

SOUTH AFRICAN REVENUE SERVICE

NO. 5573

22 November 2024

INCOME TAX ACT, 1962**PROTOCOL AMENDING THE AGREEMENT BETWEEN THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF THE STATE OF KUWAIT
FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL
EVASION WITH RESPECT TO TAXES ON INCOME**

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 it is hereby notified that the 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 State of Kuwait 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 7 of the Protocol that the date of entry into force is 2 October 2024

SCHEDULE

PROTOCOL AMENDING THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF THE STATE OF KUWAIT 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 State of Kuwait, desiring to amend the Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, signed at Kuwait on 17 February 2004 (in this Protocol referred to as “the Agreement”);

HAVE AGREED as follows:

ARTICLE 1

Paragraph 3 of Article 2 of the Agreement shall be deleted and replaced by the following:

“3. The existing taxes to which this Agreement shall apply are, in particular:

a) in the case of Kuwait:

- (1) Decree No. 3 of 1955 as amended by Law No. 2 of 2008;
- (2) Law No. 23 of 1961 of the Neutral Zone; and
- (3) Law No. 19 of 2000 of the Supporting of National Employees;

(hereinafter referred to as “Kuwaiti tax”); and

b) in the case of South Africa:

- (1) the normal tax;
- (2) the withholding tax on royalties;
- (3) the dividends tax;
- (4) the withholding tax on interest; and
- (5) the tax on foreign entertainers and sportspersons;

(hereinafter referred to as “South African tax”).”

ARTICLE 2

Subparagraph a) of paragraph 1 of Article 4 of the Agreement shall be deleted and replaced by the following new subparagraph:

“a) in the case of Kuwait:

- (1) a Kuwaiti national and a company or an entity which is incorporated in Kuwait, and
- (2) an individual who is present in Kuwait for a period or periods totalling in the aggregate at least 183 days in the fiscal year concerned;”

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.

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.

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 Kuwait:
 - (1) the Central Bank of Kuwait; and
 - (2) any other statutory body or institution wholly owned by the Government of the State of Kuwait, as may be agreed from time to time between the competent authorities of the Contracting States,
- b) in the case of South Africa:
 - (1) the South African Reserve Bank; and
 - (2) 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, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

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 insofar as such dividends are paid to a resident of that other Contracting State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or fixed base situated in that other Contracting State, nor subject the company's undistributed profits to a tax on the company's 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."

ARTICLE 4

Article 11 of the Agreement shall be deleted and replaced by the following:

"Article 11

Interest

1. Interest arising in a Contracting State and paid to 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 laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 5 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State if:

- a) the interest is paid by or derived by the Government or a political subdivision or a local authority of either of that Contracting State; or
- b) the interest is paid in respect of a loan, debt-claim or credit that is owed to, or made by, provided, guaranteed or insured by that other State or a political subdivision, or local authority or central bank thereof; or
- c) the interest is paid by any bank; or
- d) the interest is paid to any institution or body which is wholly owned, directly or indirectly, by the other Contracting State or a political subdivision or a local authority thereof; or

- e) the interest arises in respect of any debt instrument listed on a recognised stock exchange.

4. For the purposes of subparagraph e) of paragraph 3, the term “recognised stock exchange” means:

- a) in Kuwait, the Kuwait Stock Exchange;
- b) in South Africa, the Johannesburg Stock Exchange;
- c) any other stock exchange agreed upon by the competent authorities of the Contracting States.

5. The term “interest” as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor’s profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purposes of this Article.

6. The provisions of paragraphs 1, 2 and 3 of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein or performs in that other Contracting State independent personal services from a fixed base situated in that other Contracting State, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

7. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or a fixed base is situated.

8. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.”

ARTICLE 5

Article 13 of the Agreement shall be deleted and will be replaced by the following:

“Article 13

Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains of an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in that State.

4. Gains derived by a resident of a Contracting State from the alienation of shares deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.

5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4, shall be taxable only in the Contracting State of which the alienator is a resident."

ARTICLE 6

Article 26 of the Agreement shall be deleted and replaced by the following:

"Article 26

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 Agreement or to the administration or enforcement of the domestic laws concerning 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 Agreement. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 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, or 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. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

3. In no case shall the provisions of paragraphs 1 and 2 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 (*ordre public*).

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 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 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 7

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 Protocol, which shall form an integral part of the Agreement. The Protocol shall enter into force on the date of the later of these notifications.

2. The provisions of the 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 8

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

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

DONE at Kuwait City through exchange of texts this 19th day of Shaban 1442 H, corresponding to the 1st day of April 2021 in two originals in the Arabic and English languages, both texts being equally authentic. In case of divergence, the English text shall prevail.

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

**FOR THE GOVERNMENT OF THE
STATE OF KUWAIT**

SUID-AFRIKAANSE INKOMSTEDIENS

NO. 5573

22 November 2024

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

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 word hiermee kennis gegee dat die Protokol ter vermyding van dubbele belasting en die voorkoming van fiskale ontduiking met betrekking tot belasting op inkomste wat in die Bylae tot hierdie Kennisgewing vervat is, aangegaan is met die Regering van die Staat van Koeweit en deur die Parlement goedgekeur is ingevolge artikel 231(2) van die Grondwet.

Daar word verder bekendgemaak dat ingevolge paragraaf 1 van Artikel 7 van die Protokol die datum van inwerkingtreding 2 Oktober 2024 is.

BYLAE

PROTOKOL TER WYSIGING VAN DIE OOREENKOMS TUSSEN DIE REGERING VAN DIE REPUBLIEK VAN SUID-AFRIKA EN DIE REGERING VAN DIE STAAT VAN KOEWAIT VIR DIE VERMYDING VAN DUBBELE BELASTING EN DIE VOORKOMING VAN FISKALE ONTDUIKING MET BETREKKING TOT BELASTINGS OP INKOMSTE**AANHEF**

Die Regering van die Republiek van Suid-Afrika en die Regering van die Staat van Koeweit, begerig om die ooreenkoms vir die vermyding van dubbele belasting en die voorkoming van fiskale ontduiking, met betrekking tot belasting op inkomste, geteken te Koeweit op 17 Februarie 2004 (in hierdie Protokol verwys na as "die Ooreenkoms") te wysig;

HET AS VOLG OOREENGEKOM:**ARTIKEL 1**

Paragraaf 3 van Artikel 2 van die Ooreenkoms sal geskrap word en met die volgende vervang word:

"3. Die bestaande belastingen waarop hierdie Ooreenkoms van toepassing is, is in die besonder:

a) in die geval van Koeweit:

- (1) Bevel Nr. 3 of 1955 soos gewysig in Wet nr. 2 van 2008;
- (2) Wet Nr. 23 van 1961 van die Neutrale Sone; en
- (3) Wet Nr. 19 van 2000 vir die Bystand van Nasionale Werknemers;

(hierna genoem "Koeweitse belasting"); en

b) in die geval van Suid-Afrika:

- (1) die normale belasting;
- (2) die terughoubelasting op tantième;
- (3) die dividendebelasting;
- (4) die terughoubelasting op rente; en
- (5) die belasting op buitelandse vermaaklikheids- en sportpersone;

(hierna genoem "Suid-Afrikaanse belasting")."

ARTIKEL 2

Subparagraaf a) van paragraaf 1 van Artikel 4 van die Ooreenkoms sal geskrap word en met die volgende subparagraaf vervang word:

"a) in die geval van Koeweit:

- (1) 'n Koeweitse burger en 'n maatskappy of 'n entiteit wat in Koeweit ingelyf is, en
- (2) 'n individu wat in Koeweit teenwoordig is vir 'n tydperk of tydperke met 'n somtotaal van minstens 183 dae in die toepaslike fiskale jaar;"

ARTIKEL 3

Artikel 10 van die Ooreenkoms sal geskrap word en met die volgende vervang word:

“Artikel 10***Dividende***

1. Dividende deur ‘n maatskappy betaal, wat ‘n inwoner van ‘n Kontrakterende Staat is, aan die ander Kontrakterende Staat, mag in sodanige ander Kontrakterende Staat belas word.

2. Alhoewel, sodanige dividende mag ook in die Kontrakterende Staat, waarvan die maatskappy wat die dividende betaal ‘n inwoner is, belas word en ingevolge die wette van sodanige Kontrakterende Staat, maar indien die voordelige eienaar van die dividende ‘n inwoner van die ander Kontrakterende Staat is, sal die belasting sodanig gehef nie oorskry nie:

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

Hierdie paragraaf sal nie die belasting van die maatskappy beïnvloed ten opsigte van die winste waaruit die dividende betaal is nie.

3. Nieteenstaande die bepalings in paragraaf 2, dividende wat betaal word deur ‘n maatskappy wat ‘n inwoner is van ‘n Kontrakterende Staat aan die Regering van die ander Kontrakterende Staat, sal vrygestel wees van belasting in die eersgenoemde Staat.

4. Vir die doeleindes van paragraaf 3, sal die uitdrukking “Regering” insluit:

- a) in die geval van Koeweit:
 - (1) die Sentrale Bank van Koeweit; en
 - (2) enige ander statutêre liggaam of instansie, geheel deur die Regering van die Staat van Koeweit besit, soos van tyd tot tyd tussen die bevoegde owerhede van die Kontrakterende State ooreengekom mag word,
- b) in die geval van Suid-Afrika:
 - (1) the Suid-Afrikaanse Reserwe Bank; en
 - (2) enige ander statutêre liggaam of instansie geheel deur die Regering van Suid-Afrika besit, soos van tyd tot tyd tussen die bevoegde owerhede van die Kontrakterende State ooreengekom mag word.

5. Die uitdrukking “dividende” soos in hierdie Artikel aangewend, beteken inkomste uit aandele of ander regte deelnemend aan winste (buiten skuldeise), asook inkomste uit ander korporatiewe regte wat onderhewig is aan dieselfde belastinghantering as inkomste uit aandele, ingevolge die wette van die Kontrakterende Staat waarvan die maatskappy wat die uitkering maak ‘n inwoner is.

6. Die bepalings van paragrawe 1 en 2 van hierdie Artikel sal nie van toepassing wees 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, 'n onderneming bedryf deur 'n permanente instelling daarin geleë, of persoonlike dienste lewer vanuit 'n vaste basis daarin geleë, en die aandeelhouding ten opsigte waarvan die dividende betaal is, is prakties verbonde aan sodanige permanente instelling of vaste basis. In sodanige geval is die reëls van Artikel 7 of Artikel 14, hoe ook al die geval mag wees, van toepassing.

7. Waar 'n maatskappy wat 'n inwoner van 'n Kontrakterende Staat is, winste of inkomste van die ander Kontrakterende Staat verkry, mag sodanige ander Kontrakterende Staat geen belasting hef op die dividende deur die ander maatskappy betaal nie, behalwe in soverre sodanige dividende aan 'n inwoner van sodanige ander Kontrakterende Staat betaal word of in soverre die aandeelhouding ten opsigte waarvan die dividende betaal is, prakties verbonde is aan 'n permanente instelling of vaste basis wat binne sodanige ander Kontrakterende Staat geleë is, en ook nie die maatskappy se onuitgekeerde winste blootstel aan 'n belasting op die maatskappy se onuitgekeerde winste nie, selfs nie indien die uitbetaalde dividende of die onuitgekeerde winste geheel of gedeeltelik bestaan uit winste of inkomste uit sodanige ander Kontrakterende Staat nie."

ARTIKEL 4

Artikel 11 van die Ooreenkoms sal geskrap word en vervang word met die volgende:

"Artikel 11

Rente

1. Rente wat ontstaan in 'n Kontrakterende Staat en aan 'n inwoner van die ander Kontrakterende Staat betaal word, mag ook in daardie ander Staat belas word.

2. Alhoewel, sodanige rente mag ook in die Kontrakterende Staat, waarin dit ontstaan en ingevolge die wette van daardie Staat, belas word, maar indien die voordelige eienaar van die rente 'n inwoner van die ander Kontrakterende Staat is, sal die belasting sodanig gehef, nie 5 persent van die bruto bedrag van die rente oorskry nie.

3. Nieteenstaande die bepalings van paragraaf 2, sal rente wat in 'n Kontrakterende Staat ontstaan vrygestel wees van belasting in sodanige Staat, indien:

- a) die rente betaal is deur of ontstaan in die Regering of 'n politiese subafdeling of 'n plaaslike owerheid van enige van daardie Kontrakterende Staat; of
- b) die rente betaal is ten opsigte van 'n lening, skuldeis of krediet, wat geskuld word aan, of gemaak is deur, verskaf, gewaarborg of verseker is deur sodanige ander Staat of 'n politiese subafdeling, of plaaslike owerheid of sentrale bank daarvan; of
- c) die rente deur enige bank betaal is; of
- d) die rente betaal is aan enige instansie of liggaam wat geheel besit word, direk of indirek, deur die ander Kontrakterende Staat of 'n politiese subafdeling of 'n plaaslike owerheid daarvan; of

- e) die rente ontstaan ten opsigte van enige skuldinstrument gelys op 'n erkende aandelemark.

4. Vir die doeleindes van subparagraaf e) van paragraaf 3, beteken die uitdrukking “erkende aandelemark”:

- a) in Koeweit, die Koeweitse Aandelemark;
- b) in Suid-Afrika, die Johannesburgse Aandelemark;
- c) enige ander aandelemark soos ooreengekom deur die bevoegde owerhede van die Kontrakterende State.

5. Die uitdrukking “rente”, soos aangewend in hierdie Artikel, beteken inkomste uit skuldeise van enige aard, welke of nie deur 'n verbandlening beveilig, en welke of nie 'n reg het om deel te hê aan die skuldenaar se winste nie, en in besonder, inkomste uit Regeringsekuriteite en inkomste uit verbande of obligasies, insluitend premies en pryse verbonde aan sodanige sekuriteite, verbande of obligasies. Boetes gehef vir laat betaling sal nie as rente geag word vir die doeleindes van hierdie Artikel nie.

6. Die bepalings van paragrafe 1, 2 en 3 van hierdie Artikel sal nie van toepassing wees indien die voordelige eienaar van die rente, wat 'n inwoner van 'n Kontrakterende Staat is, 'n besigheid bedryf in die ander Kontrakterende Staat waarin die rente ontstaan, deur 'n permanente instelling daarin geleë, of onafhanklike persoonlike dienste lewer in sodanige ander Staat, vanaf 'n vaste basis in sodanige ander Kontrakterende Staat geleë, en die skuldeis ten opsigte waarvan die rente betaal is, prakties verbonde is aan sodanige permanente instelling of vaste basis nie. In sodanige geval, is die bepalings in Artikel 7 of Artikel 14, hoe ook al die geval mag wees, van toepassing.

7. Rente sal geag word as ontstaan in 'n Kontrakterende Staat indien die betaler 'n inwoner van sodanige Staat is. Alhoewel, in die geval waar die persoon wat die rente betaal, welke sodanige persoon 'n inwoner van 'n Kontrakterende Staat is of nie, 'n permanente instelling of vaste basis in die Kontrakterende Staat het, in verband waarmee die skuld waarop die rente betaal word aangegaan is, en sodanige rente word gedra deur sodanige permanente instelling of vaste basis, sal sodanige rente geag word as ontstaan in die Staat waarin die permanente instelling of vaste basis geleë is.

8. Waar, by rede van 'n spesiale verhouding tussen die betaler en die voordelige eienaar, of tussen beide van hulle en 'n ander persoon, die rentebedrag, met betrekking tot die skuldeis waarvoor dit betaal is, die bedrag oorskry waarop ooreengekom sou wees tussen die betaler en die voordelige eienaar in die afwesigheid van sodanige verhouding, sal die bepalings van hierdie Artikel slegs op die laasgenoemde bedrag van toepassing wees. In sodanige geval, sal die oorskotporsie van die betalings belasbaar bly ingevolge die wette van elke Kontrakterende Staat, na behoorlike inagneming van die ander bepalings van hierdie Ooreenkoms.”

ARTIKEL 5

Artikel 13 van die Ooreenkoms sal geskrap word en met die volgende vervang word:

“Artikel 13

Kapitaalwinst

1. Winste verkry deur 'n inwoner van 'n Kontrakterende Staat uit die oordra van onroerende eiendom, soos na verwys in Artikel 6 en geleë in die ander Kontrakterende Staat, mag in sodanige ander Staat belas word.

2. Winste uit die oordra van roerende eiendom wat deel uitmaak van die sake-eiendom van 'n permanente instelling wat 'n onderneming van 'n Kontrakterende Staat in die ander Kontrakterende Staat het, of van roerende eiendom met betrekking tot 'n vaste basis, beskikbaar aan 'n inwoner van 'n Kontrakterende Staat in die ander Kontrakterende Staat, vir die doel van lewering van onafhanklike persoonlike dienste, insluitend sodanige winste uit die oordra van sodanige permanente instelling (alleenstaande of met die hele onderneming) of van sodanige vaste basis, mag in sodanige ander Staat belas word.

3. Winste uit 'n onderneming van 'n Kontrakterende Staat uit die oordra van skepe of vliegtuie wat in internasionale verkeer bedryf word, of roerende eiendom met betrekking tot die bedryf van sodanige skepe of vliegtuie sal slegs in sodanige Staat belasbaar wees.

4. Winste verkry deur 'n inwoner van 'n Kontrakterende Staat uit die oordra van aandele, wat meer as 50 persent van die waarde daarvan aflei, direk of indirek van onroerende eiendom geleë in die ander Kontrakterende Staat, mag in sodanige ander Staat belas word.

5. Winste uit die oordra van enige eiendom buiten die na verwys in paragrawe 1, 2, 3 en 4, sal slegs belasbaar wees in die Kontrakterende Staat waarvan die oordraer 'n inwoner is."

ARTIKEL 6

Artikel 26 van die Ooreenkoms sal geskrap word en met die volgende vervang word:

"Artikel 26

Uitruil van Inligting

1. Die bevoegde owerhede van die Kontrakterende State sal sodanige inligting uitruil soos voorsienbaar toepaslik vir die uitvoer van die bepalings van hierdie Ooreenkoms, of tot die administrasie of afdwing van die landswette ten opsigte van belastings van elke soort en omskrywing, soos opgelê namens die Kontrakterende State, of hulle politiese subafdelings of plaaslike owerhede, in soverre die vermelde belasting nie teenstellig die Ooreenkoms is nie. Die uitruil van inligting word nie deur Artikels 1 en 2 beperk nie.

2. Enige inligting ontvang ingevolge paragraaf 1 deur 'n Kontrakterende Staat sal as vertroulik hanteer word op dieselfde wyse as inligting bekom ingevolge die landswette van sodanige Staat en sal slegs bekend gemaak word aan persone of owerhede (insluitend howe en administratiewe liggame) vermoed met die aanslag of invordering van, die afdwing of vervolging met betrekking tot, of die bepaling van appëlle in verband met die belastings na verwys in paragraaf 1, of die vergissing van die bogenoemde. Sodanige persone of owerhede sal die inligting alleenlik vir sodanige doeleindes aanwend. Hulle mag die inligting in openbare hofverrigtinge bekend maak of in geregtelike besluite. Nieteenstaande die voorafgaande, mag inligting ontvang deur 'n Kontrakterende Staat vir ander doeleindes aangewend word indien sodanige inligting mag aangewend word vir sodanige ander doeleindes ingevolge die wette van beide State en indien die bevoegde owerheid van die lewende Staat sodanige aanwending magtig.

3. In geen geval sal die bepalings van paragrawe 1 en 2 so vertolk word dat dit 'n Kontrakterende Staat die verpligting oplê om:

- a) administratiewe maatreëls toe te pas wat teenstrydig is met die wette en administratiewe praktyk van sodanige of die ander Kontrakterende Staat nie;
- b) inligting te verskaf wat nie ingevolge die wette of in gewone verloop van die administrasie van sodanige of die ander Kontrakterende Staat bekombaar is nie;
- c) inligting te verskaf wat enige handels-, sake-, industriële-, kommersiële of beroepsgeheim of handelsproses sal openbaar maak, of inligting te verskaf waarvan die openbaarmaking teenstellig tot openbare beleid (*ordre public*) sou wees.

4. Indien inligting deur 'n Kontrakterende Staat ooreenstemmig hierdie Artikel versoek word, sal die ander Kontrakterende Staat sy inligtingversamelingsmaatreëls toepas om die versoekte inligting te bekom, selfs al benodig sodanige ander Staat nie sodanige inligting vir eie belastingdoeleindes nie. Die verpligting vervat in die voorafgaande sin is onderworpe aan die beperkings van paragraaf 3, maar in geen geval sal sodanige beperkings vertolk word om inligting aan 'n Kontrakterende Staat te weier alleenlik omdat dit geen plaaslike belang in sodanige inligting het nie.

5. In geen geval sal die bepalings van paragraaf 3 so vertolk word om 'n Kontrakterende Staat te weier om inligting te verskaf alleenlik omdat die inligting deur 'n bank, ander finansiële instelling, benoemde of persoon wat in 'n agentskap of fidusiële hoedanigheid optree, gehou word of omdat dit verband hou met eienaarskapsbelange in 'n persoon nie."

ARTIKEL 7

1. Elk van die Kontrakterende State sal die ander skriftelik in kennis stel, deur die diplomatieuse kanaal, van die afhandeling van die prosedures soos deur sy eie wette vereis vir die inwerkingstelling van hierdie Protokol, wat 'n integrale deel van die Ooreenkoms uitmaak. Die Protokol sal inwerking tree op die datum van die laaste van sodanige kennisgewings.

2. Die bepalings van die Protokol sal daarmee in werking wees op die datum waarop 'n belastingstelsel op aandeelhouervlak van dividende verklaar in werking tree in Suid-Afrika.

ARTIKEL 8

Hierdie Protokol bly van krag vir solank die Ooreenkoms van krag is.

IN GETUIENIS WAARVAN die ondergetekendes, behoorlik daartoe gemagtig deur hul onderskeie Regerings, hierdie Protokol onderteken het.

GETEKEN te Kuwait City deur die uitruil van tekste op hierdie 19^{de} dag van Shaban 1442 H. wat ooreenstem met die 1^{ste} dag van April 2021 op twee oorspronklikes in die Arabiese en Engelse tale, waarvan beide tekste ewe outentiek is. In geval van afwyking, sal die Engelse taal voorkeur neem.

**VIR DIE REGERING VAN DIE
REPUBLIEK VAN SUID-AFRIKA**

**VIR DIE REGERING VAN DIE
STAAT VAN KOEWIT**