

**No. 45151\***

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**South Africa  
and  
Namibia**

**Agreement between the Republic of South Africa and the Republic of Namibia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains. Windhoek, 18 May 1998**

**Entry into force:** *11 April 1999 by notification, in accordance with article 29*

**Authentic texts:** *English*

**Registration with the Secretariat of the United Nations:** *South Africa, 1 August 2008*

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**Afrique du Sud  
et  
Namibie**

**Accord entre la République sud-africaine et la République de Namibie tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu et sur les gains en capital. Windhoek, 18 mai 1998**

**Entrée en vigueur :** *11 avril 1999 par notification, conformément à l'article 29*

**Textes authentiques :** *anglais*

**Enregistrement auprès du Secrétariat des Nations Unies :** *Afrique du Sud, 1er août 2008*

\* *The text reproduced below is the original text of the agreement as submitted. For ease of reference, it was sequentially paginated. The relevant Treaty Series volume will be published in due course.*

*Le texte reproduit ci-dessous est le texte authentique de l'accord tel que soumis pour l'enregistrement. Pour référence, il a été présenté sous forme de la pagination consécutive. Le volume correspondant du Recueil des Traités sera disponible en temps utile.*

[ ENGLISH TEXT – TEXTE ANGLAIS ]

**AGREEMENT**

**BETWEEN**

**THE REPUBLIC OF SOUTH AFRICA**

**AND**

**THE REPUBLIC OF NAMIBIA**

**FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE**

**PREVENTION OF FISCAL EVASION WITH RESPECT TO**

**TAXES ON INCOME AND CAPITAL GAINS**

The Government of the Republic of South Africa and the Government of the Republic of Namibia desiring to promote and strengthen the economic relations between the two countries,

Have agreed as follows:

**Article 1**

*Personal Scope*

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

**Article 2**

*Taxes Covered*

1. This Agreement shall apply to taxes on income and on capital gains imposed on behalf of a Contracting State or its political subdivisions, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income and on capital gains all taxes imposed on total income, on total capital gains, or on elements of income or of capital gains, including taxes on gains from the alienation of movable or immovable property, as well as taxes on capital appreciation.
3. The existing taxes to which the Agreement shall apply are in particular:
  - (a) in the case of Namibia:
    - (i) the income tax;
    - (ii) the non-resident shareholders' tax;
    - (iii) the petroleum income tax,(hereinafter referred to as "Namibian tax");
  - (b) in the case of South Africa:
    - (i) the normal tax;
    - (ii) the secondary tax on companies;(hereinafter referred to as "South African tax").

4. The Agreement shall apply also to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of the Agreement 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 which have been made in their respective taxation laws.

### Article 3

#### *General Definitions*

1. In this Agreement, unless the context otherwise requires:
  - (a) the term "Namibia" means the Republic of Namibia, and, when used for the purposes of this Agreement in a geographical sense, the area in which the tax laws of Namibia are in force, as well as the territorial sea, the exclusive economic zone and the continental shelf, over which Namibia exercises sovereign rights in accordance with the international law, concerning the exploration and exploitation of the natural resources of the seabed and subsoil of these waters;
  - (b) 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 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;
  - (c) the terms "a Contracting State" and "the other Contracting State" mean Namibia or South Africa as the context requires;
  - (d) the term "company" means any body corporate or any entity which is treated as a company or body corporate for tax purposes;
  - (e) the term "competent authority" means:
    - (i) in the case of Namibia, the Minister of Finance or his or her authorised representative; and
    - (ii) in the case of South Africa, the Commissioner for the South African Revenue Service or his authorised representative;
  - (f) 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;

- (g) the term "international traffic" means any transport by ship, aircraft or road transport vehicle operated by an enterprise which has its place of effective management in a Contracting State, except when the ship, aircraft or road transport vehicle is operated solely between places in the other Contracting State;
  - (h) the term "national" means:
    - (i) any individual possessing the nationality of a Contracting State;
    - (ii) any legal person or association deriving its status as such from the laws in force in a Contracting State; and
  - (i) the term "person" includes an individual, a company and any other body of persons which is treated as an entity for tax purposes.
2. As regards the application of the provisions of the Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has at that time under the law of that State for the purposes of the taxes to which the Agreement 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 Agreement, the term "resident of a Contracting State" means any individual who is ordinarily resident in that State and any legal person which has its place of management in that State.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his or her status shall be determined as follows:
  - (a) he or she shall be deemed to be a resident of the State in which he or she has a permanent home available to him or her. If he or she has a permanent home available to him or her in both States, he or she shall be deemed to be a resident of the State with which his or her personal and economic relations are closer (centre of vital interests);
  - (b) if the State in which he or she has his or her centre of vital interests cannot be determined, or if he or she does not have a permanent home available to him or her in either State, he or she shall be deemed to be a resident of the State in which he or she has an habitual abode;