

No. 45417*

**South Africa
and
Hungary**

Convention between the Republic of South Africa and the Republic of Hungary for the avoidance of double taxation with respect to taxes on income. Budapest, 4 March 1994

Entry into force: *5 May 1996 by notification, in accordance with article 28*

Authentic texts: *English and Hungarian*

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

**Afrique du Sud
et
Hongrie**

Convention entre la République sud-africaine et la République hongroise tendant à éviter la double imposition en matière d'impôts sur le revenu. Budapest, 4 mars 1994

Entrée en vigueur : *5 mai 1996 par notification, conformément à l'article 28*

Textes authentiques : *anglais et hongrois*

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]

CONVENTION BETWEEN THE REPUBLIC OF SOUTH AFRICA AND THE REPUBLIC OF HUNGARY FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic South Africa and the Government of the Republic of Hungary desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income and to further develop and facilitate their relationship,

Have agreed as follows:

Article 1. Personal Scope

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 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 all taxes imposed on total income, or on elements of income, including taxes or gains from the alienation of movable or immovable property and taxes on the total amounts of wages or salaries paid by enterprises.

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

(a) in Hungary:

- (i) the income tax on individuals;
- (ii) the corporation tax; (hereinafter referred to as "Hungarian tax").

(b) in South Africa:

- (i) the income tax (normal tax);
- ii) the non-resident shareholders tax; (hereinafter referred to as "South African tax").

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

Article 3. General Definitions

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

- (a) the term "Hungary" means the Republic of Hungary and, when used in a geographical sense, means the territory of the Republic of Hungary;
- (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 international law and the laws of South Africa, as areas within which South Africa may exercise sovereign rights or jurisdiction;
- (c) the terms "a Contracting State" and "the other Contracting State" mean Hungary or South Africa as the context requires;
- (d) the term "person" includes an individual, a company and any other body of persons, which is treated as an entity for tax purposes;
- (e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (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 "nationals" means:
 - (i) all individuals possessing the nationality of a Contracting State;
 - (ii) all legal persons, partnerships and associations deriving their status as such from the laws in force in a Contracting State;
- (h) the term "international traffic" means any transport by a 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; and
- (i) the term "competent authority" means:
 - (i) in the case of Hungary the Minister of Finance, or his authorized representative; and
 - (ii) in the case of South Africa the Commissioner for Inland Revenue, or his authorized representative.

2. As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

Article 4. Fiscal Domicile

1. For the purposes of this Convention:

- (a) the term "resident of Hungary" 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 that State in respect only of income from sources in that State or capital situated therein;

- (b) the term "resident of South Africa" means any individual who is ordinarily resident in South Africa and any legal person which is incorporated, managed or controlled in South Africa.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:
- (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 in which he has his centre of vital interests;
 - (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not 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 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 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 or construction, installation or assembly project constitutes a permanent establishment only if it lasts more than 12 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 of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) a building site or construction, installation or assembly project carried on by an enterprise of a Contracting State in connection with the delivery of materials, machinery or equipment from that State to the other Contracting State;
- (g) the sale of goods or merchandise belonging to the enterprise displayed at an occasional temporary fair or exhibition after the closing of the said fair or exhibition; and
- (h) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (g), 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, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

8. An enterprise of a Contracting State, notwithstanding that it has no fixed place of business in the other Contracting State, shall be deemed to have a permanent establishment in that other Contracting State if it carries on supervisory activities therein in connection with a construction, installation or assembly project which is being undertaken in that other Contracting State for a period of more than 12 months.