

## Corporate Tax - Cyprus

### Protocol amending Cyprus-South Africa double tax agreement signed

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#### **Introduction**

On April 1 2015 Cyprus and South Africa signed a protocol amending their existing double tax agreement, which was signed in 1997 and has been in force since December 8 1998.

The protocol amends the following areas of the 1997 agreement:

- the definition of 'residence';
- withholding taxes on dividends; and
- the exchange of information.

However, the protocol does not change the highly beneficial arrangements regarding the taxation of capital gains.

#### **Residence**

The protocol aligns the definition of a 'resident of a contracting state' with the 2010 Organisation for Economic Cooperation and Development (OECD) Model Convention.

#### **Taxation of dividends**

The 1997 agreement exempts dividends paid by a company in one country to a recipient in the other from withholding tax in the first country, as long as the recipient is the beneficial owner of the dividends.

Under the protocol, withholding tax may be imposed in the first country. The rate is limited to 5% of the dividend if the recipient is the beneficial owner of the dividends and owns 10% or more of the share capital of the company paying the dividend; otherwise, the rate is 10%.

Cyprus does not impose withholding taxes on dividends paid to overseas shareholders. As a result, the change affects only dividends paid by companies that are resident in South Africa.

Once the protocol has been ratified, the provisions regarding dividends will apply retrospectively from April 1 2012 - that is, the date on which taxation of dividends was introduced in South Africa at shareholder level.

#### **Exchange of information**

The protocol aligns the provisions regarding exchange of information with the 2010 OECD Model Convention. In particular, it commits the parties to exchange such information "as is foreseeably relevant", rather than "as is necessary". An annex to the protocol sets out the detailed procedures for information exchange and provides robust safeguards against its abuse by requiring requests for information to comply with specified conditions to demonstrate the foreseeable relevance of the information requested. No request is to be submitted unless the state making the request has exhausted all reasonable means available to obtain the information in its own territory. Each request must be accompanied by the following:

- the identity of the person under examination or investigation;
- the period covered by the request;
- a statement of the information sought, including its nature and the form in which the requesting contracting state wishes to receive the information;
- the tax purpose for which the information is sought; and
- the name and address of any person believed to be in possession of the requested information (to the extent known).

### **Taxation of capital gains**

Cyprus retains the exclusive taxing right on disposals by Cyprus tax residents of shares in South African companies, including shares in 'property-rich' companies that derive their value or the greater part of their value directly or indirectly from immovable property in South Africa. Most of South Africa's double tax agreements allow gains on such shares to be taxed in South Africa and the effective exemption of gains from South African tax gives Cyprus a significant advantage as a jurisdiction for holding shares of property-rich South African companies.

### **Entry into force**

The protocol will enter into force when both countries complete their ratification procedures. Cyprus completed its ratification procedure on May 8 2015, but South Africa has yet to do so.

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