

2009-50 International Co-Operation (Tax Information)

Subsidiary Legislation made under s.3(6).

International Co-operation (Tax Information) Act 2009 (Mexico) Notice 2012

LN.2012/206

Commencement **6.12.2012**

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 (Mexico) Notice 2012.

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 Gibraltar and the Government of the United Mexican States is hereby reproduced—

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**AGREEMENT BETWEEN THE GOVERNMENT OF GIBRALTAR AND
THE GOVERNMENT OF THE UNITED MEXICAN STATES FOR THE
EXCHANGE OF INFORMATION RELATING TO TAXES**

WHEREAS it is acknowledged that Gibraltar under the terms of its Entrustment from the United Kingdom of Great Britain and Northern Ireland has the right to negotiate, conclude, perform and subject to the terms of this agreement terminate a Tax Information Exchange Agreement with the United Mexican States;

WHEREAS the Government of Gibraltar and the Government of the United Mexican States (the Parties) wish to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes;

NOW, THEREFORE, the Parties have agreed to conclude the following Agreement which contains obligations on the part of Gibraltar and the United Mexican States only:

ARTICLE 1
Scope of the Agreement

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.

ARTICLE 2
Jurisdiction

To enable the scope of this Agreement to be implemented and subject to the provisions of Article 7, 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 of a Party. A Requested Party shall not be obliged 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 imposed by the Parties:
 - (a) in the case of the United Mexican States:

- (i) federal income tax,
- (ii) business flat rate tax, and
- (iii) value added tax.

(b) in the case of Gibraltar, taxes of every kind and description.

2. This Agreement shall apply also 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 apply also 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 of the Parties so agree. The competent authority of each Party shall notify the other of changes in laws which may affect the obligations of that Party pursuant to this Agreement.

ARTICLE 4 **Definitions**

1. In this Agreement:

- (a) “Gibraltar” means the territory of Gibraltar;
- (b) “Mexico” means the United Mexican States, when used in a geographical sense it includes the territory of the United Mexican States, as well as the integrated parts of the Federation, the islands, including the reefs and cays in the adjacent waters, the islands of Guadalupe and Revillagigedo, the continental shelf and the seabed and sub-soil of the islands, cays and reefs, the waters of the territorial seas and the inland waters and beyond them the areas over which, in accordance with the international law, Mexico may exercise its sovereign rights of exploration and exploitation of the natural resources of the seabed, sub-soil and the suprajacent waters, and the air space of the national territory to the extent and under conditions established by international law;
- (c) “Party” means Gibraltar or Mexico as the context requires;
- (d) “competent authority” means, for Gibraltar, the Minister of Finance or his authorised representative, and for Mexico, the Ministry of Finance and Public Credit;

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- (e) “criminal laws” means all criminal laws designated as such under the domestic law of each Party, irrespective of whether contained in the tax laws, the criminal code, or other statutes;
- (f) “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;
- (g) “information” means any fact, statement, document, or record in whatever form;
- (h) “information gathering measures” means judicial, regulatory, criminal, or administrative procedures enabling a Requested Party to obtain and provide the information requested;
- (i) “person” means a natural person, a company, or any other body or group of persons;
- (j) “Requested Party” means the Party to this Agreement which is requested to provide or has provided information in response to a request;
- (k) “Requesting Party” means the Party to this Agreement submitting a request for or having received information from the Requested Party;
- (l) “tax” means any tax covered by this Agreement;
- (m) “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;
- (n) “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (o) “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- (p) “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;

- (q) “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Parties;

2. Any term not defined in this Agreement, unless the context otherwise requires or the competent authorities agree to a common meaning pursuant to the provisions of Article 10, shall:

- (a) with respect to the Requested Party, have the meaning which it has under the laws of the Requested Party, any meaning under the applicable tax laws of the Requested Party prevailing over a meaning given to the term under other laws of the Requested Party; and
- (b) with respect to the Requesting Party, have the meaning which it has under the laws of the Requesting Party, any meaning under the applicable tax laws of the Requesting Party prevailing over a meaning given to the term under other laws of the Requesting 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 exchanged without regard to whether the Requested Party needs such information for its own tax purposes or whether 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, 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, the Requested Party shall take all relevant information gathering measures 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. In the execution of a request by the Requested Party, only those privileges under the laws and practices of the Requested Party shall apply and any privileges under the laws and practices of the Requesting Party shall be reserved for resolution by the Requesting Party.

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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 it has the authority, for the purposes referred to in Article 1 of this Agreement and subject to Article 2 of this Agreement, to obtain and provide, through its competent authority and 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, information on shares, units, and other interests; and in the case of trusts, information on settlors, trustees, 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 funds, unless such information can be obtained without giving rise to disproportionate difficulties.

5. Any request for information made by a Party shall be framed with the greatest degree of specificity possible. In all cases, such requests shall specify in writing the following:

- (a) the identity of the taxpayer under examination or investigation;
- (b) the period of time with respect to which the information is requested;
- (c) the Requesting Party would prefer to receive it;
- (d) the matter under the Requesting Party's tax law with respect to which the information is sought;
- (e) the reasons for believing that the information requested is foreseeably relevant to tax administration and enforcement of the Requesting Party, with respect to the person identified in subparagraph (a) of this paragraph;
- (f) reasonable grounds for believing that the information requested is present 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 or control of the information requested;

- (h) a statement that the request conforms to the law and administrative practice of the Requesting Party and would be obtainable by the Requesting Party under its laws or in the normal course of administrative practice in similar circumstances, both for its own tax purposes and in response to a valid request from the Requested Party under this Agreement;
- (i) a statement that the Requesting Party has pursued all reasonable means available in its own jurisdiction to obtain the information, except where that would give rise to disproportionate difficulty.

6. The competent authority of the Requested Party shall forward the requested information as soon as reasonably possible to the Requesting Party. To ensure a prompt response, the competent authority of the Requested Party shall:

- (a) 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 sixty (60) days of the receipt of the request; and
- (b) if the competent authority of the Requested Party has been unable to obtain and provide the information within ninety (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 Investigations Abroad

1. By reasonable notice given in advance, a Party may request that the other Party allow officials of the first-mentioned Party to enter the territory of the second-mentioned Party, to the extent permitted under the domestic laws of the first-mentioned Party, to interview individuals and examine records with the prior written consent of the individuals concerned. The competent authority of the first-mentioned Party shall notify the competent authority of the second-mentioned Party of the time and place of the intended meeting with the individuals concerned.

2. At the request of the competent authority of one Party, the competent authority of the other Party may permit representatives of the competent authority of the first-mentioned Party to be present at the appropriate part of a tax examination in the territory of the second-mentioned Party.

3. If the request referred to in paragraph 2 is granted, the competent authority of the Party conducting the examination shall, as soon as possible, notify the competent authority of the other Party of the time and place of the examination, the authority or person authorized to carry out the examination and the procedures and conditions required by the first-mentioned Party for the conduct of the examination. All decisions regarding the conduct of the examination shall be made by the Party conducting the examination.

ARTICLE 7

Possibility of Declining a Request

1. The competent authority of the Requested Party may decline to assist where:
 - (a) the request is not made in conformity with this Agreement;
 - (b) 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) 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 Party any obligation to:
 - (a) provide items subject to legal privilege, nor any trade, business, industrial, commercial or professional secret or trade process, provided that information described in Article 5(4) shall not by reason of that fact alone be treated as such a secret or trade process; or
 - (b) 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 Article 5(4).
3. For purposes of paragraph 2(a), the term “items subject to legal privilege” means information that would reveal confidential communications between a client and an attorney, where such communications are made for the purpose of seeking or providing legal advice or for the purpose of use in existing or contemplated legal proceedings.
4. A request for information shall not be refused on the ground that the tax liability giving rise to the request is disputed by the taxpayer.
5. 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.

ARTICLE 8
Confidentiality

1. All information provided and received pursuant to this Agreement by the competent authorities of the Parties shall be kept confidential.
2. Information provided shall be disclosed only to persons or authorities (including judicial, administrative and Congressional oversight authorities) officially concerned with the purposes specified in Article 1, and used by such persons or authorities only for such purposes or for oversight purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial proceedings.
3. Information provided to a Requesting Party under this Agreement may not be disclosed to any third party, including an agency or employee of any other government, without the express written consent of the competent authority of the Requested Party.
4. Information received by the Requested Party in conjunction with a request for assistance under this Agreement shall likewise be treated as confidential in the Requested Party.

ARTICLE 9
Costs

The Requesting Party shall reimburse the Requested Party for all direct costs incurred in providing information pursuant to this Agreement. The respective competent authorities shall consult from time to time with regard to this Article, and in particular the competent authority of the Requested Party shall consult with the competent authority of the Requesting Party if the costs of providing information with respect to a specific request are expected to be significant.

ARTICLE 10
Mutual Agreement Procedure

Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall use their best efforts to resolve the matter by mutual agreement.

ARTICLE 11
Mutual Assistance Procedure

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If both competent authorities of the Parties consider it appropriate to do so they may agree to exchange technical know-how, develop new audit techniques, identify new areas of non-compliance, and jointly study non-compliance areas.

ARTICLE 12
Interpretation

The competent authorities may take into consideration the commentaries pertaining to the 2002 Agreement on Exchange of Information on Tax Matters of the Organisation for Economic Cooperation and Development (OECD Model Agreement) when interpreting provisions of this Agreement that are identical to the provisions in that OECD Model Agreement.

ARTICLE 13
Entry Into Force

1. This Agreement shall enter into force thirty (30) days after the date of receipt of the later communication on which the Parties notify each other in writing the completion of its internal procedures required for such effect.
2. The provisions of this Agreement shall have effect:
 - (a) with respect to criminal tax matters upon the entry into force of this Agreement; and
 - (b) with respect to all other matters covered in Article 1 for taxable periods beginning with the calendar year within which this Agreement enters into force.

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 at least six (6) months before the end of any calendar year beginning on or after the expiration of a period of two (2) years from the date of its entry into force. Such termination shall become effective on the first day of the month following the expiration of a period of three (3) months after the date of notification of termination by the other Party.
3. If a Party terminates this Agreement, notwithstanding such termination, both Parties shall remain bound by the provisions of Article 8 of this Agreement with respect to any information obtained under this Agreement.

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In witness whereof the undersigned being duly authorised in that behalf by their respective Governments, have signed this Agreement.

Done in duplicate at Mexico City this ninth day of November of 2012, and at Gibraltar this 29th day of November of 2012, in the English and Spanish languages, both texts being equally authentic.

**FOR THE GOVERNMENT
OF GIBRALTAR**

Gilbert Licudi QC
**Minister with responsibility
for Financial Services**

**FOR THE GOVERNMENT
OF THE UNITED MEXICAN STATES**

José Antonio Meade Kuribreña
**Minister of Finance and
Public Credit**