

No. 39565. United Kingdom of Great Britain and Northern Ireland and South Africa

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND 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 AND CAPITAL GAINS. LONDON, 4 JULY 2002 [*United Nations, Treaty Series*, vol. 2225, I-39565.]

PROTOCOL BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA TO AMEND THE CONVENTION FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS, SIGNED AT LONDON ON 4 JULY 2002. PRETORIA, 8 NOVEMBER 2010*

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N° 39565. Royaume-Uni de Grande-Bretagne et d'Irlande du Nord et Afrique du Sud

CONVENTION ENTRE LE GOUVERNEMENT DU ROYAUME-UNI DE GRANDE-BRETAGNE ET D'IRLANDE DU NORD ET LE GOUVERNEMENT DE LA RÉPUBLIQUE D'AFRIQUE DU SUD TENDANT À ÉVITER LA DOUBLE IMPOSITION ET À PRÉVENIR L'ÉVASION FISCALE EN MATIÈRE D'IMPÔTS SUR LE REVENU ET SUR LES GAINS EN CAPITAL. LONDRES, 4 JUILLET 2002 [*Nations Unies, Recueil des Traités*, vol. 2225, I-39565.]

PROTOCOLE ENTRE LE GOUVERNEMENT DU ROYAUME-UNI DE GRANDE-BRETAGNE ET D'IRLANDE DU NORD ET LE GOUVERNEMENT DE LA RÉPUBLIQUE D'AFRIQUE DU SUD MODIFIANT LA CONVENTION TENDANT À ÉVITER LA DOUBLE IMPOSITION ET À PRÉVENIR L'ÉVASION FISCALE EN MATIÈRE D'IMPÔTS SUR LE REVENU ET SUR LES GAINS EN CAPITAL, SIGNÉE À LONDRES LE 4 JUILLET 2002. PRETORIA, 8 NOVEMBRE 2010*

Entrée en vigueur : 13 octobre 2011, conformément à l'article VI

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[ENGLISH TEXT – TEXTE ANGLAIS]

**PROTOCOL BETWEEN THE GOVERNMENT OF THE UNITED
KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND
THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA
TO AMEND THE CONVENTION FOR THE AVOIDANCE OF
DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL GAINS,
SIGNED AT LONDON ON 4 JULY 2002**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of South Africa;

Desiring to conclude a Protocol to amend the Convention between the Contracting Governments for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains, signed at London on 4 July 2002 (hereinafter referred to as “the Convention”);

Have agreed as follows:

ARTICLE I

Paragraph 1 of Article 3 shall be amended by:

- (a) deleting the full stop at the end of sub-paragraph (k) and substituting a semicolon; and
- (b) adding immediately after sub-paragraph (k) the following new sub-paragraphs:
 - “(l) the term “property investment company” means:
 - (i) in South Africa, a company that may be agreed between the competent authorities as corresponding to a real estate investment trust;
 - (ii) in the United Kingdom, a real estate investment trust within the meaning of section 103 of Finance Act 2006;
 - (m) the term “qualifying dividend” means:
 - (i) in South Africa, a dividend that may be agreed between the competent authorities as being paid out of tax-exempt property income; and
 - (ii) in the United Kingdom, a dividend from tax-exempt income within section 107(8) of Finance Act 2006.”

ARTICLE II

Article 10 of the Convention shall be deleted and replaced by the following:

“Article 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:
 - (a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds at least 10 per cent of the capital of the company paying the dividends; or
 - (b) 15 per cent of the gross amount of the dividends in the case of qualifying dividends paid by a property investment company which is a resident of a Contracting State; or
 - (c) 10 per cent of the gross amount of the dividends in all other cases.
3. The term “dividends” as used in this Article means income from shares, or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the company making the distribution is a resident and also includes any other item which, under the laws of the Contracting State of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company.
4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 of this Convention shall apply.
5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company’s undistributed profits to a tax on undistributed profits,

even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

6. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.”

ARTICLE III

Article 25 of the Convention shall be deleted and replaced by the following:

“Article 25

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws of the Contracting States concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2 of the Convention.

2. Any information received under paragraph 1 of this Article by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

3. In no case shall the provisions of paragraphs 1 and 2 of this Article be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy.

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 of this Article but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 of this Article be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.”

ARTICLE IV

The following new Article shall be inserted immediately after Article 25 of the Convention:

“Article 25A

Assistance in the Collection of Taxes

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2 of this Convention. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. The term “revenue claim” as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of