

## **2009-50** International Co-Operation (Tax Information)

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Subsidiary Legislation made under s.3(6).

### **International Co-operation (Tax Information) Act 2009 (Germany) Notice 2010**

**LN.2010/027**

*Commencement*                      **28.1.2010**

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*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 (Germany) 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 Federal Republic of Germany and the Government of Gibraltar is hereby reproduced—

**2009-50** International Co-Operation (Tax Information)  
**2010/027** International Co-operation (Tax Information) Act 2009  
(Germany) Notice 2010

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**AGREEMENT**

**BETWEEN**

**THE GOVERNMENT  
OF GIBRALTAR**

**AND**

**THE GOVERNMENT  
OF THE FEDERAL REPUBLIC OF GERMANY**

**ON ASSISTANCE IN CIVIL AND CRIMINAL TAX MATTERS THROUGH  
EXCHANGE OF INFORMATION**

**The Government of Gibraltar**

**and**

**The Government of the Federal Republic of Germany**

Whereas the Government of Gibraltar and the Government of the Federal Republic of Germany (the “Contracting Parties”) recognise that present legislation already provides for co-operation and the exchange of information in criminal tax matters;

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

Whereas it is acknowledged that the Government of Gibraltar under the terms of the Entrustment letter from the United Kingdom has the right to negotiate, conclude, perform and subject to the terms of this Agreement terminate a tax information exchange agreement with the Government of the Federal Republic of Germany.

Whereas the Contracting Parties wish to enhance and facilitate the terms and conditions governing the exchange of information relating to all tax matters;

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

Have agreed as follows:

Article 1

Scope of the Agreement

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the respective laws of the Contracting Parties concerning taxes covered by this Agreement, including information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of criminal tax matters. The rights and safeguards secured to persons by the laws or administrative practice of the requested Contracting Party remain applicable.

Article 2  
Jurisdiction

A requested Contracting Party is not obligated to provide information which is neither held by its authorities nor in the possession of or obtainable by persons who are within its territorial jurisdiction.

Article 3  
Taxes Covered

(1) This Agreement shall apply to the following taxes:

- a) in respect of the Federal Republic of Germany:
  - the income tax (Einkommensteuer),
  - the corporation tax (Körperschaftsteuer),
  - the trade tax (Gewerbsteuer),
  - the capital tax (Vermögensteuer) and
  - the inheritance tax (Erbschaftsteuer),
  - the value added tax (Umsatzsteuer),
  - the tax on insurance premiums (Versicherungsteuer),
  - including the supplements levied thereon;
- b) in respect of Gibraltar:

**2009-50** International Co-Operation (Tax Information)

**2010/027** International Co-operation (Tax Information) Act 2009  
(Germany) Notice 2010

---

Gibraltar income taxes.

(2) This Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to or in place of the existing taxes if the Contracting Parties so agree. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by the Agreement.

Article 4  
Definitions

(1) For the purposes of this Agreement, unless otherwise defined:

- a) “Federal Republic of Germany”, when used in a geographical sense, means the area in which the tax law of the Federal Republic of Germany is in force;
- b) “Gibraltar”, when used in a geographical sense, means the area in which the tax law of Gibraltar is in force;
- c) “competent authority” means
  - (i) in respect of the Federal Republic of Germany, the Federal Ministry of Finance or the agency to which it has delegated its power; which in respect of criminal tax matters will be the Federal Ministry of Justice or the agency to which it has delegated its power,
  - (ii) in respect of Gibraltar, the Chief Secretary or such other person as the Minister of Finance may appoint,
- d) “person” includes an individual, a company and any other body of persons,
- e) “company” means any body corporate or any entity that is treated as a body corporate for tax purposes,
- f) “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,
- g) “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company,

- h) “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties,
- i) “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors,
- j) “tax” means any tax to which the Agreement applies,
- k) “requesting Contracting Party” means the Contracting Party requesting information,
- l) “requested Contracting Party” means the Contracting Party requested to provide information,
- m) “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information,
- n) “information” means any fact, statement, document or record in any form whatever;
- o) “tax matters” means all tax matters including criminal tax matters,
- p) “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 Contracting Party,
- q) “criminal laws” means all criminal laws designated as such under the respective law of the Contracting Parties irrespective of whether such are contained in the tax laws, the criminal code or other statutes.

(2) Any term not defined in this Agreement shall, unless the context otherwise requires, have the meaning that it has at the time the request was made under the law of that Contracting Party, any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the term under other laws of that Contracting Party.

**2009-50** International Co-Operation (Tax Information)

**2010/027** International Co-operation (Tax Information) Act 2009  
(Germany) Notice 2010

---

Article 5  
Exchange of Information

(1) The competent authority of the requested Contracting Party shall provide upon request by the requesting Contracting Party information for the purposes referred to in Article 1. Such information shall be provided without regard to whether the requested Contracting Party needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the requested Contracting Party if it had occurred in the territory of the requested Contracting Party. The competent authority of the requesting Contracting Party shall only make a request for information pursuant to this Article when it is unable to obtain the requested information by other means in its own territory, except where recourse to such means would give rise to disproportionate difficulty.

(2) If the information in the possession of the competent authority of the requested Contracting Party is not sufficient to enable it to comply with the request for information, that Contracting Party shall use at its own discretion all applicable information gathering measures necessary to provide the requesting Contracting Party with the information requested, notwithstanding that the requested Contracting 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 Contracting Party, the competent authority of the requested Contracting Party shall provide information under this Article, to the extent allowable under its laws, in the form of depositions of witnesses and authenticated copies of original records.

(4) Each Contracting Party shall ensure that its competent authorities, in accordance with the terms of this Agreement 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) information regarding the beneficial ownership of companies, partnerships and other persons, including in the case of collective investment funds and schemes, information on shares, units and other interests; in the case of trusts, information on settlors, trustees, protectors and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries,

provided that this Agreement does not create an obligation on the Contracting 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.

(5) Any request for information shall be formulated with the greatest detail possible and shall specify in writing:

- a) the identity of the person under examination or investigation,
- b) the period for which the information is requested,
- c) the nature of the information sought and the form in which the requesting Contracting Party would prefer to receive it,
- d) the tax purpose for which the information is sought,
- e) the reasons for believing that the information requested is foreseeably relevant to the tax administration and enforcement of the tax law of the requesting Contracting Party, with respect to the person identified in subparagraph a) of this paragraph,
- f) grounds for believing that the information requested is held in the requested Contracting Party or is in the possession of or obtainable by a person within the jurisdiction of the requested Contracting Party,
- g) to the extent known, the name and address of any person believed to be in possession of the requested information,
- h) a statement that the request conforms to the law and administrative practice of the applicant Contracting Party and would be obtainable by the applicant Contracting Party under its laws in similar circumstances, both for its own tax purposes and in response to a valid request from the requested Contracting Party under this Agreement,
- i) a statement that the requesting Contracting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

(6) The competent authority of the requested Contracting Party shall acknowledge receipt of the request to the competent authority of the requesting Contracting Party and shall use its best endeavours to forward the requested information to the requesting Contracting Party with the least reasonable delay.

Article 6  
Tax Examinations Abroad

**2009-50** International Co-Operation (Tax Information)

**2010/027** International Co-operation (Tax Information) Act 2009  
(Germany) Notice 2010

---

(1) By reasonable notice given in advance, the requesting Contracting Party may request that the requested Contracting Party allow representatives of the competent authority of the requesting Contracting Party to enter the territory of the requested Contracting Party, to the extent permitted under its laws, to interview individuals and examine records with the prior written consent of the individuals or other persons concerned. The competent authority of the requesting Contracting Party shall notify the competent authority of the requested Contracting Party of the time and place of the intended meeting with the individuals concerned.

(2) At the request of the competent authority of the requesting Contracting Party, the competent authority of the requested Contracting Party may allow representatives of the competent authority of the requesting Contracting Party to be present at the appropriate part of a tax examination in the requested Contracting Party.

(3) If the request referred to in paragraph 2 is acceded to, the competent authority of the requested Contracting Party conducting the examination shall, as soon as possible, notify the competent authority of the requesting Contracting Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the requested Contracting Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the requested Contracting Party conducting the examination.

Article 7

Possibility of Declining a Request

- (1) The competent authority of the requested Contracting Party may decline to assist:
- a) where the request is not made in conformity with this Agreement;
  - b) where the requesting Contracting 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 difficulty; or
  - c) where the disclosure of the information requested would be contrary to the public policy of the requested Contracting Party.
- (2) This Agreement shall not impose upon a requested Contracting Party any obligation:
- a) to provide items subject to legal privilege, or any trade, business, industrial, commercial or professional secret or trade process, provided that information described in paragraph 4 of Article 5 shall not by reason of that fact alone be treated as such a secret or trade process; or



- b) to carry out administrative measures at variance with its laws and administrative practices, provided that nothing in this subparagraph shall affect the obligations of a Contracting Party under paragraph 4 of Article 5;

(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 Contracting Party shall not be required to obtain and provide information which if the requested information was within the jurisdiction of the requesting Contracting Party the competent authority of the requesting Contracting Party would not be able to obtain under its laws .

(5) The requested Contracting Party may decline a request for information if the information is requested by the requesting Contracting Party to administer or enforce a provision of the tax law of the requesting Contracting Party, or any requirement connected therewith, which discriminates against a citizen of the requested Contracting Party as compared with a citizen of the requesting Contracting Party in the same circumstances.

#### Article 8 Confidentiality

(1) All information provided and received by the competent authorities of the Contracting Parties shall be kept confidential.

(2) Such information shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the purposes specified in Article 1, and used by such persons or authorities only for such purposes, including the determination of any appeal. For these purposes information may be disclosed in administrative or criminal investigations, in public court proceedings or in judicial decisions, if this is provided for in the respective laws of the Contracting Parties.

(3) Such information may not be used for any purpose other than for the purposes stated in Article 1 without the expressed written consent of the competent authority of the requested Contracting Party.

(4) The information provided to a requesting Contracting Party under this Agreement may not be disclosed to any other jurisdiction.

(5) Personal data may be transmitted to the extent necessary for carrying out the provisions of this Agreement and subject to the provisions of the law of the supplying Contracting Party.

**2009-50** International Co-Operation (Tax Information)

**2010/027** International Co-operation (Tax Information) Act 2009  
(Germany) Notice 2010

---

Article 9  
Costs

Incidents of costs incurred in providing assistance (including reasonable costs of third parties and external advisors in connection with litigation or otherwise) shall be agreed by the competent authorities of the Contracting Parties.

Article 10  
Mutual Agreement Procedure

(1) Where difficulties or doubts arise between the Contracting 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 the agreements referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5, 6 and 9.

(3) The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreement under this Article.

(4) The Contracting Parties shall agree on procedures for dispute resolution should this become necessary.

Article 11  
Protocol

The attached Protocol shall be an integral part of this Agreement.

Article 12  
Entry into Force

(1) This Agreement shall enter into force one month from the date on which the Contracting Parties have notified each other that their respective requirements for the entry into force of this Agreement have been fulfilled. The relevant date shall be the day on which the last notification is received.

(2) Upon the date of entry into force, this Agreement 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 Contracting Party may terminate the Agreement by serving a notice of termination by letter to the competent authority of the other Contracting Party.

(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 competent authority of the other Contracting Party.

(3) If the Agreement is terminated, the Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement.

Done at London, this 13<sup>th</sup> day of August 2009, in duplicate, in the English and German languages, each text being equally authentic.

For the Government  
of Gibraltar

James Tipping  
Finance Centre Director

For the Government  
of the Federal Republic of Germany:

Eckhard Lübke  
Minister Plenipotentiary and Chargé d'Affaires

**2009-50** International Co-Operation (Tax Information)

**2010/027** International Co-operation (Tax Information) Act 2009  
(Germany) Notice 2010

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Protocol  
to the Agreement  
between  
the Government of Gibraltar  
and  
the Government of the Federal Republic of Germany  
on Assistance in Civil and Criminal Tax Matters through Exchange of Information

The Government of Gibraltar and the Government of the Federal Republic of Germany (the “Contracting Parties”) have agreed at the signing of the Agreement between the two Governments on Assistance in Civil and Criminal Tax Matters through Exchange of Information on the following provisions which shall form an integral part of the said Agreement:

1. With respect to paragraph 5 of Article 8 the Contracting Parties shall ensure the protection of personal data at a level that is equivalent to that of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. In addition the following shall apply,

- a) The receiving agency may use such data in compliance with paragraph 3 of Article 8 only for the purpose stated by the supplying agency and shall be subject to the conditions prescribed by the supplying agency.
- b) Notwithstanding the provisions of paragraph 3 of Article 8, the information may be used for other purposes, if under the law of both Contracting Parties it may be used for these other purposes and the competent authority of the supplying Contracting Party has agreed to this use. Use for other purposes without the prior approval of the supplying Contracting Party is permissible only if it is needed to avert in the individual case at hand an imminent threat to a person of loss of life, bodily harm or loss of liberty, or to protect significant assets and there is danger inherent in any delay. In such a case the competent authority of the supplying Contracting Party must be asked without delay for retroactive authorisation of the change in use. If authorisation is refused, the information may no longer be used for the other purpose; any damage which has been caused by the change in use of the information must be compensated.
- c) The supplying agency shall be obliged to ensure that the data to be supplied are accurate and their foreseeable relevance within the meaning of Article 1 and that they are proportionate to the purpose for which they are supplied. Data are foreseeably relevant if in the concrete case at hand there is the serious possibility

that the other Contracting Party has a right to tax and there is nothing to indicate that the data are already known to the competent authority of the other Contracting Party or that the competent authority of the other Contracting Party would learn of the taxable object without the information. If it emerges that inaccurate data or data which should not have been supplied have been supplied, the receiving agency shall be informed of this without delay. That agency shall be obliged to correct or erase such data without delay. If data have been supplied spontaneously, the receiving agency shall check without delay whether the data are needed for the purpose for which they were supplied; that agency shall immediately erase any data which is not needed.

- d) The receiving agency shall on request inform the supplying agency on a case-by-case basis for the purpose of informing the person concerned about the use of the supplied data and the results achieved thereby.
- e) The receiving agency shall inform the person concerned of the data collection by the supplying agency, unless the data were supplied spontaneously. The person concerned need not be informed if and as long as on balance it is considered that the public interest in not informing him outweighs his right to be informed.
- f) Upon application the person concerned shall be informed of the supplied data relating to him and of the use to which such data are to be put. The second sentence of paragraph e) shall apply accordingly.
- g) The receiving agency shall bear liability in accordance with the law applicable to it in relation to any person suffering unlawful damage in connection with the supply of data under the exchange of data pursuant to this Agreement. In relation to the damaged person, the receiving agency may not plead to its discharge that the damage had been caused by the supplying agency.
- h) The supplying and the receiving agencies shall be obliged to keep official records of the supply and receipt of personal data.
- i) Where the law applicable to the supplying agency contains special provisions for the deletion of the personal data supplied, that agency shall inform the receiving agency accordingly. In any case, supplied personal data shall be erased once they are no longer required for the purpose for which they were supplied.
- j) The supplying and the receiving agencies shall be obliged to take effective measures to protect the personal data supplied against unauthorised access, unauthorised alteration and unauthorised disclosure.

**2009-50 International Co-Operation (Tax Information)**

**2010/027 International Co-operation (Tax Information) Act 2009  
(Germany) Notice 2010**

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2. Pursuant to Article 9 of the Agreement it is mutually decided that ordinary costs that are incurred for the purpose of responding to a request for information will be borne by the requested Contracting Party. Such ordinary costs will normally cover internal administration costs of the competent authority and any minor external costs such as the cost of couriers. All reasonable costs incurred by third parties in complying with the request for exchange of information are considered extraordinary costs and will be borne by the applicant Contracting Party. Examples of extraordinary costs include, but are not limited to, the following:

- a) reasonable fees charged for staff employed by third parties in assisting with the request;
- b) reasonable fees charged by third parties for carrying out research;
- c) reasonable fees charged by third parties for copying documents;
- d) reasonable costs of engaging experts, interpreters, or translators;
- e) reasonable costs of conveying documents to the applicant Contracting Party;
- f) reasonable litigation costs of the requested Contracting Party in relation to a specific request for information;
- g) reasonable costs for obtaining depositions or testimony; and
- h) reasonable fees and expenses, determined in accordance with amounts allowed under applicable law, on the person who voluntarily appears for an interview, deposition or testimony relating to a particular information request.

The competent authorities will consult each other in any particular case where extraordinary costs are likely to exceed \$US 500 to determine whether the applicant Contracting Party will continue to pursue the request and bear the cost.

3. Formal communications, including requests for information, made in connection with or pursuant to the provisions of the Agreement entered into will be in writing directly to the competent authority of the other Contracting Party at the addresses given below, or such other address as may be notified by one Contracting Party to the other from time to time. Any subsequent communications regarding requests for information will be either in writing or verbally, whichever is most practical, between the earlier mentioned competent authorities or their authorised entities.

Competent authority  
for Gibraltar:

Competent authority  
for the Federal Republic of Germany:

**International Co-Operation (Tax Information) 2009-50**

**International Co-operation (Tax Information) Act 2009  
(Germany) Notice 2010 2010/027**

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The Chief Secretary Bundeszentralamt für Steuern

No.6 Convent Place, Gibraltar 53221 Bonn

In respect of criminal tax matters: In respect of criminal tax matters:

The above-mentioned Bundesamt für Justiz  
competent authority 53094 Bonn.