



# Government Gazette

**REPUBLIC OF SOUTH AFRICA**

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**AIDS HELPLINE: 0800-0123-22 Prevention is the cure**

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**GOVERNMENT NOTICE****SOUTH AFRICAN REVENUE SERVICE****No. 1094****17 September 2004****INCOME TAX ACT, 1962****AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF NEW ZEALAND 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 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 New Zealand and has been approved by Parliament in terms of section 231(2) of the Constitution.

It is further notified in terms of Article 26 of the Agreement, that the date of entry into force is 23 July 2004.

**AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF NEW ZEALAND 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 South Africa and the Government of New Zealand

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**

***Persons Covered***

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 this Agreement shall apply are:

(a) in New Zealand: the income tax;  
(hereinafter referred to as "New Zealand tax");

(b) in South Africa:  
(i) the normal tax;  
(ii) the secondary tax on companies; and  
(iii) the withholding tax on royalties;

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

2. The Agreement shall apply also to any identical or substantially similar taxes that are imposed 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 within a reasonable period of time of any significant changes that have been made in their taxation laws.

3. Notwithstanding the provisions of paragraphs 1 and 2, the taxes covered by the Agreement do not include any amount which represents a penalty or interest imposed under the laws of either Contracting State.

### Article 3

#### *General Definitions*

1. For the purposes of this Agreement, unless the context otherwise requires:
  - (a)
    - (i) the term "New Zealand" means the territory of New Zealand but does not include Tokelau or the Associated Self Governing States of the Cook Islands and Niue; it also includes any area beyond the territorial sea which by New Zealand legislation and in accordance with international law has been, or may hereafter be, designated as an area in which the rights of New Zealand with respect to natural resources may be exercised;
    - (ii) 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 international law, as an area within which South Africa may exercise sovereign rights or jurisdiction;
  - (b) the term "business" includes the performance of professional services and of other activities of an independent character;
  - (c) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
  - (d) the term "competent authority" means:
    - (i) in the case of New Zealand, the Commissioner of Inland Revenue or an authorised representative;
    - (ii) in the case of South Africa, the Commissioner for the South African Revenue Service or an authorised representative;
  - (e) the terms "a Contracting State" and "the other Contracting State" mean New Zealand or South Africa, as the context requires;
  - (f) the term "enterprise" applies to the carrying on of any business;
  - (g) 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;
  - (h) 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 from a place or between places in the other Contracting State;

- (i) the term "national" means:
  - (a) in the case of New Zealand, any individual who is a citizen of New Zealand;
  - (b) in the case of South Africa:
    - (i) any individual who is a national of South Africa;
    - (ii) any legal person or association deriving its status as such from the laws in force in South Africa;
- (j) the term "natural resources" includes standing timber and fish;
- (k) the term "person" includes an individual, a company and any other body of persons that is treated as an entity for tax purposes.

2. For the purposes of Articles 10, 11 and 12, a trustee subject to tax in a Contracting State in respect of dividends, interest or royalties shall be deemed to be the beneficial owner of those dividends, interest or royalties.

3. As regards the application of the Agreement 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 State for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

#### **Article 4**

##### ***Resident***

1. For the purposes of this Agreement, the term "resident" means any person who is a resident of a Contracting State for the purposes of that State's tax. The term also includes a Contracting State and any political subdivision or local authority of that State. The term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 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 State in which a permanent home is available to the individual; if a permanent home is available to the individual in both States or a permanent home is not available in either State, the individual shall be deemed to be a resident solely of the 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 State in which the individual has an habitual abode;