

SOUTH AFRICAN REVENUE SERVICE

No. 1573

6 December 2019

INCOME TAX ACT, 1962

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF THE COMMONWEALTH OF DOMINICA FOR THE EXCHANGE OF INFORMATION WITH RESPECT TO TAXES AND TAX MATTERS

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 Agreement for the exchange of information with respect to taxes and tax matters set out in the Schedule to this Notice has been entered into with the Government of the Commonwealth of Dominica and has been approved by Parliament in terms of section 231(2) of the Constitution.

It is further notified in terms of paragraph 2 of Article 11 of the Agreement that the date of entry into force is 17th September 2015.

SCHEDULE

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF THE COMMONWEALTH OF DOMINICA FOR THE EXCHANGE OF INFORMATION WITH RESPECT TO TAXES AND TAX MATTERS

PREAMBLE

WHEREAS the Government of the Republic of South Africa and the Government of the Commonwealth of Dominica (“the Parties”) recognise the need for co-operation and the exchange of information with respect to taxes and tax matters;

WHEREAS the Parties wish to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes and tax matters;

DESIRING THEREFORE the Parties in concluding the following Agreement which contains obligations on the part of the Parties only;

HAVE AGREED AS FOLLOWS:

ARTICLE 1

SCOPE OF THE AGREEMENT

The Parties through their competent authorities shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Parties concerning taxes and tax matters covered by this Agreement, including information that is foreseeably relevant to the determination, assessment, enforcement or collection of tax with respect to persons subject to such taxes, or to the investigation of tax matters or the 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. The requested Party shall use its best endeavours to ensure that the effective exchange of information is not unduly prevented or delayed.

ARTICLE 2

JURISDICTION

1. A requested Party is not obliged to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

2. Information shall be provided in accordance with this Agreement by a requested Party without regard to the residence or the nationality of the person to whom the information relates, or by the residence or nationality of the person in control or possession of the information requested.

ARTICLE 3

TAXES COVERED

1. The taxes which are the subject of this Agreement are taxes of every kind and description imposed by the Parties at the date of signature of the Agreement.
2. This Agreement shall apply also to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes, or any substantially similar taxes if the Parties so agree. The competent authority of each Party shall notify the other of substantial changes to the taxation and information gathering measures which may affect the obligations of that Party pursuant to this Agreement.

ARTICLE 4

GENERAL DEFINITIONS

1. In this Agreement:
 - (a) the term "Commonwealth of Dominica" means the island of Dominica, including the territorial waters thereof, the sea-bed, its subsoil and their natural resources, and any other area in the sea and in the air within which the Commonwealth of Dominica in accordance with international law exercises its sovereign rights;
 - (b) the term "South Africa" means the Republic of South Africa and, when used in a geographical sense, includes the territorial sea thereof as well as any area outside the territorial sea, including the continental shelf, which has been or may hereafter be designated, under the laws of South Africa and in accordance with international law, as an area within which South Africa may exercise sovereign rights of jurisdiction;
 - (c) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
 - (d) the term "competent authority" means:
 - (i) in respect of the Commonwealth of Dominica, the Minister for Finance or an authorised representative of the Minister; and
 - (ii) in respect of South Africa, the Commissioner of the South African Revenue Service or an authorised representative of the Commissioner;
 - (e) 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;

- (f) 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 requesting Party;
- (g) the term "information" means any fact, statement, document or record in whatever form;
- (h) the term "information gathering measures" means laws, regulations and administrative or judicial procedures enabling a requested Party to obtain and provide the information requested;
- (i) the term "person" includes a natural person, a legal person or any other body or group of persons;
- (j) the term "publicly traded company" means any company whose principal class of shares is listed on a recognised 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;
- (k) 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;
- (l) the term "recognised stock exchange" means any stock exchange agreed upon by the competent authorities of the Parties;
- (m) the term "public collective investment scheme" means any collective investment scheme or fund, in which the purchase, sale or redemption of the units, shares or other interests is not implicitly or explicitly restricted to a limited group of investors;
- (n) the term "requested Party" means the Party to this Agreement which is requested to provide or has provided information in response to a request;
- (o) the term "requesting Party" means the Party to this Agreement submitting a request for or having received information from the requested Party; and
- (p) the term "tax" means any tax covered by this Agreement.

2. As regards the application of this Agreement at any time by a Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the laws 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 in writing by the requesting Party information for the purposes referred to in Article 1. Such information shall be provided without regard to whether the requested Party needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct had occurred in the territory of the requested Party. The competent authority of the requesting Party shall only make a request for information pursuant to this Article when it is unable to obtain the requested information by other means, except where recourse to such means would give rise to disproportionate difficulty.

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, the requested Party shall, at its own discretion, use the information gathering measures it considers relevant to provide the requesting 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 requesting 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 Party shall ensure that it has the authority, subject to the terms of Article 1, to obtain and provide through its competent authority and 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) (i) information regarding the legal and beneficial ownership of companies, partnerships, foundations and other persons, including in the case of collective investment schemes, information on shares, units and other interests;
- (ii) in the case of trusts, information on settlors, trustees, protectors, and beneficiaries.

5. This Agreement does not create an obligation for a Party to obtain or provide ownership information with respect to publicly traded companies or public collective investment schemes, unless such information can be obtained without giving rise to disproportionate difficulties.

6. Any request for information shall be formulated with the greatest detail possible in specifying 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 and the form in which the requesting Party would prefer to receive it;
- (d) the tax purpose for which the information is sought;
- (e) the reasons for believing that the information requested is foreseeably relevant to tax administration and enforcement of the requesting Party, with respect to the person identified in subparagraph (a) of this paragraph;
- (f) grounds for believing that the information requested is present in the territorial jurisdiction of the requested Party or is in the possession of or control of a person within the jurisdiction of the requested Party;
- (g) to the extent known, the name and address of any person believed to be in possession or control of the information requested;
- (h) a statement that the request is in conformity with the laws and administrative practices of the requesting Party, that if the requested information was within the jurisdiction of the requesting Party then the competent authority of the requesting Party would be able to obtain the information under the laws of the requesting Party or in the normal course of administrative practice and that it is in conformity with this Agreement;
- (i) a statement that the requesting Party has pursued all means available in its own territory to obtain the information, except where that would give rise to disproportionate difficulty.

7. The competent authority of the requested Party shall acknowledge in writing receipt of a request to the competent authority of the requesting Party and shall notify the competent authority of the requesting Party of any deficiencies in the request within 60 days of receipt of the request.

8. If the competent authority of the requested Party has been unable to obtain and provide the information requested within 90 days of receipt of the request, or if obstacles are encountered in furnishing the information, or if the competent authority of the requested Party refuses to provide the information, it shall immediately inform the competent authority of the requesting Party in writing, explaining the reasons for its inability to obtain and provide the information, or the obstacles encountered or the reasons for its refusal to provide the requested information.

ARTICLE 6

TAX EXAMINATIONS ABROAD

1. The requested Party may, to the extent permitted under its domestic laws, and following reasonable notice from the requesting Party, allow representatives of the competent authority of the requesting Party to enter the territory of the requested Party, to interview individuals and examine records with the prior written consent of the individuals or other persons concerned. The competent authority of the requesting Party shall notify the competent authority of the requested Party of the time and place of the intended meeting with the individuals concerned.

2. At the request of the competent authority of the requesting Party, the competent authority of the requested Party may permit representatives of the competent authority of the requesting 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 requesting Party of the time and place of the examination, the authority or person authorised to carry out the examination and the procedures and conditions required by the requested Party for the conduct of the examination. All decisions with respect to the conduct of the examination shall be made by the requested Party conducting the examination in accordance with its domestic laws.

ARTICLE 7

POSSIBILITY OF DECLINING A REQUEST

1. The competent authority of the requested Party may decline a request for information:

- (a) where the request is not made in conformity with this Agreement;
- (b) where the requesting 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; or
- (c) where the disclosure of the information requested would be contrary to public policy of the requested Party.

2. This Agreement shall not impose upon a requested Party any obligation to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process, provided that information described in Article 5, paragraph 4, shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.

3. This Agreement shall not impose on a requested Party the obligation to obtain or provide information which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:

(a) produced for the purposes of seeking or providing legal advice or

(b) produced for the purposes of use in existing or contemplated legal proceedings.

4. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed by the taxpayer under examination or investigation.

5. The requested Party shall not be required to obtain and provide information which, if the requested information was within the jurisdiction of the requesting Party, the competent authority of the requesting Party would not be able to obtain under its laws or in the normal course of administrative practice.

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

ARTICLE 8

CONFIDENTIALITY

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

2. Such information shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the purposes specified in Article 1, and used by such persons or authorities only for such purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial decisions.

3. Such 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. Information provided to a requesting Party under this Agreement may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the requested Party.

ARTICLE 9

COSTS

Unless the competent authorities of the Parties otherwise agree, indirect costs incurred in providing assistance shall be borne by the requested Party, and direct costs incurred in providing assistance (including costs of engaging external advisors in connection with litigation or otherwise) shall be borne by the requesting Party. The respective competent authorities shall consult from time to time with regard to this Article, and in particular the competent authority of the requested Party shall consult with the competent authority of the requesting Party in advance 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 Parties regarding the implementation or interpretation of this 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 Parties may mutually agree on the procedures to be used under Articles 5, 6 and 9.
3. The competent authorities of the Parties may communicate with each other directly for purposes of this Article.
4. The Parties may also agree to use other forms of dispute resolution should this become necessary.

ARTICLE 11

ENTRY INTO FORCE

1. Each of the Parties shall notify the other in writing through the diplomatic channel of the completion of all necessary formalities required by its law for the bringing into force of this Agreement.
2. This Agreement shall enter into force 30 days following the date of receipt of the later of these notifications. Upon the date of entry into force, it 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 to tax arising on or after that date.

ARTICLE 12

AMENDMENT

1. At the request of either Party, this Agreement may be amended based on mutual agreement and the Parties may communicate with each other directly for that purpose.
2. Amendments shall enter into force in accordance with Article 11.

ARTICLE 13

TERMINATION

1. This Agreement shall remain in force until terminated by either Party.
2. Either Party may terminate this Agreement by giving notice of termination in writing through the diplomatic channel. 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 notice of termination by the other Party. All requests received up to the effective date of termination will be dealt with in accordance with the terms of this Agreement.

3. Notwithstanding the termination, the Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have signed this Agreement on the 7th day of February 2012, in two originals, both texts being equally authentic.

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

**FOR THE GOVERNMENT OF THE
COMMONWEALTH OF DOMINICA**