



STATUTORY INSTRUMENTS.

S.I. No. 26 of 2010

EXCHANGE OF INFORMATION RELATING TO TAXES
(GIBRALTAR) ORDER 2010

(Prn. A10/0110)

EXCHANGE OF INFORMATION RELATING TO TAXES
(GIBRALTAR) ORDER 2010

WHEREAS it is enacted by section 826(1B) (inserted by section 35 of the Finance Act 2007 (No. 11 of 2007)) of the Taxes Consolidation Act 1997 (No. 39 of 1997) that if the Government by order declare that arrangements specified in the order have been made with the government of any territory outside the State in relation to exchanging information for the purposes of the prevention and detection of tax evasion in the case of taxes of any kind or description imposed by the laws of the State or by the laws of that territory, and that it is expedient that those arrangements should have the force of law, and that the order so made is specified in Part 3 of Schedule 24A of the Taxes Consolidation Act 1997, then subject to section 826 of that Act, the arrangements shall, notwithstanding any enactment, have the force of law as if such order were an Act of the Oireachtas on and from the date of the insertion of a reference to the order into Part 3 of Schedule 24A:

AND WHEREAS it is further enacted by section 826(6) of the Taxes Consolidation Act 1997 that where such an order is proposed to be made, a draft of the order shall be laid before Dáil Éireann and the order shall not be made until a resolution approving of the draft has been passed by Dáil Éireann:

AND WHEREAS a draft of the following Order has been laid before Dáil Éireann and a resolution approving of the draft has been passed by Dáil Éireann:

NOW, the Government, in exercise of the powers conferred on them by section 826(1B) of the Taxes Consolidation Act 1997, hereby order as follows:

1. This Order may be cited as the Exchange of Information Relating to Taxes (Gibraltar) Order 2010.
2. It is declared—
 - (a) that the arrangements specified in the Agreement, the text of which is set out in the Schedule, have been made with Gibraltar in relation to exchanging information for the purposes of the prevention and detection of tax evasion, and
 - (b) that it is expedient that those arrangements should have the force of law.

*Notice of the making of this Statutory Instrument was published in
"Iris Oifigiúil" of 5th February, 2010.*

SCHEDULE

AGREEMENT BETWEEN IRELAND AND GIBRALTAR FOR THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS

WHEREAS Ireland and 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 Ireland;

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

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 Ireland and Gibraltar only:

Article 1**Scope of the Agreement**

The Parties shall provide assistance through exchange of information that is foreseeable relevant to the administration and enforcement of the domestic laws of the Parties concerning the taxes covered by this Agreement, including information that is foreseeable 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. A requested Party is not 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. 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**Taxes Covered**

1. This Agreement shall apply to the following taxes imposed by the Parties:
 - (a) in the case of Ireland:

- (i) the income tax;
- (ii) the income levy;
- (iii) the corporation tax;
- (iv) the capital gains tax;
- (v) the capital acquisitions tax; and
- (vi) the value added tax.

(b) in the case of Gibraltar:

Gibraltar income taxes.

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 3

Definitions

1. In this Agreement:

“Ireland” means Ireland and includes any area outside the territorial waters of Ireland which has been or may hereafter be designated under the laws of Ireland concerning the Exclusive Economic Zone and the Continental Shelf, as an area within which Ireland may exercise such sovereign rights and jurisdiction as are in conformity with international law;

“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 Ireland: the Revenue Commissioners or their authorised representative; in the case of Gibraltar: the Chief Secretary or such other person as the Minister of Finance may appoint;

“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;

“public collective investment scheme” means any scheme or fund, in which the purchase, sale or redemption of shares or other interests 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 4

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 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 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 it has the authority, subject to the terms of Article 1, 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) (i) information regarding the beneficial ownership of companies, partnerships and other persons, including in the case of collective investment 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, members of the foundation council 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 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 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) the reasons for believing that the information requested is foreseeable relevant to tax administration and enforcement of the requesting 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 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 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;
- (i) a statement that the requesting Party has pursued all means available in its own territory to obtain the information, except where that would give rise to disproportionate difficulty.

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 5

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 6

Possibility of Declining a Request

1. The competent authority of the requested Party may decline to assist:
 - (a) where the request is not made in conformity with this Agreement;
 - (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 the disclosure of the information requested would be contrary to public policy (“ordre public”).
2. This Agreement shall not impose upon a requested Party any obligation to provide items subject to legal privilege, or information which would disclose any trade, business, industrial, commercial or professional secret or trade process, provided that information described in paragraph 4 of Article 4 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 Party shall not be required to obtain and provide information which if the requested information was within the jurisdiction of the requesting Party the competent authority of the requesting Party would not be able to obtain under its laws or in the normal course of administrative practice.
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 or citizen of the requested Party as compared with a national or citizen of the requesting Party in the same circumstances.

Article 7

Confidentiality

1. All information provided and received by the competent authorities of the Parties shall be kept confidential.
2. Such information shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the purposes specified in Article 1, and used by such persons or authorities only for such purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial decisions.

3. Such information may not be used for any purpose other than for the purposes stated in Article 1 without the expressed written consent of the competent authority of the requested Party.

4. Information provided to a requesting Party under this Agreement may not be disclosed to any other jurisdiction.

Article 8

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 9

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 10

Implementation of Legislation

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

Article 11

Entry into Force

This Agreement shall enter into force when 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 the first day of January 2010 or, where there is no taxable period, all charges to tax arising on or after that date.

Article 12

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 7 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 June, 2009.

FOR IRELAND:

Martin Mansergh
Minister of State
Department of Finance

FOR GIBRALTAR:

Peter Caruana
Chief Minister



GIVEN under the Official Seal of the Government,
26 January 2010.

MARY COUGHLAN,
Tanaiste.

EXPLANATORY NOTE.

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

This Order gives the force of law to the Tax Information Exchange Agreement (TIEA) between Ireland and Gibraltar, which is set out in the Schedule to the Order. The Agreement was signed on 24 June 2009.

The provisions of the Agreement are summarised below.

The Tax Information Exchange Agreement (TIEA) is based on a model agreement that was developed by the OECD. The Agreement allows the tax authorities of Ireland or Gibraltar to request information from each other in relation to tax matters under investigation, in particular, for bank account information and for information concerning the beneficial ownership of companies, trusts and partnerships. The taxes covered in the case of Ireland are income tax; the income levy; corporation tax; capital gains tax; capital acquisitions tax and value added tax.

There are also provisions in the Agreement that allow each Party to carry out tax investigations in the territory of the other Party, that allow for the possibility of declining a request, that cover confidentiality and that deal with which Party should bear certain costs incurred in relation to exchanging information under the Agreement. There are also provisions that allow the competent authorities of both Parties to resolve difficulties concerning the interpretation or application of the Agreement.

The Agreement will enter into force when each country notifies the other of the completion of its necessary internal procedures for bringing the Agreement into force. The Agreement will be effective for criminal tax matters from that date and for all other matters covered by the Agreement from that date also but only in respect of taxable periods beginning on or after 1 January 2010 or charges arising to tax on or after 1 January 2010.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
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TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
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