

**GOVERNMENT NOTICE**

**SOUTH AFRICAN REVENUE SERVICE**

**No. 92**

**9 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 31<sup>st</sup> day of July 2015.

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

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