

# Cyprus – South Africa Double Tax Treaty Amendments

September 2016



## Introduction

On 1 April 2015 the Republic of Cyprus and the Republic of South Africa signed a Protocol amending the existing Double Taxation Agreement (“DTA”) between the two countries, which was signed in 1997 and entered into force in December 1998.

Both countries have completed the ratification process (Cyprus in May and South Africa in December 2015) with the Protocol being enforced with retrospective effect as from 18 September 2015.

The three main areas amended by the Protocol are:

- i) the definition of residence;
- ii) withholding taxes on dividends; and
- iii) exchange of information.

## Residence

The amending Protocol aligns the definition of a “resident of a Contracting State” with the 2010 OECD Model Convention.

## Withholding taxes on dividends (Appendix 1)

Pursuant to the 1997 DTA, dividends paid by a company in one Contracting State to a recipient in the other are exempted from withholding taxes in the first country as long as the recipient is the beneficial owner.

The Protocol introduces the following withholding taxes:

- 5% if the recipient of the dividend is the beneficial owner and owns 10% or more of the share capital of the company paying the dividend; and
- 10% in all other cases.

Following ratification of the Protocol, these withholding taxes took retrospective effect from 1 April 2012 (the date of the introduction of taxation of dividends at shareholder level in South Africa).

**Important Note:** *Cyprus does not impose any withholding taxes on the distribution of dividends to foreign tax residents. The change applies only to dividends paid by South African resident companies.*

***Please see the illustrative diagrams on Appendix 1***

## Exchange of Information

The amending Protocol aligns with the relevant article of the 2010 OECD Model Convention, committing parties to exchange information “will exchange as much information as is foreseeably relevant for carrying out the provisions of the Agreement” for carrying out the provisions of the DTA rather than “as much information is necessary”.

## Capital Gains Taxation

A significant aspect of the Protocol is the maintenance of the current DTA’s highly beneficial provision on capital gains taxation. The exclusive taxation rights in relation to the disposal of shares in property-rich companies (companies whose value, or greater part of, derives directly or indirectly from immovable property situated in South Africa) are granted to the contracting State in which the person making the disposal is tax resident. Cyprus imposes no taxation on the disposal of shares, with the exception of gains derived from the sale of shares in companies owning Cyprus located real estate.



Retaining this provision gives Cyprus a significant advantage as a Jurisdiction for holding the shares of property-rich companies, as most of South Africa's other DTAs provide that the gains from such transactions are taxed in South Africa.

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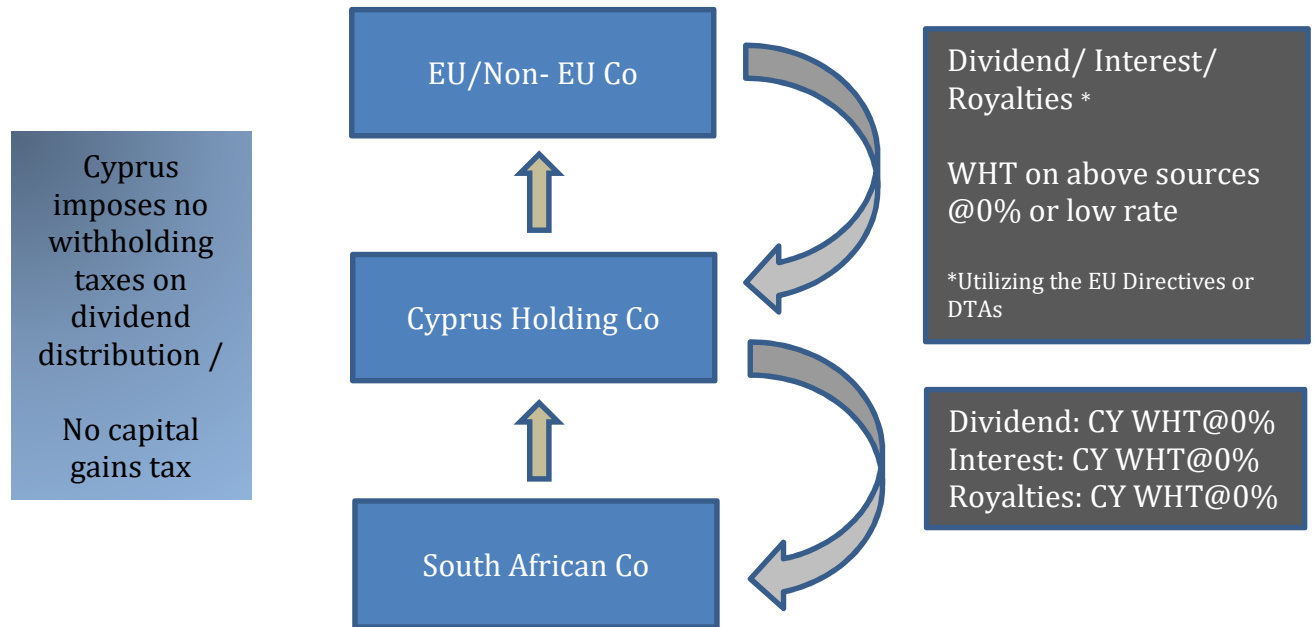
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**APPENDIX 1**

**Diagram 1** – Outward investment from South Africa via Cyprus



**Diagram 2** – Inward investment into South Africa via Cyprus

