

2008

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**International Tax Agreements
Amendment Bill (No. 2) 2008**

No. , 2008

(Treasury)

A Bill for an Act to amend the *International Tax Agreements Act 1953*, and for related purposes

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1 **A Bill for an Act to amend the *International Tax***
2 ***Agreements Act 1953, and for related purposes***

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *International Tax Agreements*
6 *Amendment Act (No. 2) 2008*.

7 **2 Commencement**

8 This Act commences on the day on which it receives the Royal
9 Assent.

10 **3 Schedule(s)**

11 Each Act that is specified in a Schedule to this Act is amended or
12 repealed as set out in the applicable items in the Schedule

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concerned, and any other item in a Schedule to this Act has effect according to its terms.

1
2 **Schedule 1—International Tax Agreements Act**
3 **1953**
4

5 **1 Subsection 3(1) (at the end of the definition of *the South***
6 ***African agreement*)**

7 Add “, as amended by the South African protocol”.

8 **2 Subsection 3(1)**

9 Insert:

10 *the South African protocol* means the Protocol amending the
11 Agreement between the Government of Australia and the
12 Government of the Republic of South Africa for the avoidance of
13 double taxation and the prevention of fiscal evasion with respect to
14 taxes on income. A copy of the protocol is set out in Schedule 42A.

15 **3 After section 11ZG**

16 Insert:

17 **11ZGA Protocol with the Republic of South Africa**

18 Subject to this Act, on and after the date of entry into force of the
19 South African protocol, the provisions of the protocol have the
20 force of law according to their tenor.

21 **4 After Schedule 42**

22 Insert:

23 **Schedule 42A—South African protocol**

24 Note: See section 3.
25

26 **PROTOCOL AMENDING THE AGREEMENT BETWEEN THE**
27 **GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE**
28 **REPUBLIC OF SOUTH AFRICA FOR THE AVOIDANCE OF DOUBLE**
29 **TAXATION AND THE PREVENTION OF FISCAL EVASION WITH**
30 **RESPECT TO TAXES ON INCOME**
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1 The Government of Australia and the Government of the Republic of South
2 Africa,

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4
5 Desiring to amend the Agreement between the Government of Australia and the
6 Government of the Republic of South Africa for the avoidance of double
7 taxation and the prevention of fiscal evasion with respect to taxes on income
8 signed at Canberra on the 1st day of July 1999 (in this Protocol referred to as
9 “the Agreement”),

10
11
12 Have agreed as follows:

13
14
15 **ARTICLE 1**

16
17 Article 2 of the Agreement is omitted and the following Article is substituted:

18
19 **“Article 2**

20
21 ***Taxes Covered***

22
23 1. The existing taxes to which this Agreement shall apply are:

24
25 (a) in the case of Australia:

26
27 the income tax, including the resource rent tax in respect of
28 offshore projects relating to exploration for or exploitation of
29 petroleum resources, imposed under the federal law of
30 Australia;

31
32 (b) in the case of South Africa:

- 33
34 (i) the normal tax;
35 (ii) the secondary tax on companies; and
36 (iii) the withholding tax on royalties.

37
38 2. The Agreement shall apply also to any identical or substantially similar
39 taxes, including taxes on dividends, that are imposed under the federal
40 law of Australia or by the Government of the Republic of South Africa
41 under its domestic law after the date of signature of the Agreement in
42 addition to, or in place of, the existing taxes. The competent authorities

1 of the Contracting States shall notify each other of any significant
2 changes that have been made in the law of their respective States
3 relating to the taxes to which the Agreement applies within a reasonable
4 period of time after those changes.
5

6 3. For the purposes of Article 23A, the taxes to which the Agreement shall
7 apply are taxes of every kind and description imposed on behalf of the
8 Contracting States, or their political subdivisions or local authorities.
9

10 4. For the purposes of Articles 25 and 25A, the taxes to which the
11 Agreement shall apply are:

12 (a) in the case of Australia, taxes of every kind and description
13 imposed under the federal tax laws administered by the
14 Commissioner of Taxation; and
15

16 (b) in the case of South Africa, taxes of every kind and description
17 imposed under the tax laws administered by the Commissioner
18 for the South African Revenue Service.”
19
20
21

22 **ARTICLE 2**

23
24 Article 3 of the Agreement is amended by:

25 (a) inserting after subparagraph (i) of paragraph 1:

26 “(j) the term “national”, in relation to a Contracting State, means:

27 (i) any individual possessing the nationality or citizenship
28 of that Contracting State; and
29

30 (ii) any company deriving its status as such from the laws
31 in force in that Contracting State;” and
32

33 (b) renumbering subparagraphs (j) and (k) of paragraph 1 as (k) and (l)
34 respectively.
35

36 **ARTICLE 3**

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

1 gains is exempt from tax by virtue of being a temporary resident of the
2 other State within the meaning of the applicable laws of that other State,
3 then the relief to be allowed under the Agreement in the firstmentioned
4 State shall not apply to the extent that such income, profits or gains are
5 exempt from tax in the other State.”
6

7
8 **ARTICLE 4**

9
10 Article 5 of the Agreement is omitted and the following Article is substituted:

11 **“Article 5**

12 ***Permanent Establishment***

- 13
14
15
16 1. For the purposes of this Agreement, the term “permanent
17 establishment” means a fixed place of business through which the
18 business of the enterprise is wholly or partly carried on.
19
20 2. The term “permanent establishment” includes especially:
21
22 (a) a place of management;
23 (b) a branch;
24 (c) an office;
25 (d) a factory;
26 (e) a workshop;
27 (f) a mine, an oil or gas well, a quarry or any other place relating to
28 the exploration for or exploitation of natural resources; and
29 (g) an agricultural, pastoral or forestry property.
30
31 3. A building site or construction or installation project constitutes a
32 permanent establishment only if it lasts more than six months.
33
34 4. Notwithstanding the provisions of paragraphs 1, 2 and 3, where an
35 enterprise of a Contracting State:
36
37 (a) carries on supervisory or consultancy activities in the other
38 State for a period or periods exceeding in the aggregate 183
39 days in any 12 month period in connection with a building site
40 or construction or installation project which is being undertaken
41 in that other State; or
42

- 1 (b) carries on activities (including the operation of substantial
2 equipment) in the other State in the exploration for or
3 exploitation of natural resources situated in that other State for
4 a period or periods exceeding in the aggregate 90 days in any
5 12 month period; or
6
7 (c) operates substantial equipment in the other State (including as
8 provided in subparagraph (b)) for a period or periods exceeding
9 183 days in any 12 month period,
10
11 such activities shall be deemed to be performed through a permanent
12 establishment that the enterprise has in that other State, unless the
13 activities are limited to those mentioned in paragraph 6 and are, in
14 relation to the enterprise, of a preparatory or auxiliary character.
15
16 5. (a) The duration of activities under paragraphs 3 and 4 will be
17 determined by aggregating the periods during which activities
18 are carried on in a Contracting State by associated enterprises
19 provided that the activities of the enterprise in that State are
20 connected with the activities carried on in that State by its
21 associate.
22
23 (b) The period during which two or more associated enterprises are
24 carrying on concurrent activities will be counted only once for
25 the purpose of determining the duration of activities.
26
27 (c) Under this Article, an enterprise shall be deemed to be
28 associated with another enterprise if:
29
30 (i) one is controlled directly or indirectly by the other; or
31
32 (ii) both are controlled directly or indirectly by the same
33 person or persons.
34
35 6. Notwithstanding the preceding provisions of this Article, the term
36 “permanent establishment” shall be deemed not to include:
37
38 (a) the use of facilities solely for the purpose of storage, display or
39 irregular delivery of goods or merchandise belonging to the
40 enterprise;
41

- 1 (b) the maintenance of a stock of goods or merchandise belonging
2 to the enterprise solely for the purpose of storage, display or
3 irregular delivery;
4
5 (c) the maintenance of a stock of goods or merchandise belonging
6 to the enterprise solely for the purpose of processing by another
7 enterprise;
8
9 (d) the maintenance of a fixed place of business solely for the
10 purpose of purchasing goods or merchandise, or of collecting
11 information, for the enterprise;
12
13 (e) the maintenance of a fixed place of business solely for the
14 purpose of carrying on, for the enterprise, any other activity of
15 a preparatory or auxiliary character;
16
17 (f) the maintenance of a fixed place of business solely for any
18 combination of activities mentioned in subparagraphs (a) to (e)
19 of this paragraph,

20
21 provided that such activities are, in relation to the enterprise, of a
22 preparatory or auxiliary character.
23

24 7. Notwithstanding the provisions of paragraphs 1 and 2, where a person
25 — other than an agent of an independent status to whom paragraph 8
26 applies — is acting on behalf of an enterprise and:

27
28 (a) has, and habitually exercises, in a Contracting State an
29 authority to substantially negotiate or conclude contracts on
30 behalf of the enterprise; or

31
32 (b) manufactures or processes in a Contracting State for the
33 enterprise goods or merchandise belonging to the enterprise,
34

35 that enterprise shall be deemed to have a permanent establishment in
36 that State in respect of any activities which that person undertakes for
37 that enterprise, unless the activities of such person are limited to those
38 mentioned in paragraph 6 and are, in relation to the enterprise, of a
39 preparatory or auxiliary character.
40

41 8. An enterprise shall not be deemed to have a permanent establishment in
42 a Contracting State merely because it carries on business in that State

1 through a person who is a broker, general commission agent or any
2 other agent of an independent status, provided that such persons are
3 acting in the ordinary course of the person's business as such a broker
4 or agent.
5

6 9. The fact that a company which is a resident of a Contracting State
7 controls or is controlled by a company which is a resident of the other
8 Contracting State, or which carries on business in that other State
9 (whether through a permanent establishment or otherwise), shall not of
10 itself make either company a permanent establishment of the other.
11

12 10. The principles set forth in the preceding paragraphs of this Article shall
13 be applied in determining for the purposes of paragraph 7 of Article 11
14 and paragraph 5 of Article 12 whether there is a permanent
15 establishment outside both Contracting States, and whether an
16 enterprise, not being an enterprise of a Contracting State, has a
17 permanent establishment in a Contracting State.”
18

19 **ARTICLE 5**

20 Article 10 of the Agreement is omitted and the following Article is substituted:
21

22 **“Article 10**

23 *Dividends*

24 1. Dividends paid by a company which is a resident of a Contracting State
25 for the purposes of its tax, being dividends beneficially owned by a
26 resident of the other Contracting State, may be taxed in that other State.
27

28 2. However, those dividends may also be taxed in the Contracting State of
29 which the company paying the dividends is a resident for the purposes
30 of its tax, and according to the law of that State, but the tax so charged
31 shall not exceed:
32

33 (a) 5 per cent of the gross amount of the dividends if the beneficial
34 owner of those dividends is a company which holds directly at
35 least 10 per cent of the voting power in the company paying the
36 dividends;
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- 1 (b) 15 per cent of the gross amount of the dividends in all other
2 cases.
3
- 4 3. The term “dividends” as used in this Article means income from shares
5 or other rights, not being debt-claims, participating in profits, as well as
6 other amounts which are subjected to the same taxation treatment as
7 income from shares by the law of the State of which the company
8 making the distribution is a resident for the purposes of its tax.
9
- 10 4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial
11 owner of the dividends, being a resident of a Contracting State, carries
12 on business in the other Contracting State of which the company paying
13 the dividends is a resident through a permanent establishment situated
14 in that other State, or performs in that other State independent personal
15 services from a fixed base situated in that other State, and the holding in
16 respect of which the dividends are paid is effectively connected with
17 that permanent establishment or fixed base. In such case the provisions
18 of Article 7 or Article 14, as the case may be, shall apply.
19
- 20 5. Where a company which is a resident of a Contracting State derives
21 profits or income from the other Contracting State, that other State may
22 not impose any tax on the dividends paid by the company — being
23 dividends beneficially owned by a person who is not a resident of the
24 other Contracting State — except insofar as the holding in respect of
25 which such dividends are paid is effectively connected with a
26 permanent establishment or a fixed base situated in that other State nor
27 subject the company’s undistributed profits to a tax on the company’s
28 undistributed profits, even if the dividends paid or the undistributed
29 profits consist wholly or partly of profits or income arising in that other
30 State. This paragraph shall not apply in relation to dividends paid by
31 any company which is a resident of Australia for the purposes of
32 Australian tax and which is also a resident of South Africa for the
33 purposes of South African tax.
34
- 35 6. Notwithstanding any other provisions of the Agreement, where a
36 company which is a resident of a Contracting State has a permanent
37 establishment in the other Contracting State, that other State may tax
38 the profits attributable to the permanent establishment at a rate not
39 exceeding by more than 5 percentage points:
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- 41 (a) in the case of Australia, the rate of income tax payable on the
42 profits of a company which is resident of Australia; and
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(b) in the case of South Africa, the rate of normal tax payable on the profits of a company which is resident of South Africa.

7. No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with assignment of the dividends, or 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 6

Article 11 of the Agreement is omitted and the following Article is substituted:

“Article 11

Interest

1. Interest arising in a Contracting State and beneficially owned by a resident of the other Contracting State may be taxed in that other State.
2. However, such interest may also be taxed in the Contracting State in which it arises and according to the law of that State, but the tax so charged shall not exceed 10 per cent of the gross amount of the interest.
3. Notwithstanding paragraph 2, interest arising in a Contracting State and beneficially owned by a resident of the other Contracting State may not be taxed in the firstmentioned State if:
 - (a) the interest is derived by a Contracting State or by a political or administrative subdivision or a local authority thereof, or by any other body exercising governmental functions in a Contracting State, or by a bank performing central banking functions in a Contracting State; or
 - (b) the interest is derived by a financial institution which is unrelated to and dealing wholly independently with the payer. For the purposes of this Article, the term “financial institution” means a bank or other enterprise substantially deriving its profits by raising debt finance in the financial markets or by

-
- 1 taking deposits at interest and using those funds in carrying on
2 a business of providing finance.
3
- 4 4. Notwithstanding paragraph 3, interest referred to in subparagraph (b) of
5 that paragraph may be taxed in the State in which it arises at a rate not
6 exceeding 10 per cent of the gross amount of the interest if the interest
7 is paid as part of an arrangement involving back-to-back loans or other
8 arrangement that is economically equivalent and intended to have a
9 similar effect to back-to-back loans.
10
- 11 5. The term “interest” in this Article includes interest from government
12 securities or from bonds or debentures, whether or not secured by
13 mortgage and whether or not carrying a right to participate in profits,
14 interest from any other form of indebtedness, as well as income which
15 is subjected to the same taxation treatment as income from money lent
16 by the law of the Contracting State in which the income arises.
17
- 18 6. The provisions of paragraphs 1 and 2, subparagraph (b) of paragraph 3
19 and paragraph 4 of this Article shall not apply if the beneficial owner of
20 the interest, being a resident of a Contracting State, carries on business
21 in the other Contracting State in which the interest arises through a
22 permanent establishment situated in that other State, or performs in that
23 other State independent personal services from a fixed base situated in
24 that other State, and the indebtedness in respect of which the interest is
25 paid is effectively connected with that permanent establishment or fixed
26 base. In such case the provisions of Article 7 or Article 14, as the case
27 may be, shall apply.
28
- 29 7. Interest shall be deemed to arise in a Contracting State when the payer
30 is a resident of that State for the purposes of its tax. Where, however,
31 the person paying the interest, whether the person is a resident of a
32 Contracting State or not, has in a Contracting State or outside both
33 Contracting States a permanent establishment or fixed base in
34 connection with which the indebtedness on which the interest is paid
35 was incurred, and that interest is borne by that permanent establishment
36 or fixed base, then the interest shall be deemed to arise in the State in
37 which the permanent establishment or fixed base is situated.
38
- 39 8. Where, by reason of a special relationship between the payer and the
40 beneficial owner of the interest, or between both of them and some
41 other person, the amount of the interest paid, having regard to the
42 indebtedness for which it is paid, exceeds the amount which might
-

1 reasonably have been expected to have been agreed upon by the payer
2 and the person so entitled in the absence of that relationship, the
3 provisions of this Article shall apply only to the lastmentioned amount.
4 In such case, the excess part of the amount of interest paid shall remain
5 taxable according to the law of each Contracting State, due regard being
6 had to the other provisions of this Agreement.

7
8 9. No relief shall be available under this Article if it was the main purpose
9 or one of the main purposes of any person concerned with assignment
10 of the interest, or the creation or assignment of the indebtedness in
11 respect of which the interest is paid, to take advantage of this Article by
12 means of that creation or assignment.”

13
14
15 **ARTICLE 7**

16
17 Article 12 of the Agreement is omitted and the following Article is substituted:

18
19 **“Article 12**

20
21 ***Royalties***

- 22
23 1. Royalties arising in a Contracting State and beneficially owned by a
24 resident of the other Contracting State may be taxed in that other State.
25
26 2. However, those royalties may also be taxed in the Contracting State in
27 which they arise, and according to the law of that State, but the tax so
28 charged shall not exceed 5 per cent of the gross amount of the royalties.
29
30 3. The term “royalties” in this Article means payments or credits, whether
31 periodical or not, and however described or computed, to the extent to
32 which they are made as consideration for:
33
34 (a) the use of, or the right to use, any copyright, patent, design or
35 model, plan, secret formula or process, trademark or other like
36 property or right;
37
38 (b) the supply of scientific, technical, industrial or commercial
39 knowledge or information;
40
41 (c) the supply of any assistance that is ancillary and subsidiary to,
42 and is furnished as a means of enabling the application or

-
- 1 enjoyment of, any such property or right as is mentioned in
2 subparagraph (a) or any such knowledge or information as is
3 mentioned in subparagraph (b);
4
- 5 (d) the use of, or the right to use:
6
7 (i) motion picture films;
8
9 (ii) films or audio or video tapes or disks, or any other
10 means of image or sound reproduction or transmission
11 for use in connection with television, radio or other
12 broadcasting;
13
- 14 (e) the use of, or the right to use, some or all of the part of the
15 radiofrequency spectrum as specified in a spectrum licence of a
16 Contracting State, where the payment or credit arises in that
17 State; or
18
- 19 (f) total or partial forbearance in respect of the use or supply of any
20 property or right referred to in this paragraph.
21
- 22 4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial
23 owner of the royalties, being a resident of a Contracting State, carries
24 on business in the other Contracting State in which the royalties arise
25 through a permanent establishment situated in the other State, or
26 performs in that other State independent personal services from a fixed
27 base situated in that other State, and the right or property in respect of
28 which the royalties are paid or credited is effectively connected with
29 that permanent establishment or fixed base. In such case the provisions
30 of Article 7 or Article 14, as the case may be, shall apply.
31
- 32 5. Royalties shall be deemed to arise in a Contracting State when the payer
33 is a resident of that State for the purposes of its tax. Where, however,
34 the person paying the royalties, whether the person is a resident of a
35 Contracting State or not, has in a Contracting State or outside both
36 Contracting States a permanent establishment or fixed base in
37 connection with which the liability to pay the royalties was incurred,
38 and the royalties are borne by the permanent establishment or fixed
39 base, then the royalties shall be deemed to arise in the State in which
40 the permanent establishment or fixed base is situated.
41
-

- 1 6. Where, owing to a special relationship between the payer and the
2 beneficial owner of the royalties, or between both of them and some
3 other person, the amount of the royalties paid or credited, having regard
4 to what they are paid or credited for, exceeds the amount which might
5 reasonably have been expected to have been agreed upon by the payer
6 and the person so entitled in the absence of that relationship, the
7 provisions of this Article shall apply only to the lastmentioned amount.
8 In such case, the excess part of the amount of the royalties paid or
9 credited shall remain taxable according to the law of each Contracting
10 State, due regard being had to the other provisions of this Agreement.
11
- 12 7. No relief shall be available under this Article if it was the main purpose
13 or one of the main purposes of any person concerned with assignment
14 of the royalties, or the creation or assignment of the rights in respect of
15 which the royalties are paid or credited, to take advantage of this Article
16 by means of that creation or assignment.”
17
18

19 ARTICLE 8

20
21 Article 13 of the Agreement is omitted and the following Article is substituted:

22 “Article 13

23 *Alienation of Property*

- 24
25
26
- 27 1. Income, profits or gains derived by a resident of a Contracting State
28 from the alienation of real property referred to in Article 6 and situated
29 in the other Contracting State may be taxed in that other State.
30
- 31 2. Income, profits or gains from the alienation of property, other than real
32 property, that forms part of the business property of a permanent
33 establishment which an enterprise of a Contracting State has in the
34 other Contracting State or pertains to a fixed base available in that other
35 State to a resident of the firstmentioned State for the purposes of
36 performing independent personal services, including income, profits or
37 gains from the alienation of that permanent establishment (alone or with
38 the whole enterprise) or of that fixed base, may be taxed in that other
39 State.
40
- 41 3. Income, profits or gains of an enterprise of a Contracting State from the
42 alienation of ships or aircraft operated by that enterprise in international

1 traffic, or of property (other than real property) pertaining to the
2 operation of such ships or aircraft, shall be taxable only in that State.
3

- 4 4. Income, profits or gains derived by a resident of a Contracting State
5 from the alienation of any shares or comparable interests deriving more
6 than 50 per cent of their value directly or indirectly from real property
7 situated in the other Contracting State may be taxed in that other State.
8
- 9 5. Gains of a capital nature from the alienation of any property, other than
10 that referred to in the preceding paragraphs shall be taxable only in the
11 Contracting State of which the alienator is a resident.”
12

13
14 **ARTICLE 9**

15
16 The following Article is inserted after Article 23 of the Agreement:
17

18 **“Article 23A**

19 ***Non-discrimination***

- 20
21
- 22 1. Nationals of a Contracting State shall not be subjected in the other
23 Contracting State to any taxation or any requirement connected
24 therewith, which is other or more burdensome than the taxation and
25 connected requirements to which nationals of that other State in the
26 same circumstances, in particular with respect to residence, are or may
27 be subjected. This provision shall, notwithstanding the provisions of
28 Article 1, also apply to persons who are not residents of one or both of
29 the Contracting States.
30
- 31 2. The taxation on a permanent establishment which an enterprise of a
32 Contracting State has in the other Contracting State shall not be less
33 favourably levied in that other State than the taxation levied on
34 enterprises of that other State carrying on the same activities in similar
35 circumstances. This provision shall not be construed as obliging a
36 Contracting State to grant to individuals who are residents of the other
37 Contracting State any of the personal allowances, reliefs and reductions
38 for tax purposes which are granted to its own residents.
39
- 40 3. Except where the provisions of paragraph 1 of Article 9, paragraph 8 of
41 Article 11 or paragraph 6 of Article 12, apply, interest, royalties and
42 other disbursements paid by an enterprise of a Contracting State to a

1 resident of the other Contracting State shall, for the purpose of
2 determining the taxable profits of such enterprise, be deductible under
3 the same conditions as if they had been paid to a resident of the
4 firstmentioned State.
5

6 4. Enterprises of a Contracting State, the capital of which is wholly or
7 partly owned or controlled, directly or indirectly, by one or more
8 residents of the other Contracting State, shall not be subjected in the
9 firstmentioned State to any taxation or any requirement connected
10 therewith which is other or more burdensome than the taxation and
11 connected requirements to which other similar enterprises of the
12 firstmentioned State in similar circumstances are or may be subjected.
13

14 5. This Article shall not apply to any provision of the laws of a
15 Contracting State which:

16 (a) is designed to prevent the avoidance or evasion of taxes;
17

18 (b) does not permit the deferral of tax arising on the transfer of an
19 asset where the subsequent transfer of the asset by the
20 transferee would be beyond the taxing jurisdiction of the
21 Contracting State under its laws;
22

23 (c) provides for consolidation of group entities for treatment as a
24 single entity for tax purposes provided that a company, being a
25 resident of that State, the capital of which is wholly or partly
26 owned or controlled, directly or indirectly, by one or more
27 residents of the other Contracting State, may access such
28 consolidation treatment on the same terms and conditions as
29 other companies that are residents of the firstmentioned State;
30

31 (d) does not allow tax rebates or credits in relation to dividends
32 paid by a company that is a resident of that State for purposes
33 of its tax;
34

35 (e) provides deductions to eligible taxpayers for expenditure on
36 research and development; or
37

38 (f) is otherwise agreed to be unaffected by this Article in an
39 Exchange of Notes between the Contracting States.
40
41

- 1 (a) to carry out administrative measures at variance with the law
2 and administrative practice of that or of the other Contracting
3 State;
4
5 (b) to supply information which is not obtainable by the competent
6 authority under the law or in the normal course of the
7 administration of that or of the other Contracting State;
8
9 (c) to supply information which would disclose any trade, business,
10 industrial, commercial or professional secret or trade process,
11 or information, the disclosure of which would be contrary to
12 public policy.
13
14 4. If information is requested by a Contracting State in accordance with
15 this Article, the other Contracting State shall use its information
16 gathering measures to obtain the requested information, even though
17 that other State may not need such information for its own tax purposes.
18 The obligation contained in the preceding sentence is subject to the
19 limitations of paragraph 3 but in no case shall such limitations be
20 construed to permit a Contracting State to decline to supply information
21 solely because it has no domestic interest in such information.
22
23 5. In no case shall the provisions of paragraph 3 be construed to permit a
24 Contracting State to decline to supply information solely because the
25 information is held by a bank, other financial institution, nominee or
26 person acting in an agency or a fiduciary capacity or because it relates
27 to ownership interests in a person.”
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ARTICLE 11

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31
32 The following Article is inserted after Article 25 of the Agreement:
33

“Article 25A

Assistance in the Collection of Taxes

- 34
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37
38 1. The Contracting States shall lend assistance to each other in the
39 collection of revenue claims. This assistance is not restricted by Article
40 1. The competent authorities of the Contracting States may by mutual
41 agreement settle the mode of application of this Article.
42

-
- 1 2. The term “revenue claim” as used in this Article means an amount
2 owed in respect of taxes referred to in Article 2, insofar as the taxation
3 thereunder is not contrary to this Agreement or any other instrument to
4 which the Contracting States are parties, as well as interest,
5 administrative penalties and costs of collection or conservancy related
6 to such amount.
7
- 8 3. When a revenue claim of a Contracting State is enforceable under the
9 laws of that State and is owed by a person who, at that time, cannot,
10 under the laws of that State, prevent its collection, that revenue claim
11 shall, at the request of the competent authority of that State, be accepted
12 for purposes of collection by the competent authority of the other
13 Contracting State. That revenue claim shall be collected by that other
14 State in accordance with the provisions of its laws applicable to the
15 enforcement and collection of its own taxes as if the revenue claim were
16 a revenue claim of that other State.
17
- 18 4. When a revenue claim of a Contracting State is a claim in respect of
19 which that State may, under its law, take measures of conservancy with
20 a view to ensure its collection, that revenue claim shall, at the request of
21 the competent authority of that State, be accepted for purposes of taking
22 measures of conservancy by the competent authority of the other
23 Contracting State. That other State shall take measures of conservancy
24 in respect of that revenue claim in accordance with the provisions of its
25 laws as if the revenue claim were a revenue claim of that other State
26 even if, at the time when such measures are applied, the revenue claim
27 is not enforceable in the firstmentioned State or is owed by a person
28 who has a right to prevent its collection.
29
- 30 5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim
31 accepted by a Contracting State for purposes of paragraph 3 or 4 shall
32 not, in that State, be subject to the time limits or accorded any priority
33 applicable to a revenue claim under the laws of that State by reason of
34 its nature as such. In addition, a revenue claim accepted by a
35 Contracting State for the purposes of paragraph 3 or 4 shall not, in that
36 State, have any priority applicable to that revenue claim under the laws
37 of the other Contracting State.
38
- 39 6. Proceedings with respect to the existence, validity or the amount of a
40 revenue claim of a Contracting State shall not be brought before the
41 courts or administrative bodies of the other Contracting State.
42
-

1 7. Where, at any time after a request has been made by a Contracting State
2 under paragraph 3 or 4 and before the other Contracting State has
3 collected and remitted the relevant revenue claim to the firstmentioned
4 State, the relevant revenue claim ceases to be:

5
6 (a) in the case of a request under paragraph 3, a revenue claim of
7 the firstmentioned State that is enforceable under the laws of
8 that State and is owed by a person who, at that time, cannot,
9 under the laws of that State, prevent its collection; or

10
11 (b) in the case of a request under paragraph 4, a revenue claim of
12 the firstmentioned State in respect of which that State may,
13 under its laws, take measures of conservancy with a view to
14 ensure its collection,

15
16 the competent authority of the firstmentioned State shall promptly
17 notify the competent authority of the other State of that fact and, at the
18 option of the other State, the firstmentioned State shall either suspend or
19 withdraw its request.

20
21 8. In no case shall the provisions of this Article be construed so as to
22 impose on a Contracting State the obligation:

23
24 (a) to carry out administrative measures at variance with the laws
25 and administrative practice of that or of the other Contracting
26 State;

27
28 (b) to carry out measures which would be contrary to public policy;

29
30 (c) to provide assistance if the other Contracting State has not
31 pursued all reasonable measures of collection or conservancy,
32 as the case may be, available under its laws or administrative
33 practice;

34
35 (d) to provide assistance in those cases where the administrative
36 burden for that State is clearly disproportionate to the benefit to
37 be derived by the other Contracting State;

38
39 (e) to provide assistance if that State considers that the taxes with
40 respect to which assistance is requested are imposed contrary to
41 generally accepted taxation principles.”
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ARTICLE 12

Paragraph 1 of the existing Protocol to the Agreement is deleted.

ARTICLE 13

1. The Government of Australia and the Government of the Republic of South Africa shall notify each other in writing through the diplomatic channel of the completion of their domestic requirements for the entry into force of this Protocol.
2. The Protocol, which shall form an integral part of the Agreement, shall enter into force on the date of the last notification, and thereupon the Protocol shall have effect:
 - (a) in the case of Australia:
 - (i) with regard to withholding tax on income that is derived by a nonresident, in respect of income derived on or after the first day of the second month following the date on which the Protocol enters into force;
 - (ii) with regard to other Australian tax, in respect of income, profits or gains of any year of income beginning on or after 1 July in the calendar year next following the date on which the Protocol enters into force;
 - (b) in the case of South Africa:
 - (i) with regard to taxes withheld at source, in respect of amounts paid or credited from the day after the date on which the Protocol enters into force;
 - (ii) with regard to other South African tax, in respect of years of assessment beginning on or after 1 January next following the date on which the Protocol enters into force;

1 (c) for purposes of Article 25 from the date on which the Protocol
2 enters into force; and

3
4 (d) for purposes of Article 25A, from a date to be agreed in an
5 Exchange of Notes through the diplomatic channel.
6

7 IN WITNESS WHEREOF the undersigned, duly authorised by their respective
8 Governments, have signed this Protocol.
9

10
11 DONE in duplicate at Pretoria, this 31st day of March two thousand and eight.
12

13
14 **FOR THE GOVERNMENT OF**
15 **AUSTRALIA**

16 **FOR THE GOVERNMENT OF**
17 **THE REPUBLIC OF SOUTH**
18 **AFRICA**

19
20 HE Philip Green
21 High Commissioner

22
23 HE Geraldine Fraser-Moleketi
Acting Minister of Finance

24 Signatures omitted