

Subsidiary Legislation made under s. 3(6).

**INTERNATIONAL CO-OPERATION (TAX
INFORMATION) ACT 2009 (POLAND) NOTICE 2013**

(LN. 2013/024)

Commencement **14.2.2013**

Amending enactments	Relevant current provisions	Commencement date
None		

EU Legislation/International Agreements involved:

In accordance with the provisions of section 3(6) of the International Co-operation (Tax Information) Act 2009 I have issued the following Notice.

Title.

1. This Notice may be cited as the International Co-operation (Tax Information) Act 2009 (Poland) Notice 2013.

Text of Agreement.

2. Pursuant to section 3(6) of the International Co-operation (Tax Information) Act 2009 the text of an agreement entered into between the Government of the Republic of Poland and the Government of Gibraltar is hereby reproduced—

AGREEMENT BETWEEN GIBRALTAR

AND

**THE REPUBLIC OF POLAND FOR THE EXCHANGE OF
INFORMATION RELATING TO TAX MATTERS**

WHEREAS Gibraltar and Poland (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 United Kingdom has the right to negotiate, conclude, perform and, subject to the terms of this Agreement, terminate a Tax Information Exchange Agreement with Poland;

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

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 Gibraltar and Poland only:

Article 1

Object and Scope of the Agreement

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement, including information that is foreseeably relevant to the determination, assessment and collection of tax with respect to persons subject to such taxes, the recovery and enforcement of tax claims, or the investigation of tax matters or prosecution of criminal tax matters in relation to such persons. 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. 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 the following taxes imposed by the Contracting Parties:

- (a) in the case of Poland:
 - (i) the personal income tax;
 - (ii) the corporate income tax;

- (b) in the case of Gibraltar:
 - taxes of every kind and description.

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. 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 competent authorities of the Contracting

Parties so agree. The competent authorities of the Contracting Parties shall notify each other of any substantial changes in their laws which may effect the obligations of that Contracting Party pursuant to this Agreement.

**Article 4
Definitions**

1. In this Agreement:

- (a) the term “Poland” means the Republic of Poland and, when used in a geographical sense, means the territory of the Republic of Poland, and any area adjacent to the territorial waters of the Republic of Poland within which, under the laws of Poland and in accordance with international law, the rights of Poland with respect to the exploration and exploitation of the natural resources of the seabed and its sub-soil may be exercised;
- (b) the term “Gibraltar” means the territory of Gibraltar;
- (c) the term “Contracting Party” means Poland or Gibraltar, as the context requires;
- (d) the term “competent authority” means:
 - (i) in the case of Poland, the Minister of Finance or his authorized representative;
 - (ii) in the case of Gibraltar, the Minister of Finance or his authorised representative;
- (e) the term “person” includes an individual, a company and any other body of persons;
- (f) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (g) the term “publicly traded company” means any company whose principal class of shares is listed on a recognized 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;

- (h) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- (i) the term “recognized stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
- (j) the term “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 are not implicitly or explicitly restricted to a limited group of investors;
- (k) the term “tax” means any tax to which the Agreement applies;
- (l) the term “applicant Party” means the Contracting Party requesting information;
- (m) the term “requested Party” means the Contracting Party requested to provide information;
- (n) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
- (o) the term “information” means any fact, statement or record in any form whatever;
- (p) the term “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 laws of the applicant Party, and includes fraud and wilful default;
- (r) the term “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.

2. As regards the application of this Agreement at any time by a Contracting 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 competent authority of the applicant 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 it had occurred in the territory of the requested Party.
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 to provide the competent authority of the applicant 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 applicant 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 Contracting 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) information regarding the legal and beneficial ownership of companies, partnerships, collective investment schemes, trusts, foundations and other persons, including information on all such persons in an ownership chain, in particular:
 - (i) in the case of public collective investment fund or schemes, information on shares, units and other interests;
 - (ii) in the case of foundations, information on founders, members of the foundation council and beneficiaries;
 - (iii) in the case of trusts, information on settlors, trustees, protectors and beneficiaries;

this Agreement does not create an obligation on the Contracting Parties 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 possible detail 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;
- (d) the tax purpose for which the information is sought;
- (e) 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;
- (f) to the extent known, the name and address of any person believed to be in possession of the requested information;
- (g) a statement that the request is in conformity with the law and administrative practices of the applicant Party, that if the requested information was within the jurisdiction of the applicant Party then the competent authority of the applicant Party would be able to obtain the information under the laws of the applicant Party or in the normal course of administrative practice and that it is in conformity with this Agreement;
- (h) a statement that the applicant 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 forward the requested information as soon as is reasonably possible to the applicant Party. To ensure a prompt response, the competent authority of the requested Party shall:

- (a) confirm receipt of the request in writing to the competent authority of the applicant Party and shall notify the competent authority of the applicant Party of any deficiencies in the request within 60 days of receipt of the request, and

- (b) if the competent authority of the requested Party has been unable to obtain and provide the information within 120 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the applicant 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 applicant Party may request that the requested Party allow representatives of the competent authority of the applicant Party to enter the territory of the requested Party, to the extent permitted under its domestic laws, to interview individuals and examine records. The competent authority of the applicant Party shall notify the competent authority of the requested Party of the time and place of the meeting with the individuals concerned.
2. At the request of the competent authority of the applicant Party, the competent authority of the requested Party may allow representatives of the competent authority of the applicant Party to be present at the appropriate part of 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 applicant 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 tax 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, where:
 - (a) the request is not made in conformity with this Agreement;
 - (b) the applicant 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;

(c) the disclosure of the information requested would be contrary to public policy (ordre public).

2. This Agreement shall not impose on 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 Article 5 (4) shall not by reason of that fact alone be treated as such a secret or trade process.

3. In no case shall the provisions of this Agreement be construed so as to impose on a Contracting Party the obligation to supply information which is not obtainable under the laws or in the normal course of the administration of the other Contracting Party.

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

5. The requested Party may decline a request for information if the information is requested by the applicant Party to administer or enforce a provision of the tax law of the applicant 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 applicant Party in the same circumstances.

Article 8 Confidentiality

1. Any information provided and received by the competent authorities of the Contracting Parties shall be kept confidential.

2. The information may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution of, or the determination of appeals in relation to the taxes covered by this Agreement. For these purposes, information may be disclosed in public court proceedings or in judicial decisions.

3. 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. The information provided to the applicant Party under this Agreement may not be disclosed to any other jurisdiction.

**Article 9
Costs**

Unless the competent authorities of the Parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the requested Party, and extraordinary costs in providing assistance (including costs of engaging external advisers in connection with litigation or otherwise) shall be borne by the applicant Party. The respective competent authorities shall consult periodically with regard to this Article, and in particular the competent authority of the requested Party shall consult with the competent authority of the applicant Party 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 Contracting Parties regarding the implementation or interpretation of the Agreement, the respective competent authorities shall use their best efforts to resolve the matter by mutual agreement.
2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5, 6, and 7.
3. The Contracting Parties shall endeavour to agree on other forms of dispute resolution should this become necessary.
4. Formal communications, including requests for information, made in connection with or pursuant to the provision of this Agreement will be in writing directly to the competent authority of the other Contracting Party at such address as may be notified by one Contracting Party to the other. Any subsequent communications regarding requests for information will be either in writing or verbally, whichever is most practical, between the aforementioned competent authorities or their authorized representatives.

**Article 11
Entry into Force**

Each of the Contracting Parties shall notify directly in writing to the other the completion of the procedures required by its law for the bringing into force of this Agreement.

This Agreement shall enter into force on the date of the later of these notifications and 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 arising on or after that date.

**Article 12
Termination**

1. This Agreement shall remain in force until terminated by one of the Contracting Party.
2. Either Contracting Party may terminate the Agreement by giving written notice of termination. 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 the notice by the other Contracting Party. All request received up to effective date of termination will be dealt with in accordance with the terms of this Agreement.
3. If the Agreement is terminated the Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement.

In witness whereof the undersigned, duly authorised thereto by their Contracting Party, have signed the Agreement.

Done in duplicate at London this 31st day of January 2013, in the English and Polish languages, all two texts being equally authentic.

For Gibraltar:

For the Republic of Poland:

Gilbert Licudi QC
Minister with responsibility
for Financial Services

Witold Sobków
Ambassador

PROTOCOL TO THE AGREEMENT

**BETWEEN
GIBRALTAR
AND
THE REPUBLIC OF POLAND
FOR THE EXCHANGE OF INFORMATION RELATING TO TAX
MATTERS**

With respect to Article 11 of the Agreement, it is understood that the term “criminal tax matters” includes all cases where a person has been notified that administrative proceedings concerning fraud or wilful default have been initiated against that person.

In witness whereof the undersigned, duly authorised thereto by their Contracting Party, have signed the Protocol.

Done in duplicate at London this 31st day of January 2013, in the English and Polish languages, all two texts being equally authentic.

For Gibraltar:
Gilbert Licudi QC
Minister with responsibility
for Financial Services

For the Republic of Poland:
Witold Sobków
Ambassador