

No. 45416*

**South Africa
and
Mauritius**

Agreement between the Government of the Republic of Mauritius and the Government of the Republic of South Africa for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income. Port Louis, 19 March 1994

Entry into force: *19 March 1994 by notification, in accordance with article 27*

Authentic texts: *English*

Registration with the Secretariat of the United Nations: *South Africa, 3 November 2008*

**Afrique du Sud
et
Maurice**

Accord entre le Gouvernement de la République de Maurice et le Gouvernement de la République sud-africaine tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu. Port-Louis, 19 mars 1994

Entrée en vigueur : *19 mars 1994 par notification, conformément à l'article 27*

Textes authentiques : *anglais*

Enregistrement auprès du Secrétariat des Nations Unies : *Afrique du Sud, 3 novembre 2008*

* *The texts reproduced below are the original texts of the agreement as submitted. For ease of reference, they were sequentially paginated. Their final UNTS version is not yet available.*

Les textes reproduit ci-dessous sont les textes authentiques de l'accord tel que soumises pour l'enregistrement. Pour référence, ils ont été présentés sous forme de la pagination consécutive. Leur version finale RTNU n'est pas encore disponible.

[ENGLISH TEXT – TEXTE ANGLAIS]

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF MAURITIUS AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of Mauritius and the Government of the Republic of South Africa 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 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.
3. The existing taxes to which this Agreement shall apply are in particular:
 - (a) in Mauritius, the income tax; (hereinafter referred to as "Mauritius tax");
 - (b) in South Africa:
 - (i) the normal tax;
 - (ii) the non-resident shareholders' tax; and
 - (iii) the secondary tax on companies;(hereinafter referred to as "South African tax").
4. This Agreement shall also apply to any other taxes of a substantially similar character which are imposed by either Contracting State after the date of signature of this Agreement in addition to, or in place of, the existing taxes.
5. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws, and if it seems desirable to amend any Article of this Agreement, without affecting the general principles thereof, the necessary amendments may be made by mutual consent by means of an Exchange of Notes.

Article 3. General Definitions

1. In this Agreement, unless the context otherwise requires:
 - (a) the term "Mauritius" means the Republic of Mauritius and includes:
 - (i) all the territories and islands which, in accordance with the laws of Mauritius, constitute the State of Mauritius;
 - (ii) the territorial sea of Mauritius; and
 - (iii) any area outside the territorial sea of Mauritius which in accordance with international law has been or may hereafter be designated, under the laws of Mauritius, as an area, including the Continental Shelf, within which the rights of Mauritius with respect to the sea, the sea bed and sub-soil and their natural resources may be exercised;
 - (b) the term "South Africa" means the Republic of South Africa and, when used in a geographical sense, includes:
 - (i) the territorial sea of South Africa; and
 - (ii) any area outside the territorial sea, including the Continental Shelf, which has been or may hereafter be designated, under the laws of South Africa, 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 Mauritius 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 Mauritius, the Commissioner of Income Tax or his authorised representative; and
 - (ii) in South Africa, the Commissioner for Inland Revenue 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 a ship or aircraft operated by an enterprise which 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;
 - (h) the term "national" means any individual having the citizenship of a Contracting State and any legal person, partnership, association or other entity deriving its status as such from the laws in force in a Contracting State;
 - (i) the term "person" includes an individual, a company and any other body of persons which is treated as an entity for tax purposes; and

- (j) the term "tax" means Mauritius tax or South African tax as the context requires.

2. In the application of the provisions of this Agreement by a Contracting State, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that State relating to the taxes which are the subject of this Agreement.

Article 4. Resident

1. For the purposes of this Agreement:

- (a) the term "resident of Mauritius" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. This term does not include any person who is liable to tax in Mauritius in respect only of income from sources in Mauritius; and
- (b) the term "resident of South Africa" means any individual who is ordinarily resident in South Africa and any legal person which has its place of management in South Africa.

2. Where by reason of the provisions of paragraph 1 of this Article an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him. If he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if he 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 of this Article a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

Article 5. Permanent Establishment

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

2. The term "permanent establishment" shall include:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a warehouse, in relation to a person providing storage facilities for others;
- (g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and
- (h) an installation or structure used for the exploration of natural resources.

3. A building, site or a construction, installation or assembly project, or supervisory activities in connection therewith, constitutes a permanent establishment only if the site, project or activity lasts more than nine months.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise; and
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, a person acting in a Contracting State on behalf of an enterprise of the other Contracting State (other than an agent of an independent status to whom paragraph 6 of this Article applies) notwithstanding that he has no fixed place of business in the first-mentioned State shall be deemed to be a permanent establishment in that State if:

- (a) he has, and habitually exercises, a general authority in the first-mentioned State to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or