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**GOVERNMENT NOTICE  
GOEWERMENTSKENNISGEWING**

**SOUTH AFRICAN REVENUE SERVICE  
SUID-AFRIKAANSE INKOMSTEDIENS**

No. 365

11 May 2015

**VALUE-ADDED TAX, 1991**

**AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF THE KINGDOM OF LESOTHO ON MUTUAL ASSISTANCE AND CO-OPERATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO VALUE-ADDED TAX**

In terms of section 75(2) of the Value-Added Tax, 1991 (Act No 89 of 1991), 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 Agreement on mutual assistance and co-operation and the prevention of fiscal evasion with respect to value-added tax set out in the Schedule to this Notice has been entered into with the Government of the Kingdom of Lesotho 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 8 of the Agreement that the date of entry into force is 29 October 2014.

No. 365

11 Mei 2015

**BELASTING OP TOEGEVOEGDE WAARDE, 1991****OOREENKOMS TUSSEN DIE REGERING VAN DIE REPUBLIEK VAN SUID-AFRIKA EN DIE REGERING VAN DIE KONINKRYK VAN LESOTHO OOR WEDERSYDSE BYSTAND EN SAMEWERKING EN DIE VOORKOMING VAN FISKALE ONTDUIKING MET BETREKKING TOT BELASTING OP TOEGEVOEGDE WAARDE**

Ingevolge artikel 75(2) van die Belasting op Toegevoegde Waarde, 1991 (Wet No 89 van 1991), 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 Ooreenkoms oor wedersydse bystand en samewerking en die voorkoming van fiskale ontduiking met betrekking tot belasting op toegevoegde waarde wat in die Bylae tot hierdie Kennisgewing vervat is, aangegaan is met die Regering van die Koningryk van Lesotho en deur die Parlement goedgekeur is ingevolge artikel 231(2) van die Grondwet.

Daar word verder bekendgemaak ingevolge paragraaf 1 van Artikel 8 van die Ooreenkoms, dat die datum van inwerkingtreding 29 Oktober 2014 is.

**SCHEDULE****AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF THE KINGDOM OF LESOTHO ON MUTUAL ASSISTANCE AND CO-OPERATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO VALUE-ADDED TAX****PREAMBLE**

The Government of the Republic of South Africa and the Government of the Kingdom of Lesotho (hereinafter jointly referred to as the "Contracting States" and in the singular as the "Contracting State") –

**HAVING** regard to their tax legislation;

**WISHING** to enter into an agreement to make provision for and regulate various matters relating to tax;

**CONSCIOUS** that practices of tax evasion and tax avoidance extending across the frontiers of the Contracting States lead to budget losses and are liable to bring about distortion of business practices and conditions of competition;

**CONSCIOUS** that the international nature of the problem renders national measures insufficient because their effect does not extend beyond national frontiers;

**DESIROUS** to exchange any information which appears relevant for the correct assessment or refund of tax or where such tax has been or may be evaded or avoided so as to obtain an undue tax benefit;

**RECOGNISING** that collaboration between the tax authorities is necessary for the continuous study of co-operation procedures and the pooling of experience in the field of tax with the aim of improving those procedures and of preparing appropriate rules;

**DESIROUS** that the Agreement should provide for mutual assistance and co-operation between the Contracting States and should be construed as complementary to, and not curtailing, mutual assistance between the Contracting States under any other agreements or arrangements;

**HEREBY AGREE** as follows:

**BYLAE****OORENKOMS TUSSEN DIE REGERING VAN DIE REPUBLIEK VAN SUID-AFRIKA EN DIE REGERING VAN DIE KONINKRYK VAN LESOTHO OOR WEDERSYDSE BYSTAND EN SAMEWERKING EN DIE VOORKOMING VAN FISKALE ONTDUIKING MET BETREKKING TOT BELASTING OP TOEGEVOEGDE WAARDE****AANHEF**

Die Regering van die Republiek van Suid-Afrika en die Regering van die Koninkryk van Lesotho (hieronder gesamentlik die "Kontrakterende State" en in die enkelvoud "die Kontrakterende Staat" genoem)

**INAGGENOME** hul belastingwetgewing;

**MET DIE WENS** om 'n ooreenkoms aan te gaan wat voorsiening maak vir verskeie aangeleenthede wat met belasting verband hou en dit reguleer;

**BEWUS** daarvan dat die praktyke van belastingontduiking en belastingvermyding wat die grense van die Kontrakterende State oorspan, tot verliese op die begroting lei en maklik die verwringing van sakepraktyke en mededingingsvoorwaardes teweeg kan bring;

**BEWUS** daarvan dat die internasionale aard van die probleem nasionale maatreëls ontoereikend maak omdat die werking daarvan nie verder as die nasionale grense strek nie;

**BEGERIG** om enige inligting uit te ruil wat toepaslik blyk te wees vir die korrekte aanslag of terugbetaling van belasting of waar sodanige belasting ontduik of vermy is of ontduik of vermy kan word ten einde 'n onbehoorlike belastingvoordeel te verkry;

**IN DIE BESEF** dat samewerking tussen die belastingowerhede nodig is vir die voortgesette bestudering van samewerkingsprosedures en die deling van ervaring op die belastingterrein met die doel om daardie prosedures te verbeter en gepaste reëls op te stel;

**BEGERIG** dat die ooreenkoms voorsiening moet maak vir wedersydse bystand en samewerking tussen die Kontrakterende State en uitgelê moet word as aanvullend, en nie as beperkend nie, tot wedersydse bystand tussen die Kontrakterende State kragtens enige ander ooreenkomste of akkoorde;

**KOM HIERBY** soos volg **OOREEN**:

**ARTICLE 1****DEFINITIONS**

In this Agreement, any word or expression to which a meaning has been assigned in the tax legislation shall have the meaning so assigned, unless the context otherwise indicates and –

- (a) “assessment” means any assessment made by a tax authority in respect of tax;
- (b) “Claims and Refund Manager” means the person that may be appointed from time to time, being responsible for managing, administering or rendering any advice, service or assistance regarding the operation of a refund system in accordance with the tax legislation of Lesotho and South Africa, as the case may be;
- (c) “export State” means the Contracting State from which goods or services are exported to the other Contracting State;
- (d) “from outside the Contracting States” means from any country other than Lesotho or South Africa;
- (e) “import State” means the Contracting State to which goods or services are imported from the other Contracting State;
- (f) “Lesotho” means the sovereign Kingdom of Lesotho comprising all the areas that immediately before 4 October 1966 were comprised in the former colony of Basutoland together with such other areas that may, in accordance with international law, be declared by an Act of the Lesotho Parliament to form part of Lesotho;
- (g) “person” includes any public authority, any local authority, any company, any body of persons (corporate or unincorporate), the estate of any deceased or insolvent person and any trust fund which is treated as an entity for tax purposes;
- (h) “requested authority” means the tax authority of the Contracting State from which assistance is requested;
- (i) “requesting authority” means the tax authority of the Contracting State which requests assistance;
- (j) “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;
- (k) “tax” means value-added tax in Lesotho and South Africa, as the case may be;
- (l) “tax authority” means -
  - (i) in Lesotho, the Commissioner General of the Lesotho Revenue Authority or an authorised representative of the Commissioner General; and
  - (ii) in South Africa, the Commissioner for the South African Revenue Service or an authorised representative of the Commissioner;

**ARTIKEL 1****WOORDOMSKRYWING**

In hierdie Ooreenkoms het 'n uitdrukking waaraan daar in die belastingwetgewing 'n betekenis geheg is, daardie betekenis en, tensy uit die samehang anders blyk, beteken

- (a) "aanslag", enige aanslag gedoen deur 'n belastingowerheid ten opsigte van belasting;
- (b) "Bestuurder: Eise en Terugbetaling", 'n persoon wat van tyd tot tyd aangestel kan word, wat verantwoordelik is vir die hantering, toepassing of bediening van enige raad, diens of bystand betreffende die werking van 'n terugbetalingstelsel ooreenkomstig die belastingwetgewing van Lesotho en Suid-Afrika, na gelang van die geval;
- (c) "uitvoerstaat", die Kontrakterende Staat waaruit goedere of dienste na die ander Kontrakterende Staat uitgevoer word;
- (d) "van buite die Kontrakterende State", van enige ander land as Lesotho of Suid-Afrika;
- (e) "invoerstaat", die Kontrakterende Staat waarin goedere of dienste vanuit die ander Kontrakterende Staat ingevoer word;
- (f) "Lesotho", die soewereine Koninkryk van Lesotho wat al die gebiede beslaan wat onmiddellik voor 4 Oktober 1966 deur die gewese Basoetoeland-kolonie beslaan is, saam met sodanige ander gebiede wat ooreenkomstig die volkereg deur 'n Wet van die Lesotho-parlement verklaar word deel van Lesotho uit te maak;
- (g) "persoon", stuit 'n openbare owerheid, 'n plaaslike owerheid, 'n maatskappy, 'n liggaam van persone (ingelyf of oningelyf), die boedel van 'n persoon wat oorlede of insolvent is en 'n trustfonds wat vir belastingdoeleindes as 'n entiteit behandel word, in;
- (h) "versoekte owerheid", die belastingowerheid van die Kontrakterende Staat wat versoek word om bystand te verleen;
- (i) "versoekende owerheid", die belastingowerheid van die Kontrakterende Staat wat bystand versoek;
- (j) "Suid-Afrika", die Republiek van Suid-Afrika en, wanneer dit in 'n geografiese sin gebruik word, ook die gebiedswaters daarvan asook enige gebied buite die gebiedswaters, insluitende die vastelandsplat, wat ingevolge die wette van Suid-Afrika en ooreenkomstig die volkereg aangewys is of hierna aangewys word as 'n gebied waarin Suid-Afrika soewereine regte of jurisdiksie kan uitoefen;
- (k) "belasting", belasting op toegevoegde waarde in Lesotho en Suid-Afrika, na gelang van die geval;
- (l) "belastingowerheid"-
  - (i) in Lesotho, die Kommissaris-generaal van die Lesotho-inkomsteowerheid of 'n gemagtigde verteenwoordiger van die Kommissaris-generaal; en
  - (ii) in Suid-Afrika, die Kommissaris van die Suid-Afrikaanse Inkomstediens of 'n gemagtigde verteenwoordiger van die Kommissaris;

- (m) "tax legislation" means the legislation which provides for the levy and payment of value-added tax in Lesotho and South Africa, as the case may be.

## ARTICLE 2

### TAXES COVERED

1. This Agreement shall apply in respect of tax levied in terms of the applicable tax legislation of each of the Contracting States.
2. The tax authorities of the Contracting States shall notify each other of any significant changes in their respective tax legislation.

## ARTICLE 3

### REFUND SYSTEM

1. Under the powers vested in the Governments of the Contracting States by the relevant provisions of the tax legislation, a refund system to administer the refund and assessment of tax as provided for in this Agreement shall be established.
2. Each Contracting State may appoint a Claims and Refund Manager and shall inform the other Contracting State of any such appointment.
3. Refunds in respect of tax shall be administered by each Contracting State or by the Claims and Refund Manager subject to tax legislation and in accordance with the provisions of this Agreement.
4. The tax authorities of the Contracting States shall, subject to tax legislation and in accordance with the provisions of the Agreement, develop a Memorandum of Understanding setting out operational procedures regarding -
  - (a) any matter relating to the refund of tax in respect of exports from an export State to an import State;
  - (b) the determining and monitoring of the amounts refundable in terms of the Agreement;
  - (c) the intervals at which refunds are to be made in terms of the Agreement;
  - (d) the responsibilities of a Claims and Refund Manager; and
  - (e) any matter that will facilitate or improve the operation of the refund system provided for in the Agreement.



- (m) "belastingwetgewing", die wetgewing wat voorsiening maak vir die heffing en betaling van belasting op toegevoegde waarde in Lesotho en Suid-Afrika, na gelang van die geval.

## ARTIKEL 2

### BELASTINGS GEDEK

1. Hierdie Ooreenkoms is van toepassing op belasting gehef ingevolge die toepaslike belastingwetgewing van elk van die Kontrakterende State.
2. Die belastingowerhede van die Kontrakterende State moet mekaar in kennis stel van enige beduidende veranderinge in hulle onderskeie belastingwetgewing.

## ARTIKEL 3

### TERUGBETALINGSTELSEL

1. Kragtens die bevoegdhede verleen aan die Regerings van die Kontrakterende State by die tersaaklike bepalinge van die belastingwetgewing, moet 'n terugbetalingstelsel ingestel word om die terugbetaling en aanslag van belasting toe te pas waarvoor daar in hierdie Ooreenkoms voorsiening gemaak word.
2. Elke Kontrakterende Staat kan 'n Bestuurder: Eise en Terugbetaling aanstel en moet die ander Kontrakterende Staat van so 'n aanstelling verwittig.
3. Terugbetalings ten opsigte van belasting word deur elke Kontrakterende Staat geadmistreer of deur die Bestuurder: Eise en Terugbetaling behoudens belastingwetgewing en ooreenkomstig die bepalinge van hierdie Ooreenkoms.
4. Die belastingowerhede van die Kontrakterende State moet, behoudens belastingwetgewing en ooreenkomstig die bepalinge van die Ooreenkoms, 'n Memorandum van Verstandhouding aangaan wat die bedryfsprosedures uiteensit betreffende
  - (a) enige aangeleentheid wat verband hou met die terugbetaling van belasting ten opsigte van uitvoere vanuit 'n uitvoerstaat na 'n invoerstaat;
  - (b) die vasstelling en monitering van die bedrae wat ingevolge die Ooreenkoms terugbetaalbaar is;
  - (c) die tussenposes waarmee terugbetalings ingevolge die Ooreenkoms gedoen moet word;
  - (d) die verantwoordelikhede van 'n Bestuurder: Eise en Terugbetaling; en
  - (e) enige aangeleentheid wat die werking van die terugbetalingstelsel waarvoor daar in hierdie Ooreenkoms voorsiening gemaak word, sal fasiliteer of verbeter.

5. Where tax has been charged and collected by a vendor in the export State on a sale or supply of goods which have been exported, any refund due in respect of such amount of tax shall, after deduction of any commission due to the Claims and Refund Manager, be transferred to the tax authority in the import State or refunded to the importer. The terms and conditions for the transfer or refund must be determined by the tax authorities of the Contracting States in the Memorandum of Understanding.

6. Where an importer has paid a lesser amount of tax in the export State in respect of a sale or a supply of goods that have been exported than the tax liability in the import State, the deficit shall be recovered from the importer by the tax authority in the import State.

#### **ARTICLE 4**

##### **EXCHANGE OF INFORMATION**

1. The tax authorities of the Contracting States shall exchange any information which is foreseeably relevant for the correct assessment or refund of tax or to combat the evasion or avoidance of tax. Exchanges will be done in accordance with the Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion for the time being in effect between the Contracting States and shall be subject to the same limitations on use and confidentiality.

2. The tax authorities of the Contracting States may communicate with each other directly in the implementation of this Agreement.

#### **ARTICLE 5**

##### **NOTIFICATION OF ASSESSMENT, CLAIM OR DECISION**

1. The requested authority shall, upon the request of the requesting authority, notify a person of all assessments, claims or decisions addressed to that person, including those of a legal nature, which relate to tax and which emanate from the territory of the Contracting State in which the requesting authority is situated. The notification by the requested authority shall be done in accordance with the rules in force for the notification of similar assessments, claims or decisions in the territory of the Contracting State in which the requested authority is situated.

2. The request for notification referred to in sub-article 1, shall include the name and physical and postal addresses of the person concerned, the nature and subject of the assessment, claim or decision to be notified and any other relevant information.

3. The requested authority shall promptly inform the requesting authority of the action taken on its request and of the date on which the assessment, claim or decision was forwarded to the person concerned.

5. Waar belasting deur 'n ondernemer in die uitvoerstaat gehef en ingevorder is op 'n verkoop of lewering van goedere wat uitgevoer is, moet enige terugbetaling verskuldig ten opsigte van daardie bedrag of belasting, na aftrekking van enige kommissie verskuldig aan die Bestuurder: Eise en Terugbetaling, oorgedra word na die belastingowerheid in die invoerstaat of aan die invoerder terugbetaal word. Die bepalinge en voorwaardes vir die oordrag of terugbetaling moet deur die belastingowerhede van die Kontrakterende State in die Memorandum van Verstandhouding vasgelê word.

6. Waar 'n invoerder 'n bedrag aan belasting betaal het in die uitvoerstaat ten opsigte van 'n verkoop of lewering van goedere wat uitgevoer is wat kleiner is as die belastingaanspreeklikheid in die invoerstaat, moet die tekort van die invoerder verhaal word deur die belastingowerheid in die invoerstaat.

#### **ARTIKEL 4**

##### **UITRUIL VAN INLIGTING**

1. Die belastingowerhede van die Kontrakterende State moet enige inligting uitruil wat voorsienbaar tersaaklik is vir die korrekte aanslag of terugbetaling van belasting of om die ontduiking of vermyding van belasting te bekamp. Uitruilings word gedoen ooreenkomstig die Ooreenkoms ter Vermyding van Dubbele Belasting en ter Voorkoming van Fiskale Ontduiking wat tans tussen die Kontrakterende State in werking is, en is onderworpe aan dieselfde beperkings op gebruik en vertroulikheid.

2. Die belastingowerhede van die Kontrakterende State kan regstreeks met mekaar kommunikeer in die uitvoering van hierdie Ooreenkoms.

#### **ARTIKEL 5**

##### **KENNISGEWING VAN AANSLAG, EIS OF BESLISSING**

1. Die versoekte owerheid moet, op versoek van die versoekende owerheid, 'n persoon in kennis stel van alle aanslae, eise of beslissings gerig aan daardie persoon, ook daardie van 'n regsraad, wat op belasting betrekking het en wat afkomstig is van die gebied van die Kontrakterende Staat waarin die versoekende owerheid geleë is. Die kennisgewing deur die versoekte owerheid moet gedoen word ooreenkomstig die reëls wat van krag is vir die kennisgewing van soortgelyke aanslae, eise of beslissings in die gebied van die Kontrakterende Staat waarin die versoekte owerheid geleë is.

2. Die versoek om kennisgewing genoem in subartikel 1, moet die naam en die fisiese en posadres van die betrokke persoon, die aard en die onderwerp van die aanslag, eis of beslissing waarvan kennis gegee moet word en enige ander tersaaklike inligting insluit.

3. Die versoekte owerheid moet die versoekende owerheid onverwyld verwittig van die optrede waartoe oorgegaan is op sy versoek en van die datum waarop die aanslag, eis of beslissing aan die betrokke persoon gestuur is.

**ARTICLE 6****AMENDMENTS**

The Contracting States may, at any time, revise or amend this Agreement by mutual consent through an Exchange of Notes through the diplomatic channel.

**ARTICLE 7****RESOLUTION OF DIFFICULTIES**

The tax authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place directly between representatives of the tax authorities of the Contracting States.

**ARTICLE 8****ENTRY INTO FORCE AND TERMINATION**

1. This Agreement shall enter into force on the date on which each Contracting State has notified the other in writing through the diplomatic channel of its compliance with the constitutional requirements necessary for the implementation of the Agreement. The date of entry into force shall be the date of the last notification.

2. The Agreement shall remain in force indefinitely unless terminated by either Contracting State by giving three months notice in writing through the diplomatic channel of its intention to terminate the agreement. The Contracting States shall remain bound by the provisions of the Agreement for as long as either Contracting State at the time of termination has any outstanding duties to be performed in terms of the Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have signed and sealed this Agreement, in two originals in the English language, both being equally authentic.

DONE at Maseru on this 6<sup>th</sup> day of March 2014.

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

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**FOR THE GOVERNMENT OF THE  
KINGDOM OF LESOTHO**

**ARTIKEL 6****WYSIGINGS**

Die Kontrakterende State kan hierdie Ooreenkoms te eniger tyd, met onderlinge toestemming, deur 'n uitruiling van notas deur middel van die diplomatieke kanaal hersien of wysig.

**ARTIKEL 7****BESLEGTING VAN MOEILIKHEDE**

Die belastingowerhede van die Kontrakterende State moet alles in werk stel om enige moeilikhede of twyfel wat ontstaan betreffende die uitleg of toepassing van hierdie Ooreenkoms deur onderlinge ooreenkoms te besleg. Wanneer dit raadsaam blyk, ten einde tot 'n ooreenkoms te kom, om 'n mondelinge meningswisseling te hê, kan sodanige wisseling regstreeks tussen verteenwoordigers van die belastingowerhede van die Kontrakterende State plaasvind.

**ARTIKEL 8****INWERKINGTREDING EN OPSEGGING**

1. Hierdie Ooreenkoms tree in werking op die datum waarop elk van die Kontrakterende State die ander skriftelik, deur middel van die diplomatieke kanaal, van sy nakoming van die staatkundige vereistes wat vir die uitvoering van die Ooreenkoms nodig is, in kennis stel. Die datum van inwerkingtreding is die datum van die laaste kennisgewing.

2. Die Ooreenkoms bly onbepaald van krag, tensy enigeen van die Kontrakterende State dit opsê deur skriftelik, deur middel van die diplomatieke kanaal, drie maande kennis te gee van sy voorneme om die Ooreenkoms op te sê. Die Kontrakterende State bly gebind deur die bepalinge van die Ooreenkoms solank enigeen van die Kontrakterende State ten tye van opsegging enige onafgehandelde pligte het wat ingevolge die Ooreenkoms verrig moet word.

TEN BEWYSE WAARVAN die ondergetekendes, behoorlik daartoe gemagtig deur hul onderskeie Regerings, hierdie Ooreenkoms geteken en geseël het, in twee eksemplare in die Engelse taal, waarvan beide ewe outentiek is.

GEDOEN te Maseru op hede die 6<sup>de</sup> dag van Maart 2014.

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

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**VIR DIE REGERING VAN DIE  
KONINKRYK VAN LESOTHO**





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