

2009-50 International Co-Operation (Tax Information)

Subsidiary Legislation made under s.3(6).

International Co-operation (Tax Information) Act 2009 (Greece) Notice 2013

LN.2013/023

Commencement **14.2.2013**

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 (Greece) Notice 2013.

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 Hellenic Republic and the Government of Gibraltar is hereby reproduced—

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

WHEREAS Gibraltar and the Hellenic Republic (the “Parties”) recognise that present legislation already provides for cooperation 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 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 Hellenic Republic;

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;

NOW, THEREFORE, the Parties have agreed to conclude the following Agreement which contains obligations on the part of Gibraltar and Greece only.

**Article 1
Object and Scope of the Agreement**

1. 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, 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 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.

2. The rights and safeguards secured to persons by the laws or administrative practice of the requested Contracting Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

**Article 2
Jurisdiction**

1. To enable the provisions 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 or citizen of a Contracting Party.

2. A requested Contracting Party is not obligated 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

1. The taxes which are the subject of this Agreement are:

(a) in the case of the Hellenic Republic

the income tax

the capital tax

the inheritance tax

the transfer tax

the value added tax and

excise duties.

(b) in the case of Gibraltar

taxes of every kind and description.

2. This Agreement shall apply also to any identical or substantially similar taxes 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

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

- (a) the term “Hellenic Republic” means the territory of the Hellenic Republic, including territorial sea and national airspace, as well as the maritime areas, over which the Hellenic Republic exercises or shall exercise sovereignty, sovereign rights or jurisdiction in accordance with international law;
- (b) the term “Gibraltar” comprises the territory of Gibraltar;
- (c) “competent authority” means:
 - (i) in the case of the Hellenic Republic the Minister of Finance or his authorized representative;
 - (ii) in the case of Gibraltar, the Minister of Finance or his authorized representative;
- (d) the term “person” includes an individual, a company and any other body or group of persons;
- (e) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (f) 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;
- (g) 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;
- (h) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
- (i) 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;

- (j) the term “tax” means any tax to which the Agreement applies;
- (k) the term “Requesting Contracting Party” means the Contracting Party requesting information;
- (l) the term “Requested Contracting Party” means the Contracting Party requested to provide information;
- (m) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
- (n) the term “information” means any fact, statement, document or record in any form whatever;
- (o) the term “tax matters” means all tax matters including criminal tax matters;
- (p) “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the requesting Contracting Party;
- (q) the term “criminal laws” means all criminal laws designated as such under domestic law of 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.

Article 5 **Exchange of Information Upon Request**

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 conduct being investigated would constitute a crime under the laws of the Requested Contracting Party.

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 Party shall use all relevant information gathering measures to provide the Requesting Contracting Party

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with the information requested, notwithstanding that the Requested Contracting Party may not 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 domestic 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) (i) 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;
- (ii) 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 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 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 is in conformity with the laws and administrative practices of the Requesting Contracting Party, that if the requested information was within the jurisdiction of the Requesting Contracting Party then the competent authority of the Requesting Contracting Party would be able to obtain the information under the laws of the Requesting Contracting Party or in the normal course of administrative practice and that it is in the conformity with 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:

- (a) acknowledge receipt of the request in writing to the competent authority of the Requesting Contracting Party and shall notify the competent authority of the Requesting Contracting Party of any deficiencies in the request within 60 days of the 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 the receipt of the request, it shall inform the Requesting Party, explaining the reason(s) for its inability and the nature of the obstacles.

Article 6
Tax Examinations or Investigations 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 competent authority 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 meeting with the persons concerned.

2. At the request of the competent authority of one Contracting Party, the competent authority of the Requested 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 territory of the Requested Contracting 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 Contracting Party of the time and place of the examination, the authority or official authorised to carry out the examination and the procedures and conditions required by the Requested Contracting Party for the conduct of the examination. All decisions regarding the conduct of the tax 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 Contracting Party may decline to assist where the request is not made in conformity with this Agreement or where the disclosure of the information would be contrary to public policy (ordre public).

2. The provisions of this Agreement shall not impose on a Contracting Party the obligation to supply information 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 paragraph 4 of Article 5 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 Contracting Party shall not be required to obtain and provide information which the Requesting Contracting 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.

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 national or a citizen of the Requested Contracting Party as compared with the national or the citizen of the Requesting Contracting Party in the same circumstances.

Article 8 **Confidentiality**

1. 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, if this is provided for in the respective laws of the Contracting Parties. 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 Contracting Party.
2. 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.
3. The information provided to a Requesting Contracting Party under this Agreement may not be disclosed to any other jurisdiction without the written consent of the competent authority of the Requested Contracting Party.

Article 9 Administrative Costs

Unless the competent authorities of the Contracting Parties otherwise agree, costs incurred in providing assistance shall be borne by the Requested Party, unless they are agreed as extraordinary costs. At the request of either Contracting Party, the competent authorities shall consult each other when necessary with regard to this Article. In particular the competent authority of the Requested Party shall consult with the competent authority of the Requesting Party in advance if the costs of providing information with respect to a specific request are expected to be extraordinary.

Article 10 Implementing Legislation

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

Article 11 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.

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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 shall agree in writing on other forms of dispute resolution should this become necessary.

Article 12
Language

Requests for assistance and answers thereto shall be drawn up in the English language between the competent authorities of the Contracting Parties.

Article 13
Entry into Force

This Agreement shall enter into force when each Contracting 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 on the date on which the last notification is received:

- (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 a Contracting Party. Either Contracting Party may terminate the Agreement, by giving notice of termination directly 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 Contracting Party.

2. Notwithstanding any termination of this Agreement the Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement.

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IN WITNESS WHEREOF, the undersigned, being dully authorized thereto by their respective Governments, have signed this Agreement.

Done at London on 31st January 2013, in duplicate, in the English and Greek languages, both texts being equally authentic.

For Gibraltar

For the Hellenic Republic

Gilbert Licudi QC
Minister with responsibility
for Financial Services

Konstantinos Bikas
Ambassador