

No. 45161*

**South Africa
and
Swaziland**

Agreement between the Government of the Republic of South Africa and the Government of the Kingdom of Swaziland for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (with protocol). Pretoria, 23 January 2004

Entry into force: *28 February 2005 by notification, in accordance with article 28*

Authentic texts: *English*

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

**Afrique du Sud
et
Swaziland**

Accord entre le Gouvernement de la République sud-africaine et le Gouvernement du Royaume de Swaziland tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu (avec protocole). Pretoria, 23 janvier 2004

Entrée en vigueur : *28 février 2005 par notification, conformément à l'article 28*

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 GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

AND

THE GOVERNMENT OF THE KINGDOM OF SWAZILAND

FOR THE AVOIDANCE OF DOUBLE TAXATION

AND THE PREVENTION OF FISCAL EVASION

WITH RESPECT TO TAXES ON INCOME

Preamble

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

Have agreed as follows:

Article 1

Persons Covered

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 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 all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property.
3. The existing taxes to which the Agreement shall apply are in particular:
 - (a) 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"); and
 - (b) in Swaziland, the taxes imposed under the Income Tax Order, 1975;
(hereinafter referred to as "Swaziland tax").
4. The Agreement shall also apply to any other taxes of a substantially similar character that are imposed 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 that have been made in their respective taxation laws.

Article 3

General Definitions

1. For the purposes of this Agreement, unless the context otherwise requires:
 - (a) 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;
 - (b) the term "Swaziland" means the Kingdom of Swaziland;
 - (c) the terms "a Contracting State" and "the other Contracting State" mean South Africa or Swaziland, as the context requires;
 - (d) the term "business" includes the performance of professional services and of other activities of an independent character;
 - (e) the term "company" means any body corporate or any entity that is treated as a company or body corporate for tax purposes;
 - (f) the term "competent authority" means:
 - (i) in South Africa, the Commissioner for the South African Revenue Service or an authorised representative; and
 - (ii) in Swaziland, the Commissioner of Taxes or an authorised representative;
 - (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, aircraft or rail or road transport vehicle operated by an enterprise of a Contracting State, except when the ship, aircraft or rail or road transport vehicle is operated solely between places in the other Contracting State;
 - (j) the term "nationals" means all individuals having the citizenship of a Contracting State and all legal persons, associations and other entities deriving their status as such from the laws in force in a Contracting State; and
 - (k) the term "person" includes an individual, a company and any other body of persons that 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 that 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 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 therein.
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.