

GOVERNMENT NOTICE

SOUTH AFRICAN REVENUE SERVICE

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.

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.”

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.”

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.”

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**