

# **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 (Portugal) Notice 2010**

**LN.2010/032**

*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 (Portugal) 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 Portuguese Republic and the Government of Gibraltar is hereby reproduced—

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

The Portuguese Republic and the Government of Gibraltar, hereinafter referred to as “Parties”,

Whereas the Parties recognise that their present domestic laws already provide for co-operation and the exchange of information in criminal tax matters;

Whereas the 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 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 Portugal;

Whereas Gibraltar on 27 February 2002 entered into a political commitment to the OECD’s principles of effective exchange of information;

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

Have agreed as follows:

Article 1  
SCOPE OF THE AGREEMENT

The competent authorities of the Parties shall provide assistance through exchange of information upon request as set forth in this Agreement. Such information shall:

- a) Be foreseeably relevant to the administration and enforcement of the domestic laws of the Requesting Party concerning taxes covered by this Agreement;
- b) Include 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; and
- c) Be treated as confidential as set forth in this Agreement.

Article 2  
JURISDICTION

A requested 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 Portugal:

- i. Personal income tax (Imposto sobre o Rendimento das Pessoas Singulares - IRS);
- ii. Corporate income tax (Imposto sobre o Rendimento das Pessoas Colectivas – IRC);
- iii. Local surtax on corporate income tax (Derrama);
- iv. Stamp duty on gratuitous transfers (Imposto do Selo sobre as transmissões gratuitas).

b) In respect of Gibraltar:

- i. 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 Parties so agree. The competent authorities of the 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) “Portugal” means [the territory of the Portuguese Republic situated in the European continent, the archipelagos of Azores and Madeira, the territorial sea and inland waters thereof as well as the continental shelf and any other area wherein the Portuguese State exercises sovereign rights or jurisdiction in accordance with the rules of international law and the laws of the Portuguese Republic];

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- b) “Gibraltar” means the territory of Gibraltar;
- c) “Competent authority” means:
  - (i) In respect of Portugal, the Minister of Finance, the Director General of Taxation (Director-Geral dos Impostos) or their authorized representative;
  - (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 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 Party” means the Party requesting information,
- l) “Requested Party” means the Party requested to provide information,

- m) “Information-gathering measures” means laws and administrative or judicial procedures that enable a 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 Party,
- q) “Criminal laws” means all criminal laws designated as such under the respective law of the 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 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 by the requesting Party information for the purposes referred to in Article 1. Such information shall be provided 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 it had occurred in the territory of the requested Party. The competent authority of the requesting 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 Party is not sufficient to enable it to comply with the request for information, that Party shall use at its own discretion all applicable 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

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allowable under its laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each 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; and
- 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 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 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 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 Party or is in the possession of or obtainable by a person within the jurisdiction of the requested 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 is in conformity with the laws and administrative practices of the requesting Party, that if the requested information was within the jurisdiction of the requesting Party then the competent authority of the requesting Party would be able to obtain the information under the laws of the requesting Party or in the normal course of administrative practice and that it is in conformity with this Agreement,
- i) A statement that the requesting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

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

Article 6  
TAX EXAMINATIONS ABROAD

1. By reasonable notice given in advance, the requesting Party may request that the requested Party allow representatives of the competent authority of the requesting Party to enter the territory of the requested 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 Party shall notify the competent authority of the requested 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 Party, the competent authority of the requested Party may allow representatives of the competent authority of the requesting Party to be present at the appropriate part of a tax examination in the requested Party.

3. If the request referred to in paragraph 2 is acceded to, the competent authority of the requested Party conducting the examination shall, as soon as possible, notify the competent authority of the requesting 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 Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the requested Party conducting the examination.

Article 7  
POSSIBILITY OF DECLINING A REQUEST

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1. The competent authority of the requested Party may decline to assist:
  - a) Where the request is not made in conformity with this Agreement;
  - b) Where the requesting Party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulty; or
  - c) Where the disclosure of the information requested would be contrary to the public policy of the requested Party.
2. This Agreement shall not impose upon a requested 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 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 Party shall not be required to obtain and provide information which the requesting Party would be unable to obtain in similar circumstances under its own laws for the purpose of the administration or enforcement of its own tax laws or in response to a valid request from the requested Party under this Agreement.
5. The requested Party may decline a request for information if the information is requested by the requesting Party to administer or enforce a provision of the tax law of the requesting Party, or any requirement connected therewith, which discriminates against a citizen or a national of the requested Party as compared with a citizen or a national of the requesting Party in the same circumstances.

Article 8  
CONFIDENTIALITY

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



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 public court proceedings or in judicial decisions.
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 Party.
4. The information provided to a requesting 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 Party.
6. The 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 and shall comply with the guidelines established by the United Nations General Assembly Resolution 45/95, adopted on the 14<sup>th</sup> December 1990.

Article 9  
COSTS

Incidence of costs incurred in providing assistance shall be agreed by the Parties.

Article 10  
IMPLEMENTATION LEGISLATION

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

Article 11  
LANGUAGE

Requests for assistance and answers thereto shall be drawn up in English, French or any other language agreed bilaterally between the competent authorities of the Parties under Article 12.

Article 12  
MUTUAL AGREEMENT PROCEDURE

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1. Where 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 the agreements referred to in paragraph 1, the competent authorities of the Parties may mutually agree on the procedures to be used under Articles 5 and 6.
3. The competent authorities of the Parties may communicate with each other directly for purposes of reaching agreement under this Article.
4. The Parties shall agree on procedures for dispute resolution should this become necessary.

Article 13  
ENTRY INTO FORCE

1. This Agreement shall enter into force thirty days from the date on which the 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 14  
DURATION AND TERMINATION

1. The present Agreement shall remain in force for an unlimited period of time.
2. Either Party may, at any time, terminate the present Agreement upon a prior notification by giving written notice of termination to the other Party.
3. The present Agreement shall terminate six months after the receipt of such notification.
4. Notwithstanding the termination, the Parties shall remain bound to the provisions of Article 8 of the present Agreement.

IN WITNESS WHEREOF the undersigned being duly authorised in that behalf by the respective Parties, have signed the Agreement.

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Done at Lisbon, on the 14th of October 2009, in duplicate in the Portuguese and English languages, both texts being equally authentic.

For the Portuguese Republic:

Carlos Manuel Baptista Lobo  
Secretary of State for Fiscal Affairs

For Gibraltar:

James Tipping  
Finance Centre Director