

**EXPLANATORY MEMORANDUM**  
**ON THE AGREEMENT FOR EXCHANGE OF INFORMATION**  
**BETWEEN**  
**THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA**  
**AND**  
**THE GOVERNMENT OF BARBADOS**

The purpose of an Agreement on the Exchange of Information between States is to promote international cooperation in tax matters in instances where jurisdictions have not entered into a Double Taxation Agreement. The Model was developed by the OECD Global Forum Working Group on Effective Exchange of Information, in which South Africa participates, to address harmful tax practices. Provision is made for such exchange of information between the States as may be required both for carrying out the provisions of the Agreement and for applying the domestic taxation laws concerning any tax imposed on behalf of the Contracting States. This Agreement is paramount in the campaign against tax fraud and evasion.

In order to achieve full implementation of the international transparency and information exchange standards, a Tax Information Exchange Agreement has been entered into with Barbados ("the Agreement").

The Agreement concluded between the Republic of South Africa and the Government of Barbados ("the Parties") closely follows the OECD Model Agreement on Tax Information Exchange. In the explanation which follows, the general principles of each Article of the Agreement are set out.

The entire text has been made gender neutral.

**PREAMBLE**

The Preamble records that the object of the Agreement is to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes.

## **ARTICLE 1**

### **SCOPE OF THE AGREEMENT**

Article 1 specifies that the Parties will provide assistance, through their competent authorities, for exchange of information with regard to the taxes covered by this Agreement. The information should be relevant to the administration and enforcement of the domestic laws of the Parties, in the determination, assessment, enforcement or collection of tax, the investigation of tax matters or the prosecution of criminal tax matters.

Furthermore, emphasis is given to the fact that rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable.

## **ARTICLE 2**

### **TAXES COVERED**

Article 2 identifies the taxes with respect to which the Parties agree to exchange information in accordance with the Agreement.

Paragraph 1 lists the existing taxes imposed by each State while paragraph 2 provides that the Agreement will also apply to identical or substantially similar taxes that are subsequently imposed by either State, if the Parties so agree. Furthermore, competent authorities are also obliged to notify each other should there be changes to a Party's domestic law which may have an effect on the obligations imposed on the Parties in terms of this Agreement.

## **ARTICLE 3**

### **DEFINITIONS**

This Article defines various expressions which are used in the body of the Agreement. Several of these definitions are self-evident and are not further explained.

The definition of "South Africa" includes not only the sovereign territory but also those areas outside its territorial sea over which it may exercise jurisdiction in accordance with international law, for example, in relation to the exploitation of natural resources.

The term "criminal tax matters" is defined as all 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 Party. A tax matter involves "intentional conduct" if the pertinent criminal law provision requires an element of intent. This definition does not create an obligation on the part of the requesting Party to prove to the requested Party an element of intent in connection with the actual conduct under investigation.

Typical categories of conduct that constitute tax crimes include the wilful failure to file a tax return within the prescribed time period; wilful omission or concealment of sums subject to tax; making false or incomplete statements to the tax or other authorities of facts which obstruct the collection of tax and deliberate omissions of entries in books and records.

The term "information gathering measures" means the methods set out in the domestic laws and administrative or judicial procedures of each Party. Information gathering methods typically include requiring the presentation of records for examination, gaining direct access to records,

making copies of such records and interviewing persons having knowledge, possession, control or custody of pertinent information.

The definition of the term "person" is intended to be very broad. The definition explicitly mentions an individual, a company and any other body of persons. The main example of a "body of persons" is the partnership. However, it also covers other organisational structures such as trusts, foundations, as well as collective investment funds or schemes.

Paragraph 2 provides that terms not defined in the Agreement have the meaning that they have under the domestic taxation laws of that Party at the time of application of the provisions of the Agreement. Any meaning under the taxation laws will take precedence over a meaning under other laws of that Party.

## **ARTICLE 4**

### **EXCHANGE OF INFORMATION UPON REQUEST**

Paragraph 1 provides the general rule that the competent authority of the requested Party must exchange information on request provided it falls within the scope of this Agreement. The requested Party is obliged to exchange information even if it is not needed by that Party for domestic tax purposes or the conduct being investigated would also constitute a crime under the domestic laws of the requested Party. The competent authority of the requested Party is further obliged to request additional information from the competent authority of the requesting Party if the information received is not sufficient to enable it to comply with the request for information.

In terms of paragraph 2, if the information on hand is insufficient to comply with the request, the requested Party must use the information gathering methods it considers necessary to gather the requested information, irrespective of whether it has a domestic tax interest. Specifying that there is no need for a domestic tax interest ensures that there will be an effective exchange of information even in cases where the requested Party does not impose an income tax or the request relates to an entity not subject to tax within the jurisdiction of the requested Party.

Paragraph 3 includes a provision intended to require the provision of information, if specifically requested by a Party, in the form of statements from witnesses and certified copies of original records.

Paragraph 4 stipulates that each Party will ensure that its domestic law provides that, within the parameters of Article 1 of this Agreement, the following information can be obtained and provided through its competent authority:

- (a) Information held by banks and other financial institutions therefore ruling out bank secrecy. Under this sub-paragraph, person's acting in an agency or fiduciary capacity including nominees or trustees are also included;
- (b) (i) Information regarding the legal and beneficial ownership of persons;
- (ii) Information on settlors, trustees and beneficiaries.

Paragraph 5 provides that in the case of publicly traded companies or public collective investment schemes, the competent authorities need only provide ownership information that the requested Party can obtain without disproportionate difficulties. It is recognised that

where a true public market for ownership interests exists there is less of a risk that such vehicles will be used for tax evasion or other non-compliance with the tax law.

Paragraph 6 stipulates that any request for information must be in writing and formulated in accordance with the requirements of sub-paragraphs (a) to (i). While paragraph 6 contains important procedural requirements that are intended to ensure that fishing expeditions do not occur, the Commentary to the OECD Model provides that the sub-paragraphs nevertheless need to be interpreted liberally in order not to frustrate the effective exchange of information.

Paragraph 7 provides that receipt of the request must be acknowledged by the competent authority of the requested Party and must forward the requested information as promptly as possible.

## **ARTICLE 5**

### **TAX EXAMINATIONS ABROAD**

Paragraph 1 provides that the requesting Party may request the requested Party, to the extent permitted under its domestic laws and with the consent of the individuals concerned, to allow representatives of the competent authority of the requesting Party to enter the territory of the requested Party to interview individuals and examine records. The competent authority of the requested Party must be advised of the time and place of any intended meeting arranged by the requesting Party.

Paragraph 2 provides for the competent authority of the requested Party to permit representatives of the competent authority of the requesting Party to attend a tax examination in the territory of the requested Party. It is understood that this request should only be made if the requesting Party is convinced that its presence will contribute greatly to the solution of a domestic tax case or may be regarded as part of an examination on a large scale, encompassing domestic enterprises and residents.

Paragraph 3 sets out the procedures to be followed if a request under paragraph 2 has been granted. All decisions on how the examination is to be carried out will be taken by the authority or the official of the requested Party in charge of the examination.

## **ARTICLE 6**

### **POSSIBILITY OF DECLINING A REQUEST**

This Article identifies the situations in which a requested Party is not required to supply information in response to a request. If the grounds for declining a request under Article 6 are met, the requested Party is given discretion to refuse to provide the information.

Paragraph 1 provides that the competent authority of the requested Party may decline to assist under the following conditions:

- (a) where the request is not made in conformity with this Agreement.
- (b) where the information has been requested and the requesting Party has not pursued all means available in its own territory unless the requesting Party is unable to obtain such information due to the exercise giving rise to disproportionate difficulty;
- (c) where the disclosure of information would be contrary to public policy.

Paragraph 2 ensures that although the requested Party is not obliged to provide information which is subject to legal privilege, or any trade, business, industrial, commercial or professional secret or trade process. The proviso in this paragraph makes it clear that the Agreement overrides any domestic law or practices that may treat information as a trade, business, industrial, commercial or professional secret or trade process merely because it is held by a person described in paragraph 4 of Article 4 or because it is ownership information.

Paragraph 3 clarifies that a request for information must not be refused on the basis that the tax liability, to which it relates, is disputed.

Paragraph 4 makes it clear that a requested Party is not required to obtain and provide information that the requesting Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its domestic law. This stipulation is intended to prevent the requesting Party from circumventing its domestic law limitations by requesting information from the other Party thereby making use of greater powers than it possesses under its own laws.

Paragraph 5 is intended to ensure that the Agreement does not result in discrimination between nationals or citizens of the requested Party and nationals or citizens in the same circumstances of the requesting Party. It provides for the requested Party to decline a request if it would result in the enforcement of a provision of the requesting Party's tax law which discriminates against its nationals or citizens.

## **ARTICLE 7**

### **CONFIDENTIALITY**

Respect for the confidentiality of information is necessary to protect the legitimate interests of taxpayers. This Article ensures that adequate protection is given to information received from another Party.

Paragraph 1 provides that any information received pursuant to this Agreement by either Party must be treated as confidential.

Paragraph 2 stipulates that the information may be disclosed only to persons or authorities involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to taxes covered by the Agreement.

Paragraph 3 stipulates that the information requested must not be used for any purpose other than for the purposes stated in Article 1 unless written consent is given by the requested Party that supplied the information.

Paragraph 4 precludes disclosure by the requesting Party to any other jurisdiction.

## **ARTICLE 8**

### **COSTS**

Unless otherwise agreed by the competent authorities, indirect costs in providing assistance would be borne by the requested Party and direct costs by the requesting Party. The Article provides for the competent authorities to consult from time to time in relation to this issue and stipulates that the competent authority of the requesting Party must be warned in advance by the competent authority of the requested Party if the costs of providing information with respect to a specific request are expected to be significant.

## **ARTICLE 9**

### **MUTUAL AGREEMENT PROCEDURE**

Paragraph 1 institutes a mutual agreement procedure for resolving any difficulties arising out of the implementation or interpretation of the Agreement.

Paragraph 2 allows the competent authorities to decide on the procedures to be used under Articles 4, 5 and 8 by mutual agreement.

Paragraph 3 provides for the competent authorities to communicate with each other directly.

Paragraph 4 provides that the Parties will agree to other forms of dispute resolution should the mutual agreement procedure fail to resolve a matter.

## **ARTICLE 10**

### **ENTRY INTO FORCE**

This Article stipulates that the Agreement will enter into force in both South Africa and the Barbados on the date of the last notification and will have effect:

- (a) from the date of entry into force of this Agreement, with respect to criminal tax matters; and
- (b) with respect to all other matters covered in Article 1, with regard to 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 11**

### **TERMINATION**

Paragraph 1 stipulates that this Agreement will remain in force until terminated by either Party.

Paragraph 2 provides for the notice of termination to be given in writing and sets out the conditions thereto.

Paragraph 3 ensures that the Parties shall remain bound by the obligation of confidentiality under Article 7 with respect to any information obtained under this Agreement.

**AGREEMENT**  
**BETWEEN**  
**THE GOVERNMENT OF THE**  
**REPUBLIC OF SOUTH AFRICA**  
**AND**  
**THE GOVERNMENT OF BARBADOS**  
**FOR THE EXCHANGE OF INFORMATION**  
**RELATING TO TAX MATTERS**



## **PREAMBLE**

**WHEREAS** the Government of the Republic of South Africa and the Government of Barbados ("the Parties") have long been active in international efforts in the fight against financial and other crimes, including the targeting of terrorist financing;

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

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

### **TAXES COVERED**

1. This Agreement shall apply to the following taxes imposed by the Parties:
  - (a) in the case of Barbados:
    - (i) the income tax (including premium income tax);
    - (ii) the corporation tax (including the tax on branch profits); and
    - (iii) the petroleum winning operations tax;

(hereinafter referred to as "Barbados tax"); and

- (b) in the case of South Africa:
  - (i) the normal tax;
  - (ii) the withholding tax on royalties;
  - (iii) the dividend tax;
  - (iv) the tax on foreign entertainers and sportspersons; and
  - (v) the value-added tax;

(hereinafter referred to as "South African tax").

- 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 in laws which may affect the obligations of that Party pursuant to this Agreement.

### ARTICLE 3

#### GENERAL DEFINITIONS

- 1. In this Agreement:
  - (a) the term "Barbados" means the present territory of Barbados including the territorial sea and any maritime area situated outside the territorial sea of Barbados, which has been or might in the future be designated under the national law of Barbados in accordance with international law as an area within which Barbados may exercise its sovereign rights and jurisdiction to explore, exploit and preserve the seabed, subsoil and the natural resources; and
  - (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 the case of Barbados, the Minister responsible for Finance or an authorised representative of the Minister; and
    - (ii) in the case 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 and administrative or judicial procedures enabling a requested Party to obtain and provide the information requested;
- (i) the term “person” includes an individual, a company 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 scheme or fund, in which the purchase, sale or redemption of 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 4**

### **EXCHANGE OF INFORMATION UPON REQUEST**

1. The competent authority of the requested Party shall provide upon request by the requesting Party information for the purposes referred to in Article 1. Such information shall be exchanged 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 it 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 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 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 requested Party or is in the possession of or obtainable by 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 able to obtain 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 receipt of the request to the competent authority of the requesting Party and shall use its best endeavours to forward the requested information to the requesting Party with the least possible delay.

## **ARTICLE 5**

### **TAX EXAMINATIONS ABROAD**

1. With reasonable notice, the requesting Party may request that the requested Party allow representatives of the competent authority of the requesting Party to enter the territory of the requested Party, to the extent permitted under its domestic laws, 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 attend 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 regarding the conduct of the examination shall be made by the requested Party conducting the examination.

## **ARTICLE 6**

### **POSSIBILITY OF DECLINING A REQUEST**

1. The competent authority of the requested Party may decline to assist:
  - (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 items subject to legal privilege, or any trade, business, industrial, commercial or professional secret or trade process, provided that information described in Article 4, paragraph 4, shall not by reason of that fact alone be treated as such a secret or trade process.

3. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.
4. 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.
5. 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 7**

### **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 jurisdiction.

## **ARTICLE 8**

### **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 9**

### **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 4, 5 and 8.
3. The competent authorities of the Parties may communicate with each other directly for purposes of reaching agreement under this Article.
4. The Parties shall agree on other forms of dispute resolution should this become necessary.

## **ARTICLE 10**

### **ENTRY INTO FORCE**

This Agreement shall enter into force 30 days after receipt of written notification by the latter Party of completion of all legal formalities required for entry into force. 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 11

### 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. 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. If the Agreement is terminated the Parties shall remain bound by the provisions of Article 7 with respect to any information obtained under this Agreement.

**IN WITNESS WHEREOF** the undersigned, being duly authorised by their respective Governments, have signed and sealed this Agreement in two originals in the English language, both texts being equally authentic.

**DONE** at ..... on.....day of ..... in the year 20.....

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

\_\_\_\_\_  
**FOR THE GOVERNMENT OF  
BARBADOS**

**EXPLANATORY MEMORANDUM**  
**ON THE AGREEMENT FOR EXCHANGE OF INFORMATION**  
**BETWEEN**  
**THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA**  
**AND**  
**THE GOVERNMENT OF BELIZE**

The purpose of an Agreement on the Exchange of Information between States is to promote international cooperation in tax matters in instances where jurisdictions have not entered into a Double Taxation Agreement. The Model was developed by the OECD Global Forum Working Group on Effective Exchange of Information, in which South Africa participates, to address harmful tax practices. Provision is made for such exchange of information between the States as may be required both for carrying out the provisions of the Agreement and for applying the domestic taxation laws concerning any tax imposed on behalf of the Contracting States. This Agreement is paramount in the campaign against tax fraud and evasion.

In order to achieve full implementation of the international transparency and information exchange standards, a Tax Information Exchange Agreement has been entered into with Belize ("the Agreement").

The Agreement concluded between the Republic of South Africa and Belize ("the Parties") closely follows the OECD Model Agreement on Tax Information Exchange. In the explanation which follows, the general principles of each Article of the Agreement are set out.

The entire text has been made gender neutral.

**PREAMBLE**

The Preamble records that, recognising that the Parties have long been active in the fight against financial and other crimes including the targeting of terrorist financing, the object of the Agreement is to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes.

## **ARTICLE 1**

### **SCOPE OF THE AGREEMENT**

Article 1 specifies that the Parties will provide assistance, through their competent authorities, for exchange of information with regard to the taxes covered by this Agreement. The information should be relevant to the administration and enforcement of the domestic laws of the Parties, in the determination, assessment, enforcement or collection of tax, the investigation of tax matters or the prosecution of criminal tax matters.

However, a requested Party is not obliged to provide information which is not in the possession of its authorities or obtainable by or in the possession of persons who are within its jurisdiction. Furthermore, emphasis is given to the fact that the rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable. The requested Party must also ensure to the best of its ability that the effective exchange of information is not unduly prevented or delayed.

## **ARTICLE 2**

### **TAXES COVERED**

Article 2 identifies the taxes with respect to which the Parties agree to exchange information in accordance with the Agreement.

Paragraph 1 lists the existing taxes imposed by each State while paragraph 2 provides that the Agreement will also apply to identical or substantially similar taxes that are subsequently imposed by either State, if the Parties so agree. Furthermore, competent authorities are also obliged to notify each other should there be changes to a Party's domestic law which may have an affect on the obligations imposed on the Parties in terms of this Agreement.

## **ARTICLE 3**

### **GENERAL DEFINITIONS**

This Article defines various expressions which are used in the body of the Agreement. Several of these definitions are self-evident and are not further explained.

The definition of "South Africa" includes not only the sovereign territory but also those areas outside its territorial sea over which it may exercise jurisdiction in accordance with international law, for example, in relation to the exploitation of natural resources.

The term "criminal tax matters" is defined as all tax matters involving intentional conduct, which is liable to prosecution under the criminal laws of the Party. A tax matter involves "intentional conduct" if the pertinent criminal law provision requires an element of intent. This definition does not create an obligation on the part of the requesting Party to prove to the requested Party an element of intent in connection with the actual conduct under investigation.

Typical categories of conduct that constitute tax crimes include the wilful failure to file a tax return within the prescribed time period; wilful omission or concealment of sums subject to tax; making false or incomplete statements to the tax or other authorities of facts which obstruct the collection of tax and deliberate omissions of entries in books and records.

The term "information gathering methods" means the methods set out in the domestic laws and administrative or judicial procedures of each Party. Information gathering methods typically include requiring the presentation of records for examination, gaining direct access to records, making copies of such records and interviewing persons having knowledge, possession, control or custody of pertinent information.

The definition of the term "person" is intended to be very broad. The definition explicitly mentions an individual, a company and any other body of persons. The main example of a "body of persons" is the partnership. However, it also covers other organisational structures such as trusts, foundations, as well as collective investment funds or schemes.

Paragraph 2 provides that terms not defined in the Agreement have the meaning that they have under the domestic taxation laws of that Party at the time of application of the provisions of the Agreement. Any meaning under the taxation laws will take precedence over a meaning under other laws of that Party.

## **ARTICLE 4**

### **EXCHANGE OF INFORMATION UPON REQUEST**

Paragraph 1 provides the general rule that the competent authority of the requested Party must exchange information on request provided it falls within the scope of this Agreement. The requested Party is obliged to exchange information even if it is not needed by that Party for domestic tax purposes or the conduct being investigated would also constitute a crime under the domestic laws of the requested Party. Information must only be requested when the requesting Party is unable to obtain such information by other means unless such other means would give rise to disproportionate difficulty.

In terms of paragraph 2, if the information on hand is insufficient to comply with the request, the requested Party must use the information gathering methods it considers necessary to gather the requested information, irrespective of whether it has a domestic tax interest. Specifying that there is no need for a domestic tax interest ensures that there will be an effective exchange of information even in cases where the requested Party does not impose an income tax or the request relates to an entity not subject to tax within the jurisdiction of the requested Party.

Paragraph 3 includes a provision intended to require the provision of information, if specifically requested by a Contracting Party, in the form of statements from witnesses and certified copies of original records.

Paragraph 4 stipulates that each Party will ensure that its domestic law provides that, within the scope of this Agreement, the following information can be obtained and provided through its competent authority:

- (a) Information held by banks and other financial institutions therefore ruling out bank secrecy. Under this sub-paragraph, person's acting in an agency or fiduciary capacity including nominees or trustees are also included;
- (b)
  - (i) Information regarding the legal and beneficial ownership of persons;
  - (ii) Information on settlors, trustees and beneficiaries.

Paragraph 5 provides that in the case of publicly traded companies or public collective investment schemes, the competent authorities need only provide ownership information that the requested Party can obtain without disproportionate difficulties. It is recognised that where a true public market for ownership interests exists there is less of a risk that such vehicles will be used for tax evasion or other non-compliance with the tax law.

Paragraph 6 stipulates that any request for information must be in writing and formulated in accordance with the requirements of sub-paragraphs (a) to (i). While paragraph 6 contains important procedural requirements that are intended to ensure that fishing expeditions do not occur, the Commentary to the OECD Model provides that the sub-paragraphs nevertheless need to be interpreted liberally in order not to frustrate the effective exchange of information.

Paragraph 7 provides that receipt of a request must be acknowledged by the competent authority of the requested Party and further stipulates that the requested Party must use its best endeavours to forward the requested information with the least possible delay.

## **ARTICLE 5**

### **TAX EXAMINATIONS ABROAD**

Paragraph 1 provides that the requesting Party may request the requested Party, to the extent permitted under its domestic laws and with the consent of the individuals concerned, to allow representatives of the competent authority of the requesting Party to enter the territory of the requested Party to interview individuals and examine records. The competent authority of the Requested Party must be advised of the time and place of any intended meeting arranged by the requesting Party.

Paragraph 2 provides for the competent authority of the requested Party to permit representatives of the competent authority of the requesting Party to attend a tax examination in the territory of the requested Party. It is understood that this request should only be made if the requesting Party is convinced that its presence will contribute greatly to the solution of a domestic tax case or may be regarded as part of an examination on a large scale, encompassing domestic enterprises and residents.

Paragraph 3 sets out the procedures to be followed if a request under paragraph 2 has been granted. All decisions on how the examination is to be carried out will be taken by the authority or the official of the requested Party in charge of the examination.

## **ARTICLE 6**

### **POSSIBILITY OF DECLINING A REQUEST**

This Article identifies the situations in which a requested Party is not required to supply information in response to a request. If the grounds for declining a request under Article 6 are met, the requested Party is given discretion to refuse to provide the information.

Paragraph 1 provides that the competent authority of the requested Party may decline to assist under the following conditions:

- (a) where the request is not made in conformity with this Agreement.

- (b) where the information has been requested and the requesting Party has not pursued all means available in its own territory unless the requesting Party is unable to obtain such information due to the exercise giving rise to disproportionate difficulty;
- (c) where the disclosure of information would be contrary to public policy.

Paragraph 2 ensures that although the requested Party is not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process. The proviso in this paragraph makes it clear that the Agreement overrides any domestic law or practices that may treat information as a trade, business, industrial, commercial or professional secret or trade process merely because it is held by a person described in paragraph 4 (a) of Article 4 or because it is ownership information.

Paragraph 3 clarifies that a request for information must not be refused on the basis that the tax claim, to which it relates, is disputed.

Paragraph 4 makes it clear that a requested Party is not required to obtain and provide information that the requesting Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its domestic law. This stipulation is intended to prevent the requesting Party from circumventing its domestic law limitations by requesting information from the other Party thereby making use of greater powers than it possesses under its own laws.

Paragraph 5 is intended to ensure that the Agreement does not result in discrimination between nationals of the requested Party and nationals in the same circumstances of the requesting Party. It provides for the requested Party to decline a request if it would result in the enforcement of a provision of the requesting Party's tax law which discriminates against its nationals.

## **ARTICLE 7**

### **CONFIDENTIALITY**

Respect for the confidentiality of information is necessary to protect the legitimate interests of taxpayers. This Article ensures that adequate protection is given to information received from another Contracting Party.

Paragraph 1 provides that any information received pursuant to this Agreement by either Party must be treated as confidential. Mutual assistance between competent authorities is only feasible if each is assured that the other will treat with proper confidence the information, which is obtained in the course of their co-operation.

Paragraph 2 stipulates that the information may be disclosed only to persons or authorities involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to taxes covered by the Agreement.

Paragraph 3 stipulates that the information requested must not be used for any purpose other than for the purposes stated in Article 1 unless written consent is given by the requested Party that supplied the information.

Paragraph 4 precludes disclosure by the requesting Party to any other jurisdiction.

## **ARTICLE 8**

### **COSTS**

Unless otherwise agreed by the competent authorities, indirect costs in providing assistance would be borne by the requested Party and direct costs by the requesting Party. The Article provides for the competent authorities to consult from time to time in relation to this issue and stipulates that the competent authority of the requesting Party must be warned in advance by the competent authority of the requested Party if the costs of providing information with respect to a specific request are expected to be significant.

## **ARTICLE 9**

### **MUTUAL AGREEMENT PROCEDURE**

Paragraph 1 institutes a mutual agreement procedure for resolving any difficulties arising out of the implementation or interpretation of the Agreement.

Paragraph 2 allows the competent authorities to decide on the procedures to be used under Articles 4, 5 and 8 by mutual agreement.

Paragraph 3 provides for the competent authorities to communicate with each other directly.

Paragraph 4 provides that the Parties may agree to other forms of dispute resolution should the mutual agreement procedure fail to resolve a matter.

## **ARTICLE 10**

### **ENTRY INTO FORCE**

This Article stipulates that the Agreement will enter into force in both South Africa and Belize 30 days after receipt of written notification by the latter Party that their domestic requirements for the entry into force have been completed. Once the Agreement has entered into force, the taxes matters referred to will become effective in accordance with the provisions of this paragraph, differentiation being made between exchange of information in criminal tax matters and exchange of information in all other tax matters.

## **ARTICLE 11**

### **TERMINATION**

Paragraph 1 stipulates that this Agreement will remain in force until terminated by either Party.

Paragraph 2 provides for the notice of termination to be given in writing and sets out the conditions thereto.

Paragraph 3 ensures that the Parties shall remain bound by the obligation of confidentiality under Article 7 with respect to any information obtained under this Agreement.

**AGREEMENT**  
**BETWEEN**  
**THE GOVERNMENT OF THE**  
**REPUBLIC OF SOUTH AFRICA**  
**AND**  
**THE GOVERNMENT OF**  
**BELIZE**  
**FOR THE EXCHANGE OF INFORMATION**  
**RELATING TO TAX MATTERS**



## **PREAMBLE**

**WHEREAS** the Government of the Republic of South Africa and the Government of Belize ("the Parties") have long been active in international efforts in the fight against financial and other crimes, including the targeting of terrorist financing;

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

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

### **TAXES COVERED**

1. This Agreement shall apply to the following taxes imposed by the Parties:

- (a) in the case of Belize -
  - (i) the income tax (including surtax or surcharge);
  - (ii) the business tax;
  - (iii) the general sales tax; and
- (b) in the case of South Africa:
  - (i) the normal tax;
  - (ii) the withholding tax on royalties;
  - (iii) the dividend tax;
  - (iv) the tax on foreign entertainers and sportspersons; and
  - (v) the value-added tax.

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 in laws which may affect the obligations of that Party pursuant to this Agreement.

### **ARTICLE 3**

#### **GENERAL DEFINITIONS**

1. In this Agreement:
  - (a) the term "Belize" means the land and sea areas as defined in Schedule 1 to the Belize Constitution, including the territorial waters and any other area in the sea and in the air within which Belize, in accordance with international law, exercises sovereign rights or its jurisdiction; and
  - (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 the case of Belize, the Minister of Finance or his authorised representative; and
    - (ii) in the case 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 and administrative or judicial procedures enabling a requested Party to obtain and provide the information requested;

- (i) the term "person" includes an individual, a company 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 scheme or fund, in which the purchase, sale or redemption of 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 4

### EXCHANGE OF INFORMATION UPON REQUEST

1. The competent authority of the requested Party shall provide upon request by the requesting Party information for the purposes referred to in Article 1. Such information shall be exchanged 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 it 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 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 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 requested Party or is in the possession of or obtainable by 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 able to obtain 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 receipt of the request to the competent authority of the requesting Party and shall use its best endeavours to forward the requested information to the requesting Party with the least possible delay.

## **ARTICLE 5**

### **TAX EXAMINATIONS ABROAD**

1. With reasonable notice, the requesting Party may request that the requested Party allow representatives of the competent authority of the requesting Party to enter the territory of the requested Party, to the extent permitted under its domestic laws, 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 attend 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 regarding the conduct of the examination shall be made by the requested Party conducting the examination.

## **ARTICLE 6**

### **POSSIBILITY OF DECLINING A REQUEST**

1. The competent authority of the requested Party may decline to assist:
  - (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 items subject to legal privilege, or any trade, business, industrial, commercial or professional secret or trade process, provided that information described in Article 4, paragraph 4, shall not by reason of that fact alone be treated as such a secret or trade process.
3. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.
4. 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.
5. 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 7**

### **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 jurisdiction.

## **ARTICLE 8**

### **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 9**

### **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 4, 5 and 8.
3. The competent authorities of the Parties may communicate with each other directly for purposes of reaching agreement under this Article.
4. The Parties shall agree on other forms of dispute resolution should this become necessary.

## **ARTICLE 10**

### **ENTRY INTO FORCE**

This Agreement shall enter into force 30 days after receipt of written notification by the latter Party of completion of all legal formalities required for entry into force. 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 11**

### **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. 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. If the Agreement is terminated the Parties shall remain bound by the provisions of Article 7 with respect to any information obtained under this Agreement.

**IN WITNESS WHEREOF** the undersigned, being duly authorised by their respective Governments, have signed and sealed this Agreement in two originals in the English language, both texts being equally authentic.

**DONE** at ..... on ..... day of .....  
in the year 2012.

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

**PRAVIN GORDHAN**  
Minister of Finance

\_\_\_\_\_  
**FOR THE GOVERNMENT OF  
BELIZE**

**(DEAN O. BARROW)**  
PRIME MINISTER  
and Minister of Finance  
and Economic Development

**EXPLANATORY MEMORANDUM**  
**ON THE AGREEMENT FOR EXCHANGE OF INFORMATION**  
**BETWEEN**  
**THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA**  
**AND**  
**THE GOVERNMENT OF THE TURKS AND CAICOS ISLANDS**

The purpose of an Agreement on the Exchange of Information between States is to promote international cooperation in tax matters in instances where jurisdictions have not entered into a Double Taxation Agreement. The Model was developed by the OECD Global Forum Working Group on Effective Exchange of Information, in which South Africa participates, to address harmful tax practices. Provision is made for such exchange of information between the States as may be required both for carrying out the provisions of the Agreement and for applying the domestic taxation laws concerning any tax imposed on behalf of the Contracting States. This Agreement is paramount in the campaign against tax fraud and evasion.

In order to achieve full implementation of the international transparency and information exchange standards, a Tax Information Exchange Agreement has been entered into with the Turks and Caicos Islands ("the Agreement").

The Agreement concluded between the Republic of South Africa and the Turks and Caicos Islands ("the Parties") closely follows the OECD Model Agreement on Tax Information Exchange. In the explanation which follows, the general principles of each Article of the Agreement are set out.

The entire text has been made gender neutral.

**PREAMBLE**

The Preamble records that, recognising that the Parties have long been active in the fight against financial and other crimes including the targeting of terrorist financing, the object of the Agreement is to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes.

## **ARTICLE 1**

### **SCOPE OF THE AGREEMENT**

Article 1 specifies that the Parties will provide assistance, through their competent authorities, for exchange of information with regard to the taxes covered by this Agreement. The information should be relevant to the administration and enforcement of the domestic laws of the Parties, in the determination, assessment, enforcement or collection of tax, the investigation of tax matters or the prosecution of criminal tax matters.

However, a requested Party is not obliged to provide information which is not in the possession of its authorities or obtainable by or in the possession of persons who are within its jurisdiction. Furthermore, emphasis is given to the fact that the rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable. The requested Party must also ensure to the best of its ability that the effective exchange of information is not unduly prevented or delayed.

## **ARTICLE 2**

### **TAXES COVERED**

Article 2 identifies the taxes with respect to which the Parties agree to exchange information in accordance with the Agreement.

Paragraph 1 lists the existing taxes imposed by each State while paragraph 2 provides that the Agreement will also apply to identical or substantially similar taxes that are subsequently imposed by either State, if the Parties so agree. Furthermore, competent authorities are also obliged to notify each other should there be changes to a Party's domestic law which may have an effect on the obligations imposed on the Parties in terms of this Agreement.

## **ARTICLE 3**

### **GENERAL DEFINITIONS**

This Article defines various expressions which are used in the body of the Agreement. Several of these definitions are self-evident and are not further explained.

The definition of "South Africa" includes not only the sovereign territory but also those areas outside its territorial sea over which it may exercise jurisdiction in accordance with international law, for example, in relation to the exploitation of natural resources.

The term "criminal tax matters" is defined as all tax matters involving intentional conduct, which is liable to prosecution under the criminal laws of the Party. A tax matter involves "intentional conduct" if the pertinent criminal law provision requires an element of intent. This definition does not create an obligation on the part of the requesting Party to prove to the requested Party an element of intent in connection with the actual conduct under investigation.

Typical categories of conduct that constitute tax crimes include the wilful failure to file a tax return within the prescribed time period; wilful omission or concealment of sums subject to tax; making false or incomplete statements to the tax or other authorities of facts which obstruct the collection of tax and deliberate omissions of entries in books and records.

The term "information gathering methods" means the methods set out in the domestic laws and administrative or judicial procedures of each Party. Information gathering methods typically include requiring the presentation of records for examination, gaining direct access to records, making copies of such records and interviewing persons having knowledge, possession, control or custody of pertinent information.

The definition of the term "person" is intended to be very broad. The definition explicitly mentions an individual, a company and any other body of persons. The main example of a "body of persons" is the partnership. However, it also covers other organisational structures such as trusts, foundations, as well as collective investment funds or schemes.

Paragraph 2 provides that terms not defined in the Agreement have the meaning that they have under the domestic taxation laws of that Party at the time of application of the provisions of the Agreement. Any meaning under the taxation laws will take precedence over a meaning under other laws of that Party.

## **ARTICLE 4**

### **EXCHANGE OF INFORMATION UPON REQUEST**

Paragraph 1 provides the general rule that the competent authority of the requested Party must exchange information on request provided it falls within the scope of this Agreement. The requested Party is obliged to exchange information even if it is not needed by that Party for domestic tax purposes or the conduct being investigated would also constitute a crime under the domestic laws of the requested Party. Information must only be requested when the requesting Party is unable to obtain such information by other means unless such other means would give rise to disproportionate difficulty.

In terms of paragraph 2, if the information on hand is insufficient to comply with the request, the requested Party must use the information gathering methods it considers necessary to gather the requested information, irrespective of whether it has a domestic tax interest. Specifying that there is no need for a domestic tax interest ensures that there will be an effective exchange of information even in cases where the requested Party does not impose an income tax or the request relates to an entity not subject to tax within the jurisdiction of the requested Party.

Paragraph 3 includes a provision intended to require the provision of information, if specifically requested by a Contracting Party, in the form of statements from witnesses and certified copies of original records.

Paragraph 4 stipulates that each Party will ensure that its domestic law provides that, within the scope of this Agreement, the following information can be obtained and provided through its competent authority:

- (a) Information held by banks and other financial institutions therefore ruling out bank secrecy. Under this sub-paragraph, person's acting in an agency or fiduciary capacity including nominees or trustees are also included;
- (b)
  - (i) Information regarding the legal and beneficial ownership of persons;
  - (ii) Information on settlors, trustees and beneficiaries.

Paragraph 5 provides that in the case of publicly traded companies or public collective investment schemes, the competent authorities need only provide ownership information that the requested Party can obtain without disproportionate difficulties. It is recognised that where a true public market for ownership interests exists there is less of a risk that such vehicles will be used for tax evasion or other non-compliance with the tax law.

Paragraph 6 stipulates that any request for information must be in writing and formulated in accordance with the requirements of sub-paragraphs (a) to (i). While paragraph 6 contains important procedural requirements that are intended to ensure that fishing expeditions do not occur, the Commentary to the OECD Model provides that the sub-paragraphs nevertheless need to be interpreted liberally in order not to frustrate the effective exchange of information.

Paragraph 7 provides that receipt of a request must be acknowledged by the competent authority of the requested Party and further stipulates that the requested Party must use its best endeavours to forward the requested information with the least possible delay.

## **ARTICLE 5**

### **TAX EXAMINATIONS ABROAD**

Paragraph 1 provides that the requesting Party may request the requested Party, to the extent permitted under its domestic laws and with the consent of the individuals concerned, to allow representatives of the competent authority of the requesting Party to enter the territory of the requested Party to interview individuals and examine records. The competent authority of the Requested Party must be advised of the time and place of any intended meeting arranged by the requesting Party.

Paragraph 2 provides for the competent authority of the requested Party to permit representatives of the competent authority of the requesting Party to attend a tax examination in the territory of the requested Party. It is understood that this request should only be made if the requesting Party is convinced that its presence will contribute greatly to the solution of a domestic tax case or may be regarded as part of an examination on a large scale, encompassing domestic enterprises and residents.

Paragraph 3 sets out the procedures to be followed if a request under paragraph 2 has been granted. All decisions on how the examination is to be carried out will be taken by the authority or the official of the requested Party in charge of the examination.

## **ARTICLE 6**

### **POSSIBILITY OF DECLINING A REQUEST**

This Article identifies the situations in which a requested Party is not required to supply information in response to a request. If the grounds for declining a request under Article 6 are met, the requested Party is given discretion to refuse to provide the information.

Paragraph 1 provides that the competent authority of the requested Party may decline to assist under the following conditions:

- (a) where the request is not made in conformity with this Agreement.

- (b) where the information has been requested and the requesting Party has not pursued all means available in its own territory unless the requesting Party is unable to obtain such information due to the exercise giving rise to disproportionate difficulty;
- (c) where the disclosure of information would be contrary to public policy.

Paragraph 2 ensures that although the requested Party is not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process. The proviso in this paragraph makes it clear that the Agreement overrides any domestic law or practices that may treat information as a trade, business, industrial, commercial or professional secret or trade process merely because it is held by a person described in paragraph 4 (a) of Article 4 or because it is ownership information.

Paragraph 3 clarifies that a request for information must not be refused on the basis that the tax claim, to which it relates, is disputed.

Paragraph 4 makes it clear that a requested Party is not required to obtain and provide information that the requesting Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its domestic law. This stipulation is intended to prevent the requesting Party from circumventing its domestic law limitations by requesting information from the other Party thereby making use of greater powers than it possesses under its own laws.

Paragraph 5 is intended to ensure that the Agreement does not result in discrimination between nationals of the requested Party and nationals in the same circumstances of the requesting Party. It provides for the requested Party to decline a request if it would result in the enforcement of a provision of the requesting Party's tax law which discriminates against its nationals.

Paragraph 6 provides that a request for information may be refused if a period of six years has expired unless accessible within the requested jurisdiction..

## **ARTICLE 7**

### **CONFIDENTIALITY**

Respect for the confidentiality of information is necessary to protect the legitimate interests of taxpayers. This Article ensures that adequate protection is given to information received from another Contracting Party.

Paragraph 1 provides that any information received pursuant to this Agreement by either Party must be treated as confidential. Mutual assistance between competent authorities is only feasible if each is assured that the other will treat with proper confidence the information, which is obtained in the course of their co-operation.

Paragraph 2 stipulates that the information may be disclosed only to persons or authorities involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to taxes covered by the Agreement.

Paragraph 3 stipulates that the information requested must not be used for any purpose other than for the purposes stated in Article 1 unless written consent is given by the requested Party that supplied the information.

Paragraph 4 precludes disclosure by the requesting Party to any other jurisdiction.

## **ARTICLE 8**

### **COSTS**

The Article stipulates that incidence of costs will be agreed upon by the competent authorities in accordance with a Memorandum of Understanding.

## **ARTICLE 9**

### **LEGISLATIVE REQUIREMENTS**

Any necessary requirements will be instituted by the Parties.

## **ARTICLE 10**

### **MUTUAL AGREEMENT PROCEDURE**

Paragraph 1 institutes a mutual agreement procedure for resolving any difficulties arising out of the implementation or interpretation of the Agreement.

Paragraph 2 allows the competent authorities to decide on the procedures to be used under Articles 4, 5 and 8 by mutual agreement.

Paragraph 3 provides for the competent authorities to communicate with each other directly.

Paragraph 4 provides that the Parties may agree to other forms of dispute resolution should the mutual agreement procedure fail to resolve a matter.

## **ARTICLE 11**

### **ENTRY INTO FORCE**

This Article stipulates that the Agreement will enter into force in both South Africa and The Turks and Caicos Islands 30 days after receipt of written notification by the latter Party that their domestic requirements for the entry into force have been completed. Once the Agreement has entered into force, the taxes matters referred to will become effective in accordance with the provisions of this paragraph, differentiation being made between exchange of information in criminal tax matters and exchange of information in all other tax matters.

## **ARTICLE 12**

### **TERMINATION**

Paragraph 1 stipulates that this Agreement will remain in force until terminated by either Party.

Paragraph 2 provides for the notice of termination to be given in writing and sets out the conditions thereto.

Paragraph 3 ensures that the Parties shall remain bound by the obligation of confidentiality under Article 7 with respect to any information obtained under this Agreement.



**AGREEMENT**  
**BETWEEN**  
**THE GOVERNMENT OF THE**  
**TURKS AND CAICOS ISLANDS**  
**AND**  
**THE GOVERNMENT OF THE**  
**REPUBLIC OF SOUTH AFRICA**  
**FOR THE EXCHANGE OF INFORMATION**  
**RELATING TO TAX MATTERS**

## **PREAMBLE**

**WHEREAS** it is acknowledged that the Government of the Turks and Caicos Islands under the terms of its Entrustment from the United Kingdom has the right to negotiate and conclude a tax information exchange agreement with the Government of the Republic of South Africa;

**WHEREAS** the Government of the Turks and Caicos Islands and the Government of the Republic of South Africa ("the Parties") wish to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes;

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

### **TAXES COVERED**

1. This Agreement shall apply to the following taxes imposed by the Parties:
  - (a) in the case of the Turks and Caicos Islands:
    - (i) the stamp duty;
    - (ii) the hotel and restaurant tax;
    - (iii) the passenger tax; and
    - (iv) the value added tax.

- (b) in the case of South Africa:
  - (i) the normal tax;
  - (ii) the dividends tax;
  - (iii) the withholding tax on interest;
  - (iv) the withholding tax on royalties;
  - (v) the tax on foreign entertainers and sportspersons; and
  - (vi) the value added tax.
- 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 in laws which may affect the obligations of that Party pursuant to this Agreement.

### ARTICLE 3

#### GENERAL DEFINITIONS

- 1. In this Agreement:
  - (a) the term "Turks and Caicos Islands" means the territory of the Turks and Caicos Islands and includes the territorial sea, areas within the maritime boundaries of the Turks and Caicos Islands and any area within which in accordance with international law the rights of the Turks and Caicos Islands with respect to its seabed and sub-soil of their natural resources may be exercised;
  - (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 the case of Turks and Caicos Islands, the Permanent Secretary in the Ministry of Finance or the Permanent Secretary's authorised representative; and
    - (ii) in the case 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 and administrative or judicial procedures enabling a requested Party to obtain and provide the information requested;
  - (i) the term “person” includes an individual, a company 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 scheme or fund, in which the purchase, sale or redemption of 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 4

### EXCHANGE OF INFORMATION UPON REQUEST

1. The competent authority of the requested Party shall provide upon request by the requesting Party information for the purposes referred to in Article 1. Such information shall be exchanged 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 it 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 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 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 by 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) reasonable grounds for believing that the information requested is present in the requested Party or is in the possession of or obtainable by 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 able to obtain 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 receipt of the request to the competent authority of the requesting Party and shall use its best endeavours to forward the requested information to the requesting Party with the least possible delay.

## **ARTICLE 5**

### **TAX EXAMINATIONS ABROAD**

1. With reasonable notice, the requesting Party may request in writing that the requested Party allow representatives of the competent authority of the requesting Party to enter the territory of the requested Party, to the extent permitted under its domestic laws, 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 attend a tax examination in the territory of the requested Party to the extent allowable under its domestic laws.

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 regarding the conduct of the examination shall be made by the requested Party conducting the examination.

## ARTICLE 6

### POSSIBILITY OF DECLINING A REQUEST

1. The competent authority of the requested Party may decline to assist:
  - (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 items subject to legal privilege, or any trade, business, industrial, commercial or professional secret or trade process, provided that information described in Article 4, paragraph 4, shall not by reason of that fact alone be treated as such a secret or trade process.
3. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.
4. 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.
5. 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.
6. The requested Party may decline a request for information relating to a period more than six years prior to the tax period under consideration, unless such information is held in the territory of the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party.

## **ARTICLE 7**

### **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 jurisdiction.

## **ARTICLE 8**

### **COSTS**

Incidence of costs incurred in providing assistance (including reasonable costs of third parties and external advisors in connection with litigation or otherwise) shall be agreed by the competent authorities of the Parties in accordance with a Memorandum of Understanding.

## **ARTICLE 9**

### **LEGISLATIVE REQUIREMENTS**

The Parties shall enact any legislation necessary to comply with, and give effect to, the terms of the Agreement.

## **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 4, 5 and 8.



3. The competent authorities of the Parties may communicate with each other directly for purposes of reaching agreement under this Article.
4. The Parties shall agree on other forms of dispute resolution should this become necessary.

## **ARTICLE 11**

### **ENTRY INTO FORCE**

This Agreement shall enter into force 30 days after receipt of written notification by the latter Party of completion of all legal formalities required for entry into force. 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**

### **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. 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. If the Agreement is terminated the Parties shall remain bound by the provisions of Article 7 with respect to any information obtained under this Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have signed and sealed this Agreement in two originals in the English language, both texts being equally authentic.

DONE in duplicate this ..... day of..... 20.....

**FOR THE GOVERNMENT OF THE  
TURKS AND CAICOS ISLANDS**

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

**EXPLANATORY MEMORANDUM**  
**ON THE AGREEMENT FOR EXCHANGE OF INFORMATION**  
**BETWEEN**  
**THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA**  
**AND**  
**THE GOVERNMENT OF THE PRINCIPALITY OF LIECHTENSTEIN**

The purpose of an Agreement on the Exchange of Information between States is to promote international cooperation in tax matters in instances where jurisdictions have not entered into a Double Taxation Agreement. The Model was developed by the OECD Global Forum Working Group on Effective Exchange of Information, in which South Africa participates, to address harmful tax practices. Provision is made for such exchange of information between the States as may be required both for carrying out the provisions of the Agreement and for applying the domestic taxation laws concerning any tax imposed on behalf of the Contracting States. This Agreement is paramount in the campaign against tax fraud and evasion.

In order to achieve full implementation of the international transparency and information exchange standards, a Tax Information Exchange Agreement has been entered into with the Principality of Liechtenstein ("the Agreement").

The Agreement concluded between the Republic of South Africa and the Principality of Liechtenstein ("the Parties") closely follows the OECD Model Agreement on Tax Information Exchange. In the explanation which follows, the general principles of each Article of the Agreement are set out.

The entire text has been made gender neutral.

**PREAMBLE**

The Preamble records that, recognising that the Parties have long had well-developed economic ties and wish to develop their relationship further by cooperating and enforcing their respective tax laws, the object of the Agreement is to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes.

## **ARTICLE 1**

### **SCOPE OF THE AGREEMENT**

Article 1 specifies that the Parties will provide assistance, through their competent authorities, for exchange of information with regard to the taxes covered by this Agreement. The information should be relevant to the administration and enforcement of the domestic laws of the Parties, in the determination, assessment, enforcement or collection of tax, the investigation of tax matters or the prosecution of criminal tax matters.

Furthermore, emphasis is given to confidentiality and the fact that the rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable. The requested Party must also ensure to the best of its ability that the effective exchange of information is not unduly prevented or delayed.

## **ARTICLE 2**

### **JURISDICTION**

A requested Party is not obliged to provide information which is not in the possession of its authorities or obtainable by persons who are within its jurisdiction.

## **ARTICLE 3**

### **TAXES COVERED**

Article 3 identifies the taxes with respect to which the Parties agree to exchange information in accordance with the Agreement.

Paragraph 1 lists the existing taxes imposed by each State while paragraph 2 provides that the Agreement will also apply to identical or substantially similar taxes that are subsequently imposed by either State, if the Parties so agree. Furthermore, competent authorities are also obliged to notify each other should there be changes to a Party's domestic law which may have an effect on the obligations imposed on the Parties in terms of this Agreement.

## **ARTICLE 4**

### **DEFINITIONS**

This Article defines various expressions which are used in the body of the Agreement. Several of these definitions are self-evident and are not further explained.

The definition of "South Africa" includes not only the sovereign territory but also those areas outside its territorial sea over which it may exercise jurisdiction in accordance with international law, for example, in relation to the exploitation of natural resources.

The term "information gathering measures" means the methods set out in the domestic laws and administrative or judicial procedures of each Party. Information gathering methods typically include requiring the presentation of records for examination, gaining direct access to records, making copies of such records and interviewing persons having knowledge, possession, control or custody of pertinent information.

The definition of the term "person" is intended to be very broad. The definition explicitly mentions an individual, a company and any other body of persons. The main example of a "body of persons" is the partnership. However, it also covers other organisational structures such as trusts, foundations, as well as collective investment funds or schemes.

Paragraph 2 provides that terms not defined in the Agreement have the meaning that they have under the domestic taxation laws of that Party at the time of application of the provisions of the Agreement. Any meaning under the taxation laws will take precedence over a meaning under other laws of that Party.

## **ARTICLE 5**

### **EXCHANGE OF INFORMATION UPON REQUEST**

Paragraph 1 provides the general rule that the competent authority of the requested Party must exchange information on request provided it falls within the scope of this Agreement. The requested Party is obliged to exchange information even if it is not needed by that Party for domestic tax purposes or the conduct being investigated would also constitute a crime under the domestic laws of the requested Party. Information must only be requested when the requesting Party is unable to obtain such information by other means unless such other means would give rise to disproportionate difficulty.

In terms of paragraph 2, if the information on hand is insufficient to comply with the request, the requested Party must use the information gathering methods it considers necessary to gather the requested information, irrespective of whether it has a domestic tax interest. Specifying that there is no need for a domestic tax interest ensures that there will be an effective exchange of information even in cases where the requested Party does not impose an income tax or the request relates to an entity not subject to tax within the jurisdiction of the requested Party.

Paragraph 3 includes a provision intended to require the provision of information, if specifically requested by a Contracting Party, in the form of statements from witnesses and certified copies of original records.

Paragraph 4 stipulates that each Party will ensure that its domestic law provides that, within the scope of this Agreement, the following information can be obtained and provided through its competent authority:

- (a) Information held by banks and other financial institutions therefore ruling out bank secrecy. Under this sub-paragraph, person's acting in an agency or fiduciary capacity including nominees or trustees are also included;
- (b)
  - (i) Information regarding the legal and beneficial ownership of persons;
  - (ii) Information on settlors, trustees and beneficiaries.

provided that in the case of publicly traded companies or public collective investment schemes, the competent authorities need only provide ownership information that the requested Party can obtain without disproportionate difficulties. It is recognised that where a true public market for ownership interests exists there is less of a risk that such vehicles will be used for tax evasion or other non-compliance with the tax law.

Paragraph 5 stipulates that any request for information must be in writing and formulated in accordance with the requirements of sub-paragraphs (a) to (i). While paragraph 5 contains important procedural requirements that are intended to ensure that fishing expeditions do not occur, the Commentary to the OECD Model provides that the sub-paragraphs nevertheless need to be interpreted liberally in order not to frustrate the effective exchange of information.

Paragraph 6 provides that the requested Party must forward the requested information as soon as possible.

- (a) receipt of a request must be acknowledged by the competent authority in writing and any deficiencies in the request must be notified within 60 days;
- (b) it is further stipulated that the requested Party must inform the requesting Party of any inability to provide the information, within 90 days. Refusal to provide the information or obstacles in doing so must be notified of immediately with full reasons therefor.

## **ARTICLE 6**

### **TAX EXAMINATIONS ABROAD**

Paragraph 1 provides that the requesting Party may request the requested Party, to the extent permitted under its domestic laws and with the consent of the individuals concerned, to allow representatives of the competent authority of the requesting Party to enter the territory of the requested Party to interview individuals and examine records. The competent authority of the Requested Party must be advised of the time and place of any intended meeting arranged by the requesting Party.

Paragraph 2 provides for the competent authority of the requested Party to permit representatives of the competent authority of the requesting Party to attend a tax examination in the territory of the requested Party. It is understood that this request should only be made if the requesting Party is convinced that its presence will contribute greatly to the solution of a domestic tax case or may be regarded as part of an examination on a large scale, encompassing domestic enterprises and residents.

Paragraph 3 sets out the procedures to be followed if a request under paragraph 2 has been granted. All decisions on how the examination is to be carried out will be taken by the authority or the official of the requested Party in charge of the examination.

## **ARTICLE 7**

### **POSSIBILITY OF DECLINING A REQUEST**

This Article identifies the situations in which a requested Party is not required to supply information in response to a request. If the grounds for declining a request under Article 5 are met, the requested Party is given discretion to refuse to provide the information.

Paragraph 1 provides that the competent authority of the requested Party may decline to assist under the following conditions:

- (a) where the request is not made in conformity with this Agreement.

- (b) where the information has been requested and the requesting Party has not pursued all means available in its own territory unless the requesting Party is unable to obtain such information due to the exercise giving rise to disproportionate difficulty;
- (c) where the disclosure of information would be contrary to public policy.

Paragraph 2 stipulates which obligations should not be imposed upon a requested Party

- (a) ensures that the requested Party is not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process. The proviso in this paragraph makes it clear that the Agreement overrides any domestic law or practices that may treat information as a trade, business, industrial, commercial or professional secret or trade process merely because it is held by a person described in paragraph 4 of Article 5 or because it is ownership information;
- (b) stipulates that information on manufacturing costs or other cost information need only be supplied once there is a tax convention in place addressing transfer pricing;
- (c) provides that no administrative measures at variance with its laws and administrative practices, should be carried out unless there are obligations under Article 5, paragraph 4 of this Agreement

Paragraph 3 clarifies that a request for information must not be refused on the basis that the tax claim, to which it relates, is disputed.

Paragraph 4 makes it clear that a requested Party is not required to obtain and provide information that the requesting Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its domestic law. This stipulation is intended to prevent the requesting Party from circumventing its domestic law limitations by requesting information from the other Party thereby making use of greater powers than it possesses under its own laws.

Paragraph 5 is intended to ensure that the Agreement does not result in discrimination between nationals of the requested Party and nationals in the same circumstances of the requesting Party. It provides for the requested Party to decline a request if it would result in the enforcement of a provision of the requesting Party's tax law which discriminates against its nationals.

## **ARTICLE 8**

### **CONFIDENTIALITY**

Respect for the confidentiality of information is necessary to protect the legitimate interests of taxpayers. This Article ensures that adequate protection is given to information received from another Contracting Party.

Paragraph 1 provides that any information received pursuant to this Agreement by either Party must be treated as confidential. Mutual assistance between competent authorities is only feasible if each is assured that the other will treat with proper confidence the information, which is obtained in the course of their co-operation.

Paragraph 2 stipulates that the information may be disclosed only to persons or authorities involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to taxes covered by the Agreement.

Paragraph 3 stipulates that the information requested must not be used for any purpose other than for the purposes stated in Article 1 unless written consent is given by the requested Party that supplied the information.

Paragraph 4 precludes disclosure by the requesting Party to any other jurisdiction without the express written consent of the competent authority of the requested Party.

Paragraph 5 allows for the transmission of personal data to the extent necessary for carrying out the provisions of this Agreement and is subjected to the provisions of the law of the requested Party.

## **ARTICLE 9**

### **COSTS**

The Article provides that the applicant Party will reimburse all direct costs. Furthermore, the competent authorities must consult from time to time and in particular the competent authority of the requesting Party must be warned in advance by the competent authority of the requested Party if the costs of providing information with respect to a specific request are expected to be significant.

## **ARTICLE 10**

### **MUTUAL AGREEMENT PROCEDURE**

Paragraph 1 institutes a mutual agreement procedure for resolving any difficulties arising out of the implementation or interpretation of the Agreement.

Paragraph 2 allows the competent authorities to decide on the procedures to be used under Articles 4, 5 and 8 by mutual agreement.

Paragraph 3 provides for the competent authorities to communicate with each other directly.

Paragraph 4 provides that the Parties may agree to other forms of dispute resolution should the mutual agreement procedure fail to resolve a matter.

## **ARTICLE 11**

This Article ensures that the Protocol forms an integral part of the Agreement.



## **ARTICLE 12**

### **ENTRY INTO FORCE**

This Article stipulates that the Agreement will enter into force in both South Africa and Liechtenstein one month after receipt of written notification by the latter Party that their domestic requirements for the entry into force have been completed. Once the Agreement has entered into force, the taxes matters referred to will become effective but only in respect of taxable periods beginning on or after January 1, 2014.

## **ARTICLE 13**

### **TERMINATION**

Paragraph 1 stipulates that this Agreement will remain in force until terminated by either Party.

Paragraph 2 provides for the notice of termination and sets out the conditions thereto.

Paragraph 3 ensures that the Parties shall remain bound by the obligation of confidentiality under Article 8 with respect to any information obtained under this Agreement.

## **PROTOCOL**

The Protocol, which forms an integral part of the Agreement, contains the following provisos.

1. With respect to Article 5 paragraph 1: Taxpayers will to be informed about the intention to make a request for information unless the request is in relation to a criminal investigation or would jeopardise the purpose of the investigation.
2. With respect to Article 5 paragraph 5 subparagraph a: It is not necessary to provide the name of the taxpayer in order to define its identity, if the identity of the taxpayer can be deduced from equivalent elements.
3. With reference to Article 9: The interpretation and examples of direct costs are given
4. It is stipulated that any requests for information will be in writing between the authorised representatives of the the competent authorities. In the case of Liechtenstein the authorised representative of the Government is the Fiscal Authority. Furthermore, each Contracting Party must notify the other of any change of authorised competent authority.

**AGREEMENT**  
**BETWEEN**  
**THE GOVERNMENT OF**  
**THE REPUBLIC OF SOUTH AFRICA**  
**AND**  
**THE GOVERNMENT OF THE**  
**OF THE PRINCIPALITY OF LIECHTENSTEIN**  
**FOR THE EXCHANGE OF INFORMATION**  
**RELATING TO TAX MATTERS**

## **PREAMBLE**

The Government of the Principality of Liechtenstein and the Government of the Republic of South Africa, hereinafter referred to as "the Contracting Parties", –

**WHEREAS** the Contracting Parties recognise that the well-developed economic ties between the Contracting Parties call for further cooperation;

**WHEREAS** the Contracting Parties wish to develop their relationship further by cooperating to their mutual benefits in the field of taxation;

**WHEREAS** the Contracting Parties wish to strengthen the ability of both Contracting Parties to enforce their respective tax laws; and

**WHEREAS** the Contracting Parties wish to establish the terms and conditions governing the exchange of information on tax matters –

**HAVE AGREED AS FOLLOWS:**

## **ARTICLE 1**

### **OBJECT AND SCOPE OF THE AGREEMENT**

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement, including information that is foreseeably relevant to the determination, assessment and collection of such taxes with respect to persons subject to such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of 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 to the extent that they do not unduly prevent or delay effective exchange of information.

## **ARTICLE 2**

### **JURISDICTION**

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

## **ARTICLE 3**

### **TAXES COVERED**

1. The taxes which are the subject of this Agreement are:
  - (a) in the Principality of Liechtenstein:
    - (i) the personal income tax (Erwerbssteuer);
    - (ii) the corporate income tax (Ertragssteuer);
    - (iii) the corporation taxes (Gesellschaftssteuern);
    - (iv) the real estate capital gains tax (Grundstücksgewinnsteuer);
    - (v) the wealth tax (Vermögenssteuer)
    - (vi) the coupon tax (Couponsteuer); and
    - (vii) the value added tax (Mehrwertsteuer).
  - (b) in the Republic of South Africa:
    - (i) the normal tax;
    - (ii) the secondary tax on companies;
    - (iii) the withholding tax on royalties;
    - (iv) the dividend tax;
    - (v) the tax on foreign entertainers and sportspersons;
    - (vi) the value-added tax; and
    - (vii) the withholding tax on interest.
2. This Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes, if the competent authorities of the Contracting Parties so agree. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxes covered by this Agreement and the related information gathering measures.

## **ARTICLE 4**

### **DEFINITIONS**

1. For the purposes of this Agreement, unless otherwise defined,
  - (a) the term "Principality of Liechtenstein" means, when used in a geographical sense, the area of the sovereign territory of the Principality of Liechtenstein;
  - (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 “competent authority” means:
  - (i) in the case of the Principality of Liechtenstein, the Government of the Principality of Liechtenstein or its authorised representative; and
  - (ii) in the case of South Africa, the Commissioner of the South African Revenue Service or an authorised representative of the Commissioner;
- (d) the term “person” includes an individual, a company, a dormant inheritance and any other body of persons;
- (e) the term “company” means any body corporate as well as entities and special asset dedications that are treated as a body corporate for tax purposes;
- (f) the term “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange, in the case of Liechtenstein, that fulfils the material requirements of Article 4 of the directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004, 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;
- (g) the term “principal class of shares” means the class or classes of shares representing a majority of the statutory capital and value of the company;
- (h) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Parties;
- (i) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
- (j) the term “tax” means any tax to which this Agreement applies;
- (k) the term “applicant Party” means the Contracting Party requesting information;

- (l) the term “requested Party” means the Contracting Party requested to provide information;
  - (m) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
  - (n) the term “information” means any fact, statement or record in any form whatever;
  - (o) the term “tax matters” means all tax matters, including criminal tax matters;
  - (p) the term “national” means:
    - (i) with regard to Liechtenstein, any individual possessing “Landesbürgerrechte” according to the “Bürgerrechtsgesetz” (LGBL 1960, No. 23) and any person other than an individual deriving its status as such from the laws in force in Liechtenstein;
    - (ii) with regard to South Africa, any individual possessing the nationality or citizenship of South Africa and any legal person or association deriving its status as such from the laws in force in South Africa.
2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined in this Agreement, unless the context otherwise requires or the competent authorities agree to a common meaning pursuant to the provisions of Article 10 of this Agreement, shall have the meaning that it has at that time under the laws of that Contracting Party, any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the term under other laws of that Contracting Party.

## **ARTICLE 5**

### **EXCHANGE OF INFORMATION UPON REQUEST**

1. The competent authority of the requested Party shall provide upon request of the applicant Party information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the requested Party needs such information for its own tax purposes or whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the territory of the requested Party. The competent authority of the applicant 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, that Party shall use all relevant information gathering measures to provide the applicant Party with the information requested, notwithstanding that the requested Party may not, at that time, need such information for its own tax purposes.
3. If specifically requested by the competent authority of an applicant 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 Contracting Party shall ensure that its competent authorities, in accordance with the terms of this Agreement, have the authority to obtain and provide upon request:
  - (a) information held by banks, other financial institutions, and any person, acting in an agency or fiduciary capacity including nominees and trustees;
  - (b) information regarding the ownership of companies, partnerships and other persons, including:
    - (i) in the case of collective investment funds or schemes information on the units, shares or other interests in the fund or scheme;
    - (ii) in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries;

provided that this Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

5. Any request for information shall be formulated with the greatest detail possible and shall in all cases specify in writing:
  - (a) the identity of the person under examination or investigation;
  - (b) the taxable period for which the information is sought;
  - (c) a statement of the information sought including its nature and the form in which the applicant Party wishes to receive the information from the requested Party;
  - (d) the matter under the applicant Party's tax law with respect to which the information is sought;

- (e) the reasons for believing that the information requested is foreseeably relevant to the administration and enforcement of the domestic tax laws of the applicant Party, with regard to the person specified in subparagraph a) of this paragraph;
  - (f) grounds for believing that the information requested is held in the requested Party or is in the possession 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 requested information;
  - (h) a statement that the request is in conformity with the law and administrative practices of the applicant Party, that if the requested information was within the jurisdiction of the applicant Party then the competent authority of the applicant Party would be able to obtain the information under the laws or in the normal course of administrative practice of the applicant Party and that it is in conformity with this Agreement; and
  - (i) a statement that the applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.
6. The competent authority of the requested Party shall forward the requested information as promptly as possible to the applicant Party. To ensure a prompt response, the competent authority of the requested Party shall:
- (a) Confirm receipt of a request in writing to the competent authority of the applicant Party and shall notify the competent authority of the applicant Party of deficiencies in the request, if any, within 60 days of the receipt of the request;
  - (b) If the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the applicant Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

## **ARTICLE 6**

### **TAX EXAMINATIONS ABROAD**

1. By reasonable notice given in advance, the applicant Party may request that the requested Party allows representatives of the competent authority of the applicant Party to enter the territory of the requested Party, to the extent permitted under its laws, to interview individuals and examine records with the prior written consent of the individuals or other persons concerned. The competent authority of the requested Party shall notify the competent authority of the applicant Party of the time and place of the meeting with the individuals concerned.



2. At the request of the competent authority of the applicant Party, the competent authority of the requested Party may allow representatives of the competent authority of the applicant 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 acceded to, the competent authority of the requested Party conducting the examination shall, as soon as possible, notify the competent authority of the applicant Party about the time and place of the examination, the authority or official designated 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 tax examination shall be made by the requested Party conducting the examination.

## **ARTICLE 7**

### **POSSIBILITY OF DECLINING A REQUEST**

1. The competent authority of the requested Party may decline a request of the applicant Party, where:
  - (a) the request is not made in conformity with this Agreement and, in particular, where the requirements of Article 5 are not met; or
  - (b) the applicant 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) the disclosure of the information requested would be contrary to the public policy (ordre public) of the requested Party.
2. This Agreement shall not impose upon a requested Party any obligation:
  - (a) to provide information subject to legal privilege, or any trade, business, industrial, commercial or professional secret or trade process, provided that information described in Article 5, paragraph 4, shall not by reason of that fact alone be treated as such a secret or trade process; or
  - (b) to supply information on manufacturing costs or other cost information unless and until such date when there is a comprehensive tax convention on income and capital in force between the Contracting Parties providing for a mechanism for the resolution of transfer pricing disputes; or
  - (c) to carry out administrative measures at variance with its laws and administrative practices, provided that nothing in this subparagraph shall affect the obligations of a Contracting Party under Article 5, paragraph 4 of this Agreement.
3. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

4. The requested Party shall not be required to obtain and provide information which, the applicant Party would be unable to obtain under its own laws or in the normal course of administrative practice in response to a valid request made in similar circumstances from the requested Party under this Agreement.
5. The requested Party may decline a request for information if the information is requested by the applicant Party to administer or enforce a provision of the tax law of the applicant Party, or any requirement connected therewith, which discriminates against a national of the requested Party as compared with a national of the applicant Party in the same circumstances.

## **ARTICLE 8**

### **CONFIDENTIALITY**

1. All information provided and received by the competent authorities of the Contracting Parties shall be kept confidential.
2. This information may be disclosed only to persons or authorities (including courts and administrative bodies) of the Contracting Parties concerned with the purposes specified in Article 1 including the determination of any appeal, and used by such persons or authorities only for such purposes. For these purposes, information may be used 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 received under this Agreement must not be disclosed to any other State or sovereign territory not party to this Agreement without the express written consent of the competent authority of the requested Party.
5. Personal data may be transmitted to the extent necessary for carrying out the provisions of this Agreement and subject to the provisions of the law of the requested Party.

## **ARTICLE 9**

### **COSTS**

The applicant Party shall reimburse the requested Party for all direct costs incurred in providing information pursuant to this Agreement. 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 applicant 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 Contracting Parties regarding the implementation or interpretation of this Agreement, the competent authorities shall endeavour to resolve the matter by mutual agreement.
2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under this Agreement.
3. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreement under this Article.
4. The Contracting Parties may also agree on other forms of dispute resolution.

## **ARTICLE 11**

### **PROTOCOL**

The attached Protocol shall be an integral part of this Agreement.

## **ARTICLE 12**

### **ENTRY INTO FORCE**

1. This Agreement shall enter into force one month from the date on which the Contracting Parties have notified each other in writing that their respective legal requirements for the entry into force of this Agreement have been fulfilled. The relevant date shall be the day on which the last notification is received.
2. Upon the date of entry into force, this Agreement shall have effect for all requests made but only in respect of taxable periods beginning on or after January 1, 2014.

## **ARTICLE 13**

### **TERMINATION**

1. This Agreement shall remain in force until terminated. Either Contracting Party may terminate this Agreement by serving a notice of termination in writing to the other Contracting Party through the diplomatic channel.
2. 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 Contracting Party.

3. After termination of this Agreement, both Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information provided and received under this Agreement.

**IN WITNESS WHEREOF** the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement in the German and English language, both texts being equally authentic. In case of diversion of interpretation the English text shall prevail.

**DONE** at ..... on .....day of ..... in the year 20....

For the Government of the Principality of Liechtenstein

For the Government of the Republic of South Africa

## PROTOCOL

To the Agreement between the Government of the Principality of Liechtenstein and the Government of the Republic of South Africa on the exchange of information on tax matters

On the occasion of the signing of the Agreement between the Government of the Principality of Liechtenstein and the Government of the Republic of South Africa (the "Contracting Parties") on the exchange of information on tax matters, the Contracting Parties have agreed upon the following provisions, which are an integral part of the Agreement:

1. With respect to Article 5 paragraph 1, it is understood that the taxpayer is to be informed about the intention to make a request for information unless the request is in relation to a criminal investigation or would jeopardise the purpose of the investigation.
2. With respect to Article 5 paragraph 5 subparagraph a, it is understood that it is not necessary to provide the name of the taxpayer in order to define its identity, if the identity of the taxpayer can be deduced from equivalent elements.
3. In Article 9 the term "direct costs" shall be interpreted as follows:
  - (a) Examples of the "direct costs" include, but are not limited to, the following:
    - (i) reasonable costs of reproducing and transporting documents or records to the competent authority of the applicant Party;
    - (ii) reasonable fees imposed by a financial institution or other record keeper for copying records and research related to a specific request for information;
    - (iii) reasonable costs for stenographic reports and interviews, depositions or testimony;
    - (iv) reasonable fees and expenses, determined in accordance with amounts allowed under applicable law, on the person who voluntarily appears in the territory of one of the Contracting Parties for interview, deposition or testimony relating to a particular information request;
    - (v) reasonable legal fees for non-government counsel appointed or retained, with the approval of the competent authority of the applicant Party, for litigation;
  - (b) "Direct costs" do not include ordinary administrative and overhead expenses incurred by the requested Party in reviewing and responding to information requests submitted by the applicant Party.

- (b) If the direct costs pertaining to a specific request are expected to exceed 500 Swiss Francs, the competent authority of the requested Party shall contact the competent authority of the applicant Party to determine whether the applicant Party wants to pursue the request and bear the costs.
4. Any communications regarding requests for information will be in writing between the authorised representatives of the the competent authorities. In the case of Liechtenstein the authorised representative of the Government is the Fiscal Authority. Each Contracting Party will notify the other of any change of authorised competent authority.

**IN WITNESS WHEREOF** the undersigned, being duly authorised thereto by their respective Governments, have signed this Protocol in the German and English language, both texts being equally authentic. In case of diversion of interpretation the English text shall prevail.

**DONE** at ..... on .....day of ..... in the year 20....

For the Government of the Principality of Liechtenstein

For the Government of the Republic of South Africa

## JOINT DECLARATION

The Principality of Liechtenstein and the Republic of South Africa fully subscribe to the concept of non-discriminatory tax treatment of each other's nationals and agree that, given this Agreement, discriminatory tax treatment based on a lack of tax transparency or effective exchange of information for tax purposes is not justified. The Principality of Liechtenstein and the Republic of South Africa wish to develop their relationship further and will, following the entry into force of this Agreement, continue to examine what measures could be adopted to further enhance their political and economic relationship, including measures to avoid double taxation, discrimination and other undesired tax barriers.

Done at ..... on ..... day of ..... in the year 20....

For the Government of the Principality of Liechtenstein

For the Government of the Republic of South Africa

**EXPLANATORY MEMORANDUM**  
**ON THE AGREEMENT FOR EXCHANGE OF INFORMATION**  
**BETWEEN**  
**THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA**  
**AND**  
**THE GOVERNMENT OF THE BRITISH VIRGIN ISLANDS**

The purpose of an Agreement on the Exchange of Information between States is to promote international cooperation in tax matters in instances where jurisdictions have not entered into a Double Taxation Agreement. The Model was developed by the OECD Global Forum Working Group on Effective Exchange of Information, in which South Africa participates, to address harmful tax practices. Provision is made for such exchange of information between the States as may be required both for carrying out the provisions of the Agreement and for applying the domestic taxation laws concerning any tax imposed on behalf of the Contracting States. This Agreement is paramount in the campaign against tax fraud and evasion.

In order to achieve full implementation of the international transparency and information exchange standards, a Tax Information Exchange Agreement has been entered into with the British Virgin Islands ("the Agreement").

The Agreement concluded between the Republic of South Africa and the Government of the British Virgin Islands ("the Contracting Parties") closely follows the OECD Model Agreement on Tax Information Exchange. In the explanation which follows, the general principles of each Article of the Agreement are set out.

The entire text has been made gender neutral.

**PREAMBLE**

The Preamble records that the object of the Agreement is to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes.