

No. 51707. Cyprus and Russian Federation

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF CYPRUS AND THE GOVERNMENT OF THE RUSSIAN FEDERATION FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL. NICOSIA, 5 DECEMBER 1998

PROTOCOL TO AMEND THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF CYPRUS AND THE GOVERNMENT OF THE RUSSIAN FEDERATION FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL OF 5TH DECEMBER, 1998. NICOSIA, 7 OCTOBER 2010*

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N° 51707. Chypre et Fédération de Russie

ACCORD ENTRE LE GOUVERNEMENT DE LA RÉPUBLIQUE DE CHYPRE ET LE GOUVERNEMENT DE LA FÉDÉRATION DE RUSSIE TENDANT À ÉVITER LA DOUBLE IMPOSITION EN MATIÈRE D'IMPÔTS SUR LE REVENU ET SUR LA FORTUNE. NICOSIE, 5 DÉCEMBRE 1998

PROTOCOLE MODIFIANT L'ACCORD ENTRE LE GOUVERNEMENT DE LA RÉPUBLIQUE DE CHYPRE ET LE GOUVERNEMENT DE LA FÉDÉRATION DE RUSSIE TENDANT À ÉVITER LA DOUBLE IMPOSITION EN MATIÈRE D'IMPÔTS SUR LE REVENU ET SUR LA FORTUNE DU 5 DÉCEMBRE 1998. NICOSIE, 7 OCTOBRE 2010*

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[ENGLISH TEXT – TEXTE ANGLAIS]

PROTOCOL

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

The Government of the Republic of Cyprus and the Government of the Russian Federation, desiring to conclude a Protocol to amend the Agreement between the Government of the Republic of Cyprus and the Government of the Russian Federation for the avoidance of double taxation with respect to taxes on income and on capital signed at Nicosia on 5th 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."