

Income Tax (Singapore — South Africa) (Avoidance of Double Taxation Agreement) Order 1997

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Enacting Formula

THE SCHEDULE

No. S 520

**INCOME TAX ACT
(CHAPTER 134)**

**INCOME TAX (SINGAPORE — SOUTH AFRICA) (AVOIDANCE OF DOUBLE
TAXATION AGREEMENT) ORDER 1997**

WHEREAS it is provided by section 49 of the Income Tax Act that if the Minister by order declares that arrangements specified in the order have been made with the Government of any country outside Singapore with a view to affording relief from double taxation in relation to tax under the Act and any tax of a similar character imposed by the laws of that country, and that it is expedient that those arrangements should have effect, the arrangements shall have effect in relation to tax under the Act notwithstanding anything in any written law:

AND WHEREAS by an Agreement dated 23rd December 1996, between the Government of the Republic of Singapore and the Government of the Republic of South Africa, arrangements were made amongst other things for the avoidance of double taxation:

NOW, THEREFORE, it is hereby declared by the Minister for Finance —

- (a) that the arrangements specified in the Schedule have been made with the Government of the Republic of South Africa; and
- (b) that it is expedient that those arrangements should have effect notwithstanding anything in any written law.

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

PREAMBLE

The Government of the Republic of Singapore and the Government of the Republic of South Africa desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have agreed as follows:

ARTICLE 1
PERSONAL SCOPE

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2
TAXES COVERED

1. The existing taxes to which the Agreement shall apply are:
 - (a) in Singapore, the income tax;
(hereinafter referred to as “Singapore tax”); and
 - (b) in South Africa:
 - (i) the normal tax;
 - (ii) the non-resident shareholders’ tax; and

(iii) the secondary tax on companies;

(hereinafter referred to as “South African tax”).

2. This Agreement shall also apply to any other taxes of a substantially similar character which are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes.

3. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws.

ARTICLE 3

GENERAL DEFINITIONS

1. In this Agreement, unless the context otherwise requires:

- (a) the term “Singapore” means the Republic of Singapore;
- (b) the term “South Africa” means the Republic of South Africa and, when used in a geographical sense, includes the territorial sea thereof as well as any area outside the territorial sea, including the continental shelf, which has been or may hereafter be designated, under the laws of South Africa and in accordance with and for the purposes indicated in international law, as an area within which South Africa may exercise sovereign rights or jurisdiction;
- (c) the terms “a Contracting State” and “the other Contracting State” mean Singapore or South Africa as the context requires;
- (d) the term “company” means any body corporate or any entity which is treated as a company or body corporate for tax purposes;
- (e) the term “competent authority” means:
 - (i) in Singapore, the Minister for Finance or his authorised representative; and
 - (ii) in South Africa, the Commissioner for Inland Revenue or his authorised representative;
- (f) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (g) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (h) the term “national” means:
- (i) any individual possessing the nationality of a Contracting State;
 - (i) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State; and

- (ii) the term “person” includes an individual, a company and any other body of persons which is treated as an entity for tax purposes.

2. As regards the application of the Agreement by a Contracting State at any time, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has at that time under the law of that State concerning the taxes to which the Agreement applies.

ARTICLE 4

RESIDENT

1. For the purposes of this Agreement the term “resident of a Contracting State” means:

- (a) in the case of Singapore, any person who is resident in Singapore for its tax purposes; and
- (b) in the case of South Africa, any individual who is ordinarily resident in South Africa and any other person which has its place of effective management in South Africa.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. 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 of the State in which its place of effective management is situated. If its place of effective management cannot be determined, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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; and
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site, a construction, installation or assembly project or any supervisory activity in connection with such site or project constitutes a permanent establishment only if it lasts more than 12 months.

4. 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 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 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 for 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; and
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person other than an agent of an independent status to whom paragraph 6 applies is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of 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 the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. 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 broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

7. 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 constitute either company a permanent establishment of the other.