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INCOME TAX ACT 1947

INCOME TAX (SINGAPORE — SOUTH AFRICA) (AVOIDANCE OF DOUBLE TAXATION AGREEMENT) (MODIFICATIONS TO IMPLEMENT MULTILATERAL INSTRUMENT) ORDER 2022

ARRANGEMENT OF PARAGRAPHS

Paragraph

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In exercise of the powers conferred by section 49(7) of the Income Tax Act 1947, the Minister for Finance makes the following Order:

Citation and commencement

1. This Order is the Income Tax (Singapore — South Africa) (Avoidance of Double Taxation Agreement) (Modifications to Implement Multilateral Instrument) Order 2022 and comes into operation on 1 January 2023.

Purpose

2.—(1) This Order amends the arrangements made between the Government of the Republic of Singapore and the Government of the Republic of South Africa as specified in the Schedule to the Income Tax (Singapore — South Africa) (Avoidance of Double Taxation Agreement) Order 2016 (G.N. No. S 641/2016) (called in this Order the Agreement).

(2) The purpose of this Order is to amend the Agreement to give effect to Singapore's obligations under the Multilateral Convention to

Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting done at Paris on 24 November 2016 (as amended from time to time).

Amendment of Agreement

3. The provisions of the Agreement are amended in the manner set out in the Schedule.

Entry into effect

4. The amendments mentioned in paragraph 3 have effect —
- (a) with respect to taxes withheld at source — in respect of amounts paid, deemed paid or liable to be paid (whichever is the earliest), on or after 1 January 2023; and
 - (b) with respect to taxes other than those withheld at source — where the income is derived or received in a basis period beginning on or after 1 July 2023.

THE SCHEDULE

Paragraph 3

Replacement of Preamble

1. Replace the Preamble of the Agreement with —

“The Government of the Republic of Singapore and the Government of the Republic of South Africa,

Desiring to further develop their economic relationship and to enhance their co-operation in tax matters,

Intending to eliminate double taxation with respect to the taxes covered by this Agreement without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Agreement for the indirect benefit of residents of third jurisdictions),

Have agreed as follows:”.

Amendment of Article 9

2. In Article 9 (Associated Enterprises) of the Agreement, replace paragraph 2 with —

THE SCHEDULE — *continued*

“2. Where a Contracting State includes in the profits of an enterprise of that Contracting State — and taxes accordingly — profits on which an enterprise of the other Contracting State has been charged to tax in that other Contracting State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Contracting State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Contracting State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.”.

Amendment of Article 10

3. In Article 10 (Dividends) of the Agreement, delete paragraph 8.

Amendment of Article 11

4. In Article 11 (Interest) of the Agreement, delete paragraph 10.

Amendment of Article 12

5. In Article 12 (Royalties) of the Agreement, delete paragraph 7.

New Article 25A

6. After Article 25 (Members of Diplomatic Missions and Consular Posts) of the Agreement, insert —

“ARTICLE 25A

PREVENTION OF TREATY ABUSE

Notwithstanding any provisions of this Agreement, a benefit under this Agreement shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Agreement.”.

Made on 18 November 2022.

LAI WEI LIN
*Second Permanent Secretary,
Ministry of Finance,
Singapore.*

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