

2009-50 International Co-Operation (Tax Information)

Subsidiary Legislation made under s.3(6).

International Co-operation (Tax Information) Act 2009 (France) Notice 2010

LN.2010/026

Commencement **28.1.2010**

In accordance with the provisions of section 3(6) of the International Co-operation (Tax Information) Act 2009 I have issued the following Notice.

Title.

1. This Notice may be cited as the International Co-operation (Tax Information) Act 2009 (France) Notice 2010.

Text of Agreement.

2. Pursuant to section 3(6) of the International Co-operation (Tax Information) Act 2009 the text of an agreement entered into between the Government of the French Republic and the Government of Gibraltar is hereby reproduced—

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**AGREEMENT BETWEEN THE GOVERNMENT OF THE FRENCH
REPUBLIC AND THE GOVERNMENT OF GIBRALTAR FOR THE EXCHANGE OF
INFORMATION RELATING TO TAX MATTERS**

Whereas the Government of the French Republic and the Government of Gibraltar (the Parties) wish to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes;

Whereas it is acknowledged that the government of Gibraltar has the right under the terms of its Entrustment from the United Kingdom to negotiate, conclude, perform and subject to the terms of this Agreement terminate a tax information exchange agreement with the government of the French Republic;

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

**Article 1
Object and Scope**

The competent authorities of the Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Parties concerning the taxes covered by this Agreement, including information that is foreseeably relevant to the determination, assessment, enforcement or collection of tax with respect to persons subject to such taxes, or to the investigation or prosecution of criminal 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 to the extent that they do not unduly prevent or delay effective exchange of information.

**Article 2
Jurisdiction**

To enable the scope of this Agreement to be implemented, information shall be provided in accordance with this Agreement by the competent authority of the Requested Party without regard to whether the person to whom the information relates is, or whether the information is held by, a resident or national of a Party. A Requested Party is not obliged to provide information which is neither held by its authorities nor in the possession of or in the control of or obtainable by persons who are within its territorial jurisdiction.

**Article 3
Taxes Covered**

The taxes covered by this Agreement are the existing taxes imposed by the laws of the Parties.

This Agreement shall also apply to any identical or substantially similar taxes imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes.

The Agreement shall also apply to other taxes as may be agreed in an exchange of letters between the Parties.

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. For the purposes of this Agreement, unless otherwise defined:

- a) “France” means the European and Overseas Departments of the French Republic including the territorial sea, and any area outside the territorial sea within which, in accordance with international law, the French Republic has sovereign rights for the purpose of exploring and exploiting the natural resources of the seabed and its subsoil and the superjacent waters;

“Gibraltar” means the territory of Gibraltar;

b) “competent authority” means:

- i) in the case of France, the Minister of Finance, or his authorised representative;
- ii) in the case of Gibraltar, the Chief Secretary or such other person as the Minister of Finance may appoint;

c) “person” includes a natural person, a legal person or any body or group of such persons;

d) “tax” means any tax to which the Agreement applies;

e) “Requesting Party” means the Party requesting information;

f) “Requested Party” means the Party requested to provide information;

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- g) “information gathering measures” means laws and administrative or judicial procedures that enable a Party to obtain and provide the requested information;
- h) “information” means any fact, statement, document or record in any form whatever;
- i) “criminal tax matters” means tax matters involving intentional conduct whether before or after the entry into force of this Agreement which is liable to prosecution under the criminal laws of the Requesting Party;
- j) “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether such are contained in the tax laws, the criminal code or other statutes;
- k) “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;
- l) “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- m) “public collective investment scheme” means any 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;
- n) “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Parties.

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 laws 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 the Requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the Requested Party needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the Requested Party if such conduct occurred in the Requested Party.

2. If the information in the possession of the competent authority of the Requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures necessary to provide the Requesting Party with the information requested, notwithstanding that the Requested Party may not, at that time, 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 authorities for the purposes specified in Article 1 have 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) (i) information regarding the legal ownership and the beneficial ownership of companies, partnerships, collective investment schemes, and other persons;
- (ii) in the case of a foundation, information on the founders, members of the foundation council and beneficiaries;
- (iii) in the case of trusts, information on settlors, trustees, protectors and beneficiaries.

provided that this Agreement does not create an obligation for a Party to obtain or provide ownership information with respect to publicly traded companies or public collective investment schemes if such information cannot be obtained without giving rise to disproportionate difficulties.

5. The competent authority of the Requesting Party shall provide the following information to the competent authority of the Requested Party:

- a) the identity of the person under examination or investigation;
- b) the period of time with respect to which information is requested;
- c) the nature of the information requested and the form in which the Requesting Party would prefer to receive it;

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- d) the tax purpose for which the information is sought;
 - e) grounds for believing that the information requested is present in the Requested Party or is in the possession of, or is in the control of or obtainable by 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 in control of or able to obtain the requested information;
 - g) a statement that the request conforms with the law and administrative practice of the Requesting Party and the information would be obtainable by the Requesting Party under its laws or in the normal course of administrative practice in similar circumstances, in response to a valid request made from the Requested Party under this Agreement;
 - h) a statement that the Requesting Party has pursued all means available in its own territory to obtain information, except where that would give rise to disproportionate difficulty.
6. To ensure a prompt response, the competent authority of the Requested Party shall:
- a) confirm the receipt of a request in writing to the competent authority of the Requesting Party and shall notify the competent authority of the Requesting Party of any deficiencies in the request within 60 days of receipt of the request;
 - b) if the competent authority of the Requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, it shall inform the Requesting Party, explaining the reason for its inability.

Article 6
Tax Examinations Abroad

1. The Requested Party may, to the extent permitted under its domestic laws, following reasonable notice from the Requesting Party, allow representatives of the Requesting Party to enter the territory of the Requested Party, to interview individuals 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 intended 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 permit representatives of the competent authority of the Requesting Party to attend a tax examination in the territory of the Requested Party.

3. If the request referred to in paragraph 2 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.

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 disclosure of the information requested would be contrary to public policy (*ordre public*).
2. This Agreement shall not impose upon a Party the obligation to provide items subject to legal privilege, or to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, provided that information described in Article 5, paragraph 4 shall not by reason of that fact alone be treated as such a secret or trade process.
3. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.
4. The Requested Party shall not be required to obtain and provide information which the Requesting Party would be unable to obtain under its own laws for the purpose of the administration or enforcement of its own tax laws or in response to a valid request made in similar circumstances from the Requested Party under this Agreement.

Article 8
Confidentiality

1. All information received by the competent authority of a Party shall be kept confidential.
2. Information provided to the competent authority of the Requesting Party may be used for purposes other than the purposes stated in Article 1 with the prior express written consent of the Requested Party.

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3. Information provided shall be disclosed only to persons or authorities (including judicial and administrative authorities) concerned with the purposes specified in this Agreement and used by such persons or authorities only for such purposes. For these purposes, information may be disclosed in public court proceedings or in judicial decisions.

4. Information provided to a Requesting Party under this Agreement may not be disclosed to any other jurisdiction.

Article 9
Costs

Ordinary costs incurred in providing assistance shall be borne by the Requested Party. The Requested Party may request the reimbursement of direct extraordinary costs incurred in providing assistance.

Article 10
Implementation Legislation

The Parties shall enact any legislation necessary to comply with, and give effect to, the terms of this Agreement. This includes: availability of information, access to information, exchange of information.

Article 11
Mutual agreement procedure

1. Where any difficulties or doubts arise between the Parties regarding the implementation or interpretation of the Agreement, the competent authorities shall endeavour to resolve the matter by mutual agreement.

2. In addition to these latter agreements, the competent authorities of the Parties may mutually agree on the procedures to be used under Articles 5, 6 and 9.

3. The competent authorities of the Parties may communicate with each other directly for the purpose of reaching an agreement under this Article.

4. The Parties may also agree on other forms of dispute resolution should this become necessary.

Article 12
Entry into Force

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This Agreement shall enter into force when each Party has notified the other of the completion of its necessary internal procedures for entry into force. Upon the date of entry into force, it shall have effect:

- a) for criminal tax matters on that date; and
- b) for all other matters covered in Article 1, on that date, but only in respect of taxable periods beginning on or after that date or, where there is no taxable period, all charges to tax arising on or after that date.

Article 13 **Termination**

1. Either Party may terminate the Agreement by serving a notice of termination.
2. Such termination 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 the Agreement. All requests received up to the effective date of termination will be dealt with in accordance with the terms of this Agreement.

Signed by exchange of letters on 22 September 2009–

For the Government of the French
Republic:

Eric Woerth
Minister for Budget and Public Finance

For the Government of
Gibraltar:

Peter Caruana
Chief Minister