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**GOVERNMENT NOTICE**

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**SOUTH AFRICAN REVENUE SERVICE****No. 34****23 January 2009****INCOME TAX ACT, 1962****CONVENTION BETWEEN THE REPUBLIC OF SOUTH AFRICA AND THE KINGDOM OF THE NETHERLANDS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL**

In terms of section 108(2) of the Income Tax Act, 1962 (Act No 58 of 1962), read in conjunction with section 231(4) of the Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996), it is hereby notified that the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital set out in the Schedule to this Notice has been entered into with the Government of the Kingdom of the Netherlands and has been approved by Parliament in terms of section 231(2) of the Constitution.

It is further notified in terms of paragraph 1 of Article 32 of the Convention, that the date of entry into force is 28 December 2008.

**CONVENTION BETWEEN THE REPUBLIC OF SOUTH AFRICA AND THE KINGDOM OF THE NETHERLANDS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL**

**Preamble**

The Government of the Republic of South Africa and the Government of the Kingdom of the Netherlands, desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital in order to promote and strengthen the economic relations between the two countries,

Have agreed as follows:

**CHAPTER I**

**SCOPE OF THE CONVENTION**

**Article 1**

***Persons Covered***

This Convention shall apply to persons who are residents of one or both of the Contracting States.

**Article 2**

***Taxes Covered***

1. This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which the Convention shall apply are in particular:

a) in the Netherlands:

- (i) de inkomstenbelasting (income tax),
- (ii) de loonbelasting (wages tax),

- (iii) de vennootschapsbelasting (company tax) including the Government share in the net profits of the exploitation of natural resources levied pursuant to the Mijnwet 1810 (the Mining Act of 1810) with respect to concessions issued from 1967, or pursuant to the Mijnwet Continentaal Plat 1965 (the Netherlands Continental Shelf Mining Act of 1965),
- (iv) de dividendbelasting (dividend tax), and
- (v) de vermogensbelasting (capital tax),

(hereinafter referred to as "Netherlands tax");

b) in South Africa:

- (i) the normal tax,
- (ii) the secondary tax on companies, and
- (iii) the withholding tax on royalties,

(hereinafter referred to as "South African tax").

4. The Convention shall apply also to any identical or substantially similar taxes that are imposed by either Contracting State after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their respective taxation laws.

## CHAPTER II

### DEFINITIONS

#### Article 3

##### *General Definitions*

1. For the purposes of this Convention, unless the context otherwise requires:

- a) the terms "a Contracting State" and "the other Contracting State" mean the Kingdom of the Netherlands (the Netherlands) or the Republic of South Africa (South Africa), as the context requires;
- b) the term "the Netherlands" means the part of the Kingdom of the Netherlands that is situated in Europe, including its territorial sea, and any area beyond the territorial sea within which the Netherlands, in accordance with international law, exercises jurisdiction or sovereign rights with respect to the seabed, its subsoil and its superjacent waters, and their natural resources;
- c) the term "South Africa" means the Republic of South Africa and, when used in a geographical sense, includes the territorial sea thereof as well as any area outside the territorial sea, including the continental shelf, which has been or may hereafter be designated, under the laws of South Africa and in accordance with international law, as an area within which South Africa may exercise sovereign rights or jurisdiction;

- d) the term "business" includes the performance of professional services and of other activities of an independent character;
- e) the term "person" includes an individual, a company and any other body of persons;
- f) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- g) the term "enterprise" applies to the carrying on of any business;
- h) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise that has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- j) the term "national" means:
  - (i) any individual possessing the nationality of a Contracting State;
  - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
- k) the term "competent authority" means:
  - (i) in the Netherlands, the Minister of Finance or an authorised representative;
  - (ii) in South Africa, the Commissioner for the South African Revenue Service or an authorised representative.

2. As regards the application of the provisions of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

#### **Article 4**

##### ***Resident***

1. For the purposes of this Convention, the term "resident of a Contracting State" means:
  - a) any person who, under the laws of that State, is liable to tax therein by reason of that person's domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein;

- b) a pension fund that is recognised and controlled according to the statutory provisions of a Contracting State and the income of which is generally exempt from tax in that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then that individual's status shall be determined as follows:

- a) the individual shall be deemed to be a resident solely of the State in which a permanent home is available to the individual; if a permanent home is available to the individual in both States, the individual shall be deemed to be a resident solely of the State with which the individual's personal and economic relations are closer (centre of vital interests);
- b) if sole residence cannot be determined under the provisions of subparagraph a), the individual shall be deemed to be a resident solely of the State in which the individual has an habitual abode;
- c) if the individual has an habitual abode in both States or in neither of them, the individual shall be deemed to be a resident solely of the State of which the individual is a national;
- d) if the individual is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident solely of the State in which its place of effective management is situated.

## **Article 5**

### ***Permanent Establishment***

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

- a) a place of management;
- b) a branch;
- c) an office;
- d) a factory;
- e) a workshop, and
- f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site, a construction, assembly or installation project or any supervisory activity in connection with such site or project, constitutes a permanent establishment only if such site, project or activity lasts more than twelve months.