

L.N. 208 of 2012

**INCOME TAX ACT
(CAP. 123)**

Exchange of Information (Tax Matters) (Gibraltar) Order, 2012

IN exercise of the powers conferred by article 76 of the Income Tax Act, the Minister of Finance, the Economy and Investment has made the following order:-

1. The title of this order is the Exchange of Information (Tax Matters) (Gibraltar) Order, 2012. Citation.

2. It is hereby declared:

Arrangements to
have effect.

(a) that the arrangements specified in the Agreement set out in the Schedule to this Order have been made with the Government of Gibraltar with a view to preventing fiscal evasion in relation to taxes of every kind and description imposed by the laws of Gibraltar;

(b) that it is expedient that those arrangements should have effect;

(c) that the Agreement has entered into force on 1 April 2012.

SCHEDULE
(Article 2)
AGREEMENT
BETWEEN
THE GOVERNMENT OF MALTA
AND THE GOVERNMENT OF GIBRALTAR
FOR THE EXCHANGE OF INFORMATION
RELATING TO
TAX MATTERS

WHEREAS the Government of Malta and the Government of Gibraltar ("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 UK has the right to negotiate, conclude, perform and subject to the terms of this Agreement terminate a Tax Information Exchange Agreement with Malta;

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 the Government of Malta and the Government of Gibraltar only:

Article 1

Scope of the Agreement

The competent authorities of 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 tax matters in relation to such persons. 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. This Agreement shall apply to taxes of every kind and description in the Contracting Parties.

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

Article 4

Definitions

1. In this Agreement:

"Malta" means the Republic of Malta and, when used in a geographical sense, means the Island of Malta, the Island of Gozo and the other islands of the Maltese archipelago including the territorial waters thereof, as well as any area of the sea-bed, its sub-soil and the superjacent water column adjacent to the territorial waters, wherein Malta exercises sovereign rights, jurisdiction, or control in accordance with international law and its national law, including its legislation relating to the exploration of the continental shelf and exploitation of its natural resources;

"Gibraltar" means the territory of Gibraltar;

"company" means any body corporate or any entity that is treated as a body corporate for tax purposes;

"competent authority" means, in the case of Malta: the Minister responsible for finance or his authorised representative; in the case of Gibraltar: the Minister of Finance or his authorised representative;

"criminal laws" means all criminal laws designated as such under domestic law, irrespective of whether such are contained in the tax laws, the criminal code or other statutes;

"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 law of the requesting Party;

"information gathering measures" means laws and administrative or judicial procedures enabling a requested Party to obtain and provide the information requested;

"information" means any fact, statement, document or record in whatever form;

"person" means a natural person, a company or any other body or group of persons;

"principal class of shares" means the class or classes of shares representing a majority of the voting power and value of the company;

"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;

"collective investment fund or scheme" means any pooled investment vehicle, irrespective of legal form. "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;

"requested Party" means the Party to this Agreement which is requested to provide or has provided information in response to a request;

"requesting Party" means the Party to this Agreement submitting a request for or having received information from the requested Party;

"tax" means any tax covered by this Agreement.

2. As regards the application of this Agreement at any time by a Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the laws 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 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. 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 use 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 allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each 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, 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, within the constraints of Article 2, ownership information on all such persons in an ownership chain;

(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;

Further, 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 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 or control of the information requested;
- (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 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 as soon as possible.

Article 6

Tax Investigations Abroad

1. With reasonable notice, 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

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 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

1. The competent authority of 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 provide 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 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.

3. The provisions of this Agreement shall not impose on a requested 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 the competent authorities of a Party shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the 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 requested Party.

Article 9

Costs

Unless the competent authorities of the Parties otherwise agree, indirect costs incurred in providing assistance shall be borne by the requested Party, and direct costs incurred in providing assistance (including costs of engaging external advisors in connection with litigation or otherwise necessary to comply with the request) shall be borne by the requesting Party. 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 in advance if the costs of providing information with respect to a specific request are expected to be significant.

Article 10

Mutual Agreement Procedure

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this 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.

Article 11

Implementation of Legislation

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

Article 12

Entry into Force

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 13

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 three months after the date of receipt of notice of termination by the other Party.
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 being duly authorised in that behalf by the respective Parties, have signed the Agreement.

DONE in duplicate, this 24th day of January, 2012.

Joseph Zammit Tabona

Gilbert Licudi

FOR THE GOVERNMENT
OF MALTA

FOR THE GOVERNMENT
OF GIBRALTAR

VERŻJONI ELETTRONIKA

