

*Draft Order in Council laid before the House of Commons under section 173(7) of the Finance Act
2006, for approval by resolution of that House.*

DRAFT STATUTORY INSTRUMENTS

2010 No.

TAXES

The International Tax Enforcement (Gibraltar) Order 2010

Made - - - - [day] [Month] 2010

At the Court at Buckingham Palace, the [date] day of [Month] 2010

Present,

The Queen's Most Excellent Majesty in Council

A draft of this Order was laid before the House of Commons in accordance with section 173(7) of the Finance Act 2006(1) and approved by a resolution of that House.

Accordingly, Her Majesty, in exercise of the powers conferred upon Her by section 173(1) of the Finance Act 2006, by and with the advice of Her Privy Council, orders as follows—

Citation

1. This Order may be cited as the International Tax Enforcement (Gibraltar) Order 2010.

Tax information exchange arrangements to have effect

2. It is declared that—
 - (a) the arrangements specified in the Exchange of Letters set out in Part 1 of the Schedule to this Order and in the agreement set out in Part 2 of that Schedule have been made with the Government of Gibraltar with a view to the exchange of information foreseeably relevant to the administration or enforcement or recovery of taxes, and debts relating to the taxes, covered by the agreement; and
 - (b) it is expedient that those arrangements should have effect.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK
Statutory Instrument: The International Tax Enforcement (Gibraltar) Order 2010 No. 2680

Name
Clerk of the Privy Council

SCHEDULE

Article 2

PART 1

EXCHANGE OF LETTERS BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF GIBRALTAR CONCERNING AN AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF GIBRALTAR FOR THE EXCHANGE OF INFORMATION RELATING TO TAXES

Letter from the Financial Services Secretary to the Treasury

24th August 2009

Sir,

Having regard to the wish of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Gibraltar to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes, I have the honour

- to propose to you the arrangements contained in the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Gibraltar for the exchange of information relating to taxes at Appendix 1 to this letter and that this will come into effect on the date mentioned in Article 12 of the Agreement;
- to propose our mutual commitment to undertake at the earliest date any internal legislative formalities necessary for the coming into effect of the arrangements contained in the Agreement and to notify each other without delay when such formalities are completed;

I have the honour to confirm that, if the above is acceptable to the Government of Gibraltar, this letter and Appendix 1 thereto together with your reply will constitute the mutual acceptance of the two Governments of the provisions of the said Agreement.

Please accept, Sir, the assurance of our highest consideration.

Paul Myners CBE
Financial Services Secretary to the Treasury

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Letter of Reply from the Chief Minister of Gibraltar

27th August 2009

Sir,

I have the honour to acknowledge receipt of your letter dated 24th August 2009, which reads as follows:

“Sir,

Having regard to the wish of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Gibraltar to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes, I have the honour

- to propose to you the arrangements contained in the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Gibraltar for the exchange of information relating to taxes at Appendix 1 to this letter and that this will come into effect on the date mentioned in Article 12 of the Agreement;
- to propose our mutual commitment to undertake at the earliest date any internal legislative formalities necessary for the coming into effect of the arrangements contained in the Agreement and to notify each other without delay when such formalities are completed;

I have the honour to confirm that, if the above is acceptable to the Government of Gibraltar, this letter and Appendix 1 thereto together with your reply will constitute the mutual acceptance of the two Governments of the provisions of the said Agreement.
Please accept, Sir, the assurance of our highest consideration.”

I am able to confirm that the contents of your letter dated 24th August 2009 and Appendix 1 thereto are acceptable to the Government of Gibraltar and together with this reply will constitute the mutual acceptance of our two Governments of the provisions of the proposed Agreement.

Please accept, Sir, the assurance of our highest consideration.

P R Caruana QC
Chief Minister

PART 2

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF GIBRALTAR FOR THE EXCHANGE OF INFORMATION RELATING TO TAXES

Whereas –

the United Kingdom and Gibraltar (“the Parties”) wish to enter into an Agreement that respects the constitutional relationship between the Parties;

the Parties recognise that present legislation already provides for cooperation and the exchange of information in criminal tax matters;

the Parties have long been active in international efforts in the fight against financial and other crimes, including the targeting of terrorist financing;

Gibraltar entered into a formal written commitment to the OECD's principles of transparency and exchange of information on 27th February 2002;

the Parties wish to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes;

Now, therefore, the Parties have agreed to conclude the arrangements contained in the following Agreement, which contains obligations on the part of the Parties only.

ARTICLE 1

OBJECT AND SCOPE OF AGREEMENT

The competent authorities of the Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration or enforcement of the domestic laws of the Parties concerning the taxes and the tax matters covered by this Agreement, including information that is foreseeably relevant to the determination, assessment, enforcement or collection of tax claims with respect to persons subject to such taxes, or the investigation or prosecution of tax matters in relation to such persons. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable. However, the requested Party shall use its best endeavours to ensure that the effective exchange of information is not thereby unduly prevented or delayed. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8.

ARTICLE 2

JURISDICTION

A requested Party is not obliged to provide information in accordance with this Agreement which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

ARTICLE 3

TAXES COVERED

1. The existing taxes which are the subject of this Agreement are taxes of every kind and description imposed in the Parties.
2. This Agreement shall also apply to any identical or substantially similar taxes imposed by either Party after the date of signature of this Agreement in addition to, or in place of, any of the taxes listed in paragraph 1 of this Article. The competent authorities of the Parties shall notify each other of any relevant changes to the taxation and related information gathering measures covered by this Agreement.

ARTICLE 4

DEFINITIONS

1. In this Agreement unless the context otherwise requires-
 - (a) “United Kingdom” means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom designated under its laws concerning the Continental Shelf and in accordance with international law as an area within which the rights of the United Kingdom with respect to the seabed and sub-soil and their natural resources may be exercised;
 - (b) “Gibraltar” means the territory of Gibraltar
 - (c) “collective investment scheme” means any pooled investment vehicle irrespective of legal form;
 - (d) “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
 - (e) “competent authority” means
 - (i) in the case of the United Kingdom, the Commissioners for Her Majesty’s Revenue and Customs or their authorised representative;
 - (ii) in the case of Gibraltar, the Chief Secretary of the Gibraltar Government or such other person as the Minister of Finance may appoint;
 - (f) “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other laws;
 - (g) “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the requesting Party;
 - (h) “information” means any fact, statement, document or record in whatever form;
 - (i) “information gathering measures” means laws, regulations and administrative or judicial procedures that enable a Party to obtain and provide the requested information;
 - (j) “person” includes an individual, a company, or any other body or group of persons;

- (k) “public collective investment scheme” means any collective scheme or fund, in which the purchase, sale or redemption of shares or other interests is not implicitly or explicitly restricted to a limited group of investors;
- (l) “requested Party” means the Party to this Agreement which is requested to provide or has provided information in response to a request;
- (m) “requesting Party” means the Party to this Agreement submitting a request for or having received information from the requested Party;
- (n) “tax” means any tax covered by this Agreement;
- (o) “Party” means the United Kingdom or Gibraltar as the context requires.

2. As regards the application of this Agreement at any time by a Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

ARTICLE 5

EXCHANGE OF INFORMATION UPON REQUEST

1. The competent authority of a requested Party shall provide upon request in writing by the requesting Party information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if it occurred in the territory of the requested Party. If the information received by the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, it shall advise the competent authority of the requesting Party of that fact and request such additional information as may be required to enable the effective processing of the request.
2. If the information in possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for the information, the requested Party shall use all relevant information gathering measures to provide the requesting Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.
3. If specifically requested by the competent authority of the requesting Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.
4. Each Party shall ensure that its competent authority, for the purposes of this Agreement, has the authority to obtain and provide upon request:
 - (a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;
 - (b) information regarding the ownership of companies, partnerships, collective investment schemes, trusts, foundations and other persons, including:
 - (i) within the constraints of Article 2, ownership information on all such persons in an ownership chain; and
 - (ii) in the case of collective investment schemes, information on shares, units and other interests; and
 - (iii) in the case of trusts, information on settlors, trustees and beneficiaries; and

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- (iv) in the case of foundations, information on founders, members of the foundation council and beneficiaries, and equivalent information in the case of entities that are neither trusts nor foundations.

5. Notwithstanding the preceding paragraphs, this Agreement does not create an obligation on the Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes, unless such information can be obtained without giving rise to disproportionate difficulties.

6. The competent authority of the requesting Party shall provide the following information to the competent authority of the requested Party when making a request for information under this Agreement in order to demonstrate the foreseeable relevance of the information to the request:

- (a) the identity of the person under examination or investigation;
- (b) the period for which the information is requested;
- (c) the nature and type of the information requested and the form in which the requesting Party would prefer to receive it;
- (d) the tax purposes for which the information is sought and the reasons why the information requested is foreseeably relevant to the administration or enforcement of the domestic laws of the requesting Party;
- (e) the grounds for believing that the information requested is present in the territory of the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;
- (f) to the extent known, the name and address of any person believed to be in possession or control of the information requested;
- (g) a statement that the request is in conformity with this Agreement and the laws and administrative practices of the requesting Party, and that if the requested information were within the jurisdiction of the requesting Party then the competent authority of the requesting Party would be able to obtain the information under the laws of the requesting Party or in the normal course of administrative practice;
- (h) a statement that the requesting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

7. The competent authority of the requested Party shall acknowledge receipt of the request to the competent authority of the requesting Party, shall advise if there are any unexpected delays in obtaining the requested information, and shall use its best endeavours to forward the requested information to the requesting Party with the least possible delay.

ARTICLE 6

TAX EXAMINATIONS (OR INVESTIGATIONS) ABROAD

1. The requested Party may, to the extent permitted under its domestic laws, and following reasonable notice from the requesting Party, allow representatives of the competent authority of the requesting Party to enter the territory of the requested Party in connection with a request to interview persons and examine records with the prior written consent of the persons concerned. The competent authority of the requesting Party shall notify the competent authority of the requested Party of the time and place of the meeting with the persons concerned.

2. At the request of the competent authority of the requesting Party, the competent authority of the requested Party may allow representatives of the competent authority of the requesting

Party to be present at the appropriate part of a tax examination undertaken by an authority in the requested Party.

3. If the request referred to in paragraph 2 of this Article is granted, the competent authority of the requested Party conducting the examination shall, as soon as possible, notify the competent authority of the requesting Party of the time and place of the examination, the authority or person authorised to carry out the examination and the procedures and conditions required by the requested Party for the conduct of the examination. All decisions regarding the conduct of the examination shall be made by the requested Party conducting the examination in accordance with its domestic laws.

ARTICLE 7

POSSIBILITY OF DECLINING A REQUEST

1. The competent authority of the requested Party may decline to assist:
 - (a) where the request is not made in conformity with this Agreement; or
 - (b) where the requesting Party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulties; or
 - (c) where the disclosure of the information requested would be contrary to the public policy of the requested Party.
2. The provisions of this Agreement shall not impose upon a Party any obligation to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Information described in sub-paragraph 4 of Article 5 shall not by reason of that fact alone constitute such a secret or process.
3.
 - (a) The provisions of this Agreement shall not impose on a Party the obligation to obtain or provide information which would reveal confidential communications between a client and an attorney, solicitor or barrister where such communications are:
 - (i) produced for the purposes of seeking or providing legal advice, or
 - (ii) produced for the purposes of use in existing or contemplated legal proceedings.
 - (b) Information held with the intention of furthering an offence is not subject to legal privilege, and nothing in this Article shall prevent an attorney, solicitor or barrister from providing the name and address of a client where doing so would not constitute a breach of legal privilege.
4. A request for information shall not be refused on the ground that the tax liability giving rise to the request is disputed by the taxpayer.
5. The requested Party may decline a request for information if the information is requested by the requesting Party to administer or enforce a provision of the tax law of the requesting Party, or any requirement connected therewith, which discriminates against a resident or citizen of the requested Party as compared with a resident or citizen of the requesting Party in the same circumstances.

ARTICLE 8

CONFIDENTIALITY

1. All information provided and received by the competent authorities of the Parties shall be kept confidential and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the purposes specified in Article 1. The information shall be used by such persons or authorities only for those purposes, including the determination of any appeal, or the oversight of the above. For these purposes, information may be disclosed in public court proceedings or in judicial proceedings.
2. The information may not be disclosed to any other person or entity or authority without the express written consent of the competent authority of the requested Party.
3. Information provided to a requesting Party shall not be disclosed to any other jurisdiction.

ARTICLE 9

IMPLEMENTING LEGISLATION

The Parties shall enact any legislation necessary to give effect to the terms of this Agreement.

ARTICLE 10

ADMINISTRATIVE COSTS

Incidence of costs incurred in providing assistance (including reasonable costs of third parties and external advisors in connection with litigation or otherwise) shall be decided by the competent authorities in a Memorandum of Understanding.

ARTICLE 11

MUTUAL AGREEMENT PROCEDURE

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the competent authorities shall use their best efforts to resolve the matter by mutual agreement.
2. In addition to the efforts referred to in paragraph 1 of this Article, the competent authorities of the Parties may mutually determine the procedures to be used under Articles 5 and 6.
3. The competent authorities of the Parties may communicate with each other directly for the purposes of reaching agreement under this Article.
4. The Parties may jointly decide on other forms of dispute resolution should this become necessary.

ARTICLE 12

ENTRY INTO FORCE

Each of the Parties shall notify to the other the completion of the procedures required by its law for the bringing into force of this Agreement. The Agreement will enter into force on the date

of the later of these notifications and its provisions shall have effect:

- (a) with respect to criminal tax matters on the date of entry into force of this Agreement; and
- (b) with respect to all other matters covered in Article 1 for taxable periods beginning on or after the date of entry into force or, where there is no taxable period, all charges to tax arising on or after that date.

ARTICLE 13

TERMINATION

1. This Agreement shall remain in force until terminated by either Party.
2. Either Party may terminate this Agreement by giving notice of termination in writing. Such terminations shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of notice of termination by the other Party.
3. If the Agreement is terminated the Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement.

EXPLANATORY NOTE

(This note is not part of the Order)

The Schedule to this Order contains arrangements (“the Arrangements”) dealing with the exchange of information for tax purposes between the Government of the United Kingdom and the Government of Gibraltar. This Order brings the Arrangements into effect.

Article 1 provides for citation.

Article 2 makes a declaration as to the effect and content of the Arrangements.

The Arrangements provide for the exchange of information relevant to the administration or enforcement of the taxes covered by the Arrangements by the revenue authorities of the two countries. Information will be exchanged in accordance with the provisions of the Arrangements.

The Arrangements will enter into force on the date of the later of the notifications by each country of the completion of its legislative procedures. They will take effect as follows:

- (a) in respect of requests relating to criminal tax matters on the date of entry into force; and
- (b) for all other requests, in relation to taxable periods beginning on or after the date of entry into force or, where there is no taxable period, for all charges to tax arising on or after that date.

The date of entry into force will, in due course, be published in the *London, Edinburgh and Belfast Gazettes*.

A full and final Impact Assessment has not been produced for this Order as a negligible impact on the private or voluntary sectors is foreseen.