

No. 36819. Australia and South Africa

AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA 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. CANBERRA, 1 JULY 1999 [*United Nations, Treaty Series, vol. 2116, I-36819.*]

PROTOCOL AMENDING THE AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA 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 OF 1999. PRETORIA, 31 MARCH 2008

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N° 36819. Australie et Afrique du Sud

ACCORD ENTRE L'AUSTRALIE ET LA RÉPUBLIQUE SUD-AFRICAINE TENDANT À ÉVITER LA DOUBLE IMPOSITION ET À PRÉVENIR L'ÉVASION FISCALE EN MATIÈRE D'IMPÔTS SUR LE REVENU. CANBERRA, 1 JUILLET 1999 [*Nations Unies, Recueil des Traités, vol. 2116, I-36819.*]

PROTOCOLE AMENDANT L'ACCORD DE 1999 ENTRE LE GOUVERNEMENT DE L'AUSTRALIE ET LE GOUVERNEMENT DE LA RÉPUBLIQUE SUD-AFRICAINE TENDANT À ÉVITER LA DOUBLE IMPOSITION ET À PRÉVENIR L'ÉVASION FISCALE EN MATIÈRE D'IMPÔTS SUR LE REVENU. PRETORIA, 31 MARS 2008

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[ENGLISH TEXT – TEXTE ANGLAIS]

**PROTOCOL AMENDING THE AGREEMENT BETWEEN THE
GOVERNMENT OF AUSTRALIA 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**

The Government of Australia and the Government of the Republic of South Africa,

Desiring to amend the Agreement between the Government of Australia 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 signed at Canberra on the 1st day of July 1999 (in this Protocol referred to as “the Agreement”),

Have agreed as follows:

ARTICLE 1

Article 2 of the Agreement is omitted and the following Article is substituted:

“Article 2

Taxes Covered

1. The existing taxes to which this Agreement shall apply are:
 - (a) in the case of Australia:

the income tax, including the resource rent tax in respect of offshore projects relating to exploration for or exploitation of petroleum resources, imposed under the federal law of Australia;
 - (b) in the case of South Africa:
 - (i) the normal tax;
 - (ii) the secondary tax on companies; and
 - (iii) the withholding tax on royalties.
2. The Agreement shall apply also to any identical or substantially similar taxes, including taxes on dividends, that are imposed under the federal law of Australia or by the Government of the Republic of South Africa under its domestic law 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 of any significant changes that have been made in the law of their respective States relating to the taxes to which the Agreement applies within a reasonable period of time after those changes.

3. For the purposes of Article 23A, the taxes to which the Agreement shall apply are taxes of every kind and description imposed on behalf of the Contracting States, or their political subdivisions or local authorities.
4. For the purposes of Articles 25 and 25A, the taxes to which the Agreement shall apply are:
 - (a) in the case of Australia, taxes of every kind and description imposed under the federal tax laws administered by the Commissioner of Taxation; and
 - (b) in the case of South Africa, taxes of every kind and description imposed under the tax laws administered by the Commissioner for the South African Revenue Service.”

ARTICLE 2

Article 3 of the Agreement is amended by:

- (a) inserting after subparagraph (i) of paragraph 1:
 - “(j) the term “national”, in relation to a Contracting State, means:
 - (i) any individual possessing the nationality or citizenship of that Contracting State; and
 - (ii) any company deriving its status as such from the laws in force in that Contracting State;” and
- (b) renumbering subparagraphs (j) and (k) of paragraph 1 as (k) and (l) respectively.

ARTICLE 3

Article 4 of the Agreement is omitted and the following Article 4 is substituted:

“Article 4

Resident

1. For the purposes of this Agreement, the term “resident of a Contracting State” means a person who is a resident of that State for the purposes of its tax. The Government of a Contracting State or a political subdivision or local authority of that State is also a resident of that State for the purposes of the Agreement.
2. A person is not a resident of a Contracting State for the purposes of the Agreement if the person is liable to tax in that State in respect only of income from sources in that State.

3. Where by reason of the preceding provisions of this Article a person, being an individual, is a resident of both Contracting States, then the person's status shall be determined as follows:
 - (a) the individual shall be deemed to be a resident only of the State in which a permanent home is available to that individual; but if a permanent home is available in both States, or in neither of them, that individual shall be deemed to be a resident only of the State with which the individual's personal and economic relations are closer (centre of vital interests);
 - (b) if the State in which the centre of vital interests is situated cannot be determined, the individual shall be deemed to be a resident only of the State of which that individual is a national;
 - (c) if the individual is a national of both States or of neither of them, the competent authorities of the Contracting States shall endeavour to resolve the question by mutual agreement.
4. 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 only of the State in which its place of effective management is situated.
5. Where under the Agreement any income, profits or gains are relieved from tax in a Contracting State and, under the law in force in the other Contracting State, an individual in respect of such income, profits or gains is exempt from tax by virtue of being a temporary resident of the other State within the meaning of the applicable laws of that other State, then the relief to be allowed under the Agreement in the firstmentioned State shall not apply to the extent that such income, profits or gains are exempt from tax in the other State."

ARTICLE 4

Article 5 of the Agreement is omitted and the following Article is substituted:

"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;
 - (f) a mine, an oil or gas well, a quarry or any other place relating to the exploration for or exploitation of natural resources; and
 - (g) an agricultural, pastoral or forestry property.
- 3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than six months.
- 4. Notwithstanding the provisions of paragraphs 1, 2 and 3, where an enterprise of a Contracting State:
 - (a) carries on supervisory or consultancy activities in the other State for a period or periods exceeding in the aggregate 183 days in any 12 month period in connection with a building site or construction or installation project which is being undertaken in that other State; or
 - (b) carries on activities (including the operation of substantial equipment) in the other State in the exploration for or exploitation of natural resources situated in that other State for a period or periods exceeding in the aggregate 90 days in any 12 month period; or
 - (c) operates substantial equipment in the other State (including as provided in subparagraph (b)) for a period or periods exceeding 183 days in any 12 month period,such activities shall be deemed to be performed through a permanent establishment that the enterprise has in that other State, unless the activities are limited to those mentioned in paragraph 6 and are, in relation to the enterprise, of a preparatory or auxiliary character.
- 5.
 - (a) The duration of activities under paragraphs 3 and 4 will be determined by aggregating the periods during which activities are carried on in a Contracting State by associated enterprises provided that the activities of the enterprise in that State are connected with the activities carried on in that State by its associate.
 - (b) The period during which two or more associated enterprises are carrying on concurrent activities will be counted only once for the purpose of determining the duration of activities.
 - (c) Under this Article, an enterprise shall be deemed to be associated with another enterprise if:
 - (i) one is controlled directly or indirectly by the other; or
 - (ii) both are controlled directly or indirectly by the same person or persons.
- 6. Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include: