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GOVERNMENT NOTICE GOEWERMENSKENNISGEWING

SOUTH AFRICAN REVENUE SERVICE SUID-AFRIKAANSE INKOMSTEDIENS

No. 32

23 January 2009

INCOME TAX ACT, 1962

PROTOCOL AMENDING THE CONVENTION BETWEEN THE REPUBLIC OF SOUTH AFRICA AND THE KINGDOM OF THE NETHERLANDS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL, WITH PROTOCOL

In terms of section 108(2) of the Income Tax Act, 1962 (Act No 58 of 1962), read in conjunction with section 231(4) of the Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996), it is hereby notified that the Protocol amending the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital set out in the Schedule to this Notice has been entered into with the Government of the Kingdom of the Netherlands and has been approved by Parliament in terms of section 231(2) of the Constitution.

It is further notified in terms of paragraph 1 of Article IX of the Protocol, that the date of entry into force is 28 December 2008.

INKOMSTEBELASTINGWET, 1962**PROTOKOL TOT WYSIGING VAN DIE KONVENSIE TUSSEN DIE REPUBLIEK VAN SUID-AFRIKA EN DIE KONINKRYK VAN DIE NEDERLANDE VIR DIE VERMYDING VAN DUBBELE BELASTING EN DIE VOORKOMING VAN FISKALE ONTDUIKING MET BETREKKING TOT BELASTINGS OP INKOMSTE EN OP KAPITAAL, TESAME MET PROTOKOL**

Ingevolge artikel 108(2) van die Inkomstebelastingwet, 1962 (Wet No 58 van 1962), saamgelees met artikel 231(4) van die Grondwet van die Republiek van Suid-Afrika, 1996 (Wet No 108 van 1996), word hiermee kennis gegee dat die Protokol tot wysiging van die Konvensie vir die vermyding van dubbele belasting en die voorkoming van fiskale ontduiking met betrekking tot belasting op inkomste en op kapitaal wat in die Bylae tot hierdie Kennisgewing vervat is, aangegaan is met die Regering van die Koninkryk van die Nederlande en deur die Parlement goedgekeur is ingevolge artikel 231(2) van die Grondwet.

Daar word verder bekendgemaak dat ingevolge paragraaf 1 van Artikel IX van die Protokol, die datum van inwerkingtreding 28 Desember 2008 is.

PROTOCOL AMENDING THE CONVENTION BETWEEN THE REPUBLIC OF SOUTH AFRICA AND THE KINGDOM OF THE NETHERLANDS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL, WITH PROTOCOL

Preamble

The Government of the Republic of South Africa and the Government of the Kingdom of the Netherlands,

Desiring that the Convention between the Republic of South Africa and the Kingdom of the Netherlands for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, with Protocol, signed at Pretoria on 10 October 2005 (in this Protocol referred to as "the Convention"), be amended by both States,

HAVE AGREED as follows:

Article I

Article 2, paragraph 4 of the Convention shall be amended as follows:

"Article 2

Taxes Covered

4. The Convention shall apply also to any identical or substantially similar taxes, including taxes on dividends, that 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 that have been made in their respective taxation laws."

Article II

Article 10 of the Convention shall be deleted and replaced by the following:

"Article 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

- (a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds at least 10 per cent of the capital of the company paying the dividends; or

PROTOKOL TOT WYSIGING VAN DIE KONVENSIE TUSSEN DIE REPUBLIEK VAN SUID-AFRIKA EN DIE KONINKRYK VAN DIE NEDERLANDE VIR DIE VERMYDING VAN DUBBELE BELASTING EN DIE VOORKOMING VAN FISKALE ONTDUIKING MET BETREKKING TOT BELASTINGS OP INKOMSTE EN OP KAPITAAL, TESAME MET PROTOKOL

Aanhef

Die Regering van die Republiek van Suid-Afrika en die Regering van die Koninkryk van die Nederlande, uit 'n begeerte om die Konvensie tussen die Republiek van Suid-Afrika en die Koninkryk van die Nederlande vir die vermyding van dubbele belasting en die voorkoming van fiskale ontduiking met betrekking tot belasting op inkomste, onderteken op 10 Oktober 2005 (in hierdie Protokol genoem "die Konvensie"), gesamentlik te wysig,

SOOS VOLG OOREENGEKOM:

Artikel I

Artikel 2, paragraaf 4 van die Konvensie word soos volg gewysig:

"Artikel 2

Belastings Gedek

4. Die Konvensie is van toepassing op enige identiese of wesenlik soortgelyke belasting, insluitende belasting op dividende, wat opgelê word deur enige van die Kontrakterende State na die datum van ondertekening van die Konvensie benewens, of in die plek van, die bestaande belasting. Die bevoegde owerhede van die Kontrakterende State moet mekaar van enige beduidende veranderinge verwittig wat aangebring is aan hulle onderskeie belastingwette."

Artikel II

Artikel 10 van die Konvensie word vervang deur die volgende:

"Artikel 10

Dividende

1. Dividende betaal deur 'n maatskappy wat 'n inwoner van 'n Kontrakterende Staat is aan 'n inwoner van die ander Kontrakterende Staat kan belas word in daardie ander Staat.

2. Sodanige dividende kan egter ook belas word in die Kontrakterende Staat waarvan die maatskappy wat die dividende betaal 'n inwoner is en volgens die wette van daardie Staat, maar indien die voordelige eienaar van die dividende 'n inwoner is van die ander Kontrakterende Staat, mag die belasting daarop bereken, nie die volgende te bowe gaan nie:

- (a) 5 persent van die bruto bedrag van die dividende indien die voordelige eienaar 'n maatskappy is wat minstens 10 persent van die kapitaal hou van die maatskappy wat die dividende betaal; of

(b) 10 per cent of the gross amount of the dividends in all other cases.

3. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of paragraph 2.

4. The provisions of paragraph 2 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

5. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights participating in profits, as well as income from debt-claims participating in profits and income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

6. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

7. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

8. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.

9. Notwithstanding the provisions of paragraphs 1, 2 and 7, dividends paid by a company whose capital is divided into shares and which under the laws of a State is a resident of that State, to an individual who is a resident of the other State may be taxed in the first-mentioned State in accordance with the laws of that State, if that individual – either alone or with his or her spouse – or one of their relations by blood or marriage in the direct line directly or indirectly holds at least 5 per cent of the issued capital of a particular class of shares in that company. This provision shall apply only if the individual to whom the dividends are paid has been a resident of the first-mentioned State in the course of the last ten years preceding the year in which the dividends are paid and provided that, at the time the individual became a resident of the other State, the above-mentioned conditions regarding share ownership in the said company were satisfied.

In cases where, under the domestic laws of the first-mentioned State, an assessment has been issued to the individual to whom the dividends are paid in respect of the alienation of the aforesaid shares deemed to have taken place at the time of the individual's emigration from the first-mentioned State, the above shall apply only as long as part of the assessment is still due.

(b) 10 persent van die bruto bedrag van die dividende in alle ander gevalle.

3. Die bevoegde owerhede van die Kontrakterende State moet deur onderlinge ooreenkoms die wyse van toepassing van paragraaf 2 beslis.

4. Die bepalings van paragraaf 2 raak nie die belasting van die maatskappy betreffende die winste waaruit die dividende betaal word nie.

5. Die uitdrukking “dividende” soos in hierdie Artikel gebruik beteken inkomste uit aandele, “jouissance”-aandele of mynaandele, stigtersaandele of ander regte wat in winste deel, sowel as inkomste uit skuldeise wat in winste deel en inkomste uit ander korporatiewe regte wat aan dieselfde belastingbehandeling onderhewig is as inkomste uit aandele deur wette van die Staat waarin die maatskappy die uitkering doen 'n inwoner is.

6. Die bepalings van paragrawe 1 en 2 is nie van toepassing indien die voordelige eienaar van die dividende wat 'n inwoner van die Kontrakterende Staat is, besigheid in die ander Kontrakterende Staat dryf nie, deur 'n permanente instelling daarin geleë en die besit ten opsigte waarvan die dividende betaal word, doeltreffend verbind is met sodanige permanente instelling. In sodanige geval is die bepalings van Artikel 7 van toepassing.

7. Waar 'n maatskappy wat 'n inwoner van 'n Kontrakterende Staat is, wins of inkomste uit die ander Kontrakterende Staat ontvang, mag daardie ander Staat nie belasting oplê op die dividende betaal deur die maatskappy nie, buiten vir sover sodanige dividende betaal word aan 'n inwoner van daardie ander Staat of vir sover die houding ten opsigte waarvan die dividende betaal word, doeltreffend verbind is met 'n permanente instelling geleë in daardie ander Staat, en mag ook nie die maatskappy se onuitgekeerde winste onderwerp aan 'n belasting op die maatskappy se onuitgekeerde winste nie, selfs as die dividende betaal of die onuitgekeerde winste volledig of deels bestaan uit winste of inkomste wat in sodanige ander Staat ontstaan.

8. Die bepalings van hierdie Artikel is nie van toepassing nie indien dit die hoofogmerk of een van die hoofogmerke was van enige persoon betrokke by die skepping of toewysing van die aandele of ander regte ten opsigte waarvan die dividende betaal word, om hierdie Artikel uit te buit deur daardie skepping of toewysing.

9. Ondanks die bepalings van paragrawe 1, 2 en 7, kan dividende betaal deur 'n maatskappy waarvan die kapitaal verdeel is in aandele en wat ingevolge die wette van 'n Staat 'n inwoner van daardie Staat is, aan 'n individu wat 'n inwoner van 'n ander Staat is, belas word in die eersgenoemde Staat in ooreenstemming met die wette van daardie Staat, indien daardie individu – hetsy alleen of met sy of haar eggenoot – of een van hulle bloedverwante of aangetroude familie in die direkte lyn direk of indirek minstens 5 persent hou van die uitgereikte kapitaal van 'n besondere klas aandele in daardie maatskappy. Hierdie bepaling is van toepassing slegs indien die individu aan wie die dividende betaal word 'n inwoner was in eersgenoemde Staat in die loop van die laaste tien jaar wat die jaar vooafgaan waarin die dividende betaal word en mits, teen die tyd wat die individu 'n inwoner van die ander Staat geword het, bogenoemde voorwaardes betreffende gedeelde eienaarskap in genoemde maatskappy nagekom is.

In gevalle waar, ingevolge die landsreg van eersgenoemde Staat, 'n aanslag uitgereik is aan die individu aan wie die dividende betaal word ten opsigte van die vervreemding van bogenoemde aandele geag word plaasgevind het ten tyde van die individu se emigrasie uit eersgenoemde Staat, geld bogenoemde slegs solank as wat deel van die aanslag steeds betaalbaar is.

10. If under any convention for the avoidance of double taxation concluded after the date of conclusion of this Convention between the Republic of South Africa and a third country, South Africa limits its taxation on dividends as contemplated in subparagraph a) of paragraph 2 of this Article to a rate lower, including exemption from taxation or taxation on a reduced taxable base, than the rate provided for in subparagraph a) of paragraph 2 of this Article, the same rate, the same exemption or the same reduced taxable base as provided for in the convention with that third State shall automatically apply in both Contracting States under this Convention as from the date of the entry into force of the convention with that third State."

Article III

Pensions, Annuities and Social Security Payments

Article 17 of the Convention shall be amended by:

- a) the insertion of the following new paragraph 3:

"3. Notwithstanding the preceding paragraphs, pensions, allowances and benefits based on the Netherlands laws and regulations concerning financial support to victims of the Second World War and their next of kin, if paid to residents of South Africa, shall be taxable in South Africa." and
- b) renumbering the existing paragraphs "3" and "4" as "4" and "5", respectively.

Article IV

Elimination of Double Taxation

- a) Article 23, paragraphs 2 and 4, of the Convention shall be amended by replacing in both paragraphs "paragraph 7 of Article 10" by "paragraph 6 of Article 10".
- b) Article 23, paragraph 3, of the Convention shall be amended by replacing "paragraph 2 of Article 10" by "paragraphs 2 and 9 of Article 10".

10. Indien ingevolge 'n konvensie vir die vermyding van dubbele belasting gesluit na die datum van hierdie Konvensie tussen die Republiek van Suid-Afrika en 'n derde land, Suid-Afrika sy belasting op dividende beperk soos beoog in subparagraaf a) van paragraaf 2 van hierdie Artikel tot 'n laer koers, insluitende vrystelling van belasting of belasting op 'n verminderde belasbare basis, as die koers bepaal in subparagraaf a) van paragraaf 2 van hierdie Artikel, is dieselfde koers, dieselfde vrystelling of dieselfde verminderde belasbare basis soos bepaal in die konvensie met daardie derde Staat outomaties van toepassing in beide Kontrakterende State ingevolge hierdie Konvensie met ingang van die datum van inwerkingtreding van die konvensie met daardie derde Staat.”.

Artikel III

Pensioene, Annuïteite en Maatskaplike Sekuriteitsbetalings

Artikel 17 van die Konvensie word gewysig deur:

- a) die invoeging van die volgende nuwe paragraaf 3:

“3. Ondanks voorafgaande paragrawe, is pensioene, toelaes en voordele gebaseer op die Nederlandse wette en regulasies betreffende finansiële steun aan slagoffers van die Tweede Wêreldoorlog en hulle naasbestandes, indien betaal aan inwoners van Suid-Afrika, in Suid-Afrika belasbaar.” en
- b) die bestaande paragrawe “3” en “4” tot “4” en “5”, onderskeidelik te hernommer.

Artikel IV

Uitskakelling van Dubbele Belasting

- a) Artikel 23, paragrawe 2 en 4, van die Konvensie word gewysig deur in beide paragrawe “paragraaf 7 van Artikel 10” deur “paragraaf 6 van Artikel 10” te vervang.
- b) Artikel 23, paragraaf 3, van die Konvensie word gewysig deur “paragraaf 2 van Artikel 10” deur “paragrawe 2 en 9 van Artikel 10” te vervang.

Article V

Article 27 of the Convention shall be deleted and replaced by the following:

“Article 27***Exchange of Information***

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

3. The Contracting States may release to the arbitration board, established under the provisions of paragraph 5 of Article 26, such information as is necessary for carrying out the arbitration procedure. The members of the arbitration board shall be subject to the limitations on disclosure described in paragraph 2 of this Article with respect to any information so released.

4. In no case shall the provisions of the preceding paragraphs be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*).

5. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 4 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

Artikel V

Artikel 27 van die Konvensie word deur die volgende vervang:

“Artikel 27***Uitruil van inligting***

1. Die bevoegde owerhede van die Kontrakterende State ruil sodanige inligting as wat voorsienbaar tersaaklik is vir die uitvoering van die bepalings van hierdie Konvensie of vir die administrasie of afdwing van die landsreg betreffende belastings van elke soort en beskrywing opgelê namens die Kontrakterende State, of van hulle politieke onderverdelings of plaaslike owerhede, vir sover die belasting daarkragtens nie strydig met die Konvensie is nie. Die uitruil van inligting word nie beperk deur Artikels 1 en 2 nie.

2. Enige inligting ingevolge paragraaf 1 ontvang deur 'n Kontrakterende Staat moet behandel word as geheim op dieselfde wyse as inligting verkry ingevolge die landsreg van daardie Staat en openbaar gemaak word slegs aan persone en owerhede (insluitende howe en administratiewe liggame) gemoeid met die assessering of insameling van, die afdwing of vervolging ten opsigte van, die beslissing van appèlle met betrekking tot die belastings bedoel in paragraaf 1, of die versuim van bogenoemde. Sodanige persone of owerhede moet die inligting slegs vir sodanige doeleindes gebruik. Hulle kan die inligting in openbare hofverrigtinge of in regterlike beslissings openbaar maak.

3. Die Kontrakterende State kan aan die arbitrasieraad, wat gestig is ingevolge die bepalings van paragraaf 5 van Artikel 26, sodanige inligting meedeel wat nodig is om die arbitrasieprosedure uit te voer. Die lede van die arbitrasieraad is onderworpe aan die beperkings op bekendmaking soos beskryf in paragraaf 2 van hierdie Artikel ten opsigte van enige inligting aldus meegedeel.

4. In geen geval mag die bepalings van die voorgaande paragrawe so vertolk word as sou dit 'n Kontrakterende Staat die verpligting oplê:

- (a) om administratiewe maatreëls in stryd met die wette en administratiewe praktyk van daardie of van die ander Kontrakterende Staat uit te voer nie;
- (b) om inligting te verstrek wat nie ingevolge die wette of in die normale loop van die administrasie van daardie of van die ander Kontrakterende Staat verkrygbaar is nie.
- (c) om inligting te verstrek wat enige handels-, besigheids-, industriële, kommersiële of professionele geheim of handelsproses sal openbaar, of inligting te verstrek waar die openbaarmaking strydig met openbare beleid (*ordre public*) sal wees.

5. Indien inligting deur 'n Kontrakterende Staat in ooreenstemming met hierdie Artikel versoek word, moet die ander Kontrakterende Staat sy maatreëls vir die insameling van inligting gebruik om die verlangde inligting te verkry, selfs alhoewel daardie ander Staat nie sodanige inligting vir sy eie belastingdoeleindes nodig het nie. Die verpligting vervat in die voorgaande sin is onderworpe aan die beperkings van paragraaf 4, maar in geen geval moet sodanige beperkings vertolk word as sou dit 'n Kontrakterende Staat toelaat om te weier om inligting te verskaf bloot omdat dit geen binnelandse belang in sodanige inligting het nie.

6. In no case shall the provisions of paragraph 4 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person."

Article VI

Article 28 of the Convention shall be deleted and replaced by the following:

"Article 28

Assistance in the Collection of Taxes

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Convention or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

3. The provisions of this Article shall apply only to a revenue claim that forms the subject of an instrument permitting enforcement in the applicant State and, unless otherwise agreed between the competent authorities, that is not contested. However, where the claim relates to a liability to tax of a person that is not a resident of the applicant State, this Article shall only apply, unless otherwise agreed between the competent authorities, where the claim may no longer be contested. The revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such and, unless otherwise agreed between the competent authorities, shall not lead to imprisonment of the debtor in respect of the debt. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. In geen geval moet die bepalings van paragraaf 4 vertolk word as sou dit 'n Kontrakterende Staat toelaat om te weier om inligting te verskaf bloot omdat dit gehou word deur 'n bank, ander finansiële instelling, genomineerde of persoon wat in 'n agentskap of fidusiêre hoedanigheid werk of omdat dit betrekking het op eienaarskapbelange in 'n persoon nie.”

Artikel VI

Artikel 28 van die Konvensie word vervang deur die volgende:

“Artikel 28

Bystand met die invordering van Belastings

1. Die Kontrakterende State moet aan mekaar bystand verleen met die invordering van inkomste-eise. Hierdie bystand word nie beperk deur Artikels 1 en 2 nie. Die bevoegde owerhede van die Kontrakterende State kan deur onderlinge ooreenkoms die wyse van toepassing van hierdie Artikel bepaal.

2. Die uitdrukking “inkomste-eis” soos in hierdie Artikel gebruik, beteken 'n bedrag verskuldig ten opsigte van belastings van elke soort en beskrywing wat namens die Kontrakterende State opgelê word, of van hulle politieke onderverdelings of plaaslike owerhede, vir sover die belasting daarkragtens nie strydig is met hierdie Konvensie of enige ander instrumente waarvan die Kontrakterende State partye is, sowel as rente, administratiewe strawwe en koste van invordering of bewaring wat betrekking het op sodanige bedrag.

3. Die bepalings van hierdie Artikel is slegs van toepassing op 'n belastingeis wat die onderwerp vorm van 'n instrument wat afdwinging in die aansoekerstaat toelaat en wat, tensy anders ooreengekom tussen die bevoegde owerhede, nie betwis word nie. Waar die eis betrekking het op belastingaaspreeklikheid van 'n persoon wat nie 'n inwoner van die aansoekerstaat is nie, is hierdie Artikel van toepassing, tensy anders ooreengekom tussen mededingende owerhede, waar die eis nie meer betwis mag word nie. Die inkomste-eis moet ingevorder word deur daardie ander Staat in ooreenstemming met die bepalings van sy wette wat toepaslik is vir die afdwinging en invordering van sy eie belastings asof die inkomste-eis 'n inkomste-eis van daardie ander Staat is.

4. Wanneer 'n inkomste-eis van 'n Kontrakterende Staat 'n eis is ten opsigte waarvan die Staat, ingevolge sy wet, maatreëls van bewaring kan tref met die oog op die versekering van sy invordering, moet daardie inkomste-eis op versoek van die bevoegde owerheid van daardie Staat aanvaar word vir doeleindes van die bewaringsmaatreëls deur die bevoegde owerheid van die ander Kontrakterende Staat. Daardie ander Staat moet maatreëls tref vir bewaring ten opsigte van daardie inkomste-eis in ooreenstemming met die bepalings van sy wette asof die inkomste-eis 'n inkomste-eis van daardie ander Staat is selfs as, ten tyde waarvan sodanige maatreëls toegepas word, die inkomste-eis nie afdwingbaar is in eersgenoemde Staat nie of geskuld word deur 'n persoon wat die reg het om die invordering daarvan te voorkom.

5. Ondanks die bepalings van paragrawe 3 en 4, is 'n inkomste-eis wat aanvaar word deur 'n Kontrakterende Staat vir doeleindes van paragraaf 3 of 4, nie onderworpe aan dieselfde tydsbeperkings of enige voorkeur verleen word wat van toepassing is op 'n inkomste-eis ingevolge die wette van daardie Staat nie, uit hoofde van sy aard as sodanig en, tensy anders ooreengekom tussen die bevoegde owerhede, mag ook nie lei tot gevangenisstraf van die skuldenaar ten opsigte van die skuld nie. Daarbenewens mag 'n inkomste-eis aanvaar deur 'n Kontrakterende Staat vir die doeleindes van paragraaf 3 of 4 nie in daardie Staat enige prioriteit van toepassing op daardie inkomste-eis hê ingevolge die wette van die ander Kontrakterende Staat nie.

6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be:

- a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or
- b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection,

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

8. In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:

- a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- b) to carry out measures which would be contrary to public policy (ordre public);
- c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
- d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.”

Article VII

- a) Article 29 of the Convention shall be deleted.
- b) Articles 30, 31, 32 and 33 of the Convention shall be renumbered as Articles 29, 30, 31 and 32, respectively.

Article VIII

- a) In Article XI of the Protocol shall be added between “the total gross” and “exceeds” the term “amount”.
- b) Article XIV of the Protocol shall be deleted.

6. Verrigtinge ten opsigte van die bestaan, geldigheid of die bedrag van 'n inkomste-eis van 'n Kontrakterende Staat mag nie voor die howe of administratiewe liggame van die ander Kontrakterende Staat gebring word nie.

7. Waar te eniger tyd na die versoek gerig is deur 'n Kontrakterende Staat ingevolge paragraaf 3 of 4 en voordat die ander Kontrakterende Staat die tersaaklike inkomste-eis ingevorder en ingedien het by eersgenoemde Staat, hou die tersaaklike inkomste-eis op om:

- a) in die geval van 'n versoek ingevolge paragraaf 3, 'n inkomste eis van eersgenoemde Staat wat afdwingbaar is ingevolge die wette van daardie Staat en besit word deur 'n persoon wat op daardie tydstip ingevolge die wette van daardie Staat nie sy invordering kan voorkom nie, of
- b) in die geval van 'n versoek ingevolge paragraaf 4, kan 'n inkomste-eis van eersgenoemde Staat ten opsigte waarvan die Staat ingevolge sy wette, maatreëls van bewaring tref met die oog op die versekering van die invordering daarvan,

moet die bevoegde owerheid van eersgenoemde Staat dadelik die bevoegde owerheid van die ander Staat verwittig van daardie feit en na die keuse van die ander Staat, kan eersgenoemde Staat sy versoek óf opskort óf terugtrek.

8. In geen geval mag die bepalinge van hierdie Artikel so vertolk word asof 'n Kontrakterende Staat die verpligting oplê:

- a) om administratiewe maatreëls uit te voer wat strydig is met die wette en administratiewe praktyk van daardie of van die ander Kontrakterende Staat;
- b) om maatreëls uit te voer wat teen die openbare beleid (ordre public) is;
- c) om bystand te verleen indien die ander Kontrakterende Staat nie alle redelike maatreëls van invordering of bewaring nagekom het nie, na gelang van die geval, wat beskikbaar is ingevolge sy wette of administratiewe praktyk;
- d) om bystand te verleen in daardie gevalle waar die administratiewe las vir die Staat duidelik buite verhouding is tot die voordeel verkry deur die ander Kontrakterende Staat."

Artikel VII

- a) Skrap Artikel 29 van die Konvensie.
- b) Artikels 30, 31, 32 en 33 van die Konvensie moet hernommer word tot onderskeidelik Artikels 29, 30, 31 en 32.

Artikel VIII

- a) In Artikel XI en die Protokol moet die uitdrukking "bedrag" ingevoeg word tussen die uitdrukkings "die totale bruto" en "10 000 Euro".
- b) Artikel XIV van die Protokol word geskrap.

Article IX

1. Each of the Contracting States shall notify the other in writing, through the diplomatic channel, of the completion of the procedures required by its law for the bringing into force of this Protocol, which shall form an integral part of the Convention. The Protocol shall enter into force on the thirtieth day after the date of receipt of the latter of these notifications.

2. The provisions of the Protocol shall apply at the same date on which the Convention shall apply.

Article X

This Protocol shall remain in force for as long as the Convention remains in force.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Protocol in duplicate in the English language.

DONE at Pretoria, this 8th day of July 2008.

**FOR THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA**

**FOR THE GOVERNMENT OF THE
KINGDOM OF THE NETHERLANDS**

Artikel IX

1. Elkeen van die Kontrakterende State moet die ander deur die diplomatieke kanaal skriftelik verwittig van die voltooiing van die prosedure wat deur sy wet vereis word vir om hierdie Protokol in werking te stel, wat 'n integreerende deel van die Konvensie vorm. Die Protokol tree in werking op die dertigste dag na die datum van ontvangs van die laaste van hierdie verwittigings.

2. Die bepalinge van die Protokol is van toepassing op dieselfde dag waarop die Konvensie van toepassing is.

Artikel X

Hierdie Protokol bly van krag vir so lank as wat die Konvensie van krag bly.

TEN BEWYSE WAARVAN die ondergetekendes, behoorlik daartoe gemagtig, hierdie Protokol in tweevoud in die Engelse taal, onderteken het.

Gedoen te Pretoria, op hede die 8ste dag van Julie 2008.

**VIR DIE REGERING VAN DIE
REPUBLIEK VAN SUID-AFRIKA**

**VIR DIE REGERING VAN DIE
KONINKRYK VAN DIE NEDERLANDE**