



SUPPLEMENT No. 2
TO
THE SOVEREIGN BASE AREAS GAZETTE
No. 1409 of 10th February 2006
LEGISLATION

ORDINANCE 2 OF 2006

AN ORDINANCE
TO AMEND AND CONSOLIDATE THE ORDINANCES
PROVIDING FOR THE CHARGING AND COLLECTION OF
CAPITAL GAINS TAX IN THE SOVEREIGN BASE AREAS

P. T. C. Pearson CBE
ADMINISTRATOR

7th February 2006.

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

1. This Ordinance may be cited as the Capital Gains Tax Ordinance 2006. Short title.

2. In this Ordinance, unless the context otherwise requires— Interpretation.

“child”, in relation to any parent includes a step-child of that parent or a child adopted by that parent under any legislation of any country whose status as an adopted child is recognized in the Republic or the Areas, and an illegitimate child of that parent;

“company” has the same meaning as is given to that term by section 2 of the Income Tax Ordinance 2003 for the purposes of that Ordinance; Ordinance 29/2003.

“Cypriot” means a citizen of the Republic;

“degree of kindred” has the meaning assigned to it in the Wills and Succession Ordinance; Cap 195 (Laws of Cyprus) as amended by Ordinances 3/1971 and 14/1989.

“expatriate” means—

(a) a person who is not a citizen of the Republic; or

(b) a person who is a citizen of the Republic solely by reason of his birth in the Island of Cyprus before the 16th August, 1960 and who is also a citizen of one or more other countries;

“family” includes a husband and wife and any person not beyond the third degree of kindred, irrespective of whether such persons are married or unmarried;

“gains” means any gains accruing to any person on and after the day that this Ordinance comes into force, on the disposal of any property of his, provided they are not gains which fall within the provisions of any legislation in force relating to income tax;

“property” means any immovable property situated in the Areas and any shares of a company whose assets consist of such property;

“readjusted value of property” means the sum equal to the market value of the property at the time when such property was acquired, reduced by the sum equal to any capital gain which may have accrued in the past and on which in accordance with the provisions of this Ordinance, no tax has been paid;

“relations of the first or second degree” have the same meaning as shown in the Table set out in the Second Schedule to the Wills and Succession Ordinance, but includes in each respective degree the female equivalents to the male kindred set out in that Table;

“reorganisation” has the same meaning as is given to that term by section 24 of the Income Tax Ordinance 2003 for the purposes of Part VI of that Ordinance;

“tax” means capital gains tax charged under this Ordinance.

Care and
management of
capital gains tax.
Charge of capital
gains tax.

3. Capital gains tax shall be under the care and management of the Fiscal Officer.

4. Subject to the provisions of this Ordinance there shall be charged on any gains accruing to a person on the disposal of property a tax at the rate of 20% on such gains.

Exceptions.

5.—(1) No tax shall be payable by an individual if the total gains accruing to him from the disposal of property do not exceed £10,000, or where the property disposed of is agricultural land and it is being disposed of by an individual whose principal occupation is farming, do not exceed £15,000, whether or not (in either case) such gains were obtained in the course of the same year or of different years.

(2) No tax shall be payable on any gain upon the disposal of a main dwelling house used by the owner exclusively for his own occupation for a total period of at least 5 years if it is situated on land not exceeding one and a half decares and such gain is not in excess of £50,000:

Provided that:

- (i) where the gain accruing from such disposal exceeds the sum of £50,000, a tax shall be charged on any sum in excess of £50,000;
- (ii) where the dwelling house is situated on land exceeding one and a half decares, a tax shall be charged on the proportion of the gain derived from the disposal of that part of the land exceeding one and a half decares;

- (iii) where an owner of property wishes to dispose of a dwelling house for a second or subsequent time, he shall be required to use it exclusively for a total period of at least 10 years to obtain relief under this section;
- (iv) where a dwelling house is disposed of more than 1 year after it has ceased to be used exclusively by the owner, no exemption shall be granted;
- (v) a person shall not be entitled both to the exemption provided under this subsection and to that contained in subsection (1) but instead shall be entitled only to the exemption which provides the greater relief.

(3) No tax shall be chargeable on any gain accruing from the disposal of shares registered in any recognised Stock Exchange.

6.—(1) In determining gains, there shall be deducted from the proceeds of the disposal—

Determining gains.

- (a) the value of the property as at 1st January 1980, as arrived at by virtue of the general valuation carried out under section 69 of the Immovable Property (Tenure, Registration and Valuation) Ordinance, together with any subsequent increase in the value of the property due to inflation as defined in subsection (2) below:

Cap. 224 (Laws of Cyprus) as amended by—Ordinances 12/1966, 11/1984, 1/1985, 12/1985, 5/1987, 18/1987, 21/1988, 8/1990, 14/1990, 13/1993, 4/1996 and 5/1996.

Provided that:

- (i) where the property was not unencumbered on 1st January 1980, the value of the property shall be deemed instead to be its market value at that time;
- (ii) where during the general valuation referred to above, any improvements made after 1st January 1980 were taken into account, the value of such property shall be deemed instead to be its market value as at 1st January 1980;
- (iii) where part of or the full value of the property was allowed as a deduction under any Ordinance in force relating to income tax, such part of the value shall not be allowed as a deduction;
- (iv) where the owner wishes so to opt, the market value of the property as at 14th July 1974, may be deducted instead;
- (v) where the property is situated in any area not under the effective control of the government of the Republic, no gain shall be deemed to have accrued;
- (b) any expenditure incurred after 1st January 1980 wholly and exclusively in relation to the acquisition of such gains not being deductible under the laws in force relating to income tax readjusted to take account of inflation.

(2) For the purposes of this section, inflation shall be computed on the basis of the retail price index which is issued from time to time by the Department of Statistics and Research of the Ministry of Finance of the Republic of Cyprus.

Losses.

7.—(1) Any loss accruing upon a disposal of property shall be computed in the same way as the amount of a gain accruing on a disposal is computed.

(2) Where the amount of a loss which arises out of the disposal of property is such that it cannot be set off against a gain accruing from the simultaneous disposal of other property, the amount of such loss to the extent that it cannot be so set off shall be carried forward and be set off against gains arising out of a subsequent disposal of property until such loss is extinguished.

Time gain or loss accrues.

8. A gain or loss accruing from the disposal of property shall be deemed to have been incurred at the time of disposal of such property.

Proceeds from disposal of property.

9.— The proceeds from the disposal of property shall be the sum which the contracting parties shall declare:

Provided that:

- (i) where there are reasons to doubt such declaration, the Fiscal Officer may, within a period of 6 months commencing on the date of the making of the declaration, proceed to investigate the matter and if it is proved that the declaration was false, he shall be entitled to demand the payment of tax on the difference between the sum declared and that which was proved as having been realised from the disposal of property plus interest at 9% commencing from the date when tax had been paid based on the declaration of the contracting parties:
- (ii) where shares in a company the property of which also includes immovable property are disposed of, the computation of the proceeds of the disposal shall be based exclusively on the immovable property.

Disposal of property.

10. For the purposes of this Ordinance, disposal of property includes a sale, an agreement to sell or exchange and the donation of property as well as the abandonment, use or enjoyment of any relevant right but it does not include—

- (a) a transfer in consequence of death:

Provided that:

- (i) in such a case the value of the property shall be taken to be the lower of its original value and its readjusted value as at the time that it was acquired by the deceased or its value as at 1st January 1980, if this is later:
- (ii) where the property was acquired by the deceased prior to 14th July 1974, the person disposing of such property may elect for the value of the property to be taken to be its value as at 14th July 1974;
- (b) a donation by a parent to a child of his (regardless of whether the child is married or unmarried), between a husband and wife or between relations not exceeding the third degree of kindred, (regardless of whether they are married or unmarried):

Provided that:

- (i) in any such case the value of the property shall be taken to be the lower of its original value and its readjusted

value as at the time that it was acquired by the donor or its value as at 1st January 1980 if this is later. In the case of successive donations, the donor, for the purposes of this proviso shall be deemed to be the first donor:

- (ii) where the property was acquired by the donor before 14th July 1974, the donee may elect for the value of the property to be taken to be its value as at 14th July 1974;
- (c) an exchange in relation to properties which shall come into the hands of the parties who shall carry out the exchange:

Provided that:

- (i) where the lower of the original value and the readjusted value of the property at the time that it was acquired, or its value as at the 1st January 1980 if this is later, is at the time of the exchange equal to or greater than the value of the other property for which such property is exchanged, tax shall be chargeable on the full amount of the gain which accrues from such disposal:
- (ii) where the lower of the original value and the readjusted value of the property at the time that it was acquired, or its value as at 1st January 1980 if this is later, is at the time the exchange lower than the value of the property for which such property is exchanged, tax shall be chargeable only on such part of the gain as was not used for acquiring the other property. In such a case the value of the other property so acquired shall be deemed to be reduced by the amount of that part of the gain on which tax was not paid:
- (iii) where the property was acquired by the previous owner before 14th July 1974, the new owner may elect for the value of the property to be taken to be its value as at 14th July 1974;
- (d) a donation to a limited company whose shareholders are members of the family of the person disposing of property and who continue to be so for at least 5 years immediately following such donation:

Provided that:

- (i) in such a case, the value of the property shall be taken to be the lower of its original value and its readjusted value at the time of acquisition by the donor or its value as at 1st January 1980 if this is later:
- (ii) where the property was acquired by the donor before 14th July 1974, the donee may elect for the value of the property to be taken to be its value as at 14th July 1974:
- (iii) this paragraph shall also apply where, within 5 years

of the donation, the shares of a member of the family of the donor are inherited by any person not being a member of the family of the donor;

- (e) a donation made by a limited company whose shareholders are all members of the same family, to a shareholder where the property so disposed of was itself donated to the company:

Provided that:

- (i) in such a case the value of the property shall be taken to be the lower of its original value and its readjusted value at the time that it was acquired by the donor or its value as at 1st January 1980 if this is later;
- (ii) where the property was acquired by the donor before 14th July 1974, the donee may elect for its value to be taken to be its value as at 14th July 1974:
- (iii) in the case of a donation made by the company to a shareholder, the exemption provided by section 5 above shall not be granted when the donee disposes of the property within 3 years of its transfer to him;
- (f) any donation to the Crown and any donation for educational, training or other philanthropic purposes made to a local community or to any philanthropic institution in the Areas or the Republic approved by the Administrator;
- (g) exchange or sale in the Republic under the Agricultural Land (Consolidation) Law 1969 of the Republic as that Law may be amended or substituted;
- (h) an assignment of property in the course of a reorganisation:

Provided that in such a case the value of the property shall be taken to be the lower of its original value and its readjusted value as at the time it was acquired by the person disposing of the property, or its value as at 1st January 1980 if this is later;

- (i) a transfer in the course of a reorganisation of shares which represent the capital of the receiving or acquiring company to or by a shareholder of the assigning or acquired company in exchange for shares which represent the capital of that company:

Provided that in such a case the value of the property shall be taken to be the lower of its original value and its readjusted value as at the time it was acquired by the person disposing of the property, or its value as at 1st January 1980 if this is later.

11.—(1) Any tax paid under this Ordinance on account of the donation of any property by a person shall be credited to the estate as part of the whole of any estate duty payable on such property under the provisions of any enactment in force relating to estate duty:

Provided that such credit shall not exceed the amount payable as estate duty.

(2) Any tax paid by any person under any Ordinance in force relating to

Law No.24/1969.

Tax to be credited
as payment of
estate duty.

estate duty, such tax being proportionate to the disposable property, shall be deductible from the tax which is chargeable under this Ordinance:

Provided that such a deduction shall not exceed the amount of tax chargeable under this Ordinance.

12.—(1) A person who intends to dispose of property shall notify the Fiscal Officer of the intended disposal within one month of the date on which the disposal is intended to take place and in any event before the property is transferred, and shall provide the Fiscal Officer with such further particulars as may be required for the purposes of this Ordinance and shall pay such tax as the Fiscal Officer shall assess.

Notification of intention to dispose of property.

(2) The notification required under subsection (1) above shall be given in such form as the Fiscal Officer may direct.

13. If a person fails to notify the Fiscal Officer of a proposed disposal of property within the time required under section 12 above, the Fiscal Officer may, at any time thereafter, assess the amount of tax payable with respect to that disposal and shall send to the person concerned a notice of such assessment.

Fiscal Officer to assess tax.

14. Where it appears to the Fiscal Officer that the amount which any person is liable to pay as tax has been assessed at less than the proper amount, the Fiscal Officer may at any time within 3 months of the notice of the self assessment and payment of tax, make an additional assessment of the amount which such person is, in his opinion, liable to pay:

Additional assessments.

Provided that where the under-assessment is due to fraud or wilful evasion, such additional assessment may be made at any time.

15. The provisions of any Ordinance in force relating to the assessment and collection of taxes, regarding objections and appeals, shall apply with appropriate modifications to tax chargeable under this Ordinance:

Objections and appeals.

Provided that the Fiscal Officer shall come to a decision regarding any objection submitted to him for consideration within 2 years from the date of submission.

16. A person disposing of property shall be liable to pay the tax at the time when such property is disposed of:

Obligation to pay tax.

Provided that in the case of an agreement for sale which provides that the payment of the agreed price for the property is to be made by instalments, the tax may be paid, with interest chargeable on the unpaid balance, in proportion to such instalments.

17.—(1) A person shall pay tax in such manner as he is directed in a notice of assessment on or before the date specified in such notice.

Manner of payment of tax.

(2) A person shall pay any tax to which he is assessed notwithstanding any notice of objection or appeal and in any event before the transfer of the property unless the Fiscal Officer orders that payment of the tax or any part thereof may be held over to a date specified in such order:

Provided that no transfer of the property may be made before payment of any tax assessed, unless the Fiscal Officer orders the holding over of such payment.

(3) Any tax remaining unpaid by the date specified in the notice of assessment or in any order made under subsection (2) above in relation to such tax shall be deemed to be in arrears.

(4) Tax payable under this Ordinance shall be collected in accordance with any Ordinance in force relating to the collection of taxes.

Interest on unpaid tax.

18. Simple interest at the rate of 9% per year shall be paid upon all tax from and after the expiration of 1 month of the date of the disposal of the property till the date of payment and shall be recovered as though it formed part of the tax in arrears:

Provided that where any tax chargeable has not been assessed the person liable to pay the tax may pay to the Fiscal Officer an amount on account of the tax thereafter to be assessed; and any such amount shall, on assessment, be appropriated to the tax due from that person.

Appropriation of payments.

19. Where under this Ordinance any amount is payable by any person by way of interest and tax, any payment made by him shall be appropriated first to interest and then to the tax:

Provided that where interest has been paid on any amount which exceeds the amount representing tax, such interest shall be refunded.

Penalty for failure to deliver declaration.

20. A person who fails to deliver a declaration of the disposal of any property within the period provided for by section 12 above is guilty of an offence and is liable on conviction to a fine not exceeding £500.

Penalty for failure to furnish information.

21. A person who fails to comply with a notice issued under section 16 above is guilty of an offence and is liable on conviction to a fine not exceeding £500.

Penal provisions relating to fraud, etc.

22. Any person who wilfully and with intent to evade or to assist any other person to evade payment of the tax—

- (a) signs any declaration, statement or return furnished under this Ordinance without reasonable grounds for believing the same to be true;
- (b) gives any false answer whether orally or in writing to any question or request for information asked or made in accordance with the provisions of this Ordinance;
- (c) prepares or maintains or authorises the preparation or maintenance of any false book of account or other document;
- (d) makes use of or authorises the use of any fraudulent device, or contrivance;
- (e) makes any incorrect statement in connection with a claim for relief on account of expenditure;
- (f) makes any false declaration in relation to the proceeds derived from the disposal of property,

is guilty of an offence and is liable on conviction for any such offence to a fine not exceeding the aggregate of £1,000 plus three times the amount of tax that he, or the person whom he has assisted, evaded or sought to evade, or to imprisonment for a term not exceeding 12 months, or to both such fine and such imprisonment.

Power of Fiscal Officer to compound offences.

23. The Fiscal Officer may at any time before a prosecution has been commenced for any offence under this Ordinance, compound such offence:

Provided that where a prosecution has been commenced against any person for any offence under this Ordinance the Fiscal Officer may, with the consent of the Attorney General and Legal Adviser, compound such offence at any time before judgment and may, with such consent, withdraw such prosecution.

24. The prosecution, conviction or imprisonment of any person for an offence under this Ordinance shall not affect the liability of that or of any other person to pay any tax in relation to which the offence was committed, or to be assessed for such tax, or to pay or to be assessed for any penalty, interest or other amount which becomes payable or assessable by reason of the failure of the person liable to pay the tax to pay it by the date that it is due.

Tax to be payable notwithstanding proceedings for penalties.

25. No prosecution in respect of any offence under this Ordinance shall be instituted except at the instance of or with the written consent of the Attorney General and Legal Adviser.

Prosecution not to be instituted except with sanction of the Attorney General and Legal Adviser.

26. The secretary, manager, chairman or other principal officer of any company or body of persons shall be liable for any failure of the company or body of persons to do any act or other thing required to be done by such company or body of persons under this Ordinance:

Principal officer to act on behalf of a company or body of persons.

Provided that any person to whom a notice has been given under the provisions of this Ordinance as representing a company or body of persons shall be deemed to be its principal officer unless he proves that he has no connection with such company or body of persons, or that some other person resident in the Areas or the Republic is its principal officer.

27.—(1) The Administrator may make regulations for the purpose of carrying out or giving effect to the objects and purposes of this Ordinance.

Regulations.

(2) Such regulations may prescribe a penalty not exceeding £25 for any contravention of, or non-compliance with, the regulations and any person contravening or not complying with any regulation for which such a penalty is prescribed is guilty of an offence is triable summarily in the Judge's Court.

28.—(1) The following Ordinances are repealed—

- (a) the Capital Gains Tax Ordinance 1980;
- (b) the Capital Gains Tax (Amendment) Ordinance 1981;
- (c) the Capital Gains Tax (Amendment) Ordinance 1991;
- (d) the Capital Gains Tax (Amendment) Ordinance 1994;
- (e) the Capital Gains Tax (Amendment) Ordinance 1999.

Repeals
Ordinance
18/1980
Ordinance 3/1981
Ordinance 1/1991
Ordinance 9/1994
Ordinance 22/1999.

(2) Without prejudice to the operation of sections 8 to 10 of the Interpretation Ordinance (which relate to the effects of repeals) the continuity of the law relating to capital gains tax shall not be affected by the substitution of sections of this Ordinance for sections of the Capital Gains Tax Ordinance 1980 which are repealed in accordance with subsection (1) above, whether or not the sections of this Ordinance modify the corresponding repealed sections.

Cap 1 (Laws of Cyprus) as amended by Ordinance 37/2003.

29. This Ordinance does not apply to any authorised service organisation as defined in the Treaty of Establishment.

30. This Ordinance comes into force on the day that it is published in the Gazette.

Commencement.

9th February 2006
(128/119)

P. D. Draycott
Chief Officer.

