

## PROTOCOL

### TO AMEND THE AGREEMENT BETWEEN THE GOVERNMENT OF THE RUSSIAN FEDERATION AND THE GOVERNMENT OF THE REPUBLIC OF CYPRUS FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL OF 5<sup>TH</sup> DECEMBER, 1998

The Government of the Russian Federation and the Government of the Republic of Cyprus, desiring to conclude a Protocol to amend the Agreement between the Government of the Russian Federation and the Government of the Republic of Cyprus for the avoidance of double taxation with respect to taxes on income and on capital signed at Nicosia on 5<sup>th</sup> December, 1998 (hereinafter referred to as "the Agreement"),

have agreed as follows:

#### ARTICLE I

A new paragraph 4 shall be added to Article 4 "Resident" of the Agreement that shall read as follows:

"4. Where the place of effective management of a person other than an individual can not be determined, the competent authorities of the Contracting States shall endeavour, having regard to all factors they consider relevant, to determine by mutual agreement the place of effective management in each individual case."

#### ARTICLE II

1. A new paragraph 4 shall be added to Article 5 "Permanent Establishment" of the Agreement that shall read as follows:

"4. Notwithstanding the provisions of paragraphs 1, 2 and 3, where an enterprise of a Contracting State performs services in the other Contracting State:

(a) through an individual who is present in that other State for a period or periods exceeding in the aggregate 183 days in any twelve month period, and more than 50 % of the gross revenues attributable to active business activities of the enterprise during this period or periods are derived from the services performed in that other State through that individual, or

(b) for a period or periods exceeding in the aggregate 183 days in any twelve month period, and these services are performed for the same project or for connected projects through one or more individuals who are present and performing such services in that other State,

the activities carried on in that other State in performing these services shall be deemed to be carried on through a permanent establishment of the enterprise situated in that other State, unless these services are limited to those mentioned in paragraph 5 which, if performed through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph. For the purposes of this paragraph services performed by an individual on behalf of one enterprise shall not be considered to be performed by another enterprise through that individual unless that other enterprise supervises, directs or controls the manner in which these services are performed by the individual.”

2. Existing paragraphs 4, 5, 6 and 7 of Article 5 “Permanent Establishment” of the Agreement shall be renumbered as paragraphs 5, 6, 7 and 8.

### ARTICLE III

A new paragraph 5 shall be added to Article 6 “Income from Immovable Property” of the Agreement that shall read as follows:

“5. The provisions of paragraphs 1 and 3 shall also apply to the income received through a real estate investment trust, a real estate investment fund or a similar collective investment vehicle organized primarily for the purposes of investing in immovable property.”

### ARTICLE IV

Paragraph 1 of Article 8 “Income from International Traffic” of the Agreement shall be modified as follows:

“1. Income from the operation in international traffic of ships or aircraft, or road vehicles by the owners or lessees, or charterers and the rental of containers and related equipment which is incidental to the operation of ships or aircraft, or road vehicles in international traffic shall be taxable only in the Contracting State in which the place of effective management of these persons deriving such income is situated.”

## ARTICLE V

1. Subparagraph (a) of paragraph 2 of Article 10 "Dividends" of the Agreement shall be modified as follows:

"(a) 5 % of the gross amount of the dividends if the beneficial owner has directly invested in the capital of the company paying the dividends the equivalent of at least 100 000 euro;"

2. Paragraph 3 of Article 10 "Dividends" of the Agreement shall be modified as follows:

"3. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income – even paid in the form of interest – which is subjected to the same taxation treatment as income from shares by the tax legislation of the State of which the paying company is a resident. This term also means any payments on shares of the mutual investment funds or similar collective investment vehicles (other than those mentioned in paragraph 5 of Article 6 "Income from Immovable Property" of the Agreement).

The term "shares" as used in this Article shall include depository receipts thereof."

## ARTICLE VI

Paragraph 2 of Article 11 "Interest" of the Agreement shall be modified as follows:

"2. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. However, the term "interest" shall not include for the purpose of this Article penalty charges for late payment or interest regarded as dividends under paragraph 3 of Article 10."

## ARTICLE VII

Article 13 "Gains from Alienation of Property" of the Agreement shall be modified with the deletion of existing paragraph 4 and the addition of new paragraphs 4, 5, 6 and 7 that shall read as follows:

“4. Gains derived by a resident of a Contracting State from the alienation of shares or similar rights deriving more than 50 % of their value from immovable property situated in the other Contracting State may be taxed in that other State.

5. For the purposes of paragraph 4, gains from the alienation of shares shall not include gains from the alienation of shares in the course of a corporate reorganisation, and gains from the alienation of shares listed on a registered stock exchange.

6. The provisions of paragraph 4 shall not apply to gains from the alienation of shares derived by a pension fund, a provident fund and the Government of a Contracting State.

7. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4 shall be taxable only in the Contracting State of which the alienator is a resident.”

#### ARTICLE VIII

1. Paragraph 1 of Article 25 “Mutual Agreement Procedure” of the Agreement shall be modified as follows:

“1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of either Contracting State. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.”

2. Paragraph 4 of Article 25 “Mutual Agreement Procedure” of the Agreement shall be modified as follows:

“4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.”

#### ARTICLE IX

Article 26 “Exchange of Information” of the Agreement shall be modified as follows:

"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, insofar 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 X

Article 27 "Assistance in Collection" of the Agreement shall be modified as follows:

### "Article 27 Assistance in Collection

1. The Contracting States shall undertake to lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States or of their political subdivisions, or local authorities, insofar as the taxation thereunder is not contrary to this Agreement or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be:

(a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or

(b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

8. In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:

(a) to carry out measures at variance with the laws and administrative practice of that or of the other Contracting State;

(b) to carry out measures which would be contrary to public policy (ordre public);

(c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;

(d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.”

## ARTICLE XI

1. A new Article 29 “Limitation of Benefits” shall be added to the Agreement that shall read as follows:

### “Article 29 Limitation of Benefits

1. It is understood that a resident of a Contracting State shall not be entitled to any reduction of, or exemption from taxes provided for in this Agreement on income derived from the other Contracting State if as a result of consultations between the competent authorities of both Contracting States it is established that the main purpose or one of the main purposes of the creation or existence of such resident was to obtain the benefits under this Agreement that would not otherwise be available.

2. The provisions of paragraph 1 shall only apply to companies that are not registered in a Contracting State but claim the benefits of the Agreement.”

2. Existing Articles 29 “Entry into Force” and 30 “Termination” of the Agreement shall be renumbered accordingly.

## ARTICLE XII

Each of the Contracting States shall notify to the other, through the diplomatic channels, the completion of the procedures required by its domestic law for the bringing into force of this Protocol. The Protocol, which shall form an integral part of the Agreement, shall enter into force on the date of the latter of these notifications and shall have effect in both States for taxable periods beginning on or after the first day of January in the calendar year next following that in which the Protocol enters into force, except for:

- (a) Article VII, which shall have effect on the first day of January of the calendar year following the expiration of a period of four years from the date on which the Protocol enters into force;



- (b) Article X, which shall take effect upon the introduction by Cyprus of the necessary legal basis.

Done in duplicate at Nicosia this 7<sup>th</sup> day of October, 2010, in the Russian, Greek and English languages, all texts being equally authentic. In the case of any divergence between the Russian and the Greek texts, the English text shall be the operative one.

For the Government  
of the Russian Federation



For the Government  
of the Republic of Cyprus

