

Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 561

Pretoria, 22 March 2012
Maart

No. 35134

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GOVERNMENT NOTICE GOEWERMENSKENNISGEWING

SOUTH AFRICAN REVENUE SERVICE SUID-AFRIKAANSE INKOMSTEDIENS

No. 211

22 March 2012

INCOME TAX ACT, 1962

**PROTOCOL AMENDING THE 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**

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 for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains set out in the Schedule to this Notice has been entered into with the Government of Ireland 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 VIII of the Protocol, that the date of entry into force is 10 February 2012.

INKOMSTEBELASTINGWET, 1962**PROTOKOL TER WYSIGING VAN DIE KONVENSIE TUSSEN DIE REGERING VAN DIE REPUBLIEK VAN SUID-AFRIKA EN DIE REGERING VAN IERLAND VIR DIE VERMYDING VAN DUBBELE BELASTING EN DIE VOORKOMING VAN FISKALE ONTDUIKING MET BETREKKING TOT BELASTINGS OP INKOMSTE EN KAPITAALWINSTE, 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 vir die vermyding van dubbele belasting en die voorkoming van fiskale ontduiking met betrekking tot belasting op inkomste en kapitaalwinste wat in die Bylae tot hierdie Kennisgewing vervat is, aangegaan is met die Regering van Ierland en deur die Parlement goedgekeur is ingevolge artikel 231 (2) van die Grondwet.

Daar word verder bekendgemaak dat ingevolge paragraaf 1 van Artikel VIII van die Protokol, die datum van inwerkingtreding 10 Februarie 2012 is.

PROTOCOL AMENDING THE 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

The Government of the Republic of South Africa and the Government of Ireland, desiring to amend the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains, with Protocol, signed at Pretoria on 7 October 1997 (in this Protocol referred to as "the Convention"),

HAVE AGREED as follows:

Article I

Paragraph 4 of Article 2 shall be deleted and replaced by the following:

"4. The Convention shall apply also to any identical or substantially similar taxes 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, including taxes on dividends. 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 4 shall be amended by:

(a) deleting paragraph 1 and replacing it by the following:

"1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of that person's domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State."

(b) adding after paragraph 3 the following paragraph:

"4. A Common Contractual Fund established in Ireland shall not be regarded as a resident of Ireland and shall be treated as fiscally transparent for the purposes of granting tax treaty benefits."

PROTOKOL TER WYSIGING VAN DIE KONVENSIE TUSSEN DIE REGERING VAN DIE REPUBLIEK VAN SUID-AFRIKA EN DIE REGERING VAN IERLAND VIR DIE VERMYDING VAN DUBBELE BELASTING EN DIE VOORKOMING VAN FISKALE ONTDUIKING MET BETREKKING TOT BELASTINGS OP INKOMSTE EN KAPITAALWINSTE, MET PROTOKOL

Die Regering van die Republiek van Suid-Afrika en die Regering van Ierland het, uit 'n begeerte om die Konvensie vir die vermyding van dubbele belasting en die voorkoming van fiskale ontduiking met betrekking tot belastings op inkomste en kapitaalwinste, met Protokol, geteken op 7 Oktober 1997 te Pretoria (in hierdie Protokol "die Konvensie" genoem), te wysig,

SOOS VOLG OOREENGEKOM:

Artikel I

Paragraaf 4 van Artikel 2 word geskrap en deur die volgende vervang:

"4. Die Konvensie is ook van toepassing op enige identiese of wesenlik soortgelyke belastings wat bykomend by of in plaas van die bestaande belastings, ook belastings op dividende, deur enigeen van die Kontrakterende State opgelê word na die datum van ondertekening van die Konvensie. Die bevoegde owerhede van die Kontrakterende State stel mekaar in kennis van enige wesenlike veranderinge wat aan hulle onderskeie belastingwette aangebring is."

Artikel II

Artikel 4 word gewysig deur:-

(a) paragraaf 1 te skrap en deur die volgende te vervang:

"1. By die toepassing van hierdie Konvensie beteken die uitdrukking "inwoner van 'n Kontrakterende Staat" 'n persoon wat, kragtens die wette van daardie Staat, daarin belastingpligtig is uit hoofde van daardie persoon se domisilie, verblyf, plek van bestuur of enige ander soortgelyke maatstaf, en ook daardie Staat en 'n staatkundige onderafdeling of plaaslike owerheid daarvan. Hierdie uitdrukking sluit egter nie 'n persoon in wat in daardie Staat slegs ten opsigte van inkomste uit bronne in daardie Staat belastingpligtig is nie."; en

(b) na paragraaf 3 die volgende paragraaf by te voeg:

"4. 'n Gemeenskaplike Kontraktuele Fonds ("*Common Contractual Fund*") wat in Ierland opgerig is word nie geag 'n inwoner van Ierland te wees nie en word vir die toestaan van belastingooreenkomsvoordele as fisikaal deursigtig behandel."

Article III

Article 10 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 directly at least 10 per cent of the capital of the company paying the dividends; or
- (b) 10 per cent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term “dividends” as used in this Article means income from shares or other rights participating in profits (not being debt-claims), as well as income from other corporate rights and any income or distribution assimilated to income from shares by the laws of the Contracting State of which the company paying the income or making the distribution is a resident.

4. 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, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. 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 in so far as such dividends are paid to a resident of that other State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base 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.”

Artikel III

Artikel 10 word geskrap en deur die volgende vervang:

"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 in daardie ander Staat belas word.

2. Daardie dividende kan egter ook in die Kontrakterende Staat waarvan die maatskappy wat die dividende betaal 'n inwoner is, en ooreenkomstig die wette van daardie Staat, belas word, maar indien die voordelige eienaar van die dividende 'n inwoner van die ander Kontrakterende Staat is, oorskry die belasting aldus gehef nie die volgende nie:

- (a) 5 persent van die bruto bedrag van die dividende indien die voordelige eienaar 'n maatskappy is wat regstreeks minstens 10 persent van die kapitaal hou van die maatskappy wat die dividende betaal; of
- (b) 10 persent van die bruto bedrag van die dividende in alle ander gevalle.

Die bevoegde owerhede van die Kontrakterende State bepaal die wyse van toepassing van hierdie beperkings deur onderlinge ooreenkoms.

Hierdie paragraaf raak nie die belasting van die maatskappy ten opsigte van die winste waaruit die dividende betaal word nie.

3. Die uitdrukking "dividende" soos in hierdie Artikel gebruik, beteken inkomste uit aandele of ander regte wat in winste deel (wat nie skuldeise is nie), asook inkomste uit ander regsperseonsooregte en enige inkomste of uitkering wat gelykgestel word aan inkomste uit aandele, deur die wette van die Kontrakterende Staat waarvan die maatskappy wat die inkomste betaal of die uitkering doen 'n inwoner is.

4. Die bepalings van paragrawe 1 en 2 is nie van toepassing nie indien die voordelige eienaar van die dividende, wat 'n inwoner van 'n Kontrakterende Staat is, in die ander Kontrakterende Staat waarvan die maatskappy wat die dividende betaal 'n inwoner is, besigheid dryf deur middel van 'n permanente saak daarin geleë, of in daardie ander Staat onafhanklike persoonlike dienste verrig vanaf 'n vaste basis daarin geleë, en die aandelebesit ten opsigte waarvan die dividende betaal word, effektief verbonde is aan sodanige permanente saak of vaste basis. In sodanige geval is die bepalings van Artikel 7 of Artikel 14, na gelang van die geval, van toepassing.

5. Waar 'n maatskappy wat 'n inwoner van 'n Kontrakterende Staat is, winste of inkomste uit die ander Kontrakterende Staat verkry, hef daardie ander Staat nie belasting op die dividende betaal deur die maatskappy nie, behalwe vir sover sodanige dividende betaal word aan 'n inwoner van daardie ander Staat of vir sover die aandelebesit ten opsigte waarvan die dividende betaal word, effektief verbonde is aan 'n permanente saak of 'n vaste basis geleë in daardie ander Staat, en onderwerp ook nie die maatskappy se onuitgekeerde winste aan 'n belasting nie, selfs al bestaan die betaalde dividende of die onuitgekeerde winste geheel en al of gedeeltelik uit winste of inkomste wat in sodanige ander Staat ontstaan."

Article IV

Paragraph 6 of Article 23 shall be deleted.

Article V

Article 26 shall be deleted and replaced by the following:

“Article 26***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, in so far 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. In no case shall the provisions of paragraphs 1 and 2 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*).

4. 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 3 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.

5. In no case shall the provisions of paragraph 3 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.”

Artikel IV

Paragraaf 6 van Artikel 23 word geskrap.

Artikel V

Artikel 26 word geskrap en deur die volgende vervang:

"Artikel 26

Uitruil van Inligting

1. Die bevoegde owerhede van die Kontrakterende State ruil sodanige inligting uit wat voorsienbaar tersaaklik is vir die uitvoering van die bepalings van hierdie Konvensie of vir die administrasie of afdwing van die landsreg aangaande belastings van enige aard en beskrywing opgelê namens die Kontrakterende State, of hulle staatkundige onderafdelings of plaaslike owerhede, vir sover die belasting daarkragtens nie strydig met die Konvensie is nie. Die uitruil van inligting word nie deur Artikels 1 en 2 beperk nie.

2. Enige inligting kragtens paragraaf 1 deur 'n Kontrakterende Staat ontvang, word as geheim behandel op dieselfde wyse as inligting wat ingevolge die landsreg van daardie Staat verkry is, en word slegs openbaar gemaak aan persone of owerhede (ook howe en administratiewe liggame) betrokke by die aanslaan of invordering van, die afdwing of vervolging met betrekking tot, of die beslissing van appèlle in verband met, die belastings in paragraaf 1 genoem, of die toesig oor bogenoemde. Sodanige persone of owerhede gebruik die inligting slegs vir sodanige doeleindes. Hulle kan die inligting by openbare hofverrigtinge of regterlike beslissings openbaar maak.

3. In geen geval word die bepalings van paragrawe 1 en 2 uitgelê nie as sou dit 'n Kontrakterende Staat die verpligting oplê om:-

- (a) administratiewe maatreëls uit te voer wat strydig is met die wette of die administratiewe praktyk van daardie of van die ander Kontrakterende Staat;
- (b) inligting te verskaf wat nie kragtens die wette of in die normale loop van die administrasie van daardie of van die ander Kontrakterende Staat verkrygbaar is nie;
- (c) inligting te verskaf wat enige handels-, besigheids-, nywerheids-, kommersiële of beroepsgeheim of handelsproses sou openbaar, of inligting waarvan die openbaarmaking strydig met openbare beleid (ordre public) sou wees.

4. Indien inligting ooreenkomstig hierdie Artikel deur 'n Kontrakterende Staat verlang word, moet die ander Kontrakterende Staat sy inligtingsinwinmaatreëls gebruik om die verlangde inligting te verkry, selfs as die ander Staat sodanige inligting nie vir sy eie belastingdoeleindes nodig het nie. Die verpligting vervat in die voorafgaande sin is onderworpe aan die beperkings van paragraaf 3, maar in geen geval word sodanige beperkings uitgelê nie as sou dit 'n Kontrakterende Staat toelaat om te weier om inligting te verskaf bloot omdat dit geen landsbelang in sodanige inligting het nie.

5. In geen geval word die bepalings van paragraaf 3 uitgelê nie as sou dit 'n Kontrakterende Staat toelaat om te weier om inligting te verskaf bloot omdat die inligting gehou word deur 'n bank, 'n ander finansiële instelling, genomineerde of persoon wat optree in 'n agentskap of 'n fidusiële kapasiteit of omdat dit verband hou met eienaarskapsbelange in 'n persoon."

Article VI

Paragraph 3 of the Protocol signed on 7 October 1997 shall be deleted.

Article VII

If, in a convention for the avoidance of double taxation that may subsequently be concluded between South Africa and a third State, the rates for taxation of dividends in the source State are lower than those specified in sub-paragraphs 2 (a) and (b) of Article 10 as amended by Article III of this Protocol, South Africa shall immediately inform the Government of Ireland in writing through the diplomatic channel and shall enter into negotiations with the Government of Ireland with a view to providing comparable treatment as may be provided for the third State.

Article VIII

1. Each of the Contracting States shall notify to 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 date of receipt of the later of these notifications.

2. (a) Subject to subparagraph (b), the provisions of the Protocol shall thereupon have effect beginning on the first day of January next following the year in which the Protocol enters into force.
- (b) Articles III and VI of the Protocol shall thereupon have effect beginning on the date on which a system of taxation at shareholder level of dividends declared enters into force in South Africa.

Article IX

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

IN WITNESS WHEREOF the undersigned, duly authorised thereto by their respective Governments, have signed and sealed this Protocol in two originals in the English language.

DONE at Cape Town, this 17th day of March 2010.

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

**FOR THE GOVERNMENT
OF IRELAND**

Artikel VI

Paragraaf 3 van die Protokol wat op 7 Oktober 1997 onderteken is, word geskrap.

Artikel VII

Indien, in 'n konvensie vir die vermyding van dubbele belasting wat later tussen Suid-Afrika en 'n derde Staat aangegaan kan word, die belastingkoerse van dividende in die Bronstaat laer is daardie gespesifiseer in subparagraawe 2(a) en (b) van Artikel 10, soos gewysig by Artikel III van hierdie Protokol, moet Suid-Afrika die Regering van Ierland onmiddellik skriftelik deur die diplomatieke kanaal daarvan verwittig en onderhandelinge met die Regering van Ierland aanknoop met die doel om behandeling te verskaf wat vergelykbaar is met dié aan die derde Staat verskaf.

Artikel VIII

1. Elk van die Kontrakterende State stel die ander skriftelik deur die diplomatieke kanaal in kennis van die afhandeling van die prosedures wat ingevolge sy reg vereis word om hierdie Protokol, wat 'n integrale deel van die Konvensie is, in werking te stel. Die Protokol tree in werking op die datum van ontvangs van die laaste van hierdie kennisgewings.

2. (a) Behoudens subparagraaf (b), tree die bepalings van die Protokol daarna in werking op die eerste dag van Januarie wat volg op die jaar waarin die Protokol in werking tree.
- (b) Artikels III en IV van die Protokol tree daarna in werking met ingang van die datum waarop 'n stelsel van belasting op aandeelhouervlak van dividende verklaar, in Suid-Afrika in werking tree.

Artikel IX

Hierdie Protokol bly van krag solank die Konvensie van krag bly.

TEN BEWYSE WAARVAN die ondergetekendes, synde behoorlik deur hulle onderskeie Regerings daartoe gemagtig, hierdie Protokol in tweevoud in Engels onderteken en beseël het.

GEDOEN te Kaapstad, op hede die 17de dag van Maart 2010.

**NAMENS DIE REGERING VAN DIE
REPUBLIC VAN SUID-AFRIKA**

**NAMENS DIE REGERING VAN
IERLAND**