

**No. 53972\***

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**South Africa  
and  
Kenya**

**Agreement between the Government of the Republic of South Africa and the Government of the Republic of Kenya for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income. Nairobi, 26 November 2010**

**Entry into force:** *19 June 2015 by notification, in accordance with article 29*

**Authentic text:** *English*

**Registration with the Secretariat of the United Nations:** *South Africa, 20 October 2016*

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**Afrique du Sud  
et  
Kenya**

**Accord entre le Gouvernement de la République sud-africaine et le Gouvernement de la République du Kenya tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu. Nairobi, 26 novembre 2010**

**Entrée en vigueur :** *19 juin 2015 par notification, conformément à l'article 29*

**Texte authentique :** *anglais*

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[ ENGLISH TEXT – TEXTE ANGLAIS ]

**AGREEMENT**

**BETWEEN**

**THE GOVERNMENT OF THE  
REPUBLIC OF SOUTH AFRICA**

**AND**

**THE GOVERNMENT OF THE  
REPUBLIC OF KENYA**

**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 the Republic of Kenya of 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. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, as well as taxes on the total amounts of wages and salaries paid by enterprises.
3. The existing taxes to which the Agreement shall apply are:
  - (a) in Kenya:

the income tax chargeable in accordance with the provisions of the Income Tax Act, Cap. 470, of the laws of Kenya;

(hereinafter referred to as “Kenyan tax”); and
  - (b) in South Africa:
    - (i) the normal tax;
    - (ii) the secondary tax on companies;
    - (iii) the withholding tax on royalties; and
    - (iv) the tax on foreign entertainers and sportspersons;

(hereinafter referred to as “South African tax”).
4. 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 of any significant changes that have been made in their respective taxation laws.

Article 3

*General Definitions*

For the purposes of this Agreement, unless the context otherwise requires:

- (a) the term “Kenya” means all territory of Kenya in state boundaries, including internal and territorial waters and also special economic zone and continental shelf, and all installations erected thereon as defined in the Continental Shelf Act, over which Kenya exercises its sovereign rights for the purpose of exploiting natural resources of the seabed, its subsoil and the superjacent waters, in accordance with international law; and
- (b) 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;
- (c) the terms “a Contracting State” and “the other Contracting State” mean Kenya or South Africa, as the context requires;
- (d) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (e) the term “competent authority” means:
  - (i) in Kenya, the Minister of Finance or an authorised representative of the Minister; and
  - (ii) in South Africa, the Commissioner for the South African Revenue Service or an authorised representative of the Commissioner;
- (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 between places in the other Contracting State;
- (i) the term “national”, in relation to a Contracting State, means:
  - (i) any individual possessing the nationality of that Contracting State; and
  - (ii) any legal person or association deriving its status as such from the laws in force in that Contracting State; and
- (j) the term “person” includes an individual, a company and any other body of persons that is treated as an entity for tax purposes.

2. As regards the application of the provisions 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 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 incorporation, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources therein.
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 only 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, the 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, or if the individual has not a permanent home available in either State, the individual shall be deemed to be a resident only of the State in which the individual has an habitual abode;
  - (c) if the individual has an habitual abode in both States or in neither of them, the individual shall be deemed to be a resident only of the State of which the individual is a national;
  - (d) if the individual is a national of both 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 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.

#### **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 an enterprise is wholly or partly carried on.