

No. 45761

**South Africa
and
Ireland**

Convention between the Government of the Republic of South Africa and the Government of Ireland for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains (with protocol). Pretoria, 7 October 1997

Entry into force: *5 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*

**Afrique du Sud
et
Irlande**

Convention entre le Gouvernement de la République sud-africaine et le Gouvernement de l'Irlande 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 (avec protocole). Pretoria, 7 octobre 1997

Entrée en vigueur : *5 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 GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

AND

THE GOVERNMENT OF IRELAND

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 Ireland, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains and to promote and strengthen the economic relations between the two countries,

Have agreed as follows:

Article 1

Persons Covered

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 and capital gains imposed on behalf of a Contracting State or of its political subdivisions, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income and capital gains 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 this Convention shall apply are:
 - (a) in Ireland:
 - (i) the income tax;
 - (ii) the corporation tax; and
 - (iii) the capital gains tax;(hereinafter referred to as "Irish tax"); and
 - (b) in South Africa:
 - (i) the normal tax; and
 - (ii) the secondary tax on companies;(hereinafter referred to as "South African tax").

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of the 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 "Ireland" includes any area outside the territorial waters of Ireland which, in accordance with international law, has been or may hereafter be designated under the laws of Ireland concerning the Continental Shelf, as an area within which the rights of Ireland with respect to the sea bed and subsoil 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 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;
 - (c) the terms "a Contracting State" and "the other Contracting State" mean Ireland 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 Ireland, the Revenue Commissioners or their 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 of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

- (h) the term "national" means:
 - (i) any individual who is a citizen of a Contracting State;
 - (ii) any legal person, association or other entity deriving its status as such from the laws in force in a Contracting State; and
 - (i) the term "person" includes an individual, a company, an estate, a trust and any other body of persons but does not include a partnership.
2. As regards the application of the provisions of the Convention 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 Convention 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 Convention, the term "resident of a Contracting State" means:
- (a) in Ireland, any person who, under the laws of Ireland, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, but this term does not include any person who is liable to tax in Ireland in respect only of income from sources in Ireland;
 - (b) in South Africa, any individual who under the laws of South Africa is ordinarily resident in South Africa and any other person which has its place of effective management in South Africa;
 - (c) that State and any political subdivision or local authority thereof.
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 only 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 has not a permanent home available to him in either State, he shall be deemed to be a resident only 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