



**HM GOVERNMENT OF GIBRALTAR
PRESS OFFICE
No.6 Convent Place
Gibraltar
Tel:20070071; Fax: 20043057**

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Chief Minister writes to Sr Cristobal Montoro on Spanish Tax Evasion

The Chief Minister, Fabian Picardo, has written to Sr Cristobal Montoro, the Spanish Minister for Hacienda, challenging him to work with the Government of Gibraltar to ensure that there is no Spanish tax evasion money in Gibraltar.

The five page letter sets out why Gibraltar is objectively considered to a "benchmark" jurisdiction in the international financial services sector and highlighting what the relevant "gateways" for access to information on individuals who are suspected to be involved in tax evasion.

Mr Picardo highlights a Europa Press article of 22 April 2013 where, in a clear reference to Gibraltar, Mr Montoro is quoted as saying that "a Europe that fights against tax evasion cannot allow itself to have tax havens". Mr Montoro was commenting on an article which appeared in El Pais on the same day which was very critical of alleged tax practices in Gibraltar and in which it was stated that his Ministry had set up a working group to "tighten the noose" around Gibraltar's neck and to suppress the evasion of hundreds of millions of euros of Spanish taxes to, or through, Gibraltar.

Mr Picardo tells Mr Montoro that his depiction of Gibraltar as a place for tax evasion for Spanish residents has come as a great disappointment to HMGoG as are the attacks by members of the Government of the Kingdom of Spain on Gibraltar for alleged tax evasion, lack of transparency on tax matters, poor regulation and money laundering, all of which are wholly unfounded. Mr Picardo tells Mr Montoro that it seems as if Spain is oblivious to the very considerable steps that Gibraltar has taken over the last 20 years to comply with EU and international requirements in all these areas.

Mr Picardo tells Mr Montoro: "Let me be very clear with you – Gibraltar financial services laws do not permit practitioners to be involved in the evasion of taxes of other states and we do not want the proceeds of tax evasion from any country, including Spain, to be sheltered either in or through Gibraltar. In particular, we do not want to act as the conduit or destination of evaded tax money from Spain. We have taken great steps to eradicate tax evasion in Gibraltar. Tax evasion is an indictable offence in Gibraltar with a maximum

prison sentence of 7 years. As such, tax evasion and/or suspicion thereof is reportable to the Gibraltar Financial Intelligence Unit (GFIU) in the same way as any other indictable offence such as drugs or fraud offences. The GFIU, spontaneously, passes on such suspicious transactions reports to any relevant foreign financial intelligence unit including that of Spain, that is, SEPBLAC."

Mr Picardo adds: "Due to the obvious misunderstandings and misapprehensions which you still appear to harbour, I would like to formally engage with you on all of these matters. Firstly, I would wish to remind you of Gibraltar's exemplary compliance with EU and international standards in all the areas which you criticise. Secondly, I am hereby inviting the working group you have set up to come to Gibraltar and speak to my officials in the relevant Gibraltar authorities on all the matters that are of concern to you. I cannot think of any better way to dispel your concerns if they are genuine and not just a desire to attack us politically."

Mr Picardo also tells Mr Montoro that Her Majesty's Government of Gibraltar has already asked the UK to extend to Gibraltar the amended OECD Convention on Mutual Administrative Assistance in Tax Matters (as amended by the provisions of the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters, which entered into force on 1st June 2011), to which Spain is also party to this Convention also. Spain will therefore be able to receive information from Gibraltar under the operation of that Convention as well as under the provisions of the EU Directive 2011/16 on exchange of information on tax matters which is recognised by the OECD itself as being equivalent to a Tax Information Exchange Agreement.

On Gibraltar's compliance with EU and international standards, Mr Picardo asks Mr Montoro to please note the following facts:

"A: Tax transparency, exchange of information and mutual assistance

(1) On 27 February 2002, Gibraltar submitted a letter of commitment to transparency and effective exchange of information to the OECD. Gibraltar was a Participating Partner of the OECD's Global Forum on Transparency and Exchange of Information for Tax. Gibraltar has acted as the Lead Contact for the European region of the Informal Contact Group of 13 countries. Gibraltar continues to form part of the OECD Global Forum. In October 2011 the Global Forum published a Phase I Peer Review Report on the legal and regulatory framework on transparency and exchange of information for tax purposes in Gibraltar. Following the commencement of the Companies, Partnerships and Trusts (Miscellaneous Amendments) Act 2012 Gibraltar has implemented in full all of the recommendations contained in that Report.

(2) Gibraltar has, to date, negotiated and signed 26 Tax Information Exchange Agreements with EU Member States (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Malta, the Netherlands, Poland, Portugal, Sweden, the United Kingdom) and other major OECD Member countries (Australia, India, Mexico, New Zealand, South Africa and the USA).

(3) Discussions for a Tax Information Exchange Agreement between Gibraltar and Spain reached a very advanced stage some years ago until they came to a standstill for political reasons."

Noting that there has been a change of government in both countries since then, Mr Picardo formally invites Mr Montoro to join him in re-launching those discussions and to find a solution to the matters that previously led to standstill.

Mr Picardo continues by saying:

"(4) In the meantime, and in any event, Gibraltar has transposed, with effect from 1 January 2013, EU Directive 2011/16 on exchange of information on tax matters which is recognized by the OECD itself as being equivalent to a Tax Information Exchange Agreement, thereby providing OECD-equivalent exchange mechanisms with the 27 EU Member States, including Spain.

(5) Gibraltar has transposed the EU Savings Directive (Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments) and since 2005 has been providing information under that Directive to all EU Member States, including Spain, on an automatic basis.

(6) Gibraltar also assists with claims relating to taxes and duties of any kind with all EU Member States, including Spain, under Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, which is transposed in Part III of Gibraltar's Mutual Legal Assistance (European Union) Act 2005.

(7) Since March 2008, exchange of information in criminal tax matters on the basis of letters of request is also provided under Gibraltar's Evidence Act.

(8) Finally, on 2 May 2013, my Government issued a Press Statement on "Eradicating Tax Evasion" which I enclose for your information. You will see from that Statement that my Government has already committed itself to all of the foregoing:

(a) to enter into a Foreign Account Tax Compliance Act (FATCA) agreement with the USA;

(b) to enter into a similar FATCA agreement with the United Kingdom;

(c) to form part of the EU pilot multilateral automatic exchange of tax information announced recently by the United Kingdom, France, Germany, Italy and Spain; and

(d) to improve the availability of information on beneficial ownership internationally and to form part of a group of jurisdictions leading the way and setting the international standards on this front.

B: Money laundering.

(9) Legislation in Gibraltar to counter money laundering has existed since 1988 (Drug Trafficking Offences Act 1988). The Crime (Money Laundering and Proceeds) Act 2007, which is currently in force, ensures that Gibraltar is fully compliant with all EU requirements in this area.

(10) In June 2000, Gibraltar was reviewed fully by the Financial Action Task Force (FATF) and classified as a co-operative jurisdiction. In a report published in November 2002, the FATF found that "Gibraltar has in place a robust arsenal of legislation, regulations and administrative practices to counter money laundering. The authorities clearly demonstrate the political will to ensure that their financial institutions and associated professionals

maximise their defences against money laundering, and cooperate effectively in international investigations into criminal funds. Gibraltar is close to complete adherence with the FATF 40 Recommendations.”

(11) Gibraltar’s Financial Intelligence Unit (GFIU) was formally admitted as a full member of the Egmont Group in 2004. The Egmont Group, which has a total membership of over 100 countries, brings together anti-money laundering organisations or financial intelligence units from all over the world. The Group aims to improve communication and co-ordination between the various agencies.

C: Financial regulation and supervision.

(12) In October 2000, Gibraltar was the first jurisdiction to volunteer to undergo the full range of Module 2 assessments by the International Monetary Fund on banking, insurance, investment services, and trust and company management. The IMF published its report on Gibraltar on 19 March 2002. It noted that Gibraltar “is at the forefront of the development of good practices”, that Gibraltar “was one of the first jurisdictions to have introduced regulation and supervision of the company and trust services business,” and that “Gibraltar has been a pioneer in the supervision and regulation of Professional Trusteeship and Company Management services providers”.

(13) The IMF once again endorsed Gibraltar’s robust regulatory environment and anti-money laundering regime in a second report published in May 2007 which examined Gibraltar’s regulatory and supervisory practices in the fields of banking and insurance as well as our anti-money laundering and counter-terrorist financing regimes. In all three areas Gibraltar was found to be meeting the international standards demanded of any reputable finance centre. The IMF stated that “Gibraltar has a good reputation internationally for co-operation and information sharing”.

(14) Ahead of the November 2011 G20 Summit, the Financial Stability Board named Gibraltar among the top group of “jurisdictions already demonstrating sufficiently strong adherence to regulatory and supervisory standards on co-operation and information exchange” and concluded that no further evaluation was necessary under the FSB’s initiative to develop a framework to strengthen the implementation of international financial standards."

Mr Picardo also explains to Mr Montoro aspects of the new Income Tax regime, relevant changes in corporate taxation and the disappearance of the exempt and qualifying companies.

In his letter, Mr Picardo adds that he cannot think of any better way to dispel Mr Montoro's concerns than by inviting the working group he has set up to come to Gibraltar and speak to the authorities here.

The letter is extensively copied to various parties, namely, Mr David Cameron MP, the Prime Minister, Mr George Osborne MP, Chancellor of the Exchequer, Mr William Hague MP, Foreign Secretary, Mr David Lidington MP, Minister for Europe, Spanish President, Sr Mariano Rajoy, Mr Herman van Rompuy, President of the European Council, Mr Jose Manuel Barroso, President of the European Commission, Sr Juaquin Almunia, Vice-President of the European Commission and Commissioner for Competition, M Michel Barnier, Commissioner for Internal Market and Services and, also, Mr Algirdas Semeta, Commissioner for Taxation, Customs, Statistics, Audit and Anti-Fraud.