TAXATION

Information Exchange

Agreement Between
the UNITED STATES OF AMERICA
and GILBRALTAR

Signed at London March 31, 2009

NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966 (80 Stat. 271; 1 U.S.C. 113)—

". . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof."

GILBRALTAR

Taxation: Information Exchange

Agreement signed at London March 31, 2009;
Entered into force December 22, 2009.

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF GIBRALTAR FOR THE EXCHANGE OF INFORMATION RELATING TO TAXES

Whereas Gibraltar has long been active in international efforts in the fight against financial and other crimes, including combating the financing of terrorism;

Whereas the Internal Revenue Service of the United States of America has determined Gibraltar's know-your-customer rules to be acceptable for purposes of the Qualified Intermediary regime, which provides simplified withholding and reporting obligations for payments of income from the United States to an account holder through one or more foreign intermediaries;

Whereas the Government of the United States of America and the Government of Gibraltar ("the parties") recognise that present legislation already provides for the exchange of information in criminal tax matters, which is conducted by the United States through the Department of Justice and by Gibraltar through the Office of the Chief Secretary;

Whereas the parties wish to establish the terms and conditions governing the exchange of information relating to taxes;

Now, therefore, the parties have agreed as follows:

Article 1
Scope of the Agreement

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 criminal tax matters in relation to such persons.

Article 2
Jurisdiction

To enable the scope of this Agreement to be implemented and subject to the provisions of Article 7, 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 of a party. A requested party shall not be obliged 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 by the parties:

   (a) in the case of the United States, all federal taxes, and therefore shall not apply to taxes imposed by states, municipalities or other political subdivisions, or possessions of a party.

   (b) in the case of Gibraltar, Gibraltar income taxes.

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

3. This Agreement shall not apply to the extent that an action or proceeding concerning taxes covered by this Agreement is barred by the requesting party's statute of limitations.

Article 4
Definitions

1. In this Agreement:

"competent authority" means, for the United States, the Secretary of the Treasury or his delegate, and for 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 contained in the tax laws, the criminal code, or other statutes;

"criminal tax matters" means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the requesting party;

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

"information gathering measures" means judicial, regulatory, criminal, or administrative procedures enabling a requested party to obtain and provide the information requested;

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

"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. For purposes of determining the geographical area within which jurisdiction to compel production of information may be exercised, the term "United States" means the United States of America, including Puerto Rico, the Virgin Islands, Guam, and any other United States territory.

For purposes of determining the geographical area within which jurisdiction to compel production of information may be exercised, the term "Gibraltar" means the territory of Gibraltar.

3. Any term not defined in this Agreement, unless the context otherwise requires or the competent authorities agree to a common meaning pursuant to the provisions of Article 10, shall:

(a) with respect to the requested party, have the meaning which it has under the laws of the requested party, any meaning under the applicable tax laws of the requested party prevailing over a meaning given to the term under other laws of the requested party; and

(b) with respect to the requesting party, have the meaning which it has under the laws of the requesting party, any meaning under the applicable tax laws of the requesting party prevailing over a meaning given to the term under other laws of the requesting 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 whether 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 take all relevant information gathering measures 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. In the execution of a request by the requested party, only those privileges under the laws and practices of the requested party shall apply and any privileges under the laws and practices of the requesting party shall be reserved for resolution by the requesting party.

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, for the purposes referred to in Article 1 of this Agreement and subject to Article 2 of this Agreement, 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) information regarding the beneficial ownership of companies, partnerships, and other persons, including in the case of collective investment funds, information on shares, units, and other interests; and in the case of trusts, information on settlors, trustees, 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, unless such information can be obtained without giving rise to disproportionate difficulties.

5. Any request for information made by a party shall be framed with the greatest degree of specificity possible. In all cases, such requests shall specify in writing the following:

(a) the identity of the taxpayer under examination or investigation;

(b) the period of time with respect to 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 matter under the requesting party's tax law with respect to 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) reasonable 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;

(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 conforms to the law and administrative practice of the requesting party and would be obtainable by the requesting party under its laws or in the normal course of administrative practice in similar circumstances, both for its own tax purposes and in response to a valid request from the requested party under this Agreement;

(i) a statement that the requesting party has pursued all reasonable means available in its own jurisdiction to obtain the information, except where that would give rise to disproportionate difficulty.

Article 6
Tax Investigations Abroad

1. By reasonable notice given in advance, a party may request that the other party allow officials of the requesting party to enter the territory of the requested party, to the extent permitted under the domestic laws of the requested party, to interview individuals and examine records with the prior written consent of the individuals 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 be present at the appropriate part of a tax examination in the territory of 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 of the time and place of the examination, the authority or person authorized 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 the public policy of the requested party.

2. This Agreement shall not impose upon a party any obligation:

   (a) to provide items subject to legal privilege, nor any trade, business, industrial, commercial or professional secret or trade process, provided that information described in Article 5(4) shall not by reason of that fact alone be treated as such a secret or trade process; or

   (b) to carry out administrative measures at variance with its laws and administrative practices, provided that nothing in this subparagraph shall affect the obligations of a party under Article 5(4).

3. For purposes of paragraph 2(a), the term "items subject to legal privilege" means information that would reveal confidential communications between a client and an attorney, where such communications are made for the purpose of seeking or providing legal advice or for the purpose of use in existing or contemplated legal proceedings.

4. A request for information shall not be refused on the ground that the tax liability giving rise to the request is disputed by the taxpayer.

5. 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.

Article 8
Confidentiality

1. All information provided and received pursuant to this Agreement by the competent authorities of the parties shall be kept confidential.

2. Information provided shall be disclosed only to persons or authorities (including judicial, administrative and Congressional oversight authorities) officially concerned with the purposes specified in Article 1, and used by such persons or authorities only for such purposes or for oversight purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial proceedings.

3. Information provided to a requesting party under this Agreement may not be disclosed to any third party, including an agency or employee of any other government, without the express written consent of the competent authority of the requested party.

4. Information received by the requested party in conjunction with a request for assistance under this Agreement shall likewise be treated as confidential in the requested party.

Article 9
Costs

The requesting party shall reimburse the requested party for all direct costs incurred in providing information pursuant to this Agreement. 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 if the costs of providing information with respect to a specific request are expected to be significant.

Article 10
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 11
Mutual Assistance Procedure

If both competent authorities of the parties consider it appropriate to do so they may agree to exchange technical know-how, develop new audit techniques, identify new areas of non-compliance, and jointly study non-compliance areas.

Article 12
Entry Into Force

1. This Agreement shall enter into force on the date that each party has notified the other in writing of the completion of its necessary internal procedures for entry into force.

2. The provisions of this Agreement shall have effect:

   (a) with respect to criminal tax matters upon the entry into force of this Agreement; and

   (b) with respect to all other matters covered in Article 1 for taxable periods beginning with the calendar year within which this Agreement enters into force.

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 notification of termination by the other party.

3. If a party terminates this Agreement, notwithstanding such termination, both parties shall remain bound by the provisions of Article 8 of this Agreement with respect to any information obtained under this Agreement.

In witness whereof the undersigned being duly authorized in that behalf by their respective Governments, have signed the Agreement.

Done at London, in duplicate, this thirty-first day of March, 2009.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF GIBRALTAR: