

Statutory Document No. 2019/0383



Income Tax Act 1970

TAXES (GIBRALTAR) ORDER 2019

Approved by Tynwald: 19th November 2019
Coming into Operation in accordance with article 2

The Council of Ministers makes the following Order under sections 104B and 104C of the Income Tax Act 1970.

1 Title

This Order is the Taxes (Gibraltar) Order 2019.

2 Commencement

If approved by Tynwald¹, this Order comes into operation on the day after it is approved.

3 Interpretation

In this Order “**applicable arrangement**” means the arrangement for the exchange of information relating to tax matters contained in an agreement between the Isle of Man and Gibraltar signed in the Isle of Man on 11 June 2019 and in Gibraltar on 28 June 2019 and set out in the Schedule.

4 Information exchange arrangement

It is declared that –

- (a) the applicable arrangement has been made with Gibraltar with a view to exchange of information foreseeably relevant for carrying out the laws (whether in the Island or in Gibraltar) concerning any taxes to which the applicable arrangement relates; and
- (b) the arrangement should have effect as part of the law of the Island.

¹Tynwald approval is required by section 104B(6) of the Income Tax Act 1970

MADE 4TH NOVEMBER 2019

W GREENHOW
Chief Secretary



EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under sections 104B and 104C of the Income Tax Act 1970. It implements an arrangement negotiated between the Isle of Man and Gibraltar for the exchange of information relating to tax matters.

**AGREEMENT BETWEEN
THE ISLE OF MAN
AND
GIBRALTAR
FOR THE EXCHANGE OF INFORMATION RELATING
TO TAX MATTERS**

THE Government of the Isle of Man and the Government of Gibraltar have agreed to conclude the following Agreement for the exchange of information relating to tax matters, which contains obligations on the part of the Parties only:

ARTICLE 1
Object and Scope of the Agreement

The Parties, through their competent authorities, shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Parties concerning taxes covered by this Agreement, including information that is foreseeably relevant to the determination, assessment or collection of such taxes, the recovery and enforcement of tax claims, or the investigation of tax matters or the prosecution of criminal 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 10. 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.

The Parties acknowledge that the United Kingdom continues to be responsible for the international relations of the Isle of Man and Gibraltar in international law. This Agreement cannot therefore create obligations which are binding under international law and is not intended to alter or affect the respective constitutional relationships between the Isle of Man and Gibraltar and the United Kingdom.

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 the following taxes imposed
 - a) by Gibraltar, income tax and corporation tax;
 - b) by the Isle of Man, income tax.

2. This Agreement shall also apply to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes, or any substantially similar taxes if the Parties so agree. The competent authority of each Party shall notify the 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 the context otherwise requires:

- a) "Gibraltar" means the territory of Gibraltar;
- b) "the Isle of Man" means the island of the Isle of Man, including its territorial sea, in accordance with international law;
- c) "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;
- d) "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- e) "competent authority" means:
 - (i) in the case of Gibraltar, the Finance Centre Director or such other official as the Minister with responsibility for the Co-ordination of the International Exchange of Information may appoint;

- (ii) in the case of the Isle of Man, the Assessor of Income Tax or his or her delegate;
- f) "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;
- g) "criminal tax matters" means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the requesting Party;
- h) "information" means any fact, statement or record in any form whatever;
- i) "information gathering measures" means laws and administrative or judicial procedures that enable a requested Party to obtain and provide the requested information;
- j) "Party" means Gibraltar or the Isle of Man as the context requires;
- k) "person" includes an individual, a company and any other body or group of persons;
- l) "principal class of shares" means the class or classes of shares representing a majority of the voting power and value of the company;
- m) "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;

- n) "recognised stock exchange" means any stock exchange agreed upon by the competent authorities of the Parties;
- o) "requested Party" means the Party to this Agreement requested to provide, or which has provided, information in response to a request;
- p) "requesting Party" means the Party to this Agreement submitting a request for information or having received information from the requested Party;
- q) "tax" means any tax to which the Agreement applies.

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 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 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 within its own territory, 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, that Party shall use all relevant information gathering measures necessary 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.

4. Each Party shall ensure that it has the authority, subject to the terms of Article 1, and within the constraints of Article 2, to obtain and provide, through its competent authorities 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, foundations 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, enforcers 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 or 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 foreseeably relevant to tax administration and enforcement of the requesting Party, with respect to the person identified in subparagraph a) of this paragraph;
- f) the 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 of or able to obtain the requested information;
- h) 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;
- 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 use its best endeavours to forward the requested information to the requesting Party with the least possible delay. 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 complete request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the competent authority of 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. 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, to the extent permitted under its domestic laws.

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 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.

2. This Agreement shall not impose on a requested Party the obligation to provide information subject to legal privilege or which would disclose any trade, business, industrial, commercial or professional secret or trade process, provided that information of the type referred to in Article 5, paragraph 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 or 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 own 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 8

Automatic Exchange of Information

1. The competent authorities of the Parties may automatically transmit information to each other for the purposes referred to in Article 1. The competent authorities shall determine the items of information to be exchanged pursuant to this Article and the procedures to be used to exchange such items of information.
2. The competent authorities of the Parties may mutually agree on additional procedures to be used for the purposes of this Article.

ARTICLE 9

Spontaneous Exchange of Information

The competent authority of a Party may spontaneously transmit to the competent authority of the other Party information that has come to the attention of the first-mentioned competent authority and that the first-mentioned competent authority supposes to be foreseeably relevant to the accomplishment of the purposes referred to in Article 1. The competent authorities shall determine the procedures to be used to exchange such information.

ARTICLE 10

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 express 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 11

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) 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 12

Mutual Agreement Procedure

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the respective 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, 6, 8, 9 and 11.

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

ARTICLE 13

Entry into Force

1. This Agreement shall enter into force on the thirtieth day after the later of the dates on which each of the Parties has notified the other in writing that the procedures required by its law have been complied with.

2. Upon entry into force, the provisions of this Agreement shall have effect:
 - a) for criminal tax matters on that date;
 - b) with respect to automatically transmitting information under Article 8 for periods beginning on or after 1 January 2019; and
 - c) for all other matters covered in Article 1, for taxable periods beginning on or after the first day of January of the year next following the date on which the Agreement enters into force, or where there is no taxable period, for all charges to tax arising on or after the first day of January of the year next following the date on which the Agreement enters into force.

ARTICLE 14
Termination

1. This Agreement shall remain in force until terminated by a Party.

2. Either Party may terminate the Agreement by giving written notice of termination to the other Party. In such case, the Agreement shall cease to have effect on the first day of the month following the end of the period of three months after the date of receipt of notice of termination by the other Party.

3. In the event of termination, both Parties shall remain bound by the provisions of Article 10 with respect to any information obtained under the Agreement.

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

DONE at Douglas on this 11 day of *June* of two thousand and nineteen
and at Gibraltar on this *28* day of *JUNE* of two thousand and nineteen,
in duplicate in the English language.

For the Government
of the Isle of Man

For the ^{Gov}Government
of Gibraltar