

GOVERNMENT NOTICE

SOUTH AFRICAN REVENUE SERVICE

No. 122

28 February 2012

INCOME TAX ACT, 1962

PROTOCOL AND ADDITIONAL PROTOCOL AMENDING THE CONVENTION BETWEEN THE REPUBLIC OF SOUTH AFRICA AND THE REPUBLIC OF AUSTRIA FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL, SIGNED ON 4 MARCH 1996

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 and Additional Protocol for the avoidance of double taxation with respect to taxes on income and on capital set out in the Schedule to this Notice has been entered into with the Republic of Austria 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 II of the Agreement, that the date of entry into force is 1 March 2012.

PROTOCOL AND ADDITIONAL PROTOCOL AMENDING THE CONVENTION BETWEEN THE REPUBLIC OF SOUTH AFRICA AND THE REPUBLIC OF AUSTRIA FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL, SIGNED ON 4 MARCH 1996

PREAMBLE

The Republic of South Africa and the Republic of Austria;

DESIRING to amend the Convention for the avoidance of double taxation with respect to taxes on income and on capital, signed on 4 March 1996 (hereinafter referred to as "the Convention");

HAVE AGREED AS FOLLOWS:

ARTICLE I

Article 26 of the Convention shall be 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, 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. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

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.”

ARTICLE II

1. Each Contracting State shall notify the other in writing, through the diplomatic channel, of the completion of the procedures required by its laws for the bringing into force of this Protocol. The Protocol shall enter into force on the first day of the third month next following the date of receipt of the latter of these notifications.

2. The provisions of this Protocol shall have effect with regard to taxable periods beginning on or after the first day of January next following the date upon which the Protocol enters into force.

ARTICLE III

This Protocol and the Additional Protocol, shall form an integral part of the Convention, shall remain in force as long as the Convention remains in force and shall apply as long as the Convention itself is applicable.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed and sealed this Protocol in two originals in the English and German languages, both texts being equally authentic.

DONE at Pretoria on this 22 day of August 2011.

**FOR THE REPUBLIC OF
SOUTH AFRICA**

**FOR THE REPUBLIC OF
AUSTRIA**

ADDITIONAL PROTOCOL

At the moment of signing the Protocol amending the Convention for the avoidance of double taxation with respect to taxes on income and on capital, signed on 4 March 1996, this day concluded between the Republic of South Africa and the Republic of Austria, the undersigned have agreed that the following provisions shall form an integral part of the Protocol.

AD ARTICLE 26:

1. The competent authority of the applicant State shall provide the following information to the competent authority of the requested State when making a request for information under the Convention to demonstrate the foreseeable relevance of the information to the request:

- (a) the identity of the person under examination or investigation;
- (b) a statement of the information sought including its nature and the form in which the applicant State wishes to receive the information from the requested State;
- (c) the tax purpose for which the information is sought;
- (d) grounds for believing that the information requested is held in the requested State or is in the possession or control of a person within the jurisdiction of the requested State;
- (e) the name and address of any person believed to be in possession of the requested information; and
- (f) a statement that the applicant State has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

2. It is understood that the exchange of information provided in Article 26 does not include measures which constitute "fishing expeditions".

3. It is understood that paragraph 5 of Article 26 does not require the Contracting States to exchange information on a spontaneous or automatic basis.

4. It is understood that - in addition to the above mentioned principles - for the interpretation of Article 26 the principles established in the Organisation for Economic Co-operation and Development Model Tax Convention Commentaries, including the technical note prepared by the Organisation for Economic Co-operation and Development Secretariat, shall be considered as well.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed and sealed this Additional Protocol in duplicate in the English and German languages, both texts being equally authentic.

DONE at Pretoria on this 22 day of August 2011.

**FOR THE REPUBLIC OF
SOUTH AFRICA**

**FOR THE REPUBLIC OF
AUSTRIA**