

**No. 45760**

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**South Africa  
and  
United States of America**

**Convention between the Republic of South Africa and the United States of America  
for the avoidance of double taxation and the prevention of fiscal evasion with  
respect to taxes on income and capital gains. Cape Town, 17 February 1997**

**Entry into force:** *28 December 1997 by notification, in accordance with article 28*

**Authentic text:** *English*

**Registration with the Secretariat of the United Nations:** *South Africa, 2 February  
2009*

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**Afrique du Sud  
et  
États-Unis d'Amérique**

**Convention entre la République sud-africaine et les États-Unis d'Amérique 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. Le Cap, 17 février 1997**

**Entrée en vigueur :** *28 décembre 1997 par notification, conformément à l'article 28*

**Texte authentique :** *anglais*

**Enregistrement auprès du Secrétariat des Nations Unies :** *Afrique du Sud, 2 février  
2009*

[ ENGLISH TEXT – TEXTE ANGLAIS ]

CONVENTION

BETWEEN

THE REPUBLIC OF SOUTH AFRICA

AND

THE UNITED STATES OF AMERICA

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 United States of America desiring to promote and strengthen the economic relations between the two countries

Have agreed as follows:

Article 1

General Scope

1. This Convention shall apply only to persons who are residents of one or both of the Contracting States, except as otherwise provided in the Convention.
2. The Convention shall not restrict in any manner any benefit now or hereafter accorded:
  - a) by the laws of either Contracting State; or
  - b) by any other agreement between the Contracting States.
3. Notwithstanding the provisions of subparagraph 2b):
  - a) the provisions of Article 25 (Mutual Agreement Procedure) of this Convention exclusively shall apply to any dispute concerning whether a measure is within the scope of this Convention, and the procedures under this Convention exclusively shall apply to that dispute; and

- b) unless the competent authorities determine that a taxation measure is not within the scope of this Convention, the non-discrimination obligations of this Convention exclusively shall apply with respect to that measure, except for such national treatment or most-favoured-nation obligations as may apply to trade in goods under the General Agreement on Tariffs and Trade. No national treatment or most-favoured-nation obligation under any other agreement shall apply with respect to that measure.
  - c) For the purpose of this paragraph, a "measure" is a law, regulation, rule, procedure, decision, administrative action, or any other form of measure.
4. Notwithstanding any provision of the Convention except paragraph 5, the United States may tax its residents (as determined under Article 4 (Residence)), and by reason of citizenship may tax its citizens, as if the Convention had not come into effect. For this purpose, the term "citizen" shall include a former citizen or long-term resident whose loss of such status had as one of its principal purposes the avoidance of tax (as defined under the laws of the United States), but only for a period of ten years following such loss.
5. The provisions of paragraph 4 shall not effect:
- a) the benefits conferred by a Contracting State under paragraph 2 of Article 9 (Associated Enterprises), paragraphs 2, 4, 5, 6 and 7 of Article 18 (Pensions and Annuities), and under Articles 23 (Elimination of Double Taxation), 24 (Non-Discrimination), and 25 (Mutual Agreement Procedure); and

- b) the benefits conferred by a Contracting State under Articles 19 (Government Service), 20 (Students, Apprentices and Business Trainees), and 27 (Diplomatic Agents and Consular Officers), upon individuals who are neither citizens of, nor have been admitted for permanent residence in, that State.

Article 2

Taxes Covered

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

- a) in the United States: the Federal income taxes imposed by the Internal Revenue Code of 1986 (but excluding social security taxes), and the Federal excise taxes imposed with respect to private foundations;

(hereinafter referred to as "United States tax");

- b) in South Africa:

- i) the normal tax;
- ii) the secondary tax on companies;

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