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## INTERNATIONAL CO-OPERATION (TAX INFORMATION) ACT 2009

### Principal Act

<b>Act. No. 2009-50</b>	<i>Commencement (LN. 2009/087)</i>	21.12.2009
	<i>Assent</i>	18.12.2009

Amending enactments	Relevant current provisions	Commencement date
LN. 2009/089	Sch. 1	22.12.2009
2009/093	Sch. 1	24.12.2009
2010/037	Sch. 1	13.2.2010
2010/086	Sch. 1	1.5.2010
2010/088	Sch. 1	6.5.2010
2010/098	Sch. 1	25.5.2010
2010/123	Sch. 1	3.7.2010
2010/130	Sch. 1	27.7.2010
2010/144	Sch. 1	8.9.2010
2010/159	Sch. 1	4.11.2010
2010/173	Sch. 1	9.12.2010
2010/185	Sch. 1	16.12.2010
2011/059	Sch. 1	21.4.2011
2011/074	Sch. 1	2.6.2011
2011/078	Sch. 1	9.6.2011
2011/230	Sch. 1	1.12.2011
2012/009	Sch. 1	2.2.2012
2012/013	Sch. 1	16.2.2012
2012/020	Sch. 1	1.3.2012
2012/036	Sch. 1	22.3.2012
2012/207	Sch. 1	6.12.2012
2012/213	Sch. 1	13.12.2012
Act. 2013-02	3(2)	3.1.2013
LN. 2013/026	Sch. 1	14.2.2013
2013/053	Sch. 1	28.3.2013

### English sources:

None cited

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AN ACT TO PROVIDE FOR EXCHANGE OF INFORMATION THAT IS FORESEEABLY RELEVANT TO THE ADMINISTRATION AND ENFORCEMENT OF CERTAIN TAXES BETWEEN GIBRALTAR AND OTHER COUNTRIES WITH WHICH GIBRALTAR HAS ENTERED INTO AN AGREEMENT TO THAT EFFECT; AND FOR CONNECTED PURPOSES.

**PART I**  
**Preliminary**

**Title and commencement.**

1.(1) This Act may be cited as the International Co-operation (Tax Information) Act 2009.

(2) This Act comes into operation on the day appointed by the Minister and different days may be appointed for different provisions and for different purposes and “the appointed day” shall be construed accordingly.

**Interpretation.**

2. In this Act–

“Authority” means the Minister or the person or persons as may from time to time be designated by the Minister under section 4;

“Court” means the Magistrates Court or such other court or tribunal as the Minister may, by regulations made under section 23, designate for the purpose of performing the functions and duties conferred on the Court under this Act;

“criminal laws” means all criminal laws designated as such under the domestic law of the country whose laws they are irrespective of whether contained in tax laws, a criminal code or other statutes;

“criminal tax matter” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of a requesting Party;

“information” means any fact, statement, document or record in whatever form and includes–

- (a) any fact, statement, document or record held by banks, other financial institutions, or any persons, including nominees and trustees, acting in an agency or fiduciary capacity; and

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- (b) any fact, statement, document or record regarding the beneficial ownership of companies, partnerships and other persons including–
  - (i) in the case of collective investment funds, information on shares, units and other interests; and
  - (ii) in the case of trusts, information on settlors, trustees and beneficiaries,  
  
provided that, with respect to publicly traded companies or public collective investment funds, ownership information shall only include information that can be obtained without giving rise to disproportionate difficulties;
- (c) any other fact, statement, document or record included in the provisions of any scheduled Agreement;

“information gathering measures” means judicial, regulatory, criminal or administrative procedures enabling the Authority to obtain and provide to the requesting Party the information requested;

“items subject to legal privilege” means, either–

- (1)–
  - (a) communications between counsel and his client or any person representing his client made in connection with the giving of legal advice to the client;
  - (b) communications between counsel and his client or any person representing his client or between counsel or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and
  - (c) items enclosed with or referred to in such communications and made–
    - (i) in connection with the giving of legal advice; or
    - (ii) in connection with, or in contemplation of, legal proceedings and for the purposes of such proceedings,

when they are in the possession of a person who is entitled to possession of them,

but items held with the intention of furthering a criminal purpose are not subject to legal privilege; or

- (2) in the case of any request under a scheduled Agreement that contains different provisions in respect of legal or other privilege, those provisions.

“Minister” means the Minister with responsibility for Finance;

“Party” means a party to a scheduled Agreement and in the case of Gibraltar means the Government;

“person” means a natural person, a company, or any other body or group of persons;

“principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;

“proceedings” means civil or criminal proceedings;

“publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public; shares can be purchased or sold by the public if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;

“recognised stock exchange” means any stock exchange agreed upon by the Authority and the competent authority of a requesting Party;

“request” means a request made by a requesting Party to the Authority pursuant to a scheduled Agreement;

“requested information” means any information that is the subject matter of a request;

“requesting Party” means a Party to a scheduled Agreement making a request under the terms of that Agreement;

“scheduled Agreement” means an agreement for the provision of information in taxation matters, being an agreement which has been

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entered into by the Government with another country or territory and which is listed in Schedule 1;

“taxation matters” includes matters relevant to the administration and enforcement of tax laws including the determination, calculation, collection or assessment of a tax referred to in a scheduled Agreement, or matters incidental thereto, or to the investigation or prosecution of criminal tax matters, or any other matter provided for in a scheduled Agreement.

## Application and Scope.

3.(1) This Act shall apply for the purpose of enabling the Authority to give effect to the terms of a scheduled Agreement for the provision of assistance in taxation matters.

(2) Information or assistance under this Act shall be provided—

(a) where the request—

- (i) is in respect of a criminal tax matter under a scheduled Agreement;
- (ii) made on or after the date of entry into force of that scheduled Agreement; and
- (iii) relates to information or assistance in relation to any taxable period or calendar year beginning on or after 1 January 2004; or

(b) where the request—

- (i) is in respect of taxation matters specified in a scheduled Agreement other than a criminal tax matter;
- (ii) is made on or after the date of entry into force of that scheduled Agreement; and
- (iii) relates to information or assistance—
  - (A) in relation to taxable periods beginning on or after 1 January in the calendar year next following such entry into force;
  - (B) where there is no taxable period, in relation to a charge to tax arising on or after 1 January in

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the calendar year next following such entry into force; or

- (C) where the scheduled Agreement expressly provides otherwise than (A) or (B), in relation to such period commencing as specified therein.

(2A) The provisions of a scheduled Agreement shall be subject to subsection (2)(a).

(2B) In this section “calendar year” means a period of twelve months beginning on 1 January.

(3) A scheduled Agreement shall, until it has been terminated in accordance with its provisions, have legal effect in Gibraltar.

(4) Subject to sub-section (5) below nothing in this Act shall be taken to require the provision of information to a requesting Party otherwise than—

- (a) with respect to a tax of the jurisdiction of the requesting Party that is covered in the relevant scheduled Agreement; and
- (b) with respect to—
- (i) a person who is subject or potentially subject to such tax; and
  - (ii) an interest which is foreseeably relevant to the administration and enforcement of the domestic laws of the requesting Party concerning the taxes referred to in sub-paragraph (a) above, including information that is foreseeably relevant to the determination, calculation, assessment, enforcement or collection of such tax, in relation to such person; or
  - (iii) an interest which such person may have in an entity not subject or potentially subject to such tax; or
  - (iv) an investigation or prosecution of criminal tax matters in relation to such persons.

(5) Where a scheduled Agreement contains provisions which are in conflict with sub-section (4) above, the provisions of the scheduled Agreement shall prevail and have effect.



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(6) The Minister shall, by notice in the Gazette, publish the texts of scheduled Agreements.

(7) Schedule 1 shall specify in relation to each scheduled Agreement—

- (a) the name of the countries with the government of which the Government has concluded the scheduled Agreement;
- (b) the date of signature of the scheduled Agreement;
- (c) the number and date of the Legal Notice in the Gazette in which the scheduled Agreement is published; and
- (d) once it is known, the date on which the scheduled Agreement becomes operative.

(8) The Minister may, by notice in the Gazette, amend, add to, delete from, revoke or replace Schedule 1.

## PART II

### The Competent Authority

#### Competent Authority.

4.(1) The Authority shall be the competent authority for Gibraltar for the purposes of this Act and any scheduled Agreement.

(2) The Minister may, from time to time by notice in the Gazette, designate such person or persons as he sees fit to be the Authority.

(3) Appointments under subsection (2)—

- (a) shall be subject to such terms as the Minister may, from time to time, see fit to impose;
- (b) may be revoked at such time as the Minister deems appropriate.

#### Duty of the Authority.

5. The Authority shall have a duty to perform the functions assigned to or conferred upon it by or under this Act, and any scheduled Agreement, and to carry out the obligations undertaken by the Government in connection therewith.

#### Functions of the Authority.

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6.(1) Without prejudice to the generality of section 5, the principal functions of the Authority include–

- (a) subject to the provisions of this Act, executing requests, including but not limited to providing assistance in relation to–
  - (i) taking the testimony or statement of any person;
  - (ii) obtaining and providing information and articles of evidence;
  - (iii) serving documents; and
  - (iv) executing searches and seizures;
- (b) enabling and ensuring compliance by the Government with the scheduled Agreements;
- (c) liaising as necessary with a requesting Party;
- (d) making determinations pursuant to the terms of any scheduled Agreement as to any costs and the apportionment of such costs relating to or arising from any request;
- (e) with the consent of the Minister (if he is not the Authority) entering into agreements with competent authorities under scheduled Agreements on matters relating to the operation thereof;
- (f) acting as competent authority for Gibraltar in any case where Gibraltar is the requesting Party; and
- (g) performing such other functions as may be prescribed under this Act or any other enactment or law.

### **PART III Execution of Requests**

#### **Procedures for the execution of a request.**

7.(1) Upon receipt of a request, and subject to the provisions of this Act and any issue of public policy that may arise as determined by the Minister, the Authority shall determine whether the request is in compliance with the relevant scheduled Agreement and, if it then believes that there is compliance, the Authority shall execute the request in accordance with, but subject to, the provisions of the relevant scheduled Agreement and this Act.

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(2) If the Minister is not the Authority, the Authority shall provide to the Minister before executing the same a copy of every request and of all other information in his possession relating to a request, together with any determination under sub-section (1) above.

(3) Where information requested in a request which the Authority has decided to execute is within the possession of the Government, or any department thereof, or any statutory agency or authority, or any contractor of the Government, such person or entity shall deliver the information to the Authority forthwith upon request and the Authority shall then provide it to the requesting Party in accordance with the relevant scheduled Agreement and this Act.

(4) Where the requested information is not available in accordance with sub-section (3) above, the Authority shall have recourse to the provisions of sections 8 to 13 to obtain the requested information.

## **Power to compel the production of information.**

8.(1) Where the Authority believes that any person is in possession of requested information he shall issue and serve upon such person a notice requiring that person to produce to the Authority the information the subject matter of the notice in the manner, at the time and in the place specified in the notice.

(2) A notice issued under sub-section (1) shall include at least the particulars specified in Schedule 2.

(3) Any person served with a notice pursuant to sub-section (1) may, within ten days from the date of service of the notice, make a written submission to the Authority specifying any grounds which he wishes the Authority to consider in making a final determination as to whether or not the request is in compliance with the provisions of the relevant scheduled Agreement or this Act, as the case may be, including any assertions that the information requested is subject to legal privilege and the reasons therefor.

(4) The Authority shall consider any written submission made in accordance and compliance with sub-section (3), but shall not be obliged to permit or consider any oral submission by or on behalf of any person who is the subject of a notice, and shall thereupon confirm, vary or withdraw the notice as the Authority considers appropriate.

(5) A person upon whom a notice is issued under sub-section (1) shall provide the information requested by the notice or any variation thereof and comply with all of its other requirements—

- (i) by the date specified in the notice; or
- (ii) if a written submission has been made under sub-section (3), within ten days of the receipt of the Authority's written decision under sub-section (4),

unless such person shall have appealed against all or any part of the notice in accordance with section 14.

**Power to compel witnesses or for production of evidence under oath.**

9.(1) This section applies in any case where, pursuant to a request, the Authority requires any person to provide evidence by way of deposition or to produce information on oath.

(2)–

- (i) In any case to which sub-section (1) applies, the Minister shall on the application of the Authority (if not the Minister) appoint a person to be a Special Examiner to conduct the examination, take the testimony and receive the information on oath of any person.
- (ii) Both an application by the Authority and any appointment under this sub-section shall attach a notice issued in conformity with section 8.

(3) The Minister may designate the Stipendiary Magistrate as the Special Examiner under sub-section (2) above.

(4) The Special Examiner may issue subpoenas, administer and take evidence under oath, and exercise any other power which the Supreme Court may exercise for the purpose of compelling testimony and the production of information.

(5) The Special Examiner appointed under sub-section (2) shall, unless it be the Stipendiary Magistrate, be a barrister or solicitor of at least 5 years standing or a public officer of at least Higher Executive Officer grade.

(6) The testimony and information taken by the Special Examiner shall be provided by the Special Examiner to the Authority who shall provide it to the requesting Party in accordance with the relevant scheduled Agreement and this Act.

(7) For the purposes of sub-section (6), testimony shall be provided to the Authority in the form of written depositions of the witness and documents

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and records, if requested by the Authority, in the form of authenticated copies.

(8) The following persons shall be permitted to ask questions of a witness before a Special Examiner, namely—

- (a) the Special Examiner;
- (b) the Authority;
- (c) any person authorised to do so by the Authority;
- (d) a lawyer representing the witness or the employer of the witness;
- (e) any other person prescribed by regulations made under this Act.

(9) A person required to testify or to produce information under this section shall have the right to be represented by counsel when he does so.

## **Search and Seizure.**

10.(1) This section applies to any case where the Court is satisfied on the application of the Authority that—

- (a) a person who has been requested to provide testimony or information has failed to comply in whole or in part with the provisions of section 8 or 9; or
- (b) if notice is given to the person who has, or is believed to have, the required information in his possession or control, there is a reasonably foreseeable possibility that it might be tampered with, removed from Gibraltar, destroyed, or placed beyond the access or control of that person or the Authority; or
- (c) the Government's ability to comply with a request in accordance with its obligations under a scheduled Agreement so requires.

(2) In any case to which sub-section (1) applies, the Authority may apply to the Court which may issue a warrant in writing authorising the Authority and/or any person or persons authorised by the Authority to enter premises, if necessary by force, at any time within fourteen days from the time of issue of the warrant, and search them.

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(3) In this section “premises” means any premises where the Authority believes requested information is to be found, or from which it can be accessed using electronic or other means.

(4) The persons so authorised by a warrant when entering or having entered the premises under the authority of a warrant under this section may—

- (a) take with them such other person or persons as appears to the Authority to be necessary;
- (b) seize and remove any things whatsoever found there which they have reasonable cause to believe may constitute or contain requested information; and
- (c) search or cause to be searched any person found on the premises whom they have reasonable cause to believe to be in possession of any requested information;

but no person shall be searched except by a person of the same sex.

(5) In the case of any information stored in any electronic form which is information that—

- (a) the Authority or those authorised by him when entering or having entered the premises as mentioned in sub-section (4) above has reasonable cause to believe may constitute or contain information requested information; and
- (b) is contained in any electronic device in the premises or accessible from the premises,

the power of seizure under sub-section (4) shall include—

- (i) a power to require the information to be produced in a form in which it can be taken away and in which it is visible and legible or from which it can readily be produced in a visible and legible form; and
- (ii) a power to remove the electronic equipment for examination elsewhere by the Authority or persons authorised by the Authority.

(6) The Authority or persons authorised thereby seeking to exercise the powers conferred by a warrant under this section—

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- (a) if the occupier of the premises concerned is present at the time the search is to begin, shall supply a copy of the warrant endorsed with his name to the occupier;
- (b) if at that time the occupier is not present but a person who appears to the officer to be in charge of the premises is present, shall supply such a copy to that person; and
- (c) if neither sub-paragraph (a) nor sub-paragraph (b) above applies, shall leave such a copy in a prominent place on the premises.

(7) Where entry to premises has been made with a warrant under this section, and the Authority or persons authorised has seized any things under the authority of the warrant, he shall endorse on or attach to the warrant a list of the things seized.

(8) The Authority or persons authorised when he removes anything in the exercise of the power conferred by this section shall, if so requested by a person showing himself—

- (a) to be the occupier of premises from which it was removed, or
- (b) to have had custody or control of it immediately before the removal,

provide that person with a record of what he removed.

(9) The Authority shall provide the record within a reasonable time from the making of the request for it.

(10) Where anything which has been removed by the Authority or person authorised is of such a nature that a photograph or copy of it would be sufficient for the purposes of complying with the request, it shall not be retained longer than is necessary to establish that fact and to obtain the photograph or copy.

(11) Subject to sub-section (15) below, if a request for permission to be granted access to anything which—

- (a) has been removed by the Authority, and
- (b) is retained by the Authority for the purpose of complying with a request,

is made to the Authority by a person who had custody or control of the thing immediately before it was so removed or by someone acting on behalf of

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any such person, the Authority shall allow the person who made the request access to it under the supervision of any officer of the Authority.

(12) Subject to sub-section (15) below, if a request for a photograph or copy of any such thing is made to the Authority by a person who had custody or control of the thing immediately before it was so removed, or by someone acting on behalf of any such person, the Authority shall—

- (a) allow the person who made the request access to it under the supervision of an officer of the Authority for the purpose of photographing or copying it, or
- (b) photograph or copy it, or cause it to be photographed or copied.

(13) Where anything is photographed or copied under sub-section (12)(b) above, the photograph or copy shall be supplied to the person who made the request.

(14) The photograph or copy shall be supplied within a reasonable time from the making of the request.

(15) There is no duty under this section to grant access to, or to supply a photograph or copy of, anything if the Authority has reasonable grounds for believing that to do so would prejudice his ability to comply with the request.

(16) For the purposes of sub-section (5) information is stored in an electronic form if it is held in, maintained by, accessed through or retrievable from any equipment or thing constituting or based on technology having electrical, magnetic, optical, electro-magnetic or similar capabilities, whether digital, analogue or otherwise.

#### **Power to obtain production order.**

11.(1) This section applies when the Authority considers it necessary to obtain from any person in Gibraltar information in order to comply with a request.

(2) In any case to which this section applies, the Authority may apply to the Court for an order to produce such information.

(3) If on an application under sub-section (2) the Court is satisfied that the conditions in sub-section (7) are fulfilled, it may make an order that the person who appears to it to be in possession or control of the information to which the application relates shall—



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- (a) produce it to the Authority or a person authorised by the Authority to take away; or
- (b) give the Authority or a person authorised by the Authority access to it,

within such period as the order may specify.

(4) The period to be specified in an order under subsection (3) shall be fourteen days, unless it appears to the Court that a longer or shorter period would be appropriate in the particular circumstances of the application.

(5) The conditions referred to in sub-section (3) are that the Court is satisfied that—

- (a) the Authority has certified the request is in accordance with the relevant scheduled Agreement;
- (b) the information to which the application relates is in the possession or under the control of a person in Gibraltar (whether the information itself be or not in Gibraltar);
- (c) the information to which the application relates does not include items subject to legal privilege or items subject to protection as secret, pursuant to the terms of a scheduled Agreement or this Act;
- (d) a notice in accordance with section 8 has been issued; and
- (e) pursuant to the terms of the relevant scheduled Agreement there are no reasonable grounds for not entertaining the request.

(6) Where the Court makes an order under subsection (3)(b) in relation to information held on any premises, it may, on the application of the Authority, order any person who appears to it to be entitled to grant entry to the premises to allow the Authority or any person or persons authorised by the Authority for that purpose to enter the premises to obtain access to the information.

(7)–

- (i) The Minister following consultation with the Chief Justice may by regulations make rules governing the procedure in relation to applications for the grant, discharge and variation of orders under subsection (3); and
- (ii) The Chief Justice may make rules of court in relation to proceedings relating to such orders.

(8) Where the information to which an order under subsection (3) relates consists of information maintained as an electronic record, such information shall be produced in a form in which it can be taken away and in which it is visible and legible or in a form in which it is visible and legible, as the case may be.

(9) Where, pursuant to a request concerning criminal proceedings or investigations, an order under subsection (3) has been made or has been applied for, and has not been refused, or a warrant under section 10 has been issued, whoever, knowing or suspecting that a request has been made, or that an investigation into any matter to which a request relates is taking place, makes any disclosure which is likely to prejudice the proceedings or the investigation to which the request may relate, is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding one year or to a fine not exceeding level 5 on the standard scale or both.

(10) In proceedings against a person for an offence under subsection (9), it is a defence to prove—

- (a) that he did not know or believe that the disclosure was likely to prejudice the request or investigation; or
- (b) that he had lawful authority or reasonable excuse for making the disclosure.

(11) Any documents or other information obtained under an order by virtue of subsection (3) shall be brought immediately to the Authority to be dealt with according to this Act.

(12) For the purposes of subsection (8) an electronic record means a record processed and maintained by technology having electrical, magnetic, optical, electromagnetic, or similar capabilities, whether digital, analogue or otherwise.

### **Privilege.**

12.(1) No person shall be obliged under this Act to provide testimony or information which is an item subject to legal privilege.

(2) No person shall be obliged under this Act to provide testimony or information which would disclose any trade, business, industrial, commercial or professional secret or trade process, provided that information described in sub-clauses (a), (b) and (c) of the definition of the term “information” in section 2 shall not by reason of that fact alone be treated as such a secret or trade process.

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(3) Save as aforesaid, the obligation of persons to provide testimony and information under this Act shall have effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information contained in any enactment or the common law or in any other relationship.

(4) Any person who pursuant to this Act provides testimony or information subject to any obligation as to confidentiality shall be immune to suit from any other person arising from the provision of such information.

## **Dealing with testimony and information obtained.**

13. Where information is produced, made available or accessible to the Authority under this Act—

- (a) the Authority may take copies or extracts of any information;
- (b) the Authority may provide the testimony and the information obtained to the requesting Party; and
- (c) where a person claims a lien on a document, the production is without prejudice to his lien.

## **Appeals.**

14.(1) Any person—

- (a) upon whom a notice is served under section 8 to produce information; or
- (b) who is the subject of a subpoena to give evidence or produce information under section 9,

may appeal to the Court on one or more of the grounds set out in sub-section (2) below.

(2) The grounds of appeal referred to in sub-section (1) above are the following—

- (a) the notice issued is not in conformity with section 8;
- (b) the information to which the notice or subpoena relates is not in the possession or control or accessible to a person who is in Gibraltar;
- (c) the notice or subpoena includes or relates to items subject to legal privilege, provided that if and to the extent that this

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ground is relied upon, the appeal may relate only to such items, and the notice or subpoena remains extant, valid and binding on that person in every other respect;

- (d) the request manifestly falls outside the scope of the scheduled Agreement under which the request was made.

(3) An appeal under this section must be lodged within 14 days of service of the notice or subpoena and otherwise in accordance with Regulations made by the Minister under section 23.

#### **PART IV General**

##### **Service of Notices.**

15.(1) Any notice or other document required to be served in accordance with the provisions of this Act may be served personally, by post, by fax or by electronic mail.

(2) Where service has been by fax or electronic mail a copy of the notice, assessment, demand or other document shall be sent on the same day by post to confirm the original service and its date, but any defect or omission in the sending of an original shall not invalidate or prejudice the service by fax or electronic mail.

(3) Service by fax or electronic mail shall require neither the agreement nor the consent of the person served.

(4) Service shall be—

- (a) in the case of a company incorporated in Gibraltar, to the registered office of the company;
- (b) in the case of a company incorporated outside Gibraltar, either to the individual authorised to accept service of process under the Companies Act at the address filed with the Registrar of companies; or to any place of business of that company or agent for that company in Gibraltar; or to the registered office of the company wherever it may be situated;
- (c) in the case of an individual personally at any place, or otherwise to the last known business or private address of such individual;

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- (d) in the case of a body of persons, personally at any place on any of them, or otherwise to the last known business or private address of such body of persons (or any of them).
- (5) Service shall be deemed to have taken place—
- (a) in the case of service by post (unless also served by fax or electronic mail), on the third day after posting;
  - (b) in the case of service by fax or electronic mail, on the day of sending unless the fax or electronic mail was sent after 5.30pm in which case service will be deemed to have taken place on the working day following sending;
  - (c) in the case of personal delivery, on the day of delivery.

## **Authentication of official documents.**

16. Any person may be authorised by the Minister for the purpose of the authentication of any official documents or records of Gibraltar for any purpose of this Act or of a scheduled Agreement.

## **Notification to the subject of request.**

17.(1) Subject to sub-section (2), a person who is the subject of a request for information solely in relation to a matter which is not a criminal tax matter or an alleged criminal tax matter, shall, if the Authority is aware that he resides in Gibraltar and of his address, be served by the Authority with a copy of a notice issued by the Authority under section 8.

(2) Failure to comply with sub-section (1) shall not invalidate the notice nor relieve the addressee of the notice of the obligation to comply with it.

(3) Nothing in this Act shall require the Authority to search for or conduct enquiries into the address or whereabouts or residence of any person who is the subject of a request in order to serve a copy of a notice pursuant to sub-section (1).

## **Protection of persons disclosing confidential information.**

18. A person who divulges or provides any confidential information or gives any testimony in conformity with an order or notice issued pursuant to a request shall be deemed not to commit any offence under any enactment for the time being in force in Gibraltar, by reason only of such disclosure, provision or the giving of such testimony; and such disclosure, provision or testimony shall be deemed not to be a breach of any confidential relationship

between that person and any other person, and no civil claim or action whatsoever shall lie against the person making such disclosure, provision or giving such testimony or against such person's principal or employer under any contract or otherwise by reason of such disclosure provision or testimony.

**Confidentiality with regard to a request.**

19.(1) Without prejudice to any other provision of this Act, if so instructed by the Authority, the particulars of and all matters relating to a request shall be treated as confidential, and no person who is notified of a request, or is required to take any action, or produce any document or supply any information in response to or in relation to any matter to which a request relates, shall disclose the fact of the receipt of such request or any of the particulars required or documents produced or information supplied to any other person, except that notified person's counsel and such other persons as the Authority may authorise, for such period as he may be notified by the Authority.

(2) This section shall be binding on counsel of any person to whom subsection (1) applies as if he were that person.

**Presence of foreign tax officials - Interviews and examinations with the person's consent.**

20.(1) This section shall apply where, pursuant to the terms of a scheduled Agreement, the competent authority of a requesting Party requests permission for its officials to enter Gibraltar for the purpose of interviewing and examining the records of a specified person in Gibraltar.

(2) The decision whether to permit officials of the requesting Party to enter Gibraltar for the purpose stated in subsection (1), and if so, on what terms, shall be in the discretion of the Minister.

(3) The Authority shall notify the specified person of the request it has received pursuant to subsection (1).

(4) The specified person shall, within a period of fourteen days of having received the notification referred to in subsection (3), inform the Authority in writing whether or not he consents to the presence of officials of the requesting Party for the purpose stated in subsection (1).

(5) Permission shall not, in any event, be granted by the Minister where, pursuant to subsection (4), the specified person informs the Authority that he does not consent to the presence of the officials of the requesting Party.

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(6) Where permission is granted, the officials of the requesting Party may conduct or participate in the conduct of the interview and examination under subsection (1) at such time and place as are specified by the Minister.

(7) In conducting an interview and examination under subsection (1), an official of a requesting Party may—

- (a) take statements from the specified person; and
- (b) with the consent of the specified person, make copies of, or take extracts from, any record.

(8) An official of a requesting Party shall not have the power—

- (a) to compel a specified person to answer any question;
- (b) to compel a specified person to remain in any place for the purpose of an interview by that official;
- (c) to compel a specified person to produce any information or thing;
- (d) to enter and search premises without the consent of the owner or occupier of the premises; or
- (e) to take information or things without the consent of the specified person.

(9) A specified person who consents to an interview and examination under subsection (1) shall have the right to be advised by counsel during the course thereof.

(10) A statement made to an official of a requesting Party under this section shall not, in any proceedings in Gibraltar, be used in evidence against the specified person making the statement.

(11) In this section, “specified person” means any person whether or not they are subject to a notice to provide information or to a subpoena to provide information or testimony under this Act.

## **Presence of foreign tax officials - part of an examination.**

21.(1) This section shall apply where, pursuant to the terms of a scheduled Agreement, the competent authority of a requesting Party requests permission for its officials to enter Gibraltar for the purpose of being present

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at the appropriate part of a tax examination of a specified person in Gibraltar.

(2) A request pursuant to subsection (1) shall include at least the following information—

- (a) a detailed and thorough explanation of the motive for the request;
- (b) a clear description of the taxation matter to which the request relates; and
- (c) an explanation of the reasons why the competent authority of the requesting Party is convinced that the presence of its officials at the examination in Gibraltar will contribute to a considerable extent to the solution of a taxation matter in its territory.

(3) The decision whether to permit officials of the requesting Party to enter Gibraltar for the purpose stated in subsection (1), and if so, on what terms, lies exclusively in the hands of the Minister.

(4) Where permission is granted, the Authority shall, as soon as possible, notify the competent authority of the requesting Party of—

- (a) the time and place of the examination;
- (b) the authority or person in Gibraltar responsible for conducting the examination;
- (c) the procedures and conditions required by the Authority for the conduct of the examination;
- (d) the appropriate part of the tax examination in respect to which permission for the presence of officials of the competent authority of the requesting Party has been granted.

(5) In this section, “specified person” has the same meaning as in section 20.

#### **Enforcement.**

22.(1) Any person who, having been required under this Act to produce any information which is in his possession or under his control—



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- (a) without lawful excuse fails so to do, within such time as may be specified by any notice or order issued under this Act;
- (b) intentionally alters, suppresses, destroys or places beyond his reach or access any document, including a document in electronic form, which he has been required to produce;
- (c) by furnishing any estimate, return or other information required of him, or otherwise in purported compliance with a requirement under this Act, furnishes information or makes any statement which he knows to be false or misleading in a material particular, or recklessly furnishes information or makes a statement which is false or misleading in a material particular; or
- (d) with intent to avoid detection of an offence or liability to a penalty removes from Gibraltar, destroys, conceals or fraudulently alters any books or papers including any material held electronically,

is guilty of an offence.

(2) Any person who, when required so to do in accordance with the instructions given by the Court or pursuant to any subpoena issued under section 9 of this Act, refuses or fails to attend as required or to provide testimony in response to a request, is guilty of an offence.

(3) A person guilty of an offence under subsections (1) or (2) is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or both; and
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both.

## **Regulations.**

23.(1) The Minister may make regulations generally for carrying the purposes and provisions of this Act into effect.

(2) Without prejudice to the generality of the foregoing, regulations made by the Minister under this section may make provision—

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- (a) for any power, procedure, process or other matter which, in the opinion of the Minister, is necessary or desirable to implement or give effect to the provisions of any scheduled Agreement;
- (b) the conduct of appeals under section 14;
- (c) adding to or modifying the grounds of appeal under section 14(2);
- (d) adding to, deleting from, modifying or replacing Schedule 2;
- (e) any other matter required to be specified, prescribed or provided for in this Act.

**Immunity.**

24. The Minister and the Authority shall not be liable in damages for anything done or omitted in the discharge of their functions under this Act unless it is shown that the act or omission was in bad faith.

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Section 3 (6)

**SCHEDULE 1****Scheduled Agreements**

The Table in this Schedule sets out the following information–

- (a) in column 1, the name of each of the countries with which the Government has concluded a scheduled Agreement;
- (b) in column 2, the date of the scheduled Agreement;
- (c) in column 3, the date opposite the name of the country is the operative date for the application of the scheduled Agreement with that country; and
- (d) in column 4, the references set out opposite the name of the country correspond to the number and date of the Legal Notice in the Gazette in which the scheduled Agreement concluded by the Government with that country is published.

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Country</b>	<b>Date of Agreement</b>	<b>Date on which Agreement becomes operative</b>	<b>Date and number of Legal Notice in which Agreement was published</b>
Australia	25 August 2009	26 July 2010	Legal Notice No.20 of 2010, dated 28 January 2010
Austria	17 September 2009	1 May 2010	Legal Notice No.21 of 2010, dated 28 January 2010
Belgium	16 December 2009	Not in operation	Legal Notice No.22 of 2010, dated 28 January 2010
Denmark	2 September 2009	13 February 2010	Legal Notice No.23 of 2010, dated 28 January 2010
Faroes	20 October 2009	8 June 2011	Legal Notice No.24 of 2010, dated 28 January 2010
Finland	20 October 2009	6 May 2010	Legal Notice No.25 of 2010, dated 28 January 2010
France	22 September 2009	9 December 2010	Legal Notice No.26 of 2010, dated 28 January 2010
Germany	13 August 2009	4 November 2010	Legal Notice No.27 of 2010, dated 28 January 2010
Greece	31 January 2013	Not in operation	Legal Notice No. 23 of 2013, dated 14 February 2013
Greenland	20 October 2009	23 January 2010	Legal Notice No.92 of 2009, dated 24 December 2009
Iceland	16 December 2009	18 April 2012	Legal Notice No.28 of 2010, dated 28 January 2010
India	1 February 2013	11 March 2013	Legal Notice No. 24 of 2013, dated 14 February 2013
Ireland	24 June 2009	25 May 2010	Legal Notice No.29 of 2010, dated 28 January 2010
Italy	2 October 2012	Not in operation	Legal Notice No. 136 of 2012,

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			dated 11 October 2012
Malta	24 January 2012	1 April 2012	Legal Notice No. 8 of 2012, dated 2 February 2012
Mexico	29 November 2012	Not in operation	Legal Notice No. 206 of 2012, dated 6 December 2012
Netherlands	23 April 2010	1 December 2011	Legal Notice No.87 of 2010, dated 6 May 2010
New Zealand	13 August 2009	13 May 2011	Legal Notice No.30 of 2010, dated 28 January 2010
Norway	16 December 2009	8 September 2010	Legal Notice No.31 of 2010, dated 28 January 2010
Poland	31 January 2013	Not in operation	Legal Notice No. 25 of 2013, dated 14 February 2013
Portugal	14 October 2009	24 April 2011	Legal Notice No.32 of 2010, dated 28 January 2010
South Africa	2 February 2012	Not in operation	Legal Notice No. 12 of 2012, dated 16 February 2012
Sweden	16 December 2009	3 July 2010	Legal Notice No.33 of 2010, dated 28 January 2010
Turkey	4 December 2012	Not in operation	Legal Notice No. 212 of 2012, dated 13th December 2012.
United Kingdom	27 August 2009	15 December 2010	Legal Notice No.34 of 2010, dated 28 January 2010
United States of America	31 March 2009	22 December 2009	Legal Notice No.88 of 2009, dated 22 December 2009

**SCHEDULE 2**

**Particulars to be included in a notice to produce information**

1. The identity of the requesting Party.
2. The date and number of the Legal Notice in which the text of the relevant scheduled Agreement was published.
3. The date on which the relevant scheduled Agreement came into operation.
4. The tax matter to which the request relates.
5. The person or persons subject to such taxes or taxation matters.
6. A statement that in the opinion of the Authority the request conforms to the relevant scheduled Agreement.
7. Details, sufficient to enable the person served with the notice to identify the information requested by the notice.
8. The reason for believing that the information requested is in the possession or control of the person served with the notice or is obtainable by that person.
9. The form and manner in which the information must be provided.
10. Details of the time, date and place where such information must be delivered.
11. Details of any copies of the requested information that must be provided and the manner in which it must be verified or authenticated.
12. Details of any access required by the Authority to the original of any record or document, or to any electronic data storing device, such as to enable the Authority to verify the authenticity of any document or record provided or the accuracy or completeness of any information provided.