



HM Government  
of Gibraltar

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## PRESS RELEASE

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### **Letter from Chief Minister to Rt Hon Andrew Mitchell MP**

Attached is a copy of a letter sent by the Chief Minister of Her Majesty's Government of Gibraltar to Rt Hon Andrew Mitchell MP in respect of an amendment moved by him and Rt Hon Margaret Hodge MP to the Sanctions Bill presently progressing through its stages in the Westminster Parliament.



HM Government  
of Gibraltar

THE CHIEF MINISTER

Rt Hon Andrew Mitchell MP  
House of Commons  
Westminster  
London

30<sup>th</sup> April 2018

*Dear Mr. Mitchell,*

### **Amendments on Public Registers of Ultimate Beneficial Ownership to the Sanctions and Anti-Money Laundering Bill**

I am writing to you to explain the commitments which Gibraltar has made publicly in respect of our register of ultimate beneficial ownership, which we established as the first EU jurisdiction to give effect to the terms of the 4th Anti Money Laundering Directive (even ahead of the UK) and which also takes into account an Exchange of Notes with the United Kingdom which provides for us to supply UK law enforcement and tax authorities with information on our register and other sources. In fact, this has been done successfully on a number of occasions to date with a number of UK law enforcement agencies.

Notwithstanding the above track record, I am aware that your amendment above referred to is focused on whether this type of register should be a public one. I will deal with that issue also below.

Separately, I am also writing to deal with the part of your amendment that provides for legislation to be made by London for Gibraltar by way of Order in Council, should Gibraltar's position - hypothetically - be contrary to the position of the United Kingdom in respect of this matter. I will deal with this in the second part of my letter.

### **I: Financial Transparency in Gibraltar**

As you will know, Gibraltar's current EU status differentiates it from the other Overseas Territories and Crown Dependencies as we are subject to EU Directives and regulations. We are following developments closely in respect of the



proposed 5<sup>th</sup> Anti Money Laundering Directive which includes a requirement for the establishment of a 'public' register of ultimate beneficial ownership. My understanding as to the timing of this Directive is that it is likely to be adopted by June this year; with a transposition deadline of December 2019.

Given this timing and our status within the EU (and/or the period of transition out of it), Gibraltar will transpose this new Directive and make our central register of ultimate beneficial ownership public.

Separately and notwithstanding the above:

(i) Gibraltar is already nonetheless independently committed to the establishment of a public register of ultimate beneficial ownership when an international standard on this subject is agreed; and

(ii) Gibraltar is committed to the existing OECD international standard as regards the sharing of registers of ultimate beneficial ownership.

I therefore trust that these commitments, to a public register and the sharing of registers between countries, reassure you as regards Gibraltar's position; which you may not have been aware of.

Furthermore, I should also like to update you more broadly on our achievements on, inter alia, transparency, tax information exchange and international cooperation.

Gibraltar ensures transparency and exchange of information on fiscal matters through three principal legal instruments:

**(1) Council Directive 2011/16/EU on administrative cooperation in the field of taxation** which has been fully implemented in Gibraltar and applies in relation to all 28 EU Member States.

**(2) The OECD and Council of Europe Multilateral Convention on Mutual Administrative Assistance in Tax Matters**, to which Gibraltar committed in 2014.

**(3) Bilateral Tax Information Exchange Agreements ("TIEAs")** to OECD standards. Gibraltar has concluded 27 TIEAs. These include 14 EU Member States and other major countries around the world. The Convention referred to above has now done away with the need for further bilateral TIEAs.



Pursuant to these three instruments, Gibraltar has approximately 161 exchange of information mechanisms to the OECD standard with 108 countries and territories around the world.

Moreover, you will no doubt want to congratulate Gibraltar on the fact that in its detailed Phase 2 Review Report on the effectiveness of exchange of tax information, published on 29 October 2014, the OECD found that Gibraltar was “Largely Compliant”. That is the second highest grade on compliance with international standards awarded by the OECD and is the same categorisation as achieved countries such as the United Kingdom, Germany and the United States of America.

### **Base Erosion**

Actions 5 and 13 of the OECD’s 15 measures against Base Erosion Profit Shifting (BEPS) were given effect to in Gibraltar by virtue of our implementation of Council Directive (EU) 2015/2376 and Council Directive (EU) 2016/881 respectively, both amending Directive 2011/16/EU. OECD Action 5 focuses on compulsory spontaneous exchange of tax rulings. OECD Action 13 contains revised guidance on transfer pricing documentation, including the template for country-by-country reporting.

Gibraltar is committed to transpose further measures against BEPS as they are coordinated as well as further measures against double non taxation. Gibraltar has asked to join the OECD framework on Base Erosion Profit Shifting.

### **FATCA**

Separately, we have been supplying comprehensive tax data on an automatic basis under FATCA to the USA since September 2015 and the same under the United Kingdom IGA since September 2016. On 30 September 2017, Gibraltar exchanged comprehensive tax data on an automatic basis with all EU Member States under the EU version of the Common Reporting Standard (deriving from Directive 2011/16/EU as amended). On the same date, Gibraltar exchanged comprehensive tax data on an automatic basis with the ‘first wave’ of countries under the Common Reporting Standard.

### **Anti Money Laundering**

As regards Anti Money Laundering, Gibraltar has draconian all crimes anti money laundering (“AML”) legislation deriving from all EU legislation on this subject. Our legislation, systems and administrative practices have been independently tested in the past by the FATF and the IMF and we will be reviewed under the Moneyval process in 2018.



We have appointed a National Coordinator for AML, published a National Risk Assessment and are reviewing our legislation to ensure compliance with FATF principles in parallel with the 4<sup>th</sup> AML Directive.

The Gibraltar Financial Intelligence Unit (“GFIU”) is a member of the International Egmont Group of Financial Intelligence Units and shares information systematically and spontaneously with all members. Tax evasion, along with all other serious crime, is a predicate offence for money laundering and subject to suspicious transaction reporting.

Lastly, I am attaching a copy of a Matrix showing all of the countries that we have tax information exchange mechanisms with.

## **II : The Constitutional Issue**

I will now deal with that part of your amendment which provides for legislation to be made by for the Overseas Territories by way of Order in Council. This is plainly unacceptable to Her Majesty’s Government of Gibraltar. We ensure that Gibraltar observes and transposes into law any international legal obligations which are binding on Gibraltar directly or via the United Kingdom. We are determined to ensure that Gibraltar never fails to comply with any such legal obligations.

**Indeed, you should be aware, that, as we prepare to the leave the European Union, Gibraltar is proud to be able to say that we do so with all extant EU Directive obligations fully transposed into law AHEAD of their transposition deadlines. That has been achieved in my time in office to date and is a demonstration of the commitment of Her Majesty’s Government of Gibraltar to compliance with internationally binding obligations and to the rules based international legal order.**

When it comes to sanctions, the subject of the relevant Bill, in particular, we ensure that we provide for such sanctions as the United Kingdom may adopt to be made a part of our laws also by way of regulation. You will therefore be pleased, no doubt, to note that Gibraltar already has Magnitsky legislation on our statute book.

In the circumstances, there has been a convention in place for sometime now between Her Majesty’s Governments in London and in Gibraltar, that Orders in Council are not used to make laws for Gibraltar. Indeed, my government considers that the use of unilateral Orders in Council imposed without the consent of the government of the relevant territory (or any analogous



mechanism), to legislate directly for an Overseas Territory would amount to an unacceptable act of modern colonialism which would in effect overturn democracy in the relevant territory. I cannot emphasise enough to you how unacceptable this is and how contrary to the direction of travel of the constitutional development of Gibraltar such a step would be. It would be more than retrograde and would call into question the very nature of the relationship of consent and mutual respect which exists today between Gibraltar and the United Kingdom, which I am forever committed to.

I have no doubt that fellow Chief Ministers and Premiers of the other Overseas Territories will express similar sentiments in respect of this aspect of your amendment.

Finally, I trust that our commitment on, inter alia, a public register of ultimate beneficial ownership, our track record on transparency, tax information exchange and international cooperation more widely provides you with a useful update. I would be happy to meet to discuss further on my next visit to London.

I shall be copying this letter to Ministers and other Members of Parliament.

*With best wishes, as ever,*

**Fabian Picardo QC MP**  
**Chief Minister**