GOVERNMENT NOTICE

SOUTH AFRICAN REVENUE SERVICE

No. 31721 23 December 2008

INCOME TAX ACT, 1962

PROTOCOL AMENDING THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF AUSTRALIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

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 set out in the Schedule to this Notice has been entered into with the Government of Australia and has been approved by Parliament in terms of section 231(2) of the Constitution.

It is further notified in terms of paragraph 2 of Article 13 of the Protocol, that the date of entry into force is 12 November 2008.

In terms of the provisions of subparagraphs (a) to (d) of paragraph 2 of Article 13 of the said Protocol, the provisions of the Protocol shall apply as follows:

(a) in the case of Australia:

(i) with regard to withholding tax on income that is derived by a nonresident, in respect of income derived on or after 1 January 2009;

(ii) with regard to other Australian tax, in respect of income, profits or gains of any year of income beginning on or after 1 July 2009;

(b) in the case of South Africa:

(i) with regard to taxes withheld at source, in respect of amounts paid or credited from 13 November 2008;

(ii) with regard to other South African tax, in respect of years of assessment beginning on or after 1 January 2009;

(c) for purposes of Article 25 from 12 November 2008; and

(d) for purposes of Article 25A, from a date to be agreed in an Exchange of Notes through the diplomatic channel.

The Protocol has been published in Government Gazette No. 31721 dated 23 December 2008.

PROTOCOL AMENDING THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF AUSTRALIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of South Africa and the Government of Australia,

Desiring to amend the Agreement between the Government of the Republic of South Africa and the Government of Australia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed at Canberra on the 1st day of July 1999 (in this Protocol referred to as "the Agreement"),

Have agreed as follows:

ARTICLE 1

Article 2 of the Agreement is omitted and the following Article is substituted:

"Article 2

Taxes Covered

1. The existing taxes to which this Agreement shall apply are:

   (a) in the case of Australia:

   the income tax, including the resource rent tax in respect of offshore projects relating to exploration for or exploitation of petroleum resources, imposed under the federal law of Australia;

   (b) in the case of South Africa:

   (i) the normal tax;
   (ii) the secondary tax on companies; and
   (iii) the withholding tax on royalties.

2. The Agreement shall apply also to any identical or substantially similar taxes, including taxes on dividends, that are imposed under the federal law of Australia or by the Government of the Republic of South Africa under its domestic law after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in the law of their respective States relating to the taxes to which the Agreement applies within a reasonable period of time after those changes.

3. For the purposes of Article 23A, the taxes to which the Agreement shall apply are taxes of every kind and description imposed on behalf of the Contracting States, or their political subdivisions or local authorities.

4. For the purposes of Articles 25 and 25A, the taxes to which the Agreement shall apply are:

(a) in the case of Australia, taxes of every kind and description imposed under the federal tax laws administered by the Commissioner of Taxation; and

(b) in the case of South Africa, taxes of every kind and description imposed under the tax laws administered by the Commissioner for the South African Revenue Service."

ARTICLE 2

Article 3 of the Agreement is amended by:

(a) inserting after subparagraph (i) of paragraph 1:

"(j) the term "national", in relation to a Contracting State, means:

(i) any individual possessing the nationality or citizenship of that Contracting State; and

(ii) any company deriving its status as such from the laws in force in that Contracting State;" and

(b) renumbering subparagraphs (j) and (k) of paragraph 1 as (k) and (l) respectively.

ARTICLE 3

Article 4 of the Agreement is omitted and the following Article 4 is substituted:

"Article 4

Resident

1. For the purposes of this Agreement, the term "resident of a Contracting State" means a person who is a resident of that State for the purposes of its tax. The Government of a Contracting State or a political subdivision or local authority of that State is also a resident of that State for the purposes of the Agreement.

2. A person is not a resident of a Contracting State for the purposes of the Agreement if the person is liable to tax in that State in respect only of income from sources in that State.

3. Where by reason of the preceding provisions of this Article a person, being an individual, is a resident of both Contracting States, then the person's status shall be determined as follows:

(a) the individual shall be deemed to be a resident only of the State in which a permanent home is available to that individual; but if a permanent home is available in both States, or in neither of them, that individual shall be deemed to be a resident only of the State with which the individual's personal and economic relations are closer (centre of vital interests);

(b) if the State in which the centre of vital interests is situated cannot be determined, the individual shall be deemed to be a resident only of the State of which that individual is a national;

(c) if the individual is a national of both States or of neither of them, the competent authorities of the Contracting States shall endeavour to resolve the question by mutual agreement.

4. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

5. Where under the Agreement any income, profits or gains are relieved from tax in a Contracting State and, under the law in force in the other Contracting State, an individual in respect of such income, profits or gains is exempt from tax by virtue of being a temporary resident of the other State within the meaning of the applicable laws of that other State, then the relief to be allowed under the Agreement in the firstmentioned State shall not apply to the extent that such income, profits or gains are exempt from tax in the other State."

ARTICLE 4

Article 5 of the Agreement is omitted and the following Article is substituted:

"Article 5

Permanent Establishment

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of the enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

(a) a place of management;
(b) a branch;
(c) an office;
(d) a factory;
(e) a workshop;
(f) a mine, an oil or gas well, a quarry or any other place relating to the exploration for or exploitation of natural resources; and
(g) an agricultural, pastoral or forestry property.

3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than six months.

4. Notwithstanding the provisions of paragraphs 1, 2 and 3, where an enterprise of a Contracting State:

(a) carries on supervisory or consultancy activities in the other State for a period or periods exceeding in the aggregate 183 days in any 12 month period in connection with a building site or construction or installation project which is being undertaken in that other State; or

(b) carries on activities (including the operation of substantial equipment) in the other State in the exploration for or exploitation of natural resources situated in that other State for a period or periods exceeding in the aggregate 90 days in any 12 month period; or

(c) operates substantial equipment in the other State (including as provided in subparagraph (b)) for a period or periods exceeding 183 days in any 12 month period,

such activities shall be deemed to be performed through a permanent establishment that the enterprise has in that other State, unless the activities are limited to those mentioned in paragraph 6 and are, in relation to the enterprise, of a preparatory or auxiliary character.

5. (a) The duration of activities under paragraphs 3 and 4 will be determined by aggregating the periods during which activities are carried on in a Contracting State by associated enterprises provided that the activities of the enterprise in that State are connected with the activities carried on in that State by its associate.

(b) The period during which two or more associated enterprises are carrying on concurrent activities will be counted only once for the purpose of determining the duration of activities.

(c) Under this Article, an enterprise shall be deemed to be associated with another enterprise if:

(i) one is controlled directly or indirectly by the other; or

(ii) both are controlled directly or indirectly by the same person or persons.

6. Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:

(a) the use of facilities solely for the purpose of storage, display or irregular delivery of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or irregular delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e) of this paragraph,

provided that such activities are, in relation to the enterprise, of a preparatory or auxiliary character.

7. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 8 applies – is acting on behalf of an enterprise and:

(a) has, and habitually exercises, in a Contracting State an authority to substantially negotiate or conclude contracts on behalf of the enterprise; or

(b) manufactures or processes in a Contracting State for the enterprise goods or merchandise belonging to the enterprise,

that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for that enterprise, unless the activities of such person are limited to those mentioned in paragraph 6 and are, in relation to the enterprise, of a preparatory or auxiliary character.

8. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a person who is a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of the person's business as such a broker or agent.

9. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself make either company a permanent establishment of the other.

10. The principles set forth in the preceding paragraphs of this Article shall be applied in determining for the purposes of paragraph 7 of Article 11 and paragraph 5 of Article 12 whether there is a permanent establishment outside both Contracting States, and whether an enterprise, not being an enterprise of a Contracting State, has a permanent establishment in a Contracting State."

ARTICLE 5

Article 10 of the Agreement is omitted and the following Article is substituted:

"Article 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting State for the purposes of its tax, being dividends beneficially owned by a resident of the other Contracting State, may be taxed in that other State.

2. However, those dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident for the purposes of its tax, and according to the law of that State, but the tax so charged shall not exceed:

(a) 5 per cent of the gross amount of the dividends if the beneficial owner of those dividends is a company which holds directly at least 10 per cent of the voting power in the company paying the dividends;

(b) 15 per cent of the gross amount of the dividends in all other cases.

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as other amounts which are subjected to the same taxation treatment as income from shares by the law of the State of which the company making the distribution is a resident for the purposes of its tax.

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 in that other State, or performs in that other State independent personal services from a fixed base situated in that other State, and the holding in respect of which the dividends are paid is effectively connected with that 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 – being dividends beneficially owned by a person who is not a resident of the other Contracting State – except insofar as the holding in respect of which such 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 that other State. This paragraph shall not apply in relation to dividends paid by any company which is a resident of Australia for the purposes of Australian tax and which is also a resident of South Africa for the purposes of South African tax.

6. Notwithstanding any other provisions of the Agreement, where a company which is a resident of a Contracting State has a permanent establishment in the other Contracting State, that other State may tax the profits attributable to the permanent establishment at a rate not exceeding by more than 5 percentage points:

(a) in the case of Australia, the rate of income tax payable on the profits of a company which is resident of Australia; and

(b) in the case of South Africa, the rate of normal tax payable on the profits of a company which is resident of South Africa.

7. No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with assignment of the dividends, or the creation or assignment of the shares or other rights in respect of which the dividend is paid, to take advantage of this Article by means of that creation or assignment."

ARTICLE 6

Article 11 of the Agreement is omitted and the following Article is substituted:

"Article 11

Interest

1. Interest arising in a Contracting State and beneficially owned by a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the law of that State, but the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding paragraph 2, interest arising in a Contracting State and beneficially owned by a resident of the other Contracting State may not be taxed in the firstmentioned State if:

(a) the interest is derived by a Contracting State or by a political or administrative subdivision or a local authority thereof, or by any other body exercising governmental functions in a Contracting State, or by a bank performing central banking functions in a Contracting State; or

(b) the interest is derived by a financial institution which is unrelated to and dealing wholly independently with the payer. For the purposes of this Article, the term "financial institution" means a bank or other enterprise substantially deriving its profits by raising debt finance in the financial markets or by taking deposits at interest and using those funds in carrying on a business of providing finance.

4. Notwithstanding paragraph 3, interest referred to in subparagraph (b) of that paragraph may be taxed in the State in which it arises at a rate not exceeding 10 per cent of the gross amount of the interest if the interest is paid as part of an arrangement involving back-to-back loans or other arrangement that is economically equivalent and intended to have a similar effect to back-to-back loans.

5. The term “interest” in this Article includes interest from government securities or from bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, interest from any other form of indebtedness, as well as income which is subjected to the same taxation treatment as income from money lent by the law of the Contracting State in which the income arises.

6. The provisions of paragraphs 1 and 2, subparagraph (b) of paragraph 3 and paragraph 4 of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated in that other State, or performs in that other State independent personal services from a fixed base situated in that other State, and the indebtedness in respect of which the interest is paid is effectively connected with that permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

7. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State for the purposes of its tax. Where, however, the person paying the interest, whether the person is a resident of a Contracting State or not, has in a Contracting State or outside both Contracting States a permanent establishment or fixed base in connection with which the indebtedness on which the interest is paid was incurred, and that interest is borne by that permanent establishment or fixed base, then the interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

8. Where, by reason of a special relationship between the payer and the beneficial owner of the interest, or between both of them and some other person, the amount of the interest paid, having regard to the indebtedness for which it is paid, exceeds the amount which might reasonably have been expected to have been agreed upon by the payer and the person so entitled in the absence of that relationship, the provisions of this Article shall apply only to the lastmentioned amount. In such case, the excess part of the amount of interest paid shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

9. No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with assignment of the interest, or the creation or assignment of the indebtedness in respect of which the interest is paid, to take advantage of this Article by means of that creation or assignment.”

ARTICLE 7

Article 12 of the Agreement is omitted and the following Article is substituted:

“Article 12

Royalties

1. Royalties arising in a Contracting State and beneficially owned by a resident of the other Contracting State may be taxed in that other State.

2. However, those royalties may also be taxed in the Contracting State in which they arise, and according to the law of that State, but the tax so charged shall not exceed 5 per cent of the gross amount of the royalties.

3. The term “royalties” in this Article means payments or credits, whether periodical or not, and however described or computed, to the extent to which they are made as consideration for:

(a) the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trademark or other like property or right;

(b) the supply of scientific, technical, industrial or commercial knowledge or information;

(c) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right as is mentioned in subparagraph (a) or any such knowledge or information as is mentioned in subparagraph (b);

(d) the use of, or the right to use:

(i) motion picture films;

(ii) films or audio or video tapes or disks, or any other means of image or sound reproduction or transmission for use in connection with television, radio or other broadcasting;

(e) the use of, or the right to use, some or all of the part of the radiofrequency spectrum as specified in a spectrum licence of a Contracting State, where the payment or credit arises in that State; or

(f) total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated in the other State, or performs in that other State independent personal services from a fixed base situated in that other State, and the right or property in respect of which the royalties are paid or credited is effectively connected with that permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State for the purposes of its tax. Where, however, the person paying the royalties, whether the person is a resident of a Contracting State or not, has in a Contracting State or outside both Contracting States a permanent establishment or fixed base in connection with which the liability to pay the royalties was incurred, and the royalties are borne by the permanent establishment or fixed base, then the royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, owing to a special relationship between the payer and the beneficial owner of the royalties, or between both of them and some other person, the amount of the royalties paid or credited, having regard to what they are paid or credited for, exceeds the amount which might reasonably have been expected to have been agreed upon by the payer and the person so entitled in the absence of that relationship, the provisions of this Article shall apply only to the lastmentioned amount. In such case, the excess part of the amount of the royalties paid or credited shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

7. No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with assignment of the royalties, or the creation or assignment of the rights in respect of which the royalties are paid or credited, to take advantage of this Article by means of that creation or assignment."

ARTICLE 8

Article 13 of the Agreement is omitted and the following Article is substituted:

"Article 13

Alienation of Property

1. Income, profits or gains derived by a resident of a Contracting State from the alienation of real property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Income, profits or gains from the alienation of property, other than real property, that forms part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or pertains to a fixed base available in that other State to a resident of the firstmentioned State for the purposes of performing independent personal services, including income, profits or gains from the alienation of that permanent establishment (alone or with the whole enterprise) or of that fixed base, may be taxed in that other State.

3. Income, profits or gains of an enterprise of a Contracting State from the alienation of ships or aircraft operated by that enterprise in international traffic, or of property (other than real property) pertaining to the operation of such ships or aircraft, shall be taxable only in that State.

4. Income, profits or gains derived by a resident of a Contracting State from the alienation of any shares or comparable interests deriving more than 50 per cent of their value directly or indirectly from real property situated in the other Contracting State may be taxed in that other State.

5. Gains of a capital nature from the alienation of any property, other than that referred to in the preceding paragraphs shall be taxable only in the Contracting State of which the alienator is a resident."

ARTICLE 9

The following Article is inserted after Article 23 of the Agreement:

"Article 23A

Non-discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities in similar circumstances. This provision shall not be construed as obliging a Contracting State to grant to individuals who are residents of the other Contracting State any of the personal allowances, reliefs and reductions for tax purposes which are granted to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 8 of Article 11 or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the firstmentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the firstmentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the firstmentioned State in similar circumstances are or may be subjected.

5. This Article shall not apply to any provision of the laws of a Contracting State which:

   (a) is designed to prevent the avoidance or evasion of taxes;

   (b) does not permit the deferral of tax arising on the transfer of an asset where the subsequent transfer of the asset by the transferee would be beyond the taxing jurisdiction of the Contracting State under its laws;

   (c) provides for consolidation of group entities for treatment as a single entity for tax purposes provided that a company, being a resident of that State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, may access such consolidation treatment on the same terms and conditions as other companies that are residents of the firstmentioned State;

(d) does not allow tax rebates or credits in relation to dividends paid by a company that is a resident of that State for purposes of its tax;

(e) provides deductions to eligible taxpayers for expenditure on research and development; or

(f) is otherwise agreed to be unaffected by this Article in an Exchange of Notes between the Contracting States.

6. In this Article, provisions of the laws of a Contracting State which are designed to prevent avoidance or evasion of taxes include:

(a) measures designed to address thin capitalisation, dividend stripping and transfer pricing;

(b) controlled foreign company, transferor trusts and foreign investment fund rules; and

(c) measures designed to ensure that taxes can be effectively collected and recovered, including conservancy measures."

ARTICLE 10

Article 25 of the Agreement is omitted and the following Article is substituted:

"Article 25

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 Agreement or to the administration or enforcement of the domestic law concerning taxes referred to in Article 2, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1.

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 law 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 4 of Article 2, 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 law and administrative practice of that or of the other Contracting State;

(b) to supply information which is not obtainable by the competent authority under the law 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.

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 11

The following Article is inserted after Article 25 of the Agreement:

"Article 25A

Assistance in the Collection of Taxes

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Article 1. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. The term "revenue claim" as used in this Article means an amount owed in respect of taxes referred to in Article 2, insofar as the taxation thereunder is not contrary to this Agreement or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the firstmentioned State or is owed by a person who has a right to prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the firstmentioned State, the relevant revenue claim ceases to be:

(a) in the case of a request under paragraph 3, a revenue claim of the firstmentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection; or

(b) in the case of a request under paragraph 4, a revenue claim of the firstmentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection,

the competent authority of the firstmentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the firstmentioned State shall either suspend or withdraw its request.

8. In no case shall the provisions of this Article 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 carry out measures which would be contrary to public policy;

(c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;

(d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State;

(e) to provide assistance if that State considers that the taxes with respect to which assistance is requested are imposed contrary to generally accepted taxation principles."

ARTICLE 12

Paragraph 1 of the existing Protocol to the Agreement is deleted.

ARTICLE 13

1. The Government of Australia and the Government of the Republic of South Africa shall notify each other in writing through the diplomatic channel of the completion of their domestic requirements for the entry into force of this Protocol.

2. The Protocol, which shall form an integral part of the Agreement, shall enter into force on the date of the last notification, and thereupon the Protocol shall have effect:

(a) in the case of Australia:

(i) with regard to withholding tax on income that is derived by a nonresident, in respect of income derived on or after the first day of the second month following the date on which the Protocol enters into force;

(ii) with regard to other Australian tax, in respect of income, profits or gains of any year of income beginning on or after 1 July in the calendar year next following the date on which the Protocol enters into force;

(b) in the case of South Africa:

(i) with regard to taxes withheld at source, in respect of amounts paid or credited from the day after the date on which the Protocol enters into force;

(ii) with regard to other South African tax, in respect of years of assessment beginning on or after 1 January next following the date on which the Protocol enters into force;

(c) for purposes of Article 25 from the date on which the Protocol enters into force; and

(d) for purposes of Article 25A, from a date to be agreed in an Exchange of Notes through the diplomatic channel.

IN WITNESS WHEREOF the undersigned, duly authorised by their respective Governments, have signed this Protocol.

DONE in duplicate at Pretoria this 31st day of March 2008.

FOR THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

FOR THE GOVERNMENT OF AUSTRALIA