

2009-50 International Co-Operation (Tax Information)

Subsidiary Legislation made under s.3(6).

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

LN.2013/024

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 (India) 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 Republic of India and the Government of Gibraltar is hereby reproduced-

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**AGREEMENT BETWEEN THE GOVERNMENT OF GIBRALTAR
AND
THE GOVERNMENT OF THE REPUBLIC OF INDIA FOR
THE EXCHANGE OF INFORMATION WITH RESPECT TO TAXES**

WHEREAS the Government of Gibraltar and the Government of the Republic of India “the Contracting Parties” wish to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes;

WHEREAS it is acknowledged that Gibraltar under the terms of its Entrustment from the UK has the right to negotiate, conclude, perform and subject to the terms of this agreement terminate a Tax Information Exchange Agreement with India;

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

**Article 1
Object and 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**

Information shall be exchanged in accordance with this Agreement without regard to whether the person to whom the information relates is, or whether the information is held by, a resident of a Contracting Party. However, a Requested Party is not obliged to provide information which is neither held by its authorities nor is 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:
 - (a) in India, taxes of every kind and description imposed by the Central Government or the Governments of political subdivisions or local authorities, irrespective of the manner in which they are levied;
 - (b) in Gibraltar, taxes of every kind and description, irrespective of the manner in which they are levied.
2. This Agreement shall also apply to any identical taxes imposed after the date of signature of this 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 this Agreement in addition to, or in place of, the existing taxes if the competent authorities of 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 which may affect the obligations of that Party pursuant to this Agreement.

Article 4 **Definitions**

1. For the purposes of this Agreement, unless otherwise defined:
 - (a) the term “India” means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law, including the U.N. Convention on the Law of the Sea;
 - (b) the term Gibraltar means the territory of Gibraltar;
 - (c) the term “Contracting Party” means India or Gibraltar as the context requires;
 - (d) the term “competent authority” means
 - (i) in the case of India, the Finance Minister, Government of India, or its authorized representative;
 - (ii) in the case of Gibraltar, the Minister of Finance or his authorised representative;
 - (e) the term “person” includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting Parties;

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- (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—
 - (i) in India, the National Stock Exchange, the Bombay Stock Exchange, and any other stock exchange recognised by the Securities and Exchange Board of India; and
 - (ii) any other stock exchange which the competent authorities agree to recognise for the purposes of this Agreement.
- (j) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form;
- (k) 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;
- (l) the term “tax” means any tax to which this Agreement applies;
- (m) the term “requesting Party” means the Contracting Party submitting a request for information to, or having received information from, the requested party.
- (n) the term “requested Party” means the Contracting Party which is requested to provide the information or which has provided information.

- (o) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
- (p) the term “information” means any fact, statement, document or record in whatever form;
- (q) the term “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 and / or the tax laws of the applicant Party;
- (r) 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 or the competent authorities agree to a common meaning pursuant to the provisions of Article 11 of this Agreement, 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 Party shall provide upon request 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 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 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.

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4. Each Contracting Party shall ensure that its competent authority, for the purposes specified in Article 1 of this Agreement, has 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 legal and beneficial ownership of companies, partnerships, collective investment funds or schemes, 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 collective investment funds or schemes, information on shares, units and other interests; in the case of trusts, information on settlors, trustees and beneficiaries; in the case of foundations, information on founders, members of the foundation council and beneficiaries; and equivalent information in case of entities that are neither trusts nor foundations.

5. 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.

6. 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) the period for which information is requested;
- (c) the nature of the information requested and the form in which the requesting Party would prefer to receive it ;
- (d) the tax purpose for which the information is sought;
- (e) grounds for believing that the information requested is present in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;
- (f) to the extent known, the name and address of any person believed to be in possession or control of the requested information;

- (g) 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;
- (h) 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.

7. 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:

- (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 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 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. At the request of the competent authority of the requesting Party, the requested Party may allow representatives of the competent authority of the requesting Party to enter the territory of the requested Party, to the extent permitted under its domestic 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 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, in which case 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 Party conducting the examination.

Article 7

Possibility of Declining a Request for information

1. The competent authority of the requested Party may decline to assist:
 - (a) where the request is not made in conformity with this Agreement; or
 - (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 disclosure of the information would be contrary to public policy (ordre public) of the requested Party.

2. This Agreement shall not impose on a Contracting Party the obligation:
 - (i) 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 be treated as such a secret or trade process merely because it meets the criteria in that paragraph; or
 - (ii) 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.

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 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 (including a foreign Government) without the express written consent of the competent authority of the Requested Party.

Article 9 Costs

1. Unless the competent authorities of the Contracting Parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the Requested Party, and, subject to the provisions of this Article, extraordinary costs incurred in providing assistance shall, if they exceed £500, be borne by the Requesting Party.
2. The competent authorities will consult each other in advance in any particular case where extraordinary costs are likely to exceed £500 to determine whether the Requesting Party will continue to pursue the request and bear the cost.
3. The competent authorities shall consult from time to time with regard to this Article.
4. Ordinary costs include internal administration costs, any minor external costs and overhead expenses incurred by the Requested Party in reviewing and responding to information requests submitted by the Requested Party. Examples of extraordinary costs incurred in providing assistance include but are not limited to the following:
 - (a) reasonable fees charged by third parties for copying documents on behalf of the Requested Party;
 - (b) reasonable costs of engaging interpreters, translators or other agreed experts;

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- (c) reasonable costs of conveying documents to the Requesting Party;
- (d) reasonable litigation costs of the Requested Party in relation to a specific request for information;
- (e) reasonable costs for obtaining depositions or testimony.

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
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. In addition, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5 and 6 of this Agreement.

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

Article 12
Entry into Force

1. The Contracting Parties shall notify each other in writing of the completion of the procedures required by the respective laws for the entry into force of this Agreement.

2. This Agreement shall enter into force on the date of the later of the notifications referred to in paragraph 1 of this Article. 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 13
Termination

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1. This Agreement shall remain in force until terminated by either Contracting Party.
2. Either Contracting Party may, after the expiry of three years from the date of its entry into force, terminate the Agreement by serving a written notice of termination to the other Contracting Party through appropriate channels.
3. 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. All requests received up to the effective date of termination shall be dealt with in accordance with the provisions of the Agreement.

In witness whereof, the undersigned, being duly authorised thereto, have signed this Agreement.

DONE in duplicate at London on this first day of February, 2013, each in the Hindi, and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

For the Government of
Gibraltar

For the Government of
Republic of India

Gilbert Licudi QC
Minister with responsibility
for Financial Services

Dr J. Bhagwati
High Commissioner of India
to the United Kingdom