Draft Order in Council laid before the House of Commons under section 173(7) of the Finance Act 2006, for approval by resolution of that House.

DRAFT STATUTORY INSTRUMENTS

2010 No.

TAXES

The International Tax Enforcement (Gibraltar) Order 2010

Made - - - - [day] [Month] 2010

At the Court at Buckingham Palace, the [date] day of [Month] 2010

Present,

The Queen's Most Excellent Majesty in Council

A draft of this Order was laid before the House of Commons in accordance with section 173(7) of the Finance Act 2006(**1**) and approved by a resolution of that House.

Accordingly, Her Majesty, in exercise of the powers conferred upon Her by section 173(1) of the Finance Act 2006, by and with the advice of Her Privy Council, orders as follows—

Citation

1. This Order may be cited as the International Tax Enforcement (Gibraltar) Order 2010.

Tax information exchange arrangements to have effect

2. It is declared that—

(a) the arrangements specified in the Exchange of Letters set out in Part 1 of the Schedule to this Order and in the agreement set out in Part 2 of that Schedule have been made with the Government of Gibraltar with a view to the exchange of information foreseeably relevant to the administration or enforcement or recovery of taxes, and debts relating to the taxes, covered by the agreement; and

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

(**1**) 2006 c. 25.

Name
Clerk of the Privy Council

SCHEDULE Article 2

PART 1

EXCHANGE OF LETTERS BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF GIBRALTAR CONCERNING AN AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF GIBRALTAR FOR THE EXCHANGE OF INFORMATION RELATING TO TAXES

Letter from the Financial Services Secretary to the Treasury

24th August 2009

Sir,

Having regard to the wish of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Gibraltar to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes, I have the honour

- to propose to you the arrangements contained in the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Gibraltar for the exchange of information relating to taxes at Appendix 1 to this letter and that this will come into effect on the date mentioned in Article 12 of the Agreement;

- to propose our mutual commitment to undertake at the earliest date any internal legislative formalities necessary for the coming into effect of the arrangements contained in the Agreement and to notify each other without delay when such formalities are completed;

I have the honour to confirm that, if the above is acceptable to the Government of Gibraltar, this letter and Appendix 1 thereto together with your reply will constitute the mutual acceptance of the two Governments of the provisions of the said Agreement.

Please accept, Sir, the assurance of our highest consideration.

Paul Myners CBE
Financial Services Secretary to the Treasury

Letter of Reply from the Chief Minister of Gibraltar

27th August 2009

Sir,

I have the honour to acknowledge receipt of your letter dated 24th August 2009, which reads as follows:

"Sir,

Having regard to the wish of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Gibraltar to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes, I have the honour

- to propose to you the arrangements contained in the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Gibraltar for the exchange of information relating to taxes at Appendix 1 to this letter and that this will come into effect on the date mentioned in Article 12 of the Agreement;

- to propose our mutual commitment to undertake at the earliest date any internal legislative formalities necessary for the coming into effect of the arrangements contained in the Agreement and to notify each other without delay when such formalities are completed;

I have the honour to confirm that, if the above is acceptable to the Government of Gibraltar, this letter and Appendix 1 thereto together with your reply will constitute the mutual acceptance of the two Governments of the provisions of the said Agreement.
Please accept, Sir, the assurance of our highest consideration."

I am able to confirm that the contents of your letter dated 24th August 2009 and Appendix 1 thereto are acceptable to the Government of Gibraltar and together with this reply will constitute the mutual acceptance of our two Governments of the provisions of the proposed Agreement.

Please accept, Sir, the assurance of our highest consideration.

P R Caruana QC
Chief Minister

PART 2

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF GIBRALTAR FOR THE EXCHANGE OF INFORMATION RELATING TO TAXES

Whereas –

the United Kingdom and Gibraltar ("the Parties") wish to enter into an Agreement that respects the constitutional relationship between the Parties;

the Parties recognise that present legislation already provides for cooperation and the exchange of information in criminal tax matters;

the Parties have long been active in international efforts in the fight against financial and other crimes, including the targeting of terrorist financing;

Gibraltar entered into a formal written commitment to the OECD's principles of transparency and exchange of information on 27th February 2002;

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 arrangements contained in the following Agreement, which contains obligations on the part of the Parties only.

ARTICLE 1

OBJECT AND SCOPE OF AGREEMENT

The competent authorities of the Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration or enforcement of the domestic laws of the Parties concerning the taxes and the tax matters covered by this Agreement, including information that is foreseeably relevant to the determination, assessment, enforcement or collection of tax claims with respect to persons subject to such taxes, or 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. However, the requested Party shall use its best endeavours to ensure that the effective exchange of information is not thereby unduly prevented or delayed. 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.

ARTICLE 2

JURISDICTION

A requested Party is not obliged to provide information in accordance with this Agreement which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.