



THE CHIEF MINISTER

6 CONVENT PLACE

GIBRALTAR

18 June 2013

Sr Cristóbal Montoro
Ministro de Hacienda y Administraciones Publicas
Ministerio de Hacienda y Administraciones Publicas
Registro General del Ministerio de Hacienda y Administraciones Públicas
c/ Alcalá, 9
28071
Madrid.

Dear Sr Montoro,

Eradicating Tax Evasion & Fraud

I have read the Europa Press article of 22 April 2013 where, in a clear reference to Gibraltar, you are quoted as saying that "a Europe that fights against tax evasion cannot allow itself to have tax havens". You were commenting on an article which appeared in El Pais on the same day which was very critical on alleged tax practices in Gibraltar and in which it was stated that the Ministry that you head has 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.

Your depiction of Gibraltar as a place for tax evasion for Spanish residents has come as a great disappointment to me 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. 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.

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 (or any other crimes, including, without prejudice to the generality of the foregoing, fraud, bribery, corruption etc.) 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 money from Spanish tax evasion.

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.

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 me and/or 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.

Finally, Her Majesty's Government of Gibraltar has asked the United Kingdom 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). I note that Spain is a party to this Convention also. You 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 recognized by the OECD itself as containing equivalent provisions to a Tax Information Exchange Agreement.

On Gibraltar's compliance with EU and international standards, 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. We continue 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. There has been a change of government in both our countries since then. I hereby formally invite you to join me in re-launching those discussions and to find, as I am sure is possible, a solution to the matters that previously led to standstill. It is my most sincere wish to have a Tax Information Exchange Agreement in place between Gibraltar and Spain at the very earliest opportunity.

(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 following additional measures:

(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.

D: Rates of taxation and offshore companies.


(15) Historically, Gibraltar had two types of companies, the so-called "exempt companies" created in 1967 and the "qualifying companies" created in 1981 alongside companies doing business in Gibraltar and taxed at higher rates. Both those regimes have now been entirely abolished. There are no longer any companies in Gibraltar enjoying a more beneficial tax regime because they do not trade here.

(16) On 1 January 2011, the Income Tax Act 2010 entered into force. Since that date, Gibraltar only applies one single tax rate of 10% and one single tax regime for all companies. One aspect of this new regime had been found harmful by the EU Code of Conduct Group on Business Taxation. Gibraltar has already communicated changes to our law to the Code Group to address that concern which, as you know, the Code Group accepted and cleared on the basis of a vote which saw only Spain vote against Gibraltar. Further to a complaint filed also by Spain, the Income tax Act 2010 is also being examined by the European Commission under state aid rules. Gibraltar has been cooperating fully with this examination and has produced a very considerable amount of information

both to the European Commission and to Spain. Gibraltar is confident that its tax regime does not contain any element of state aid and is hopeful that a decision to this effect will shortly be taken by the European Commission.

As I said at the beginning of this letter, I cannot think of any better way to dispel your concerns than by inviting the working group you have set up to come to Gibraltar and speak to my authorities. I ask you to engage with me on this and to facilitate such a meeting. My government stands ready to work together with you on this issue. I trust you will also be prepared to work with us.

Yours sincerely



Fabian Picardo
Chief Minister
Her Majesty's Government of Gibraltar

Encl : HMGoG Press Release 289/2013 of 2 May 2013 on "Eradicating Tax Evasion".

C:

Rt Hon Mr David Cameron MP, Prime Minister of the United Kingdom
Rt Hon Mr George Osborne MP, Chancellor of the Exchequer of the United Kingdom
Rt Hon William Hague MP, Foreign Secretary of the United Kingdom
Rt Hon David Lidington MP, Minister for Europe of the United Kingdom
Sr Mariano Rajoy, Presidente del Gobierno de España
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
Mr Algirdas Semeta, Commissioner for Taxation, Customs, Statistics, Audit and Anti-Fraud