

2009-50 International Co-Operation (Tax Information)

Subsidiary Legislation made under s.3(6).

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

LN.2010/087

Commencement **6.5.2010**

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 (the Netherlands) 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 Kingdom of the Netherlands and the Government of Gibraltar is hereby reproduced—

2009-50 International Co-Operation (Tax Information)
2010/087 International Co-operation (Tax Information) Act 2009
(the Netherlands) Notice 2010

AGREEMENT

BETWEEN

GIBRALTAR

AND

THE KINGDOM OF THE NETHERLANDS

FOR

THE EXCHANGE OF INFORMATION WITH RESPECT TO TAXES

The Government of Gibraltar

and

The Government of the Kingdom of the Netherlands,

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 its Entrustment 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 Netherlands;

WHEREAS Gibraltar on 27 February 2002 entered into a political commitment to the OECD's principles of effective exchange of information relating to taxes;

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

The Parties have agreed to conclude the following Agreement which contains obligations on the part of the Netherlands and Gibraltar only:

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 domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall 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 tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. 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

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

Article 3
Taxes covered

1. The taxes which are the subject of this Agreement are taxes of every kind and description existing on the date of signature.

2. This Agreement shall also apply to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. This Agreement shall also apply to any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes if the competent authorities 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) the term “Contracting Party” means the Netherlands or Gibraltar as the context requires;
 - b) the term “the Netherlands” means the part of the Kingdom of the Netherlands that is situated in Europe, including its territorial sea, and any area beyond the territorial sea within which the Netherlands, in accordance with international law, exercises jurisdiction or sovereign rights with respect to the sea bed, its sub soil and its superjacent waters, and their natural resources;

2009-50 International Co-Operation (Tax Information)

2010/087 International Co-operation (Tax Information) Act 2009
(the Netherlands) Notice 2010

- c) the term “Gibraltar” means the territory of Gibraltar;
- d) the term “competent authority” means
 - i) in the case of the Netherlands the Minister of Finance or his authorized representative;
 - ii) in the case of Gibraltar the Chief Secretary or such other official as the Minister of Finance may appoint;
- e) the term “person” includes an individual, a company and any other body of persons;
- f) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- g) the term “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;
- h) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- i) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
- j) the term “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;
- k) the term “tax” means any tax to which the Agreement applies;
- l) the term “Requesting Party” means the Contracting Party requesting information;
- m) the term “Requested Party” means the Contracting Party requested to provide information;

- n) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
- o) the term “information” means any fact, statement or record in any form whatever;
- p) the term “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the Requesting Party;
- q) the term “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes.

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

3. The Commentary to the OECD Model Agreement on Exchange of Information on Tax Matters shall apply to the interpretation of this Agreement where this Agreement is in conformity with the OECD Model Agreement on Exchange of Information on Tax Matters.

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 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 to provide the Requesting Party with the information requested, notwithstanding that the Requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of an 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.

2009-50 International Co-Operation (Tax Information)

2010/087 International Co-operation (Tax Information) Act 2009
(the Netherlands) Notice 2010

4. Each Contracting Party shall ensure that its competent authorities for the purposes specified in Article 1 of the Agreement, have the authority to obtain and provide upon request:

- a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;
- b) information regarding the legal and beneficial ownership of companies, partnerships, trusts, foundations, “*Anstalten*” and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries and the position in an ownership chain; and in the case of foundations, information on founders, members of the foundation council and beneficiaries. Further, 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. The competent authority of the Requesting Party shall provide the following information to the competent authority of the Requested Party when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:

- a) the identity of the person under examination or investigation;
- b) a statement of the information sought including its nature and the form in which the Requesting Party wishes to receive the information from the Requested Party;
- c) the tax purpose for which the information is sought;
- d) grounds for believing that the information requested is held in the Requested Party or is in the possession or control of a person within the jurisdiction of the Requested Party;
- e) to the extent known, the name and address of any person believed to be in possession of the requested information;
- f) a statement that the request is in conformity with the law 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;

- g) 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 forward the requested information as promptly as possible to the Requesting Party. To ensure a prompt response, the competent authority of the Requested Party shall confirm 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 deficiencies in the request, if any, within 60 days of the receipt of the request.

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, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the Requesting Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

Article 6
Tax examinations abroad

1. The Requested Party may allow representatives of the competent authority of the Requesting Party to enter the territory of the Requested Party to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the Requesting Party shall notify the competent authority of the Requested Party of the time and place of the meeting with the individuals 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

2009-50 International Co-Operation (Tax Information)

2010/087 International Co-operation (Tax Information) Act 2009
(the Netherlands) Notice 2010

1. The Requested Party shall not be required to obtain or provide information that the Requesting Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent authority of the Requested Party may decline to assist where the request is not made in conformity with this Agreement.

2. The provisions of this Agreement shall not impose on a Requested Party the obligation to supply items or information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in Article 5, paragraph 4 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.

3. The provisions of this Agreement shall not impose on a Contracting Party the obligation to obtain or provide information, which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:

- a) produced for the purposes of seeking or providing legal advice; or
- b) produced for the purposes of use in existing or contemplated legal proceedings.

4. The Requested Party may decline a request for information if the disclosure of the information would be contrary to public policy (*ordre public*).

5. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

6. 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 national of the Requested Party as compared with a national of the Requesting Party in the same circumstances.

Article 8
Confidentiality

Any information received by a Contracting Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public

court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the Requested Party.

Article 9
Costs

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

Article 10
Implementation legislation

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

Article 11
Language

Requests for assistance and answers thereto shall be drawn up in English.

Article 12
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 and 6.

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

Article 13
Entry into force

2009-50 International Co-Operation (Tax Information)

2010/087 International Co-operation (Tax Information) Act 2009
(the Netherlands) Notice 2010

This Agreement shall enter into force on the first day of the second month after receipt of the last notification in which each Party has notified the other in writing of the completion of its necessary internal procedures for entry into force. Upon 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 14
Termination

1. This Agreement shall remain in force until terminated by either Party.

2. Either Party may terminate this Agreement by giving notice of termination in writing. Such termination shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of notice of termination by the other Party. Nevertheless, all requests received before the effective date of termination shall be dealt with in accordance with this Agreement.

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

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed this Agreement.

DONE at London this 23rd day of April 2010, in duplicate, in the English language.

For
Gibraltar,

For
the Kingdom of the Netherlands,

James Tipping
Finance Centre Director

Pim Waldeck
Ambassador