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GOVERNMENT NOTICE
GOEWERMENSKENNISGEWING

SOUTH AFRICAN REVENUE SERVICES
SUID-AFRIKAANSE INKOMSTEDIENS

No. 172

31 January 2003

INCOME TAX ACT, 1962

CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL GAINS

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 fiscal evasion with respect to taxes on income and on capital gains set out in the Schedule to this Notice has been entered into with the Government of the United Kingdom of Great Britain and Northern Ireland 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 27 of the Convention, that the date of entry into force is 17 December 2002.

**CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA
AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND
NORTHERN IRELAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE
PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON
CAPITAL GAINS**

Preamble

The Government of the Republic of South Africa and the Government of the United Kingdom of Great Britain and Northern Ireland desiring to promote and strengthen the economic relations between the two countries by the conclusion of a new Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains,

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 gains imposed on behalf of a Contracting State or of its political subdivisions, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital gains all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property.

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

(a) in the case of 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");

(b) in the case of the United Kingdom:

- (i) the income tax;
- (ii) the corporation tax; and
- (iii) the capital gains tax;

(hereinafter referred to as "United Kingdom tax").

4. This Convention shall also apply to any identical or substantially similar taxes that are imposed by either Contracting State after the date of signature of this 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 respective taxation laws.

Article 3

General Definitions

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

- (a) 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 "United Kingdom" means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom which in accordance with international law has been or may hereafter be designated, under the laws of the United Kingdom concerning the Continental Shelf, as an area within which the rights of the United Kingdom with respect to the sea bed and sub-soil and their natural resources may be exercised;
- (c) the terms "a Contracting State" and "the other Contracting State" mean South Africa or the United Kingdom, as the context requires;
- (d) the term "business" includes the performance of professional services and of other activities of an independent character;
- (e) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (f) the term "competent authority" means:
 - (i) in the case of South Africa, the Commissioner for the South African Revenue Service or an authorised representative; and
 - (ii) in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representative;

- (g) the term "enterprise" applies to the carrying on of any business;
- (h) 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;
- (i) 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;
- (j) the term "national" means:
 - (i) in relation to South Africa, any individual possessing South African nationality and any legal person or association deriving its status as such from the law in force in South Africa; and
 - (ii) in relation to the United Kingdom, any British citizen, or any British subject not possessing the citizenship of any other Commonwealth country or territory, provided such citizen or subject has the right of abode in the United Kingdom; and any legal person, partnership, association or other entity deriving its status as such from the law in force in the United Kingdom;
- (k) the term "person" includes an individual, a company and any other body of persons and does not include a partnership.

2. As regards the application of the provisions of this 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 State for the purposes of the taxes to which this Convention 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

Residence

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of that person's domicile, residence, place of management, place of incorporation or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof.