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GOVERNMENT NOTICE GOEWERMENSKENNISGEWING

SOUTH AFRICAN REVENUE SERVICE SUID-AFRIKAANSE INKOMSTEDIENS

No. 20

29 January 2014

INCOME TAX ACT, 1962

SUPPLEMENTARY PROTOCOL AMENDING THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF THE SULTANATE OF OMAN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, WITH PROTOCOL

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 Supplementary Protocol for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income set out in the Schedule to this Notice has been entered into with the Government of the Sultanate of Oman 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 5 of the Supplementary Protocol that the date of entry into force is 5 November 2013.

No. 20

29 Januarie 2014

INKOMSTEBELASTINGWET, 1962**AANVULLENDE PROTOKOL TER WYSIGING VAN DIE OOREENKOMS TUSSEN DIE REGERING VAN DIE REPUBLIEK VAN SUID-AFRIKA EN DIE REGERING VAN DIE SULTANAAT VAN OMAN TER VERMYDING VAN DUBBELE BELASTING EN TER VOORKOMING VAN FISKALE ONTDUIKING MET BETREKKING TOT BELASTING OP INKOMSTE, MET PROTOKOL**

Ingevolge artikel 108(2) van die Inkomstebelastingwet, 1962 (Wet No 58 van 1962), saamgelees met artikel 231(4) van die Grondwet van die Republiek van Suid-Afrika, 1996 (Wet No 108 van 1996), word hiermee kennis gegee dat die Aanvullende Protokol vir die vermyding van dubbele belasting en ter voorkoming van fiskale ontduiking met betrekking tot belastings op inkomste wat in die Bylae tot hierdie Kennisgewing vervat is, aangegaan is met die Regering van die Sultanaat van Oman en deur die Parlement goedgekeur is ingevolge artikel 231(2) van die Grondwet.

Daar word verder bekendgemaak dat ingevolge paragraaf 1 van Artikel 5 van die Aanvullende Protokol, die datum van inwerkingtreding 5 November 2013 is.

SUPPLEMENTARY PROTOCOL AMENDING THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF THE SULTANATE OF OMAN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, WITH PROTOCOL

The Government of the Republic of South Africa and the Government of the Sultanate of Oman, desiring to amend the Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, with Protocol, signed at Muscat, Oman on 9 October 2002 (in this Protocol referred to as "the Agreement"),

HAVE AGREED as follows:

Article 1

Sub-paragraph (b) of paragraph (3) of Article 2 of the Agreement shall be replaced by the following:

"(b) in the case of the Sultanate of Oman:
the income tax;
(hereinafter referred to as "Omani tax");"

Article 2

Paragraph 6 of Article 8 of the Agreement shall cease to be effective in respect of the income derived by Gulf Air on or after 6 November 2007.

Article 3

Article 10 of the Agreement 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 Contracting State.

AANVULLENDE PROTOKOL TER WYSIGING VAN DIE OOREENKOMS TUSSEN DIE REGERING VAN DIE REPUBLIEK VAN SUID-AFRIKA EN DIE REGERING VAN DIE SULTANAAT VAN OMAN TER VERMYDING VAN DUBBELE BELASTING EN TER VOORKOMING VAN FISKALE ONTDUIKING MET BETREKKING TOT BELASTING OP INKOMSTE, MET PROTOKOL

Die Regering van die Republiek van Suid-Afrika en die Regering van die Sultanaat van Oman het uit 'n begeerte om die Ooreenkoms ter vermyding van dubbele belasting en ter voorkoming van fiskale ontduiking ten opsigte van belastings op inkomste, met Protokol, wat op 9 Oktober 2002 te Muscat, Oman, onderteken is (in hierdie Protokol "die Ooreenkoms" genoem), te wysig,

SOOS VOLG OOREENGEKOM:

Artikel 1

Subparagraaf (b) van paragraaf (3) van Artikel 2 van die Ooreenkoms word deur die volgende vervang:

"(b) in die geval van die Sultanaat van Oman:
die inkomstebelasting;
(hierna die "Omani-belasting" genoem);".

Artikel 2

Paragraaf 6 van Artikel 8 van die Ooreenkoms hou op om van krag te wees ten opsigte van die inkomste verkry deur Gulf Air op of na 6 November 2007.

Artikel 3

Artikel 10 van die Ooreenkoms word geskrap en deur die volgende vervang:

"Artikel 10

Dividende

1. Dividende wat deur 'n maatskappy wat 'n inwoner van 'n Kontrakterende Staat is, aan 'n inwoner van die ander Kontrakterende Staat betaal word, kan in daardie ander Kontrakterende Staat belas word.

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 Contracting 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) 10 per cent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. Notwithstanding the provisions of paragraph 2, dividends paid by a company which is a resident of a Contracting State to the Government of the other Contracting State shall be exempt from tax in the first-mentioned State.

4. For the purposes of paragraph 3, the term "Government" shall include:

(a) in the case of the Sultanate of Oman:

- (i) the Central Bank of Oman;
- (ii) the State General Reserve Fund;
- (iii) the Omani Investment Fund; and
- (iv) any other statutory body or institution wholly owned by the Government of the Sultanate of Oman, as may be agreed from time to time between the competent authorities of the Contracting States.

(b) in the case of South Africa:

- (i) the South African Reserve Bank; and
- (ii) any other statutory body or institution wholly owned by the Government of the Republic of South Africa, as may be agreed from time to time between the competent authorities of the Contracting States.

5. The term "dividends" as used in this Article means income from shares or other rights participating in profits (not being debt-claims), 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.

6. 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 shall apply.

2. Sodanige dividende kan egter ook belas word in die Kontrakterende Staat waarvan die maatskappy wat die dividende betaal, 'n inwoner is, en wel ooreenkomstig die wette van daardie Kontrakterende Staat, maar as die voordelige eienaar van die dividende 'n inwoner van die ander Kontrakterende Staat is, mag die belasting wat aldus gehef word nie meer wees nie as:

- (a) 5 persent van die bruto bedrag van die dividende indien die voordelige eienaar 'n maatskappy is wat minstens 10 persent van die kapitaal van die maatskappy hou wat die dividende betaal; of
- (b) 10 persent van die bruto bedrag van die dividende in alle ander gevalle.

Die bevoegde owerhede van die Kontrakterende State moet by onderlinge ooreenkoms besluit oor die wyse van toepassing van hierdie beperkings.

Hierdie paragraaf raak nie die belasting van die maatskappy ten opsigte van die wins waaruit die dividende betaal word nie.

3. Ondanks die bepalings van paragraaf 2, is die dividende betaal deur 'n maatskappy wat 'n inwoner van 'n Kontrakterende Staat is, aan die Regering van die ander Kontrakterende Staat, vrygestel van belasting in die eersgenoemde Staat.

4. Vir die doeleindes van paragraaf 3, sluit die uitdrukking "Regering" in:

- (a) in die geval van die Sultanaat van Oman:
 - (i) die Sentrale Bank van Oman;
 - (ii) die Staat se Algemene Reserwefonds;
 - (iii) die Omani-beleggingsfonds; en
 - (iv) enige ander statutêre liggaam of instelling wat in geheel deur die Regering van die Sultanaat van Oman besit word, soos van tyd tot tyd ooreengekom deur die bevoegde owerhede van die Kontrakterende State.
- (b) in die geval van Suid-Afrika:
 - (i) die Suid-Afrikaanse Reserwebank; en
 - (ii) enige ander statutêre liggaam of instelling wat in geheel deur die Regering van die Republiek van Suid-Afrika besit word, soos van tyd tot tyd ooreengekom deur die bevoegde owerhede van die Kontrakterende State.

5. Die uitdrukking "dividende" soos in hierdie Artikel gebruik, beteken inkomste uit aandele of ander regte wat in winste deel (wat nie skuldeise is nie), asook inkomste uit ander regs persoonlike regte wat onderhewig is aan dieselfde belastingbehandeling as inkomste uit aandele ingevolge die wette van die Kontrakterende Staat waarvan die maatskappy wat die uitkering doen 'n inwoner is.

6. Die bepalings van paragrawe 1 en 2 van hierdie Artikel is nie van toepassing nie indien die voordelige eienaar van die dividende, wat 'n inwoner van 'n Kontrakterende Staat is, in die ander Kontrakterende Staat waarvan die maatskappy wat die dividende betaal 'n inwoner is, besigheid dryf deur middel van 'n permanente saak wat daarin geleë is, en die aandeelhouding ten opsigte waarvan die dividende betaal word, effektief aan sodanige permanente saak verbode is. In sodanige geval is die bepalings van Artikel 7 van toepassing.

7. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other Contracting State may not impose any tax on the dividends paid by the company, except in so far as such dividends are paid to a resident of that other Contracting State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other Contracting 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 Contracting State.

8. 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 4

Subparagraph (ii) of paragraph 3 of the Protocol to the Agreement shall be deleted.

Article 5

1. Each of the Contracting States shall notify to the other in writing, through the diplomatic channel, of the completion of the procedures required by its law for the bringing into force of this Supplementary Protocol, which shall form an integral part of the Agreement. The Supplementary Protocol shall enter into force on the date of receipt of the later of these notifications.

2. (a) Subject to subparagraph (b), the provisions of the Supplementary Protocol shall thereupon have effect beginning on the first day of January next following the year in which the Supplementary Protocol enters into force.
- (b) Articles 2 and 3 of the Supplementary Protocol shall thereupon have effect beginning on the date on which a system of taxation at shareholder level of dividends declared enters into force in South Africa.

Article 6

This Supplementary Protocol shall remain in force for as long as the Agreement remains in force.

7. Waar 'n maatskappy wat 'n inwoner van 'n Kontrakterende Staat is, wins of inkomste uit die ander Kontrakterende Staat verkry, hef daardie ander Kontrakterende Staat geen belasting op die dividende wat deur die maatskappy betaal word nie, uitgesonderd in soverre sodanige dividende aan 'n inwoner van daardie ander Kontrakterende Staat betaal word of in soverre die aandeelhouding ten opsigte waarvan die dividende betaal word, effektief verbonde is aan 'n permanente saak wat in daardie ander Kontrakterende Staat geleë is, en onderwerp hy ook nie die maatskappy se onuitgekeerde wins aan 'n belasting op onuitgekeerde wins nie, selfs al bestaan die dividende wat betaal word of die onuitgekeerde wins in geheel of gedeeltelik uit wins of inkomste wat in sodanige ander Staat ontstaan.

8. Die bepalings van hierdie Artikel is nie van toepassing nie indien dit die hoofogmerk of een van die hoofogmerke was van enige betrokke persoon met die skep of afstaan van die aandele of ander regte ten opsigte waarvan die dividend betaal word, om misbruik te maak van hierdie Artikel by wyse van daardie skepping of afstanddoening."

Artikel 4

Subparagraaf (ii) van paragraaf 3 van die Protokol by die Ooreenkoms word geskrap.

Artikel 5

1. Elk van die Kontrakterende State stel die ander skriftelik in kennis, langs die diplomatieke kanaal, van die voltooiing van die prosedures wat ingevolge sy reg vereis word vir die inwerkingtreding van hierdie Aanvullende Protokol wat 'n integrale deel van die Ooreenkoms uitmaak. Die Aanvullende Protokol tree in werking op die datum van ontvangs van die laaste van hierdie kennisgewings.

2. (a) Behoudens subparagraaf (b), is die bepalings van die Aanvullende Protokol daarna van krag, beginnende op die eerste dag van Januarie eersvolgende op die jaar waarin die Aanvullende Protokol in werking tree.
- (b) Artikels 2 en 3 van die Aanvullende Protokol is daarna van krag, beginnende op die datum waarop 'n stelsel van belasting op aandeelhouervlak van dividende verklaar in Suid-Afrika van krag word.

Artikel 6

Hierdie Aanvullende Protokol bly van krag so lank die Ooreenkoms van krag bly.

IN WITNESS WHEREOF, the undersigned, duly authorised thereto by their respective Governments, have signed this Supplementary Protocol.

DONE at Muscat this 15th day of November 14.....H corresponding to the 15th day of November 2011 in two identical originals in the Arabic and English languages, both texts being equally authoritative. In case of divergence of interpretation between the texts, the English text shall prevail.

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

**FOR THE GOVERNMENT OF THE
SULTANATE OF OMAN**

TEN BEWYSE WAARVAN die ondergetekendes, behoorlik gemagtig daartoe deur hulle onderskeie Regerings, hierdie Aanvullende Protokol onderteken het.

GEDOEN te Muscat op hede die 15 de dag van November 14.....H, wat ooreenstem met die 15de. dag van November 2011, in twee gelykbetekenende, oorspronklike tekste in die Arabiese en Engelse tale, waarvan albei tekste ewe gesaghebbend is. In die geval van verskil in uitleg tussen die tekste, geld die Engelse teks.

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