are saying that Spain has been right all along and that there are many Gibraltarians who live in Spain and who are not paying Spanish taxes as Spanish law already requires. This is a damning acceptance by the GSD of the Spanish rhetoric on Gibraltar as place of people who are engaging in tax evasion. I invite the GSD to correct the record in this respect.

Additionally, there seems to be an attempt by the GSD to spread confusion amongst the public. For example, the test relating to “two thirds of assets” (ie 66%) is an improvement over the current



position in Spanish law that refers just to “a majority of assets” (ie anything over 50%). So, in that respect, this Treaty is a positive step for those who might otherwise have been caught by the rules of Spanish taxation.

The Chief Minister concluded: “Gibraltar’s tax sovereignty is intact after this Tax Treaty. There is no concession or effect on our entirely independent tax autonomy and jurisdiction. There is no change of control whatsoever in matters relating to taxation. This Tax Treaty has absolutely no implications for sovereignty, jurisdiction or control. In fact, far from hampering Gibraltar’s development, this Treaty will liberate us to develop even more and allow tax payers to plan with a greater degree of certainty than ever before. We have secured the right Tax Treaty for Gibraltar, in the interests of the many and not the privileged few. I want to see Gibraltar respected internationally for our expertise in financial service. This Tax Treaty will assist us in that respect and will serve to propel our business forward. If the GSD were to take a step back and not take a narrow, short term, partisan view, they would support this agreement. They should think of Gibraltar first and support this Tax Treaty.”

“The GSD were wrong on the Brussels Agreement, they were wrong on Cordoba, they were wrong on LNG gas and they are wrong on the Tax Treaty. Gibraltar cannot trust their judgement.”

NOTES TO EDITORS:

If anyone has any immediate concerns or worries about the operation of the Tax Treaty, they should send their queries to a new email address being set up by the Government so that we can address those concerns as part of the FAQs we will issue to tax and legal professionals. The email address is taxtreaty.queries@gibraltar.gov.gi. A seminar will also be held for tax and legal professionals to enable the Tax Office and the Financial Secretary to address the financial services industry on the terms of the Tax Treaty.