

PROTOCOL

AMENDING THE AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF

SOUTH AFRICA

AND

THE GOVERNMENT OF THE REPUBLIC OF MALTA

FOR THE AVOIDANCE OF DOUBLE TAXATION

AND

THE PREVENTION OF FISCAL EVASION

WITH RESPECT TO TAXES ON INCOME,

SIGNED AT ROME ON 16 MAY 1997

PREAMBLE

The Government of the Republic of South Africa and the Government of the Republic of Malta;

DESIRING to amend the Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, signed at Rome, Italy on 16 May 1997 (in this Protocol referred to as “the Agreement”);

HAVE AGREED AS FOLLOWS:

ARTICLE I

Paragraph 1 of Article 4 of the Agreement shall be deleted and replaced by the following paragraph:

- “1. For the purposes of this Agreement, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of that person’s domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.”

ARTICLE II

Paragraph 2 of Article 10 of the Agreement shall be deleted and replaced by the following paragraph:

- “2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but:
- (a) where the dividends are paid by a company which is resident of South Africa to a resident of Malta who is the beneficial owner thereof, the tax so charged shall not exceed:
 - (i) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds at least 10 per cent of the capital of the company paying the dividends; or
 - (ii) 10 per cent of the gross amount of the dividends in all other cases.

- (b) where the dividends are paid by a company which is a resident of Malta to a resident of South Africa who is the beneficial owner thereof, Malta tax on the gross amount of the dividends shall not exceed that chargeable on the profits out of which the dividends are paid.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.”

ARTICLE III

Article 11 of the Agreement is amended by:

- (a) deleting paragraph 3 and substituting the following paragraph:
 - “3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State if:
 - (a) the payer of the interest is the Government of that Contracting State or a political subdivision or a local authority thereof; or
 - (b) the interest is paid to the Government of the other Contracting State or a political subdivision or a local authority thereof; or
 - (c) the interest is paid by the Central Bank of that Contracting State or to the Central Bank of the other Contracting State; or
 - (d) the interest is paid to any institution or body which is wholly owned, directly or indirectly, by the other Contracting State or a political subdivision or a local authority thereof; or
 - (e) the interest arises in respect of any debt instrument listed on a recognised stock exchange.”
- (b) inserting after paragraph 3 the following paragraph:
 - “4. For the purposes of paragraph 3(e), the term “recognised stock exchange” means:
 - (a) in Malta, the Malta Stock Exchange;
 - (b) in South Africa, the Johannesburg Stock Exchange;
 - (c) any other stock exchange agreed upon by the competent authorities of the Contracting States.”

- (c) renumbering the existing paragraphs 4, 5, 6 and 7 as paragraphs 5, 6, 7 and 8 respectively.

ARTICLE IV

Article 25 of the Agreement shall be deleted and replaced by the following:

“ARTICLE 25

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, in so far as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.
2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.
3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:
 - (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
 - (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
 - (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.
5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.”

ARTICLE V

1. Each of the Contracting States shall notify to the other in writing, through the diplomatic channel, of the completion of the procedures required by its law for the bringing into force of this Protocol, which shall form an integral part of the Agreement. The Protocol shall enter into force on the date of receipt of the later of these notifications.
2. (a) Subject to subparagraph (b), the provisions of the Protocol shall apply from the date of entry into force thereof;

(b) Article II of the Protocol shall apply from the date of the introduction in South Africa of the system of taxation at shareholder level of dividends declared. South Africa shall notify Malta in writing, through the diplomatic channel, of the completion of the procedures required by its law for the bringing into force of the South African system of taxation at shareholder level of dividends declared, as well as the date of entry into force of this system.

ARTICLE VI

This Protocol shall remain in force for as long as the Agreement remains in force.

IN WITNESS WHEREOF the undersigned, duly authorised thereto by their respective Governments, have signed and sealed this Protocol in two originals in the English language.

DONE at, this day of 20.....

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

**FOR THE GOVERNMENT OF THE
REPUBLIC OF MALTA**