

SOUTH AFRICAN REVENUE SERVICE

NO. 92

09 FEBRUARY 2018

INCOME TAX ACT, 1962**PROTOCOL AMENDING THE CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, SIGNED AT PRETORIA ON 8 NOVEMBER 2003**

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, it is hereby notified that the Protocol amending the agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income set out in the Schedule to this Notice has been entered into with the Government of the Federative Republic of Brazil and has been approved by Parliament in terms of section 231(2) of the Constitution.

It is further notified in terms of Article II of the Protocol that the date of entry into force is 10 February 2018.

SCHEDULE

PROTOCOL AMENDING THE CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, SIGNED AT PRETORIA ON 8 NOVEMBER 2003

PREAMBLE

The Government of the Republic of South Africa and the Government of the Federative Republic of Brazil;

DESIRING to amend the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, signed at Pretoria on 8 November 2003 (hereinafter referred to as "the Convention");

HAVE AGREED AS FOLLOWS:

ARTICLE I

Article 26 of the Convention 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, 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, but it covers only federal taxes in the case of Brazil and national taxes in the case of South Africa.

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 II

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 30 days after the date of receipt of the later of these notifications and its provisions shall have effect on that date.

ARTICLE III

This Protocol, which 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 Portuguese languages, both texts being equally authentic.

DONE at Pretoria, on this 31st day of July 2015.

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

**FOR THE GOVERNMENT OF THE
FEDERATIVE REPUBLIC OF BRAZIL**

SUID-AFRIKAANSE INKOMSTEDIENS

NO. 92

09 FEBRUARIE 2018

INKOMSTEBELASTINGWET, 1962**PROTOKOL TOT WYSIGING VAN DIE KONVENSIE TUSSEN DIE REGERING VAN DIE REPUBLIEK VAN SUID-AFRIKA EN DIE REGERING VAN DIE FEDERALE REPUBLIEK VAN BRASILIË TERVERMYDING VAN DUBBELE BELASTING EN DIE VOORKOMING VAN FISKALE ONTDUIKING MET BETREKKING TOT BELASTINGS OP INKOMSTE, GETEKEN TE PRETORIA OP 8 NOVEMBER 2003**

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, word hiermee kennis gegee dat die Protokol tot wysiging van die ooreenkoms ter vermyding van dubbele belasting en die voorkoming van fiskale ontduiking met betrekking tot belasting op inkomste wat in die Bylae tot hierdie Kennisgewing vervat is, aangegaan is met die Regering van die Federale Republiek van Brasilië en deur die Parlement goedgekeur is ingevolge artikel 231(2) van die Grondwet.

Daar word verder bekendgemaak dat ingevolge Artikel II van die Protokol, die datum van inwerkingtreding 10 Februarie 2018 is.

BYLAE**PROTOKOL TOT WYSIGING VAN DIE KONVENSIE TUSSEN DIE REGERING VAN DIE REPUBLIEK VAN SUID-AFRIKA EN DIE REGERING VAN DIE FEDERALE REPUBLIEK VAN BRASILIË TER VERMYDING VAN DUBBELE BELASTING EN DIE VOORKOMING VAN FISKALE ONTDUIKING MET BETREKKING TOT BELASTINGS OP INKOMSTE, GETEKEN TE PRETORIA OP 8 NOVEMBER 2003****AANHEF**

Die Regering van die Republiek van Suid-Afrika en die Regering van die Federale Republiek van Brasilië;

BEGERIC om die Konvensie ter vermyding van dubbele belasting en die voorkoming van fiskale ontduiking met betrekking tot belasting op inkomste te wysig, geteken te Pretoria op 8 November 2003 (hierna “die Konvensie” genoem);

HET AS VOLG OOREENGEKOM:**ARTIKEL I**

Artikel 26 van die Konvensie word geskrap en vervang deur die volgende:

“ARTIKEL 26**UITRUIL VAN INLIGTING**

1. Die bevoegde owerhede van die Kontrakterende State sal sodanig inligting uitruil wat voorsienbaar tersaaklik is vir die uitvoering van die bepalings van hierdie Konvensie of vir die administrasie of afdwinging van die landsreg met betrekking tot belasting van elke soort en beskrywing wat gehef word namens die Kontrakterende State, in sover die belasting daarkragtens nie teenstrydig met die Konvensie is nie. Die uitruil van inligting word nie deur Artikels 1 en 2 beperk nie, maar dit dek slegs federale belasting in die geval van Brasilië en nasionale belasting in die geval van Suid-Afrika.

2. Enige inligting in gevolg van paragraaf 1 deur ‘n Kontrakterende Staat ontvang, sal as geheim hanteer word op dieselfde wyse as inligting wat ingevolge die landsreg van daardie Staat verkry is en sal slegs aan persone of owerhede (ingesluit hulle en administratiewe liggame), gemoed met die aanslag of invordering van, die afdwinging of vervolging in verband met, die beslissing van appèlle rakende die belasting genoem in paragraaf 1, of die toesig oor die bogenoemde. Sodanige persone of owerhede sal die inligting slegs vir hierdie doeleindes gebruik. Hulle mag die inligting in openbare hofverrigtinge of in geregtelike beslissings openbaar maak.

3. In geen geval sal die bepalings van paragrawe 1 en 2 so uitgelê word dat dit ‘n verpligting op ‘n Kontrakterende Staat plaas om:

- (a) administratiewe maatreëls toe te pas in teëstryding met die wette en administratiewe praktyk van daardie of die ander Kontrakterende Staat nie;
- (b) inligting te verskaf wat nie bekombaar is ingevolge die wette of in die gewone loop van administrasie van daardie of van die ander Kontrakterende Staat nie;

- (c) inligting te verskaf wat enige handels-, besigheids-, industriële, kommersiële of beroepsgeheim of handelsproses, of inligting openbaar maak, waarvan die openbaarmaking teenstrydig sou wees met openbare beleid (ordre public) nie.

4. Indien inligting ooreenkomstig hierdie Artikel deur 'n Kontrakterende Staat aangevra word, sal die ander Kontrakterende Staat sy inligtingversamelmaatreëls gebruik om die aangevraagde inligting te bekom, selfs al het die ander Staat nie sodanige inligting vir sy eie belastingdoeleindes nodig nie. Die verpligting vervat in die voorafgaande sin is onderworpe aan die beperkings in paragraaf 3, maar in geen geval sal daardie beperkings so uitgelê word om 'n Kontrakterende Staat toe te laat om die verskaffing van inligting van die hand te wys bloot omdat hy geen plaaslike belang in daardie inligting het nie.

5. In geen geval sal die bepalinge van paragraaf 3 uitgelê word om 'n Kontrakterende Staat toe te laat om die verskaffing van inligting van die hand te wys bloot omdat die inligting gehou word deur 'n bank, ander finansiële instelling, 'n benoemde of 'n persoon wat in 'n agenskap of 'n fidusiëre hoedanigheid optree, of omdat dit verband hou met eienaarsbelange in 'n persoon nie."

ARTIKEL II

Elke Kontrakterende Staat sal die ander skriftelik, deur die diplomatieke kanaal, in kennis stel van die afhandeling van prosedures soos deur sy wette vereis om hierdie Protokol in werking te stel. Die Protokol sal in werking tree 30 dae na die datum van ontvangs van die laaste van hierdie kennisgewings en die bepalinge daarvan sal vanaf daardie datum van krag wees.

ARTIKEL III

Hierdie Protokol, wat 'n integrale deel van die Konvensie sal uitmaak, sal van krag bly solank as wat die Konvensie van krag is en sal van toepassing wees solank as wat die Ooreenkoms self van toepassing is.

AS GETUIES WAARVAN die ondergetekendes, behoorlik daartoe gemagtig deur hulle onderskeie Regerings, het hierdie Protokol geteken en geseël in twee oorspronklike in die Engelse en Portugese tale, waarvan beide tekste ewe outentiek is.

GETEKEN te Pretoria op hierdie 31^{ste} dag van Julie 2015.

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

**VIR DIE REGERING VAN DIE
FEDERALE REPUBLIEK
VAN BRASILIË**