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File: 29/2/DMA
Ref: RO 375/2011

Attention: Makwatse Mokgethi
Directorate: Mexico, Central America, the Andean Community and the Caribbean
Route: EBB103

**AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND
THE GOVERNMENT OF THE COMMONWEALTH OF DOMINICA FOR THE EXCHANGE OF
INFORMATION WITH RESPECT TO TAXES AND TAX MATTERS**

1. Your request for legal advice received on 7 November 2011, under reference BL1/COD/1/2011, refers.
2. We have taken note of the comments made by the State Law Advisers at the Department of Justice and Constitutional Development in their legal opinion dated 24 August 2011 with regard to the aforementioned Agreement. Having scrutinised the Agreement, we comment as follows:
Ad Article 11: The first and the second paragraphs should be numbered as sub-Articles 1 and 2 respectively.
3. Subject to our comments, this Agreement is acceptable from an international law point of view and as such, not in conflict with South Africa's international obligations.
4. Please be advised of the provisions of Section 231(1) of the Constitution of the Republic of South Africa, 1996, which state that "the negotiating and signing of all international agreements is the responsibility of the national executive." This therefore means that the President of the Republic of South Africa as Head of the National Executive must, with the concurrence of the relevant Minister, approve the signing of the finally agreed upon text of the Agreement on behalf of the Government of the Republic of South Africa.
5. The President's approval needs to be obtained before the Agreement can be signed. In order to obtain Presidential approval the Agreement need to be certified by this Office. The documentation required for certification consists of:
 - two copies of the President's Minute;

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- two copies of the Explanatory Memorandum setting out the purpose of the Agreement and proposed date of signature;
- two copies of the finally agreed upon text of the Agreement;
- two copies of the legal opinions from the State Law Advisers at the Department of Justice and Constitutional Development and this Office;
- completed certification checklist (attached herewith); and
- all documentation in folder Z137.

6. This Agreement falls under the purview of section 231(2) of the Constitution which requires Parliamentary approval to be binding on the Republic. The approval in terms of Section 231(2) of the Constitution is a prerequisite for ratification.

7. In order to facilitate the process of Parliamentary approval the line function department has to submit the signed Agreement to Cabinet for consent by way of a Cabinet memorandum. This legal opinion and the legal opinion from the Department of Justice must accompany the Cabinet Memorandum. This Agreement can only be submitted to Parliament for approval once Cabinet has consented to such submission.

8. We trust that our comments will be of assistance to you.

ADV TE JOYINI
PRINCIPAL STATE LAW ADVISER (IL)

8 NOVEMBER 2011
PRETORIA

