

## **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 confidentiality must be maintained.

## **ARTICLE 2**

### **JURISDICTION**

This Article provides that in order to enable the implementation of this Agreement, the competent authority of the Requested Party must provide information in accordance with this Agreement:

- (a) without regard to whether the person to whom the information relates is a resident or national of a Party, or whether the person by whom the information is held is a resident or national of a Party; and
- (b) provided that the information is present within the territory, or in the possession or control of a person subject to the jurisdiction, of the Requested Party

## **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 "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 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. 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 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 (h). 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 the competent authority of the Requested Party must forward the requested information as promptly as possible and receipt of the request must be acknowledged by the competent authority of the Requested Party and further stipulates that the Requested Party must notify the competent authority of the Requesting Party of any deficiencies within a stipulated period. It further provides that if the competent authority of the Requested Party is unable to obtain and provide requested information within 90 days of the request, the competent authority of the Requested Party must immediately inform the competent authority of the Requesting Party in writing, providing reasons for delays or refusal.

## **ARTICLE 6**

### **TAX EXAMINATIONS OR INVESTIGATIONS 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 7 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 of Article 5 or because it is ownership information.

Paragraph 3(a) ensures client /attorney confidentiality when communications involve seeking or providing legal advice; or for use in existing or contemplated legal proceedings. Paragraph 3(b) ensures that information held with the intention of furthering criminal purpose is not protected by legal privilege and that particulars of a client who is implicated in such conduct must be disclosed if requested.

Paragraph 4 clarifies that a request for information must not be refused on the basis that the tax liability, to which it relates, is disputed.

Paragraph 5 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 6 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. It also 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 2 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 3 precludes disclosure by the Requesting Party to any other jurisdiction.

## **ARTICLE 9**

### **SAFEGUARDS**

This Article provides that nothing in this Agreement will affect the rights and safeguards secured to persons by the laws or administrative practice of the Requested Party. However, the Requested Party is prohibited from applying the rights and safeguards in manner that will unduly prevent or delay effective exchange of information.

## **ARTICLE 10**

### **ADMINISTRATIVE COSTS**

Paragraph 1 provides that ordinary costs incurred in the course of providing assistance will be borne by the Requested Party and such costs cover internal administrative costs and minor external costs.

Paragraph 2 provides that all other costs are not ordinary costs and will be borne by the Requesting Party and extraordinary costs include, but are not limited to costs listed under subparagraphs (a) to (f).

Paragraph 3 stipulates that the competent authorities of the Parties will consult each other in any particular case where extraordinary costs are likely to exceed a specific amount of money to determine whether the Requesting Party will continue to pursue the request and bear the cost.

## **ARTICLE 11**

### **IMPLEMENTING LEGISLATION**

This Article provides that Parties will enact any legislation necessary to comply with, and give effect to, the terms of this Agreement.

## **ARTICLE 12**

### **LANGUAGE**

This Article provides that requests for assistance must be in English.

## **ARTICLE 13**

### **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 5 and 6 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 14**

### **ENTRY INTO FORCE**

This Article stipulates that the Agreement will enter into force in both South Africa and the British Virgin Islands 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 relating to taxable periods beginning on or after that date or, where there is no taxable period, all charges arising on or after the date of entry into force of this Agreement; and
- (b) with respect to all other matters covered in Article 1, with regard to taxable periods beginning on or after 1 January 2014, or where there is no taxable period, all charges to tax arising on or after 1 January 2014.

## **ARTICLE 15**

### **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 8 with respect to any information obtained under this Agreement. It further stipulates that all requests received up to the effective date of termination will be dealt with in accordance with the terms of this Agreement.

### **PROTOCOL**

The Protocol stipulates that the Parties agree that the provisions embodied in the Protocol will form an integral part of the Agreement.

**FINAL TEXT - 2 NOVEMBER 2012**

**AGREEMENT**  
**BETWEEN**  
**THE GOVERNMENT OF**  
**THE REPUBLIC OF SOUTH AFRICA**  
**AND**  
**THE GOVERNMENT OF**  
**THE BRITISH VIRGIN ISLANDS**  
**FOR THE EXCHANGE OF INFORMATION**  
**RELATING TO TAXES**



**WHEREAS** the Government of the Republic of South Africa and the Government of the British Virgin Islands ("the Contracting Parties") recognise that present legislation already provides for cooperation and the exchange of information in criminal tax matters;

**WHEREAS** the Contracting Parties have long been active in international efforts in the fight against financial and other crimes, including the targeting of terrorist financing;

**WHEREAS** it is acknowledged that the Contracting Parties are competent to negotiate and conclude a tax information exchange agreement;

**WHEREAS** the British Virgin Islands on the 2nd April 2002 entered into a formal written commitment to the Organisation for Economic Cooperation and Development's (OECD) principles of transparency and exchange of information and subsequently have participated actively in the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes;

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

**WHEREAS** the Contracting Parties recognise that they will never engage in "fishing expeditions";

**NOW, THEREFORE**, the Contracting Parties have agreed to conclude the following Agreement which contains obligations on the part of the Contracting Parties only:

## **ARTICLE 1**

### **SCOPE OF 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 the taxes and the tax matters covered by this Agreement, including information that is foreseeably relevant to the determination, assessment, verification, enforcement, recovery or collection of tax claims with respect to persons subject to such taxes, 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.

## ARTICLE 2

### JURISDICTION

To enable the appropriate implementation of this Agreement, information shall be provided in accordance with this Agreement by the competent authority of the requested party:

- (a) without regard to whether the person to whom the information relates is a resident or national of a Contracting Party, or whether the person by whom the information is held is a resident or national of a Contracting Party; and
- (b) provided that the information is present within the territory, or in the possession or control of a person subject to the jurisdiction, of the Requested Party.

## ARTICLE 3

### TAXES COVERED

1. The taxes covered by this Agreement are:

- (a) in the case of the British Virgin Islands,
  - (i) the income tax;
  - (ii) the payroll tax; and
  - (iii) the property tax;
- (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 also apply to any identical or substantially similar taxes imposed by either territory after the date of signature of this Agreement in addition to, or in place of, any of the taxes listed in sub-paragraph 1. The competent authorities of the Contracting Parties shall notify each other of any relevant changes to the taxation and related information gathering measures covered by this Agreement.

## ARTICLE 4

### DEFINITIONS

1. In this Agreement:

- (a) the term "British Virgin Islands" means the territory of the Virgin Islands as referred to in the Virgin Islands Constitution Order 2007;
- (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 "collective investment scheme" means any pooled investment vehicle irrespective of legal form;
- (d) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (e) the term "competent authority" means in the case of the British Virgin Islands, the Financial Secretary or a person or authority designated by the Financial Secretary in writing and in the case of South Africa, the Commissioner for the South African Revenue Service or an authorised representative of the Commissioner;
- (f) the term "Contracting Party" means the British Virgin Islands or South Africa as the context requires;
- (g) the term "criminal laws" means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes;
- (h) the term "criminal tax matters" means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the requesting Contracting Party;
- (i) the term "information" means any fact, statement, document or record in whatever form;
- (j) the term "information gathering measures" means laws and administrative, judicial or regulatory procedures enabling a Contracting Party to obtain and provide the information requested;

- (k) the term “national” means:
- (i) in relation to the British Virgin Islands, any person who belongs to the British Virgin Islands by virtue of the Virgin Islands Constitution Order 2007 (Statutory Instrument 2007 No.1678) or has a certificate of residence of the British Virgin Islands by virtue of the Immigration and Passport Ordinance (Cap.130); and any legal person, partnership, association or other entity deriving its status as such from the laws in force in the British Virgin Islands;
  - (ii) in relation to South Africa, any individual possessing the nationality or citizenship of South Africa; and any legal person, partnership or association deriving its status as such from the laws in force in South Africa;
- (l) the term “person” includes an individual (“natural person”), a company or any entity that is treated as a body corporate for tax purposes, or any other body or group of persons;
- (m) 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;
- (n) the term “public collective investment scheme” means any collective investment 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;
- (o) 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;
- (p) the term “Requested Party” means the party to this Agreement which is requested to provide or has provided information in response to a request;
- (q) the term “Requesting Party” means the party to this Agreement submitting a request for or having received information from the Requested Party;
- (r) the term “tax” means any tax covered by this Agreement.
2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law 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 in writing 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 whether 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. If the information received by the competent authority of the Requested Party is not sufficient to enable it to comply with the request for information, it shall advise the competent authority of the Requesting Party of that fact and request such additional information as may be required to enable the effective processing of the request.
2. If the information in possession of the competent authority of the Requested Party is not sufficient to enable it to comply with the request for the information, the Requested Party shall use all relevant information gathering measures 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 Contracting Party shall ensure that its competent authority, for the purposes of this Agreement, has the authority to obtain and provide 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, beneficiaries and protectors.
5. This Agreement does not create an obligation for a Contracting 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. The competent authority of the Requesting Party shall provide the following information to the competent authority of the Requested Party when making a request for information under this Agreement in order to demonstrate the foreseeable relevance of the information to the request:
- (a) the identity of the person under examination or investigation;
  - (b) the period for which the information is requested;
  - (c) the nature and type of the information requested, including a description of the specific evidence sought and the form in which the Requesting Party would prefer to receive the information;
  - (d) the tax purposes for which the information is sought;
  - (e) reasonable grounds for believing that the information requested is present in the territory of the Requested Party or is in the possession or control of a person subject to the jurisdiction of the Requested Party;
  - (f) to the extent known, the name and address of any person believed to be in possession or control of the information requested;
  - (g) a statement that the request is in conformity with this Agreement and the laws and administrative practices of the Requesting Party, and 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;
  - (h) a statement that the Requesting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.
7. The competent authority of the Requested Party shall forward the requested information as promptly as possible to the competent authority of the Requesting Party. To ensure a prompt response, the competent authority of the Requested Party shall:
- (a) confirm the receipt of a request in writing to the competent authority of the Requesting Party and shall notify the competent authority of the Requesting Party of any deficiencies in the request within 60 days of receipt of the request; and

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

## ARTICLE 6

### TAX EXAMINATIONS OR INVESTIGATIONS ABROAD

1. The Requested Party may, to the extent permitted under its domestic laws, following reasonable notice from the Requesting Party, allow representatives of the competent authority of the Requesting Party to enter the territory of the Requested Party in connection with a request to interview persons and examine records with the prior written consent of the 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 persons concerned.
2. At the request of the competent authority of the Requesting Party, the competent authority of the Requested Party may, in accordance with its domestic laws, permit representatives of the competent authority of the Requesting Party to be present at the appropriate part of a tax examination in the territory of the Requested Party.
3. If the request referred to in paragraph 2 is granted, the competent authority of the Requested Party conducting the examination shall, as soon as possible, notify the competent authority of the Requesting Party of the time and place of the examination, the authority or person authorised to carry out the examination and the procedures and conditions required by the Requested Party for the conduct of the examination. All decisions regarding the conduct of the examination shall be made by the Requested Party conducting the examination in accordance with its domestic laws.

## ARTICLE 7

### POSSIBILITY OF DECLINING A REQUEST

1. The competent authority of the Requested Party may decline 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 the public policy (*ordre public*) of the Requested Party.
2. This Agreement shall not impose upon a Contracting Party any obligation to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Information described in Article 5(4) shall not by reason of that fact alone constitute such a secret or process.
3.
  - (a) The provisions of this Agreement shall not impose on a Contracting Party the obligation to obtain or provide information which would reveal confidential communications between a client and an attorney, solicitor or barrister where such communications are:
    - (i) produced for the purposes of seeking or providing legal advice, or
    - (ii) produced for the purposes of use in existing or contemplated legal proceedings.
  - (b) Information held with the intention of furthering a criminal purpose is not subject to legal privilege, and nothing in this Article shall prevent an attorney, solicitor or barrister from providing the name and address of a client where doing so would not constitute a breach of legal privilege.
4. A request for information shall not be refused on the ground that the tax liability giving rise to the request is disputed by the taxpayer.
5. The Requested Party shall not be required to obtain and provide information which, if the requested information was within the jurisdiction of the Requesting Party, the competent authority of the Requesting Party would not be able to obtain under its laws or in the normal course of administrative practice.



6. The Requested Party may decline a request for information if the information is requested by the Requesting Party to administer or enforce a provision of the tax law of the Requesting Party, or any requirement connected therewith, which discriminates against a national of the Requested Party as compared with a national of the Requesting 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 and shall be disclosed only to persons or authorities (including courts and administrative bodies) officially 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, or the oversight of the above. For these purposes, information may be disclosed in public court proceedings or in judicial proceedings.
2. The 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.
3. Information provided to a Requesting Party shall not be disclosed to any other jurisdiction.

## **ARTICLE 9**

### **SAFEGUARDS**

Nothing in this Agreement shall affect the rights and safeguards secured to persons by the laws or administrative practice of the Requested Party. The rights and safeguards may not be applied by the Requested Party in a manner that unduly prevents or delays effective exchange of information.

## **ARTICLE 10**

### **ADMINISTRATIVE COSTS**

1. Incidence of ordinary costs incurred in the course of responding to a request for information will be borne by the Requested Party. Such ordinary costs would normally cover internal administration costs and any minor external costs.
2. All other costs that are not ordinary costs are considered extraordinary costs and will be borne by the Requesting Party. Extraordinary costs include, but are not limited to, the following:
  - (a) reasonable fees charged by third parties for carrying out research;
  - (b) reasonable fees charged by third parties for copying documents;
  - (c) reasonable costs of engaging experts, interpreters, or translators;
  - (d) reasonable costs of conveying documents to the Requesting Party;
  - (e) reasonable litigation costs of the Requested Party in relation to a specific request for information; and
  - (f) reasonable costs for obtaining depositions or testimony.
3. The competent authorities of the Contracting Parties will consult each other in any particular case where extraordinary costs are likely to exceed 500 US Dollars to determine whether the Requesting Party will continue to pursue the request and bear the cost.

## **ARTICLE 11**

### **IMPLEMENTING LEGISLATION**

The Contracting Parties shall (where they have not already done so) enact any legislation necessary to comply with, and give effect to, the terms of this Agreement.

## **ARTICLE 12**

### **LANGUAGE**

Requests for assistance and responses thereto shall be drawn up in English.

## **ARTICLE 13**

### **MUTUAL AGREEMENT PROCEDURE**

1. Where difficulties or doubts arise between the Contracting 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 endeavours referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually determine the procedures to be used under Articles 5 and 6.
3. The competent authorities of the Contracting Parties may communicate with each other directly for the purposes of this Agreement.
4. The Contracting Parties may also agree on other forms of dispute resolution.

## **ARTICLE 14**

### **ENTRY INTO FORCE**

Each of the Contracting Parties shall notify to the other the completion of the procedures required by its laws for the bringing into force of this Agreement. This Agreement shall enter into force on the date of the last notification, and shall thereupon have effect:

- (a) from the date of entry into force of this Agreement, with respect to criminal tax matters relating to taxable periods beginning on or after that date or, where there is no taxable period, all charges arising on or after the date of entry into force of this Agreement; and
- (b) with respect to all other matters covered in Article 1, with regard to taxable periods beginning on or after 1 January 2014, or where there is no taxable period, all charges to tax arising on or after 1 January 2014.

## **ARTICLE 15**

### **TERMINATION**

1. This Agreement shall remain in force until terminated by either Contracting Party.
2. Either Contracting 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 Contracting Party.



3. If the Agreement is terminated the Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement. All requests received up to the effective date of termination shall be dealt with in accordance with the terms of this Agreement.

**IN WITNESS WHEREOF**, the undersigned, being duly authorised in that behalf by the respective Contracting Parties, have signed this Agreement.

Done at ..... in duplicate this ..... day of .....20.....,  
in the English language.

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

**FOR THE GOVERNMENT OF THE  
BRITISH VIRGIN ISLANDS**

## **PROTOCOL**

At the moment of signing the Agreement between the Government of the Republic of South Africa and the Government of the British Virgin Islands for the Exchange of Information Relating to Taxes, the undersigned have agreed that the following provisions shall form an integral part of the Agreement:

1. The intention of each Contracting Party is not to propose the application of prejudicial or restrictive measures based on harmful tax practices to residents or nationals of the other Contracting Party so long as the Agreement is in force and the Contracting Parties are meeting their obligations under the Agreement. In the event that either Contracting Party applies prejudicial or restrictive measures based on harmful tax practices to residents or citizens of the other Contracting Party, that other Contracting Party may suspend the operation of the Agreement for so long as such measures apply. If the Agreement is suspended the Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement. All requests received up to the effective date of suspension shall be dealt with in accordance with the terms of this Agreement.
2. The Commentary to the Organisation for Economic Cooperation and Development (OECD) Model Agreement on Exchange of Information on Tax Matters informs the interpretation of the standard of "foreseeable relevance". The standard is intended to provide for exchange of information in tax matters to the widest possible extent within the terms of the Agreement and, at the same time, to clarify that Parties are not at liberty to engage in "fishing expeditions" or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer.

**IN WITNESS WHEREOF**, the undersigned, being duly authorised in that behalf by the respective Contracting Parties, have signed this Agreement.

Done at ..... in duplicate this ..... day of .....20.....,  
in the English language.

**FOR THE GOVERNMENT OF THE  
BRITISH VIRGIN 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 ISLE OF MAN**

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 Isle of Man ("the Agreement").

The Agreement concluded between the Republic of South Africa and Isle of Man ("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. Mention is made of the authority given under its Entrustment from the U.K.

## **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 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**

Article 2 stipulates that 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

## **ARTICLE 3**

### **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 4**

### **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 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.

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;

(iii) Information on foundations.

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 formulated in accordance with the requirements of sub-paragraphs (a) to (i) to demonstrate the foreseeable relevance of the request. 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 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.

## **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**

Paragraph 1 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. Furthermore, the competent authority may decline to assist where the request is not made in conformity with this Agreement.

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

Paragraph 2 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(a) of Article 5 or because it is ownership information.

Paragraph 3 stipulates that a request may be declined where the disclosure of information would be contrary to public policy.

Paragraph 4 clarifies that a request for information must not be refused on the basis that the tax claim, to which it relates, is disputed.

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.

## **ARTICLE 9**

### **COSTS**

This Article provides that the incidence of costs incurred will be agreed upon by the competent authorities.

## **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 5, 6 and 9 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 Isle of Man 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 tax 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. It further provides for the notice of termination to be given in writing and sets out the conditions thereto

Paragraph 2 provides the time period in which the Agreement will cease to have effect.

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.

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

---

## **PREAMBLE**

**WHEREAS** the Government of the Republic of South Africa and the Government of the Isle of Man ("the Parties") wish to enhance and facilitate the terms and conditions governing the exchange of information with respect to taxes

**WHEREAS** it is acknowledged that the Isle of Man under the terms of its Entrustment from the United Kingdom has the right to negotiate, conclude, perform and subject to the terms of this Agreement terminate a tax information exchange agreement with the Republic of South Africa;

**NOW, THEREFORE**, the Parties desiring to conclude the following Agreement, which contains obligations on the part of the Parties only:

**HAVE AGREED AS FOLLOWS:**

## **ARTICLE 1**

### **OBJECT AND SCOPE OF THIS AGREEMENT**

The competent authorities of the Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment, enforcement, recovery or collection of such taxes, with respect to persons liable to such taxes, or to the investigation or prosecution of tax matters in relation to such persons. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable. The requested Party shall use its best endeavours to ensure that the effective exchange of information is not unduly prevented or delayed.

## **ARTICLE 2**

### **JURISDICTION**

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 case of the Isle of Man, the income 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 withholding tax on interest;
  - (v) the tax on foreign entertainers and sportspersons; and
  - (vi) the value-added tax.
- 2. This Agreement shall also apply to any identical or substantially similar taxes imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. Furthermore, the taxes covered may be expanded or modified by mutual agreement of the Parties in the form of an exchange of letters. The competent authorities of the Parties shall notify each other of any substantial changes in their taxation laws and related information gathering measures covered by this Agreement.

## ARTICLE 4

### GENERAL DEFINITIONS

- 1. In this Agreement:
  - (a) the term "Isle of Man" means the island of the Isle of Man, including its territorial sea, in accordance with international law;
  - (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 "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;
  - (d) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
  - (e) the term "competent authority" means:
    - (i) in the case of the Isle of Man., the Assessor of Income Tax or his or her delegate, and
    - (ii) in the case of South Africa, the Commissioner of the South African Revenue Service or an authorised representative of the Commissioner;

- (f) the term “criminal laws” means all criminal laws designated as such under domestic law, irrespective of whether contained in the tax laws, the criminal code or other statutes;
  - (g) the term “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the requesting Party;
  - (h) the term “information” means any fact, statement, document or record in whatever form;
  - (i) the term “information gathering measures” means laws and administrative or judicial procedures enabling a Party to obtain and provide the information requested;
  - (j) the term “person” includes an individual, a company or any other body of persons;
  - (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 “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;
  - (m) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Parties;
  - (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 to which this Agreement applies.
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, with any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.



## ARTICLE 5

### EXCHANGE OF INFORMATION UPON REQUEST

1. The competent authority of the requested Party shall provide upon request 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 such conduct occurred in the territorial jurisdiction of the requested Party.
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, and within the constraints of Article 2 any other persons in an ownership chain, including in the case of collective investment schemes, information on shares, units and other interests;
    - (ii) in the case of trusts, information on settlors, trustees, protectors and beneficiaries; and
    - (iii) in the case of foundations, information on founders, members of the foundation council 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 funds or schemes, unless such information can be obtained without giving rise to disproportionate difficulties.
6. The competent authority of the requesting Party shall provide the following information to the competent authority of the requested Party when making a request for information under this Agreement to demonstrate the foreseeable relevance of the information to the request:

- (a) the identity of the person under examination or investigation;
  - (b) the period for which the information is requested;
  - (c) a statement of the information sought including its nature and the form in which the requesting Party would prefer to receive the information from the requested Party;
  - (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 held in the territory of 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 forward the requested information as soon as reasonably possible to the requesting 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 requesting Party and shall notify the competent authority of the requesting Party of deficiencies in the request, if any, within 60 days of the receipt of the request; and
  - (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 requesting Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

## ARTICLE 6

### 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 7

### POSSIBILITY OF DECLINING A REQUEST

1. The Requested Party shall not be required to obtain or 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 own tax laws. The competent authority of the Requested Party may decline to assist where the request is not made in conformity with this Agreement.
2. The provisions of this Agreement shall not impose on a Party the obligation to provide information subject to legal privilege or to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in Article 5, paragraph 4 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.
3. The Requested Party may decline a request for information if the disclosure of the information would be contrary to public policy (*ordre public*).
4. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

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 8**

### **CONFIDENTIALITY**

1. All information provided and received by the competent authorities of the Parties shall be kept confidential.
2. Such information shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the purposes specified in Article 1, and used by such persons or authorities only for such purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial decisions.
3. Such information may not be used for any purpose other than for the purposes stated in Article 1 without the express written consent of the competent authority of the requested Party.
4. Information provided to a requesting Party under this Agreement may not be disclosed to any other jurisdiction.

## **ARTICLE 9**

### **COSTS**

The incidence of costs incurred in providing assistance shall be agreed upon by the competent authorities of the Parties.

## **ARTICLE 10**

### **MUTUAL AGREEMENT PROCEDURE**

1. Where difficulties or doubts arise between the 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 Parties may mutually agree on the procedures to be used under Articles 5, 6 and 9.
3. The competent authorities of the Parties may communicate with each other directly for purposes of reaching agreement under this Article.

4. The Parties may also agree on other forms of dispute resolution.

## **ARTICLE 11**

### **ENTRY INTO FORCE**

1. This Agreement shall enter into force on the thirtieth day after the later of the dates on which each of the Parties has notified the other in writing that the procedures required by its law have been complied with.
2. Upon entry into force, the provisions of this Agreement 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 the date of signature of this Agreement or, where there is no taxable period, all charges to tax arising on or after the date of signature.

## **ARTICLE 12**

### **TERMINATION**

1. This Agreement shall remain in force until terminated by a Party. Either Party may terminate the Agreement by giving written notice of termination at least six months before the end of any calendar year beginning on or after the expiration of a period of two years from the date of its entry into force.
2. In such event, the Agreement shall cease to have effect the first day of January in the calendar year next following that in which the notice is given.
3. Notwithstanding any termination of this Agreement the Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement.

**IN WITNESS WHEREOF** the undersigned, being duly authorised by their respective Governments, have signed this Agreement 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 THE  
ISLE OF MAN**

**EXPLANATORY MEMORANDUM**  
**ON THE AGREEMENT FOR EXCHANGE OF INFORMATION**  
**BETWEEN**  
**THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA**  
**AND**  
**THE GOVERNMENT OF THE COOK 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 Cook Islands ("the Agreement").

The Agreement concluded between the Republic of South Africa and the Cook 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.

## **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 the Cook 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 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 THE  
COOK ISLANDS**

**FOR THE EXCHANGE OF INFORMATION**

**RELATING TO TAX MATTERS**

## **PREAMBLE**

**WHEREAS** the Government of the Cook Islands and the Government of the Republic of South Africa ("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 the Cook Islands:
    - (i) the personal income tax;
    - (ii) the company income tax;
    - (iii) the withholding tax on dividends, interest and royalties; and
    - (iv) the value added tax.
  - (b) in the case of South Africa:
    - (i) the normal tax;
    - (ii) the withholding tax on royalties;
    - (iii) the dividend tax;
    - (iv) the withholding tax on interest;
    - (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 "Cook Islands" means the territory of the Cook Islands; 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 the Cook Islands, the Collector of Inland Revenue; 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, 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.....

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FOR THE GOVERNMENT OF THE  
REPUBLIC OF SOUTH AFRICA

\_\_\_\_\_  
FOR THE GOVERNMENT OF THE  
COOK ISLANDS