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GOVERNMENT NOTICE GOEWERMENTSKENNISGEWING

SOUTH AFRICAN REVENUE SERVICE SUID-AFRIKAANSE INKOMSTEDIENS

No. 33

23 January 2009

INCOME TAX ACT, 1962

CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF THE KINGDOM OF SAUDI ARABIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF TAX EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

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 Convention for the avoidance of double taxation and the prevention of tax evasion with respect to taxes on income and on capital set out in the Schedule to this Notice has been entered into with the Government of the Kingdom of Saudi Arabia 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 29 of the Convention, that the date of entry into force is 1 May 2008.

**CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND
THE GOVERNMENT OF THE KINGDOM OF SAUDI ARABIA FOR THE AVOIDANCE OF
DOUBLE TAXATION AND THE PREVENTION OF TAX EVASION WITH RESPECT TO TAXES
ON INCOME AND ON CAPITAL**

Preamble

The Government of the Republic of South Africa and the Government of the Kingdom of Saudi Arabia,

DESIRING to conclude a Convention for the avoidance of double taxation and the prevention of tax evasion with respect to taxes on income and on capital,

HAVE AGREED as follows:

Article 1

Persons Covered

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

Article 2

Taxes Covered

1. This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its political or administrative subdivisions, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which the Convention shall apply are in particular:

(a) in the case of the Kingdom of Saudi Arabia:

- (i) the Zakat;
- (ii) the income tax including the natural gas investment tax;

(hereinafter referred to as the "Saudi tax"); and

(b) in the case of the Republic of South Africa:

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

(hereinafter referred to as the "South African tax").

4. The Convention shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Convention 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 their taxation laws.

Article 3

General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:

- (a) the term "Kingdom of Saudi Arabia" means the territory of the Kingdom of Saudi Arabia which also includes the area outside the territorial waters, where the Kingdom of Saudi Arabia exercises its sovereign and jurisdictional rights in their waters, sea bed, sub-soil and natural resources by virtue of its law and international law;
- (b) the term "the Republic of South Africa" means 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, in which South Africa exercises sovereign rights or jurisdiction in accordance with international law;
- (c) the terms "a Contracting State" and "the other Contracting State" mean the Kingdom of Saudi Arabia or South Africa, as the context requires;
- (d) the term "person" includes any individual, any company or any other body of persons, including the State, its political or administrative subdivisions or local authorities, estates, trusts and foundations;
- (e) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (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 "national" means:
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
- (h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise that has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (i) the term "competent authority" means:
 - (i) in the case of the Kingdom of Saudi Arabia, the Ministry of Finance represented by the Minister of Finance or an authorised representative of the Minister; and
 - (ii) in the case of South Africa, the Commissioner for the South African Revenue Service or an authorised representative of the Commissioner.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Contracting State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that Contracting State prevailing over a meaning given to the term under other laws of that Contracting State.

Article 4

Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" means:
 - (a) any person who, under the laws of that Contracting 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 Contracting State and any political or administrative subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that Contracting State in respect only of income from sources in that Contracting State or capital situated therein;
 - (b) a legal person organised under the laws of a Contracting State and that is generally exempt from tax in that Contracting State and is established and maintained in that Contracting State either:
 - (i) exclusively for religious, charitable, educational, scientific, or other similar purposes; or
 - (ii) to provide pensions or other similar benefits to employees pursuant to a plan.

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

- (a) the individual shall be deemed to be a resident solely of the Contracting State in which a permanent home is available to the individual; if a permanent home is available to the individual in both Contracting States, the individual shall be deemed to be a resident solely of the Contracting State with which the individual's personal and economic relations are closer (centre of vital interests);
- (b) if sole residence cannot be determined under the provisions of subparagraph (a), the individual shall be deemed to be a resident solely of the Contracting State in which the individual has an habitual abode;
- (c) if the individual has an habitual abode in both Contracting States or in neither of them, the individual shall be deemed to be a resident solely of the Contracting State of which the individual is a national;
- (d) if the individual is a national of both Contracting 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 of this Article a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident solely of the Contracting State in which its place of effective management is situated.

Article 5

Permanent Establishment

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

2. The term "permanent establishment" includes but is not limited to:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, a quarry or any other place of extraction of natural resources.

3. The term "permanent establishment" also includes:

- (a) a building site, a construction, assembly or installation project or any supervisory activity in connection with such site or project, but only where such site, project or activity continues for a period of more than six months;