



PRESS RELEASE

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Chief Minister Statement to Parliament: The State Aid Decision - No Deal Planning – Joint Sovereignty

Mr Speaker,

There are two European matters I would like to address in this statement.

State Aid.

A Press Release was issued by the European Commission yesterday announcing that it had adopted a final decision closing its State Aid investigation into Gibraltar's Income Tax Act 2010.

It is an important decision in that it concludes an investigation, that has lasted over 6 years, into the entirety of our corporate tax system.

I wish to give some background to this matter.

The Income Tax Act 2010 was presented to the Parliament by the former administration.

It entered into force on 1 January 2011.

The former administration decided not to notify this new measure to the EU Commission at the time that it was adopted.

Six months after coming into office (1 June 2012), I was informed that the Spanish Government had filed a complaint with the European Commission claiming that the Income Tax Act 2010 as a whole constituted unlawful State Aid. In particular, the Spanish Government considered that the aim of the Income Tax Act 2010 was to maintain the offshore tax regime that the Gibraltar Government had put an end to when it abolished the legislation on exempt and qualifying companies.

The Spanish Government was also using this complaint to revive the spectre of their earlier complaints on regional selectivity.



After examining the numerous allegations made by Spain and hearing extensive submissions from the Her Majesty's Government of Gibraltar, on 16 October 2013 the Commission opened a formal investigation. However, it did so only in relation to two discreet aspects of the INCOME TAX ACT 2010, namely, a tax exemption given to certain interest and royalty income.

The Commission's concerns with respect to these two matters were addressed, on a without prejudice basis, by the Gibraltar Government through amendments made to the INCOME TAX ACT 2010 back in July 2013 (interest) and in January 2014 (royalty income).

In parallel to the above, the European Commission also asked questions on the practice of tax rulings by the Income Tax Office in Gibraltar.

In the view of Her Majesty's Government of Gibraltar, the Commission's questions were mistakenly influenced by the enquiries it was making into certain tax rulings given in other European tax jurisdictions in wholly different cases concerning individual companies.

Honourable members will remember the publicity given to cases involving companies such as Starbucks, Apple and Microsoft and the Commission's subsequent policy to investigate the practice of tax rulings throughout the whole EU.

Notwithstanding Gibraltar's submissions, on 1 October 2014, the Commission decided to extend its investigation to the practice of tax rulings by the Income Tax Office.

This decision was taken by the Spanish Commissioner Almunia, who at that time was responsible for State Aid, whilst discussions regarding a large number of tax rulings were still on-going.

Mr Almunia had, in other cases, been suspected of national partiality.

He took the decision in haste just weeks before the end of his term as Competition Commissioner.

The decision contained a number of palpable errors.

It triggered a series of events, including direct communications between myself and the then new President of the European Commission and Competition Commissioner.

These errors were, to a large extent, acknowledged by the Commission.

Honourable members will see that this explains why the decision opening an investigation into the practice of tax rulings in Gibraltar was not published until 7 October 2016, that is, over two years after it had been taken.

It was immediately challenged by the Gibraltar Government before the General Court of the European Union.

That case is currently pending.



At the same time as bringing the legal challenge, we remained fully engaged with the Commission in its investigation of the tax rulings practice in Gibraltar.

During that time, extensive exchanges have taken place and numerous meetings have been attended to by the Gibraltar team in Brussels.

I have attended some higher level meetings on this subject myself.

In that process, we have been able to persuade the Commission that there was no systematic problem with the practice of tax rulings in Gibraltar, as the Commission thought there was.

We have also demonstrated that, in its tax rulings, the Income Tax Office simply provided an expression of the law applicable to a particular case and based on the facts submitted to it.

It is vitally important to bear in mind that in yesterday's decision, the Commission has accepted Gibraltar's arguments that the tax ruling practice, as a whole, under the INCOME TAXACT 2010 does not constitute State Aid.

I would like to thank and congratulate the excellent team at the Income Tax Office, past and present, for this finding.

They had come under severe criticism and suspicion by the European Commission that they simply did not apply rigour or seriousness to how they went about performing their important functions.

Nothing could have been further from the truth, as is now established beyond any reasonable dispute.

Mr Frank Carreras, in particular, when he was Commissioner of Income Tax, was subjected to severe and unjustified cross examination by the Commission on more than one occasion.

He has come out from this process with flying colours.

And I would also like to thank the current Commissioner, John Lester, and Terence Rocca, Crown Counsel at the Income Tax Office for the tremendous work they have done in producing the material that was necessary to dispel the wholly unjustified suspicion that there was a systemic non-compliance of the law by the Income Tax Office.

In the discussions with the Commission, the Government has agreed to introduce legislation regulating the practice on tax rulings in order to place it on a legislative footing as well as Guidance Notes. Those notes will include references on the interpretation of the territorial principle of taxation. These were published by Her Majesty's Government of Gibraltar in October 2018.

Mr Speaker, Isaac Levy of Hassans International Law Firm, of which I declare I am a partner on a sabbatical, was a key part of the Government team also.

He was the practitioner instructed to draft the Regulations on Tax Rulings and all the Guidance Notes.



The Government's approach has been fully vindicated in yesterday's decision, which allows us to continue with the practice of tax rulings.

Furthermore, of the 165 tax rulings that the Commission has been investigating it has found errors only in relation to 5 of them, all of which concern transactions involving Dutch limited partnerships which have also been controversial in other EU jurisdictions.

None of the 5 in Gibraltar present any serious problems or issues.

Mr Speaker, I think it is worth setting out that this represents just 3% of the rulings initially concerned.

Or to put it another way, Mr Speaker, the fact is that the Commission investigation instigated by Commissioner Almunia was found to be groundless in 97% of cases.

Last night I was provided with a copy of the decision to be adopted.

As a party to the decision, we are currently examining the decision in relation to matters relating to confidentiality or for manifest errors.

It is quite a detailed decision which will be made public shortly.

There are other important findings in the Commission's reasoning for the decision which we have been able to make submissions on during the time the investigation has been open.

Most importantly, the Commission has vigorously rejected Spain's attempts to reopen the regional selectivity issue and has found that Gibraltar, and Gibraltar alone, constitutes the reference framework for analysing any tax measure adopted by the Gibraltar Government.

This is of great value and importance.

It would, of course, have set us up magnificently well for operations in the European Single Market.

The result of the 2016 referendum, however, Mr Speaker, will now likely see us leave membership of the Single Market in 99 days time, on the 29th March next year.

If there is a Withdrawal Agreement, we may enjoy access for another two years – although I note that members opposite do not see any value to the Withdrawal Agreement.

Returning to the decision, Mr Speaker, the Commission also recalls that Gibraltar has full internal self-governance in particular with respect to tax matters.

In the forthcoming days I will be examining with the team the order for recovery made by the Commission.



Our first reaction on initial reading is that the Commission has greatly exaggerated the level of the recovery and that the order is nowhere near as high as the Commission's Press release indicates.

I am therefore absolutely delighted by yesterday's decision.

Although it is termed a negative decision, its effect is minor whilst at the same time it vindicates our view that there is nothing fundamentally unlawful or wrong with our Income Tax Act 2010.

Indeed, considering that the entirety of the Act was under examination by the European Commission, the result of the investigation, which in total has taken over 6 years, is a remarkable success for Gibraltar and a massive blow for all those who seek to denigrate Gibraltar as a tax jurisdiction.

The propaganda war against us will, no doubt, not end here.

But every time that we are challenged Mr Speaker, we will as a jurisdiction be able to point to this seminal important decision.

We will be able to point to the fact that our Income Tax Act has survived challenge on the grounds of State Aid.

We will be able to point to the fact that 97% of the rulings investigated by the Commission survived full and detailed scrutiny.

I doubt we will hear much of that excellent record in the propaganda war.

The entire investigation has required us to only make minor amendments to the Act on interest and royalties and to place on a legislative footing the practice of tax rulings in Gibraltar.

The net result of this investigation is that the Income Tax Act now enjoys a full clean bill of health from the Commission.

This is great, great news indeed.

In fact, Mr Speaker, whether we are in the EU or out of the EU, this is an important feather in our cap as a jurisdiction.

In the forthcoming days, I will be studying further the decision with the team and shall make any further announcements that may emerge from that analysis.

In particular, we will consider whether we should now withdraw the pending court case.

For many, many years Gibraltar's tax system has been a constant subject of examination by the European Commission, whether under State Aid rules or by the Code of Conduct Group on Business Taxation.



On each occasion, these investigations have been at the suit of the Government of the Kingdom of Spain.

Even though we may now be leaving the EU, it is with a measure of great satisfaction that we will be doing so with a corporate tax regime that has been found to be fully compliant with EU rules.

I have no doubt that this will stand us in good stead, whatever the future may bring.

During all these years of investigation and court cases, which have spanned close to 18 years, and covered both my administration and the previous administration, the Gibraltar negotiating and legal team has been led by the Government's Chief Legal Adviser and now Attorney General, Mr Michael Llamas QC.

I would like to express my sincerest thanks and gratitude to him for all his work and commitment to this matter.

Mr Llamas' legal skills have thwarted the underlying Spanish complainants or objectors in all fields where they have sought to damage Gibraltar.

From voting in European Parliamentary elections to admission in UEFA and FIFA.

From the Code Group to the European Commission.

And from the European Court of Human Rights in Strasbourg to the Court of Justice of the The European Union.

Michael Llamas has been the legal scourge of those who unfairly seek to taint our nation's practices in every field.

As we prepare to leave the European Union, with the further challenges that this will likely entail, Gibraltar could have no better senior law officer.

No better Attorney General.

During all this time, he has been ably flanked by two leading practitioners in this field, Mr Asger Petersen and Mr John Temple Lang.

These two gentlemen are one Danish and the other Irish.

Both have long worked alongside Michael Llamas during his time in Brussels.

Although neither is a Gibraltarian, they have done an absolutely excellent job in defending Gibraltar.

Although they are unknown to almost everyone in Gibraltar, I would like to express my deep gratitude to both of them on behalf of the Government and on behalf of the People of Gibraltar.



And for some years now, that team has also been composed of the Financial Secretary, Mr Albert Mena, who has brought his financial and fiscal expertise to the team and to whom I also extend my sincerest thanks and gratitude.

He has spent many hours supporting the Attorney General in respect of this matter and has been a hugely important part of the team that has delivered this result for Gibraltar.

No deal Brexit.

Mr Speaker, the second matter I would like to address is the Communication published yesterday by the European Commission (COM (2018) 890) on its Contingency Action Plan ahead of a No-Deal Brexit.

In that Communication, the Commission states:

“By virtue of Article 355(3) TFEU and to the extent provided for in the 1972 Act of Accession of the United Kingdom to the European Communities, Union law applies to Gibraltar as a European territory for whose external relations a Member State is responsible. Article 355(3) TFEU will no longer apply to Gibraltar when the United Kingdom is no longer a Member State. As a consequence, contingency measures will not apply to Gibraltar”.

Mr Speaker, that statement has not taken me or anyone in the Government’s Brexit team by surprise.

And, in fact, it has served to strengthen my conviction that in the context of the UK leaving the EU, the best and safest outcome for Gibraltar in the Brexit negotiations is that the Withdrawal Agreement is approved by the House of Commons and the European Parliament.

That is how Gibraltar’s interests will be best safeguarded because the statement made by the Commission in the Communication gives us a good taste of the prospect of what may lie ahead for us in a no deal scenario.

And in that context I also want to clearly reflect that our position is that the Memoranda of Understanding that have been agreed by us with Spain are agreed in the context of the existence of the Withdrawal Agreement.

They are agreements designed to implement commitments set out in the Protocol on Gibraltar in the Withdrawal Agreement.

Without a Withdrawal Agreement there is no Protocol on Gibraltar.

Without a Protocol on Gibraltar, there are no effective Memoranda hanging off that

But that is not to say, Mr Speaker, that in a no deal context we would not wish to consider with Spanish colleagues how to adapt arrangements to ensure we work to soften the blow of no deal for



our respective citizens and continue to seek cooperation on the terms of the MoUs in those important policy areas.

We will start consideration of such matters in early January in meetings in London with UK and Spanish colleagues.

But we do not consider that it is accurate to say that the MoUs can automatically be considered to be in effect if there is no Withdrawal Agreement.

The Opposite is our legal view.

Now, as we are 99 days short of leaving the EU, let us be clear, Mr Speaker, the position of Her Majesty's Government of Gibraltar is that the best course for Gibraltar is to remain in the European Union.

I have detected attempts by not members opposite to suggest that we prefer the Withdrawal Agreement to remaining in the EU.

Utter nonsense, Mr Speaker.

Our preferred course is for this Brexit nightmare to end.

The best way to end it is for the Article 50 notice to be revoked, as The Court of Justice of the European Union has now agreed is possible at any time before the 29th March.

An alternative might be a new referendum in the United Kingdom, as I set out in July 2016.

Honourable Members will have different assessments of the likelihood of any of those eventualities becoming a reality.

The fact, however, is that if we are leaving on the 29th March, then there is enormous value in leaving on the basis of an agreement for that purpose.

The notice from the EU yesterday shows the types of issues we may face with the remaining 27 if we leave without a deal.

And therefore, when I am criticised by some not opposite, who with compulsive blindness still do not appear to understand the importance of my Government's achievement in ensuring that Gibraltar forms part of the Withdrawal Agreement and the transition period, I tell them look at statements of the type issued yesterday by the EU Commission and take it as an indicator of what may well lie ahead of us and what we can avoid with the agreement we have ensured will apply to Gibraltar if it is brought into effect.

I have already made my position clear on the various scenarios that may emerge with Brexit in the next 99 days and I will not repeat them now.



In any event, as you know, the Deputy Chief Minister and I returned from meetings in London on Tuesday precisely on contingency planning. The people of Gibraltar should be in no doubt that we are keeping every eventuality in mind and planning for each one of them.

We are also now ramping up implementation for a no deal scenario.

We will be ready for the morning of the 30th March.

But we will unashamedly look out for the interests of our citizens and residents above all else in such circumstances.

And those who might think it is wise or clever to seek to exclude Gibraltar from some EU mitigation measures in the event of a no deal Brexit need to know one thing:

A careful analysis will actually show that the Gibraltarians and the residents of Gibraltar will not be the ones to be most affected by such steps.

Additionally, a hugely important measure, in respect of freedom of movement has been stated by the EU Commission to be applicable to Gibraltar residents, namely the freedom to access the Schengen Area without a visa.

Mr Speaker, I have designated the Deputy Chief Minister to deal with all logistical aspects of a potential no deal exit from the EU.

I have no doubt that his cool and calm efficiency will assist me in harnessing all the power of the Civil Service and the Public Sector for the challenges to come.

We should also not lose sight, Mr Speaker, of the fact that we are now able to boast of two things which can provide security for our people as we move into the festive season.

The first is that we are able to boast about our arrangements with the UK in order to see continued access to the UK market in financial services, gaming etc.

The value of this cannot be underestimated.

Matters relating also to education, health etc and which are going to become bilateral between Gibraltar and the UK, but which have until now been underpinned by EU rules, are going to continue seamlessly.

This is of huge value and only some individuals not opposite have seen fit to try to denigrate the value of that.

Indeed, I fully expect that the temporal period of those arrangements will, in any event, be open to extension beyond 2020 if required.



The second matter of great value, which some not opposite have chosen to denigrate, is the Gibraltar parts of the Withdrawal Agreement presented by the Prime Minister and agreed with the EU.

Slowly I think it will dawn on many that – if we are to leave, which we do not want to do – it is better to leave on the basis of the Agreement and not without it.

And what should not be allowed to fly is the ‘unicorn’ Mr Speaker, that we should be directing our energies to trying to bring about ‘remaining’ in the European Union at this stage.

If there is a further referendum, we will back remain.

If there is no deal, after the UK Parliament votes on Mrs May’s deal, we will back a rescission of the Article 50 notification before an extension.

But we have a duty as a responsible government to be ready for eventualities.

We do not have the freedom to be irresponsible and simply ignore reality.

We have to work on the basis of the realities that are before us and which we are dealing with in our relationship with the UK government.

And we have to work on the basis of the work that has already been carefully done.

The heat maps and the understanding of the matters that will arise in a no deal scenario.

In that way, with great effort and energy, we will ensure that – if it is necessary – we will be ready on the morning of the 30th March to welcome a dawn that will rise as optimistic and positive for our people as the morning of the 1st of January 1973.

But let no one think that preparing for a no deal Brexit will be easy or comfortable.

But prepare we will.

And prepared we will be, Mr Speaker for that morning of our new future as a people.

Joint Sovereignty

Additionally, I must also, I feel Mr Speaker, address directly the question of the motion of the Spanish Senate urging the Government of the Kingdom of Spain to put the issue of Joint Sovereignty to the United Kingdom.

I think it is important we put on record the unanimous position of the People, Parliament and Government of Gibraltar.



First of all, it is nonsense to suggest that matters relating to the Sovereignty of Gibraltar should be raised with the United Kingdom, given the clear and unequivocal position of the UK in respect of the double-lock.

And the People, Parliament and Government of Gibraltar are not going to unlock the double-lock.

But secondly, and more seriously, Mr Speaker, I think it is important that we should send a clear and unequivocal message to anyone in Spain who thinks that there is any chance that any proposal for Spanish sovereignty over Gibraltar will ever prosper.

In particular, given the return to influence of the not missed Mr Margallo and his ideas, let us be very clear.

Gibraltar will not waiver.

We will not soften.

We will not ripen.

And that message unfortunately appears to have to be delivered in a way that is inordinately clear – otherwise it doesn't appear to get through.

So, I was clear that Mr Jose Manuel Garcia Margallo should 'wake up and smell the coffee,' because Gibraltar is never going to be Spanish.

When he pressed, I told him clearly that the answer was 'no way, Jose'.

Now we see a resurgence, in particular but not exclusively from the Spanish right wing, of the idea of Joint Sovereignty.

I think that there is no depth of understanding in any political party in Spain of how foolish this notion is.

Gibraltarians are not going to change their minds.

We are not going to be bribed with access to the EU market.

We are not going to be bribed with any sweet or reward.

We are not going to be cajoled by any threat or action.

Can they please get it into their heads in all of the political factions in Spain?

Can they just please forget it.

Because as the current Spanish Minister for Europe, Snr Marco Aguiriano, recently said in one of his interventions before one of Select Committees in Madrid, the fact is that if the question of



Sovereignty or Joint Sovereignty is put to us, we will not have the discussion. We will close our files and leave the room.

There will be no discussion to be had.

I commend Snr Aguiriano's understanding to all his parliamentary colleagues.

Because our 96% vote for remain should not be misinterpreted by anyone to be a vote to chose Europe above Britain.

That would never be our position.

Thank you Mr Speaker.