

GOVERNMENT NOTICE

SOUTH AFRICAN REVENUE SERVICE

No. 970

16 OCTOBER 2015

INCOME TAX ACT, 1962

**PROTOCOL AMENDING THE AGREEMENT BETWEEN THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF THE REPUBLIC OF CYPRUS
FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL
EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL**

In terms of section 108(2) of the Income Tax Act, 1962 (Act No 58 of 1962), read in conjunction with section 231(4) of the Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996), it is hereby notified that the Protocol amending the agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income set out in the Schedule to this Notice has been entered into with the Government of the Republic of Cyprus and has been approved by Parliament in terms of section 231(2) of the Constitution.

It is further notified in terms of Article IV Paragraph 1 of the Protocol that the date of entry into force is 18 September 2015.

SCHEDULE

PROTOCOL AMENDING THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF THE REPUBLIC OF CYPRUS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

PREAMBLE

The Government of the Republic of South Africa and the Government of the Republic of Cyprus;

DESIRING to amend the Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, with Protocol, signed on 26th November 1997, at Nicosia (in this Protocol referred to as “the Agreement”);

HAVE AGREED AS FOLLOWS:

ARTICLE I

Paragraph 1 of Article 4 shall be deleted and replaced by the following:

- “1. For the purposes of this Agreement, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.”

ARTICLE II

Article 10 shall be deleted and replaced by the following:

“ARTICLE 10

DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

- (a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds at least 10 per cent of the capital of the company paying the dividends; or
- (b) 10 per cent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term “dividends” as used in this Article means income from shares or other rights participating in profits (not being debt-claims), as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except in so far as such dividends are paid to a resident of that other State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company’s undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.”

ARTICLE III

Article 26 of the Agreement shall be deleted and replaced by the following:

“ARTICLE 26

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, in so far as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

6. The mode of application of this Article is set out in the attached Annex which shall form an integral part of this Protocol.”

ARTICLE IV

1. Each of the Contracting States shall notify to the other in writing, through the diplomatic channel, of the completion of the procedures required by its law for the bringing into force of this Protocol, which shall form an integral part of the Agreement. The Protocol shall enter into force on the date of receipt of the later of these notifications.

2. The provisions of the Protocol shall apply from the date of the introduction in South Africa of the system of taxation at shareholder level of dividends declared.

ARTICLE V

This Protocol shall remain in force for as long as the Agreement remains in force.

IN WITNESS WHEREOF the undersigned, duly authorised thereto by their respective Governments, have signed and sealed this Protocol in two originals in the English and Greek language. In case there is any divergence of interpretation between the Greek and the English texts, the English text shall prevail.

DONE at Pretoria, this 1st day of April 2015.

**FOR THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA**

**FOR THE GOVERNMENT OF THE
REPUBLIC OF CYPRUS**

Annex to the Protocol amending the Agreement between the Republic of South Africa and the Republic of Cyprus for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, with Protocol, signed at Nicosia, on 26 November 1997

Mode of Application of Article 26 "Exchange of Information"
of the Agreement

1. The requesting Contracting State shall provide the following information when making a request for information under Article 26 to demonstrate the foreseeable relevance of the information to the request:

- (a) the identity of the person under examination or investigation;
- (b) a statement of the information sought including its nature and the form in which the requesting Contracting State wishes to receive the information from the requested Contracting State;
- (c) the tax purpose for which the information is sought;
- (d) grounds for believing that the information requested is held in the requested Contracting State or is in the possession or control of a person within the jurisdiction of the requested Contracting State;
- (e) to extent known, the name and address of any person believed to be in possession of the requested information;
- (f) a statement that the request is in conformity with the law and administrative practices of the requesting Contracting State, that if the requested information was within the jurisdiction of the requesting Contracting State then the competent authority of the requesting Contracting State would be able to obtain the information under the laws of the requesting Contracting State or in the normal course of administrative practice and that it is in conformity with this Agreement;
- (g) a statement that the requesting Contracting State has exhausted all means available in its own territory to obtain the information, except those that would cause excessive difficulties.

2. Information requested by a Contracting State shall not be provided unless the requesting State has reciprocal provisions and/or applies appropriate administrative practices for the provision of the information requested.