

Double Taxation Relief (the Government of the Republic of South Africa) (Amendment) Order 2011

In exercise of the powers conferred by subsection 132(1) of the Income Tax Act 1967 [Act 53] and subsection 65A(1) of the Petroleum (Income Tax) Act 1967 [Act 543], the Minister makes the following order:

Citation

- 1 This order may be cited as **the Double Taxation Relief (The Government of the Republic of South Africa) (Amendment) Order 2011**.

Amendment to the Double Taxation Relief (The Government of the Republic of South Africa) Order 2005

- 2 The Double Taxation Relief (The Government of the Republic of South Africa) Order 2005 [P.U. (A) 385/2005] is amended as specified in the Schedule in accordance with the Protocol Amending The Agreement Between The Government Of Malaysia And The Government Of The Republic Of South Africa For The Avoidance Of Double Taxation And The Prevention Of Fiscal Evasion With Respect To Taxes On Income.

Double taxation relief

- 3 It is declared that the arrangements specified in the Schedule have been made by the Government of Malaysia with the Government of the Republic of South Africa with a view of amending the previous arrangements affording relief from double taxation in relation to Malaysian tax and South African tax (as defined in each case in the arrangements) and that it is expedient that those arrangements shall have effect.

SCHEDULE
(Paragraph 2)

**PROTOCOL AMENDING THE AGREEMENT BETWEEN THE GOVERNMENT OF MALAYSIA AND
THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA FOR THE AVOIDANCE OF DOUBLE
TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME
SIGNED AT PRETORIA ON 26 JULY 2005**

PREAMBLE

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

DESIRING to amend the Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, with Protocol, signed at Pretoria, on 26 July 2005 (hereinafter referred to as "the Agreement");

HAVE AGREED AS FOLLOWS:

ARTICLE I

Article 26 of the Agreement shall be deleted and replaced by the following:

Article 26
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 II

Each Contracting State shall notify the other in writing, through the diplomatic channel, of the completion of the procedures required by its laws for the bringing into force of this Protocol. The Protocol shall enter into force on the date of the later of these notifications.

ARTICLE III

This Protocol, which shall form an integral part of the Agreement, shall remain in force as long as the Agreement remains in force and shall apply as long as the Agreement itself is applicable.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed and sealed this Protocol in duplicate in the English and Malay languages, both texts being equally authentic. In the event of there being a dispute in the interpretation or the application of this Protocol, the English text shall prevail.

DONE at Pretoria on this 5th day of April 2011.