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a closer look

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The New Protocol To The Cyprus–South Africa Double Taxation Agreement

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On April 1, 2015, Cyprus and South Africa signed a Protocol amending their existing double taxation agreement ("DTA"), which was signed in 1997 and has been in force since December 8, 1998.

At the time the original DTA was concluded, dividends arising in South Africa were not subjected to South African tax, and the DTA included a Protocol committing the parties to reconsider the provisions relating to taxation of dividends in the event of any change. South Africa introduced taxation of dividends at shareholder level in 2012 and the main purpose of the new Protocol is to reflect this in line with the commitment in the original Protocol.

The new Protocol also updates the definition of residence and the information exchange provisions. Importantly, it does not change the existing, highly beneficial arrangements regarding taxation of capital gains.

Residence

The Protocol aligns the definition of "resident of a Contracting State" with the 2010 OECD Model Convention.

Taxation Of Dividends

The 1997 DTA completely 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 percent of the dividend if the recipient is the beneficial owner of the dividends and owns 10 percent or more of the share capital of the company paying the dividend; otherwise it is 10 percent.

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

Once the Protocol is ratified, the provisions regarding dividends will apply retrospectively from April 1, 2012, the date of the introduction in South Africa of taxation of dividends at shareholder level.

Interest and royalties continue to be taxable only in the country of residence of the recipient, provided the recipient is the beneficial owner.

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 abuse of the information exchange provisions by requiring requests for information to comply with specified conditions in order to demonstrate the foreseeable relevance of the information to the request. No request is to be submitted unless the state making the request has exhausted all reasonable means available in its own territory to obtain the information, and every 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;
- To the extent known, the name and address of any person believed to be in possession of the requested information.

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 situated in South Africa. Most of South Africa's other DTAs 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 did so on May 8, 2015, but South Africa has yet to do so.