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GOVERNMENT NOTICE

SOUTH AFRICAN REVENUE SERVICE

No. 356

20 April 2007

INCOME TAX ACT, 1962

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 (Act No 108 of 1996), it is hereby notified that the Agreement 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 Article 29 of the Agreement, that the date of entry into force is 25 April 2006.

GOEWERMENTSKENNISGEWING

SUID-AFRIKAANSE INKOMSTEDIENS

No. 356

20 April 2007**INKOMSTEBELASTINGWET, 1962****OOREENKOMS TUSSEN DIE REGERING VAN DIE REPUBLIEK VAN SUID-AFRIKA EN DIE REGERING VAN DIE STAAT KOEWIT 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 (~~Wet~~ No 108 van 1996), word hiermee kennis gegee dat die Ooreenkoms vir die vermyding van dubbele belasting en die 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 Staat Koeweit en deur die Parlement goedgekeur is ingevolge artikel 231 (2) van die Grondwet.

Daar word verder bekendgemaak dat ingevolge Artikel 29 van die Ooreenkoms, die datum van inwerkingtreding 25 April 2006 is.

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

The Government of the Republic of South Africa and the Government of the State of Kuwait;

Desiring to promote their mutual economic relations through the conclusion between them of an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;

Have agreed as follows:

Article 1

Persons Covered

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

Article 2

Taxes Covered

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, as well as taxes on capital appreciation.

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

a) in the case of Kuwait:

- (1) the corporate income tax;
- (2) the contribution from the net profits of the Kuwaiti shareholding companies payable to the Kuwait Foundation for Advancement of Science (KFAS);
- (3) the Zakat;

(hereinafter referred to as "Kuwaiti tax");

b) in the case of South Africa:

- (1) the normal tax;
- (2) the secondary tax on companies;
- (3) the withholding tax on royalties;

(hereinafter referred to as "South African tax").

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

Die Regering van die Republiek van Suid-Afrika en die Regering van die Staat Koeweit het, uit 'n begeerte om hulle wedersydse ekonomiese bande te versterk deur middel van die sluiting tussen hulle van 'n ooreenkoms vir die vermyding van dubbele belasting en die voorkoming van fiskale ontduiking met betrekking tot belasting op inkomste;

Soos volg ooreengekom:

Artikel1

Persone Gedek

Hierdie Ooreenkoms is van toepassing op persone wat inwoners van een of van albei die Kontrakterende State is.

Artikel2

Belastings Gedek

1. Hierdie Ooreenkoms is van toepassing op belasting op inkomste opgele namens 'n Kontrakterende Staat of namens sy staatkundige onderafdelings, ongeag die wyse waarop dit gehef word.

2. Aile belasting opgele op totale inkomste, of op elemente van inkomste, met inbegrip van belasting op winste uit die vervreemding van roerende of onroerende eiendom, asook belasting op kapitaalappresiasie, word geag belasting op inkomste te wees.

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

a) in die geval van Koeweit:

- (1) die maatskappy-inkomstebelasting;
- (2) die bydrae van die netto winste van die Koeweitse aandeelhouermaatskappye betaalbaar aan die Koeweit Stigting vir die Bevordering van Wetenskap (KSBW);
- (3) die Sakat;

(hierna "Koeweitse belasting" genoem);

b) in die geval van Suid-Afrika:

- (1) die normale belasting;
- (2) die sekondere belasting op maatskappye;
- (3) die terughoudingsbelasting op tantieme;

(hierna "Suid-Afrikaanse belasting" genoem).

4. This Agreement shall apply also to any identical or substantially similar taxes that are imposed under the laws of a Contracting State after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes that have been made in their respective taxation laws.

Article 3

General Definitions

1. For the purposes of this Agreement, unless the context otherwise requires:
 - a) the terms "a Contracting State" and "the other Contracting State" mean Kuwait or South Africa, as the context requires;
 - b) the term "Kuwait" means the territory of the State of Kuwait including any area beyond the territorial sea which in accordance with international law has been or may hereafter be designated, under the laws of Kuwait, as an area over which Kuwait may exercise sovereign rights or jurisdiction;
 - c) the term "South Africa" means the Republic of South Africa and, when used in a geographical sense, includes the territorial sea thereof as well as any area outside the territorial sea, including the continental shelf, which has been or may hereafter be designated, under the laws of South Africa and in accordance with international law, as an area within which South Africa may exercise sovereign rights or jurisdiction;
 - d) the term "person" includes any individual or company and any other body of persons that is treated as an entity for tax purposes;
 - e) the term "national" means:
 - (1) any individual possessing the nationality of a Contracting State;
 - (2) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
 - f) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
 - g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
 - h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
 - i) the term "tax" means Kuwaiti tax or South African tax, as the context requires;

4. Hierdie Ooreenkoms is ook van toepassing op enige identiese of wesenlik soortgelyke belastings wat benewens, of in plaas van, die bestaande belastings opgele word ingevolge die wette van die Kontrakterende State na die datum van ondertekening van hierdie Ooreenkoms. Die bevoegde owerhede van die Kontrakterende State moet mekaar in kennis stel van enige noemenswaardige veranderinge wat aan hulle onderskeie belastingwette aangebring is.

Artikel3

Aigemene Woordomsrywings

1. Vir doeleindes van hierdie Ooreenkoms, tensy die samehang anders vereis:
 - a) beteken die uitdrukkings "'n Kontrakterende Staat" en "die ander Kontrakterende Staat" Koeweit of Suid-Afrika, na gelang die samehang vereis;
 - b) beteken die uitdrukking "Koeweit" die gebied van die Staat Koeweit met inbegrip van enige gebied buite die territoriale waters wat ooreenkomstig die volkereg, aangewys is, of hierna aangewys kan word, ingevolge die reg van Koeweit, as 'n gebied waaroor Koeweit soewereine regte of jurisdiksie mag uitoefen;
 - c) beteken die uitdrukking "Suid-Afrika" die Republiek van Suid-Afrika en, wanneer in 'n geografiese verband gebruik, ook die territoriale waters daarvan en enige gebied buite die territoriale waters, met inbegrip van die kontinentale plat, wat ingevolge die reg van Suid-Afrika en ooreenkomstig die volkereg aangewys is of hierna aangewys word as 'n gebied waarbinne Suid-Afrika soewereine regte of jurisdiksie mag uitoefen;
 - d) sluit die uitdrukking "persoon" in enige individu of maatskappy en enige ander liggaam van persone wat vir belastingdoeleindes as 'n entiteit behandel word;
 - e) beteken die uitdrukking "burger":
 - (1) enige individu wat burgerskap van 'n Kontrakterende Staat het;
 - (2) enige regspersoon, vennootskap of vereniging wat sodanige status verkry uit die wette wat in 'n Kontrakterende Staat van krag is;
 - f) beteken die uitdrukking "maatskappy" enige regspersoon of enige entiteit wat vir belastingdoeleindes as 'n regspersoon behandel word;
 - g) beteken die uitdrukkings "onderneming van 'n Kontrakterende Staat" en "onderneming van die ander Kontrakterende Staat" onderskeidelik 'n onderneming gedryf deur 'n inwoner van 'n Kontrakterende Staat en 'n onderneming gedryf deur 'n inwoner van die ander Kontrakterende Staat;
 - h) beteken die uitdrukking "internasionale verkeer" enige vervoer per skip of vliegtuig bedryf deur 'n onderneming van 'n Kontrakterende Staat, behalwe wanneer die skip of vliegtuig uitsluitlik tussen plekke in die ander Kontrakterende Staat bedryf word;
 - i) beteken die uitdrukking "belasting" Koeweitse belasting of Suid-Afrikaanse belasting, na gelang die samehang vereis;

- j) the term "competent authority" means:
- (1) in the case of Kuwait: the Minister of Finance or an authorized representative of the Minister of Finance;
 - (2) in the case of South Africa: the Commissioner for the South African Revenue Service or an authorized representative.

2. As regards the application of this Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Contracting State for the purposes of the taxes to which this Agreement applies, any meaning under the applicable tax laws of that Contracting State prevailing over a meaning given to the term under other laws of that Contracting State.

Article 4

Resident

1. For the purposes of this Agreement, the term "resident of a Contracting State" means:
 - a) in the case of Kuwait: an individual who has a domicile in Kuwait and is a Kuwaiti national, and a company which is incorporated in Kuwait;
 - b) in the case of South Africa: any person who, under the laws of South Africa, is liable to tax therein by reason of that person's domicile, residence, place of management or any other criterion of a similar nature, but this term does not include any person who is liable to tax in South Africa in respect only of income from sources therein.
2. For the purposes of paragraph 1, a resident of a Contracting State shall include:
 - a) the Government of that Contracting State and any political subdivision or local authority thereof;
 - b) any governmental institution created in that Contracting State under domestic law such as a corporation, Central Bank, fund, authority, foundation, agency or other similar entity;
 - c) any entity established in that Contracting State by the Government of that Contracting State or any political subdivision or local authority thereof or any governmental institution as defined in SUBparagraph (b), together with similar bodies of third states.
3. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then that individual's status shall be determined as follows:
 - a) the individual shall be deemed to be a resident solely of the Contracting State in which a permanent home is available to the individual; if a permanent home is available to the individual in both Contracting States, the individual shall be deemed to be a resident solely of the Contracting State with which the individual's personal and economic relations are closer (centre of vital interests);

- j) beteken die uitdrukking "bevoegde owerheid":
- (1) in die geval van Koeweit: die Minister van Finansies of 'n gemagtigde verteenwoordiger van die Minister van Finansies;
 - (2) in die geval van Suid-Afrika: die Kommissaris van die Suid-Afrikaanse Inkomstediens of 'n gemagtigde verteenwoordiger.

2. Betreffende die toepassing te eniger tyd van hierdie Ooreenkoms deur 'n Kontrakterende Staat het enige uitdrukking wat nie daarin omskryf is nie, tensy die samehang anders vereis, die betekenis wat ingevolge daardie Kontrakterende Staat se reg op daardie tydstip daaraan geheg word vir doeleindes van die belastings waarop hierdie Ooreenkoms van toepassing is, en enige betekenis ingevolge die toepaslike belastingwette van daardie Kontrakterende Staat geniet voorrang bo 'n betekenis aan die uitdrukking gegee kragtens ander wette van daardie Kontrakterende Staat.

Artikel 4

Inwoner

1. Vir doeleindes van hierdie Ooreenkoms, beteken die uitdrukking "inwoner van 'n Kontrakterende Staat":

- a) in die geval van Koeweit: 'n individu wat 'n domisilie in Koeweit het en 'n Koeweitse burger is en 'n maatskappy wat in Koeweit ge'inkorporeer is;
- b) in die geval van Suid-Afrika: enige persoon wat, kragtens die wette van Suid-Afrika daarin belastingpligtig is uit hoofde van daardie persoon se domisilie, verblyf, plek van bestuur of enige ander soortgelyke kriterium, maar hierdie uitdrukking sluit nie 'n persoon in nie wat in Suid-Afrika belastingpligtig is slegs ten opsigte van inkomste uit bronne daarin.

2. Vir doeleindes van paragraaf 1, sluit 'n inwoner van 'n Kontrakterende Staat in:

- a) die Regering van daardie Kontrakterende Staat en enige staatkundige onderafdeling of plaaslike owerheid daarvan;
- b) enige regeringsinstelling geskep in daardie Kontrakterende Staat ingevolge landsreg, 5005 'n maatskappy, Sentrale Bank, fonds, owerheid, stigting, agentskap of ander soortgelyke entiteit;
- c) enige entiteit in daardie Kontrakterende Staat opgerig deur die Regering van daardie Kontrakterende Staat of enige staatkundige onderafdeling of plaaslike owerheid daarvan of enige staatsinstelling 5005 omskryf in subparagraaf (b). tesame met soortgelyke liggame van derde state.

3. Waar 'n individu uit hoofde van die bepalings van paragraaf 1 'n inwoner van albei Kontrakterende State is, word daardie individu se status 5005 volg bepaal:

- a) die individu word geag 'n inwoner te wees uitsluitlik van die Kontrakterende Staat waarin 'n permanente tuiste tot die beskikking van die individu is; indien 'n permanente tuiste in albei Kontrakterende State tot die beskikking van die individu is, word die individu geag 'n inwoner te wees uitsluitlik van die Kontrakterende Staat waarmee die individu se persoonlike en ekonomiese betrekkinge die nouste is (tuiste van lewensbelange);

- b) if sole residence cannot be determined under the provisions of subparagraph (a), the individual shall be deemed to be a resident solely of the Contracting State in which the individual has an habitual abode;
- c) if the individual has an habitual abode in both Contracting States or in neither of them, the individual shall be deemed to be a resident solely of the Contracting State of which the individual is a national;
- d) if the individual's status cannot be determined under the provisions of subparagraphs (a) to (c), the competent authorities of the Contracting States shall settle 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 solely of the Contracting State in which its place of effective management is situated.

Article 5

Permanent Establishment

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

- a) a place of management;
- b) a branch;
- c) an office;
- d) a factory;
- e) a workshop;
- f) a mine, an oil or gas well, a quarry or any other place relating to the exploration for or exploitation of natural resources.

3. A building site, a construction, assembly or installation project or supervisory activities in connection with such site or project carried out in a Contracting State, constitutes a permanent establishment only if such site, project or activities continue for a period of more than six months.

4. The furnishing of services, including consultancy or managerial services, by an enterprise of a Contracting State through employees or other personnel engaged by the enterprise for such purpose, in the other Contracting State constitutes a permanent establishment only if activities of that nature continue for a period or periods aggregating more than six months within any twelve-month period commencing or ending in the fiscal year concerned.

5. An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if substantial technical, mechanical or scientific equipment or machinery is used for more than six months within any twelve-month period commencing or ending in the fiscal year concerned or installed, in that other Contracting State by, for or under contract with the enterprise.

- b) indien die uitsluitlike verblyfplek nie ingevolge die bepalings van subparagraaf (a) vasgestel kan word nie, word die individu geag 'n inwoner te wees uitsluitlik van die Kontrakterende Staat waarin die individu 'n gebruikelike verblyfplek het;
- e) indien die individu 'n gebruikelike verblyfplek in albei Kontrakterende State het, of in geeneen van hulle nie, word die individu geag 'n inwoner te wees uitsluitlik van die Kontrakterende Staat waarvan die individu 'n burger is;
- d) indien die status van die individu nie ingevolge die bepalings van subparagraawe (a) tot (e) bepaal kan word nie, beslis die bevoegde owerhede van die Kontrakterende State die saak deur middel van onderlinge ooreenkoms.

4. Waar 'n ander persoon as 'n individu uit hoofde van die bepalings van paragraaf 1 'n inwoner van albei Kontrakterende State is, word dit geag 'n inwoner te wees uitsluitlik van die Kontrakterende Staat waarin die plek van effektiewe bestuur daarvan geleë is.

Artikel5

Permanente Saak

1. Vir doeleindes van hierdie Ooreenkoms beteken die uitdrukking "permanente saak" 'n vaste besigheidsplek waardeur die besigheid van 'n onderneming geheel en al of gedeeltelik gedryf word.

2. Die uitdrukking "permanente saak" sluit veral in:

- a) 'n plek van bestuur;
- b) 'n tak;
- e) 'n kantoor;
- d) 'n fabriek;
- e) 'n werkwinkel;
- f) 'n myn, 'n olie- of gasbron, 'n steengroef of enige ander plek wat betrekking het op die eksplorasië na of die eksplorasie van natuurlike hulpbronne.

3. 'n Bouterrein, 'n konstruksie-, monteer- of installasiëprojek of toesighoudende bedrywighede met betrekking tot sodanige terrein of projek wat in 'n Kontrakterende Staat uitgeoefen word, maak 'n permanente saak uit slegs indien sodanige terrein, projek of bedrywighede vir 'n tydperk van langer as ses maande voortduur.

4. Die lewering van dienste, met inbegrip van konsultasie- of bestuursdienste, deur 'n onderneming van 'n Kontrakterende Staat deur middel van werknemers of ander personeel wat deur die onderneming vir sodanige doel in diens geneem word, maak in die ander Kontrakterende Staat 'n permanente saak uit slegs indien bedrywighede van daardie aard voortduur vir 'n tydperk of tydperke wat altesaam ses maande binne enige tydperk van twaalf maande wat in die betrokke fiskale [jaar begin of eindig, te bowe gaan.

5. 'n Onderneming van 'n Kontrakterende Staat word geag 'n permanente saak in die ander Kontrakterende Staat te hê indien noemenswaardige legniese, werktuigkundige of wetenskaplike toerusting of masjinerie vir langer as ses maande binne enige tydperk van twaalf maande wal in die betrokke fiskale jaar begin of eindig, gebruik word, of in daardie ander Kontrakterende Staat geïnstalleer word deur, vir of onder kontrak met die onderneming.

6. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

- a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

7. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 8 applies - is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person has, and habitually exercises in the first-mentioned Contracting State, an authority to negotiate and conclude contracts in the name of such enterprise, unless the activities of such person are limited to those mentioned in paragraph 6 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

8. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other Contracting State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

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

6. Ondanks die voorgaande bepalings van hierdie Artikel, word die uitdrukking "pennanente saak" geag nie in te sluit nie:

- a) die gebruik van fasiliteite uitsluitlik met die doel om goedere of handelsware wat aan die onderneming behoort, te berg, te vertoon of af te lewer;
- b) die instandhouding van 'n voorraad goedere of handelsware wat aan die onderneming behoort, uitsluitlik met die doel om dit te berg, te vertoon of af te lewer;
- c) die instandhouding van 'n voorraad goedere of handelsware wat aan die onderneming behoort, uitsluitlik met die doel van verwerking deur 'n ander onderneming;
- d) die instandhouding van 'n vaste besigheidsplek uitsluitlik met die doel om vir die onderneming goedere of handelsware aan te koop of inligting in te win;
- e) die instandhouding van 'n vaste besigheidsplek uitsluitlik met die doel om enige ander bedrywigheid wat van 'n voorlopige of bykomstige aard is, vir die onderneming te beoefen;
- f) die instandhouding van 'n vaste besigheidsplek uitsluitlik vir enige kombinasie van bedrywighede in subparagrafe (a) tot (e) genoem, met dien verstande dat die algehele bedrywigheid van die vaste besigheidsplek wat spruit uit hierdie kombinasie, van 'n voorlopige of bykomstige aard is.

7. Ondanks die bepalings van paragrafe 1 en 2, waar 'n persoon - uitgesonderd 'n agent met 'n onafhanklike status op wie paragraaf 8 van toepassing is - in 'n Kontrakterende Staat namens 'n onderneming van die ander Kontrakterende Staat optree, word daardie onderneming geag 'n permanente saak in eersgenoemde Kontrakterende Staat te hê ten opsigte van enige bedrywighede wat daardie persoon vir die onderneming ondemeem, indien so 'n persoon magtiging het, en dit gewoonlik uitoefen om kontrakte in die naam van die onderneming te onderhandel en te sluit, tensy die bedrywighede van sodanige persoon beperk is tot dié genoem in paragraaf 6 wat, indien dit deur middel van 'n vaste besigheidsplek uitgeoefen word, nie hierdie vaste besigheidsplek ingevolge die bepalings van daardie paragraaf 'n pennanente saak sou maak nie.

8. 'n Onderneming van 'n Kontrakterende Staat word nie geag 'n permanente saak in die ander Kontrakterende Staat te hê bloot omdat dit in daardie ander Kontrakterende Staat besigheid dryf deur middel van 'n makelaar, algemene kommissie-agent of enige ander agent met 'n onafhanklike status nie, met dien verstande dat sodanige persone in die gewone loop van hulle besigheid handel.

9. Die feit dat 'n maatskappy wat 'n inwoner van 'n Kontrakterende Staat is, beheer het oor of beheer word deur 'n maatskappy wat 'n inwoner van die ander Kontrakterende Staat is, of wat in daardie ander Kontrakterende Staat besigheid dryf (hetsy deur middel van 'n permanente saak of andersins), beteken nie op sigself dat enigeen van die maatskappye 'n permanente saak van die ander is nie.

Article 6

Income from Immovable Property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other Contracting State.
2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7

Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that Contracting State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated in that other Contracting State. If the enterprise carries on or has carried on business in that manner, the profits of the enterprise may be taxed in the other Contracting State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

Artikel6

Inkomste uit Onroerende Eiendom

1. Inkomste deur 'n inwoner van 'n Kontrakterende Staat uit onroerende eiendom verkry (met inbegrip van inkomste uit landbou of bosbou) wat in die ander Kontrakterende Staat geleë is, kan in daardie ander Kontrakterende Staat belas word.

2. Die uitdrukking "onroerende eiendom" het die betekenis wat daaraan geheg word ingevolge die reg van die Kontrakterende Staat waarin die betrokke eiendom geleë is. Die uitdrukking sluit in ieder geval in eiendom bykomstig by onroerende eiendom, lewende hawe en toerusting wat in landbou en bosbou gebruik word, regte waarop die bepalings van die algemene reg betreffende grondbesit van toepassing is, vruggebruik van onroerende eiendom en regte op wisselende of vaste betalings as vergoeding vir die ontginning van, of die reg op die ontginning van, mineraalafsettings, bronne en ander natuurlike hulpbronne. Skepe en vliegtuie word nie as onroerende eiendom beskou nie.

3. Die bepalings van paragraaf 1 is van toepassing op inkomste verkry uit die regstreekse gebruik, verhuring of gebruik in enige ander vorm van onroerende eiendom.

4. Die bepalings van paragrawe 1 en 3 is ook van toepassing op die inkomste uit onroerende eiendom van 'n onderneming en op inkomste uit onroerende eiendom gebruik vir die verrigting van onafhanklike persoonlike dienste.

Artikel7

Besigheidswinste

1. Die winste van 'n onderneming van 'n Kontrakterende Staat is slegs in daardie Kontrakterende Staat belasbaar, tensy die onderneming in die ander Kontrakterende Staat besigheid dryf deur middel van 'n permanente saak wat in daardie ander Kontrakterende Staat geleë is.' Indien die onderneming op daardie wyse besigheid dryf of gedryf het, kan die winste van die onderneming in die ander Kontrakterende Staat be/as word, maar slegs soveel daarvan as wat aan daardie permanente saak toeskryfbaar is,

2. Behoudens die bepalings van paragraaf 3, waar 'n onderneming van 'n Kontrakterende Staat in die ander Kontrakterende Staat besigheid dryf deur middel van 'n permanente saak wat daarin geleë is, word daar in elke Kontrakterende Staat aan daardie permanente saak die winste toegeskryf wat dit na verwagting sou kon behaal indien dit 'n afsonderlike en aparte onderneming was wat met dieselfde of soortgelyke bedrywighede onder dieselfde of soortgelyke voorwaardes besig is en geheel en al onafhanklik sake doen met die onderneming waarvan dit 'n permanente saak is.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions those deductible expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere, taking into consideration any applicable law or regulations in the concerned Contracting State. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary. The method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6. Nothing in this Article shall affect the application of any law or regulation of a Contracting State relating to the determination of the tax liability of a person, including determinations in cases where the information available to the competent authority of that Contracting State is inadequate to determine the profits to be attributed to a permanent establishment, provided that that law or regulation shall be applied, taking into account the information available and so far as it is practicable to do so, consistently with the principles of this Article.

7. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

8. Where profits include items of income or gains which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

Shipping and Air Transport

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that Contracting State.

3. By die vasstelling van die winste van 'n permanente saak word daardie toelaatbare uitgawes wat vir doeleindes van die permanente saak aangegaan is, met inbegrip van bestuurs- en algemene administratiewe uitgawes aldus aangegaan, as aftrekkings toegelaat, hetsy in die Kontrakterende Staat waarin die permanente saak geleë is of elders, met inagneming van enige toepaslike wet of regulasies in die betrokke Kontrakterende Staat. Geen sodanige aftrekking word egter toegelaat nie ten opsigte van bedrae, indien enige, betaal deur die permanente saak aan die hoofkantoor van die onderneming of enige van sy ander kantore (behalwe by wyse van vergoeding van werklike uitgawes), by wyse van tantieme, gelde of ander soortgelyke betalings in ruil vir die gebruik van patente of ander regte, of by wyse van kommissie, vir spesifieke dienste gelewer of vir bestuur, of, behalwe in die geval van 'n bankonderneming, by wyse van rente op gelde wat aan die permanentes saak geleen is. Eweneens word daar, by die vasstelling van die winste van 'n permanente saak, buite rekening gelaat bedrae deur die permanente saak ten laste van die hoofkantoor van die onderneming of enige van sy ander kantore opgele (behalwe vir terugbetaling van werklike uitgawes), by wyse van tantieme, gelde of ander soortgelyke betalings in ruil vir die gebruik van patente of ander regte, of by wyse van kommissie vir spesifieke dienste gelewer of vir bestuur, of, behalwe in die geval van 'n bankonderneming, by wyse van rente op gelde geleen aan die hoofkantoor van die onderneming of enige van sy ander kantore.

4. Vir sover dit in 'n Kontrakterende Staat gebruiklik is om die winste wat aan 'n permanente saak toegeskryf moet word, vas te stel op die grondslag van 'n toedeling van die totale winste van die onderneming aan sy onderskeie dele, belet niks in paragraaf 2 daardie Kontrakterende Staat om die winste wat belas moet word, deur sodanige toedeling as wat gebruiklik is, vas te stel nie. Die metode van toedeling wat aanvaar word, moet egter sodanig wees dat die resultaat in ooreenstemming is met die beginsels in hierdie Artikel vervat.

5. Geen winste word aan 'n permanente saak toegeskryf uit hoofde van die blote aankoop deur daardie permanente saak van goedere of handelware vir die onderneming nie.

6. Niks in hierdie Artikel raak die toepassing van enige wet of regulasie van 'n Kontrakterende Staat wat betrekking het op die vasstelling van die belastingaanspreeklikheid van 'n persoon, met inbegrip van vasstellings in gevalle waar die inligting tot beskikking van die bevoegde owerheid van daardie Kontrakterende Staat onvoldoende is om die winste toeskryfbaar aan 'n permanente saak, vas te stel, met dien verstande dat daardie wet of regulasie toegepas sal word, met inagneming van die inligting tot beskikking en vir sover dit prakties moontlik is om dit te doen, konsekwent met die beginsels van hierdie Artikel.

7. Vir doeleindes van die voorgaande paragrawe, word die winste wat aan die permanente saak toegeskryf moet word, jaar na jaar volgens dieselfde metode vasgestel, tensy daar goeie en afdoende rede vir die teendeel is.

8. Waar winste inkomste-items insluit wat afsonderlik in ander Artikels van hierdie Ooreenkoms behandel word, word die bepalings van daardie Artikels nie deur die bepalings van hierdie Artikel geraak nie.

Artikel8

Skeepvaart en Lugvervoer

1. Winste van 'n onderneming van 'n Kontrakterende Staat uit die bedryf van skepe of vliegtuie in internasionale verkeer, is slegs in daardie Kontrakterende Staat belasbaar.

2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall include profits derived from the rental on a bare boat basis of ships or aircraft used in international traffic, if such profits are incidental to the profits to which the provisions of paragraph 1 apply.

3. Profits of an enterprise of a Contracting State from the use or rental of containers (including trailers, barges and related equipment for the transport of containers) used for the transport in international traffic of goods or merchandise shall be taxable only in that Contracting State.

4. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9

Associated Enterprises

1. Where

- a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State,
- b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

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 chargee-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 may make an appropriate adjustment to the amount of the profits subjected to tax. 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.

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 who is the beneficial owner of such dividends shall be taxable only in that other Contracting State.

2. Vir doeleindes van hierdie Artikel sluit winste uit die bedryf van skepe of vliegtuie in internasionale verkeer in winste verkry uit die verhuring op 'n sonder-bemannings-basis van skepe of vliegtuie gebruik in internasionale verkeer, indien sodanige winste bykomstig is by die winste waarop die bepalings van paragraaf 1 van toepassing is.

3. Winste van 'n onderneming van 'n Kontrakterende Staat uit die gebruik of verhuring van houers (met inbegrip van treilers, vragskuite en verwante toerusting vir die vervoer van houers) gebruik in internasionale verkeer vir die vervoer van goedere of handelsware, is slegs in daardie Kontrakterende Staat belasbaar.

4. Die bepalings van paragraaf 1 is ook van toepassing op winste uit die deelname aan 'n poel, 'n gesamentlike besigheid of 'n internasionale bedryfsagentskap.

Artikel9

Verwante Ondernemings

1. Waar

- a) 'n onderneming van 'n Kontrakterende Staat regstreeks of onregstreeks aan die bestuur van, beheer oor of kapitaal van 'n onderneming van die ander Kontrakterende Staat deelneem,
- b) dieselfde persone regstreeks of onregstreeks aan die bestuur van, beheer oor of kapitaal van 'n onderneming van 'n Kontrakterende Staat en 'n onderneming van die ander Kontrakterende Staat deelneem,

en voorwaardes in enigeen van die gevalle tussen die twee ondernemings met betrekking tot hul handels- of finansiële betrekkinge gestel of opgele word wat verskil van **dié** wat tussen onafhanklike ondernemings gestel sou word, kan enige winste wat by ontstentenis van daardie voorwaardes aan een van die ondernemings sou toegeval het, maar as gevolg van daardie voorwaardes nie aldus toegeval het nie, by die winste van daardie onderneming ingesluit en dienooreenkomstig belas word.

2. Waar 'n ~~Kontrakterende~~ Staat by die winste van 'n onderneming van daardie Kontrakterende Staat winste insluit - en dit dienooreenkomstig belas - waarop 'n onderneming van die ander Kontrakterende Staat in daardie ander Kontrakterende Staat belas is en die winste aldus ingesluit winste is wat aan die onderneming van eersgenoemde Kontrakterende Staat sou toegeval het indien die voorwaardes tussen die twee ondernemings gestel, dieselfde was as **dié** wat tussen onafhanklike ondernemings gestel sou gewees het, kan daardie ander Kontrakterende Staat 'n toepaslike aanpassing maak aan die bedrag van die winste wat aan belasting onderhewig is. By die vasstelling van sodanige aanpassing, moet die ander bepalings van hierdie Ooreenkoms behoorlik in ag geneem word en die bevoegde owerhede van die Kontrakterende State mekaar, indien nodig, raadpleeg.

Artikel10

Dividende

1. Dividende betaal deur 'n maatskappy wat 'n inwoner van 'n Kontrakterende Staat is, aan 'n inwoner van die ander Kontrakterende Staat wat die voordelige eienaar van sodanige dividende is, is slegs in daardie ander Kontrakterende Staat belasbaar,

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

2. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the taxation laws of the Contracting State of which the company making the distribution is a resident.

3. The provisions of paragraph 1 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 in that other Contracting State, or performs in that other Contracting State independent personal services from a fixed base situated in that other Contracting State, 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.

4. 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 a 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 11

Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State who is the beneficial owner of such interest shall be taxable only in that other Contracting State.

2. 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, as well as income which is subjected to the same taxation treatment as income from monies lent by the taxation laws of the Contracting State in which the income arises. Penalty charges for late payment shall not be regarded as interest for the purposes of this Article.

3. The provisions of paragraph 1 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 in that other Contracting State, 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.

Die bepalings van hierdie paragraaf raak nie die belasting van die maatskappy ten opsigte van die winste waaruit die dividende betaal word nie.

2. Die uitdrukking "dividende" soos in hierdie Artikel gebruik, beteken inkomste uit aandele, "jouissance"-aandele of "jouissance"-regte, mynaandele, stigtersaandele of ander regte, wat nie skuldeise is nie, wat in winste deel, asook inkomste uit ander regs persoonlike regte wat aan dieselfde belastingbehandeling as inkomste uit aandele onderwerp word deur die belastingwette van die Kontrakterende Staat waarvan die maatskappy wat die uitkering doen, 'n inwoner is.

3. Die bepalings van paragraaf 1 is nie van toepassing nie indien die voordelige eienaar van die dividende, wat 'n inwoner van 'n Kontrakterende Staat is, besigheid dryf in die ander Kontrakterende Staat waarvan die maatskappy wat die dividende betaal 'n inwoner is, deur middel van 'n permanente saak in daardie ander Kontrakterende Staat gelee, of in daardie ander Kontrakterende Staat onafhanklike persoonlike dienste verrig vanaf 'n vaste basis in daardie ander Kontrakterende Staat gelee, en die aandelebesit ten opsigte waarvan die dividende betaal word, effektief verbonde is aan sodanige permanente saak of vaste basis. In sodanige geval, is die bepalings van Artikel 7 of Artikel 14, na gelang van die geval, van toepassing.

4. Waar 'n maatskappy wat 'n inwoner van 'n Kontrakterende Staat is, winste of inkomste uit die ander Kontrakterende Staat verkry, hef daardie ander Kontrakterende Staat nie belasting op die dividende betaal deur die maatskappy nie, behalwe vir sover sodanige dividende betaal word aan 'n inwoner van daardie ander Kontrakterende Staat of vir sover die aandelebesit ten opsigte waarvan die dividende betaal word effektief verbonde is aan 'n permanente saak of 'n vaste basis in daardie ander Kontrakterende Staat gelee, en onderwerp ook nie die maatskappy se onuitgekeerde winste aan 'n belasting op die maatskappy se onuitgekeerde winste nie, setfs al bestaan die betaalde dividende of die onuitgekeerde winste geheel en al of gedeeltelik uit winste of inkomste wat in sodanige ander Kontrakterende Staat ontstaan.

Artikel 11

Rente

1. Rente wat in 'n Kontrakterende Staat ontstaan en betaal word aan 'n inwoner van die ander Kontrakterende Staat wat die voordelige eienaar van sodanige rente is, is slegs in daardie ander Kontrakterende Staat belasbaar.

2. Die uitdrukking "rente" soos in hierdie Artikel gebruik, beteken inkomste uit alle soorte skuldeise, hetsy gesekureer deur verband al dan nie, en hetsy dit 'n reg inhou om in die skuldenaar se winste te deel al dan nie, en, in die besonder, inkomste uit staatseffekte en inkomste uit obligasies of skuldbriewe, met inbegrip van premies en pryse aan sodanige effekte, obligasies of skuldbriewe verbonde, asook inkomste wat aan dieselfde belastingbehandeling onderwerp word as inkomste uit gelde geleen deur die belastingwette van die Kontrakterende Staat waarin die inkomste ontstaan. Boeteheffings vir laat betaling word by die toepassing van hierdie Artikel nie as rente beskou nie.

3. Die bepalings van paragraaf 1 is nie van toepassing nie indien die voordelige eienaar van die rente, wat 'n inwoner van 'n Kontrakterende Staat is, in die ander Kontrakterende Staat waarin die rente ontstaan, besigheid dryf deur middel van 'n permanente saak in daardie ander Kontrakterende Staat gelee, of in daardie ander Kontrakterende Staat onafhanklike persoonlike dienste verrig vanaf 'n vaste basis in daardie ander Kontrakterende Staat gelee, en die skuldeis ten opsigte waarvan die rente betaal word, effektief verbonde is aan sodanige permanente saak of vaste basis. In sodanige geval, is die bepalings van Artikel 7 of Artikel 14, na gelang van die geval, van toepassing.

4. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that Contracting 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 Contracting State in which the permanent establishment or fixed base is situated.

5. Where, by reason of a special relationship between the payer and the beneficial owner of the interest, 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 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 12

Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that Contracting State, but if the beneficial owner of the royalties is a resident of the other Contracting State the tax so charged shall not exceed ten per cent of the gross amount of such royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and works on films, tapes or other means of reproduction for use in connection with television or radio broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information (know-how) concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated in that other Contracting State, or performs in that other Contracting State independent personal services from a fixed base situated in that Contracting State, and the right or property in respect of which the royalties 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.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that Contracting State. Where, however, the person paying the royalties, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base with which the right or property in respect of which the royalties are paid is effectively connected, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

4. Rente word geag in 'n Kontrakterende Staat te ontstaan wanneer die betaler 'n inwoner van daardie Kontrakterende Staat is. Waar die persoon wat die rente betaal, hetsy daardie persoon 'n inwoner van 'n Kontrakterende Staat is al dan nie, egter in 'n Kontrakterende Staat 'n permanente saak of 'n vaste basis het in verband waarmee die verpligting ten opsigte waarvan die rente betaal word, aangegaan is, en sodanige rente deur sodanige permanente saak of vaste basis gedra word, word sodanige rente geag te ontstaan in die Kontrakterende Staat waarin die permanente saak of vaste basis geleë is.

5. Waar, vanwee 'n besondere verband tussen die betaler en die voordelige eienaar van die rente of tussen hulle albei en 'n ander persoon, die bedrag van die rente, met inagneming van die skuldeis waarvoor dit betaal word, die bedrag te bowe gaan waarop die betaler en die voordelige eienaar by ontstentenis van sodanige verband sou ooreengekom het, is die bepalings van hierdie Artikel slegs op laasgenoemde bedrag van toepassing. In sodanige geval bly die oormaatdeel van die betalings belasbaar ooreenkomstig die wette van elk van die Kontrakterende State, met behoorlike inagneming van die ander bepalings van hierdie Ooreenkoms.

Artikel 12

Tantieme

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

2. Sodanige tantieme kan egter ook belas word in die Kontrakterende Staat waarin hulle ontstaan en ooreenkomstig die wette van daardie Kontrakterende Staat, maar indien die voordelige eienaar van die tantieme 'n inwoner van die ander Kontrakterende Staat is, gaan die belasting aldus opgele, nie tien persent van die bruto bedrag van die tantieme te bowe nie.

3. Die uitdrukking "tantieme" soos in hierdie Artikel gebruik, beteken betalings van enige aard ontvang as 'n vergoeding vir die gebruik van, of die reg op die gebruik van, enige outeursreg van 'n letterkundige, artistieke of wetenskaplike werk, met inbegrip van kinematograaffilms en werke op films, bande of ander middele van reproduksie vir gebruik in verband met televisie- of radio-uitsending, enige patent, handelsmerk, ontwerp of model, plan, geheime formule of proses, of vir inligting (bedryfskundigheid) aangaande industriële, kommersiële of wetenskaplike ondervinding.

4. Die bepalings van paragrafe 1 en 2 is nie van toepassing nie indien die voordelige eienaar van die tantieme, wat 'n inwoner van 'n Kontrakterende Staat is, in die ander Kontrakterende Staat waarin die tantieme ontstaan, besigheid dryf deur middel van 'n permanente saak in daardie ander Kontrakterende Staat gelee, of in daardie ander Kontrakterende Staat onafhanklike persoonlike dienste verrig vanaf 'n vaste basis in daardie Kontrakterende Staat gelee, en die reg of eiendom ten opsigte waarvan die tantieme betaal word, effektief verbonde is aan sodanige permanente saak of vaste basis. In sodanige geval, is die bepalings van Artikel 7 of Artikel 14, na gelang van die geval, van toepassing.

5. Tantieme word geag in 'n Kontrakterende Staat te ontstaan wanneer die betaler 'n inwoner van daardie Kontrakterende Staat is. Waar die persoon wat die tantieme betaal, hetsy daardie persoon 'n inwoner van 'n Kontrakterende Staat is al dan nie, egter in 'n Kontrakterende Staat 'n permanente saak of 'n vaste basis het waaraan die reg of eiendom ten opsigte waarvan die tantieme betaal word, effektief verbonde is en sodanige tantieme deur sodanige permanente saak of vaste basis gedra word, word sodanige tantieme geag te ontstaan in die Kontrakterende Staat waarin die permanente saak of vaste basis geleë is.

6. Where, by reason of a special relationship between the payer and the beneficial owner of the royalties or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are 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 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 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 Contracting 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 Contracting State.

3. Gains derived by 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 Contracting State.

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

Article 14

Independent Personal Services

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that Contracting State unless a fixed base is regularly available to the individual in the other Contracting State for the purpose of performing the individual's activities. If such a fixed base is available to the individual, the income may be taxed in the other Contracting State but only so much of it as is attributable to that fixed base. For the purposes of this Agreement, where an individual who is a resident of a Contracting State is present in the other Contracting State for a period or periods exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned, a fixed base shall be deemed to be regularly available in that other Contracting State to the individual and the income that is derived from the individual's activities that are performed in that other Contracting State shall be attributable to that fixed base.

6. Waar, vanwee 'n besondere verband tussen die betaler en die voordelige eienaar van die tantieme of tussen hulle albei en 'n ander persoon, die bedrag van die tantieme, met inagneming van die gebruik, reg of inligting waarvoor dit betaal word, die bedrag te bowe gaan waarop die betaler en die voordelige eienaar by ontstentenis van sodanige verband sou ooreengekom het, is die bepaling van hierdie Artikel slegs op laasgenoemde bedrag van toepassing. In sodanige geval bly die oormaatdeel van die betalings belasbaar ooreenkomstig die wette van elk van die Kontrakterende State, met behoorlike inagneming van die ander bepaling van hierdie Ooreenkoms.

Artikel13

Kapitaalwinste

1. Winste deur 'n inwoner van 'n Kontrakterende Staat verkry uit die vervreemding van onroerende eiendom in Artikel 6 bedoel en wat in die ander Kontrakterende Staat geleë is, kan in daardie ander Kontrakterende Staat belas word.

2. Winste uit die vervreemding van roerende eiendom wat deel uitmaak van die besigheidseiendom van 'n permanente saak wat 'n onderneming van 'n Kontrakterende Staat in die ander Kontrakterende Staat het, of van roerende eiendom wat betrekking het op 'n vaste basis wat vir 'n inwoner van 'n Kontrakterende Staat in die ander Kontrakterende Staat beskikbaar is met die doel om onafhanklike persoonlike dienste te verrig, met inbegrip van sodanige winste uit die vervreemding van so 'n permanente saak (alleen of tesame met die onderneming in sy geheel) of van sodanige vaste basis, kan in daardie ander Kontrakterende Staat belas word.

3. Winste van 'n onderneming van 'n Kontrakterende Staat verkry uit die vervreemding van skepe of vliegtuie bedryf in Internasionale verkeer of roerende eiendom wat betrekking het op die bedryf van sodanige skepe of vliegtuie, is slegs in daardie Kontrakterende Staat belasbaar.

4. Winste uit die vervreemding van enige eiendom, behalwe dié bedoel in paragrawe 1, 2 en 3, is slegs belasbaar in die Kontrakterende Staat waarvan die vervreemder 'n inwoner is.

Artikel14

Onafhanklike Persoonlike Dienste

1. Inkomste verkry deur 'n individu wat 'n inwoner van 'n Kontrakterende Staat is ten opsigte van professionele dienste of ander bedrywighede van 'n onafhanklike aard, is slegs in daardie Kontrakterende Staat belasbaar, tensy 'n vaste basis gereeld tot beskikking van die individu in die ander Kontrakterende Staat is vir die doel van die verrigting van die individu se bedrywighede. Indien so 'n vaste basis tot beskikking van die individu is, kan die inkomste in die ander Kontrakterende Staat belas word, maar slegs soveel daarvan as wat aan daardie vaste basis toeskryfbaar is. Vir doeleindes van hierdie Ooreenkoms, waar 'n individu wat 'n inwoner van 'n Kontrakterende Staat is in die ander Kontrakterende Staat teenwoordig is vir 'n tydperk of tydperke wat altesaam 183 dae in enige tydperk van twaalf maande wat in die betrokke fiskale jaar begin of eindig, te bowe gaan, word 'n vaste basis geag gereeld in daardie ander Kontrakterende Staat tot beskikking van die individu te wees en die inkomste wat verkry word uit die individu se bedrywighede wat in daardie ander Kontrakterende Staat verrig word, is aan daardie vaste basis toeskryfbaar.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15

Dependent Personal Services

1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that Contracting State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Contracting State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned Contracting State if all the following conditions are met:

- a) the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned;
- b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting State;
- c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other Contracting State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State shall be taxable only in that Contracting State.

4. An individual who is both a national of a Contracting State and an employee of an enterprise of that Contracting State the principal business of which is the operation of aircraft in international traffic, and such individual derives remuneration in respect of duties performed in the other Contracting State shall be taxable only in the first-mentioned Contracting State in respect of the remuneration derived from the individual's employment with that enterprise.

Article 16

Directors' Fees

Directors' fees and other similar payments derived by a resident of a Contracting State in that person's capacity as a member of the board of directors or other similar organ of a company which is a resident of the other Contracting State shall be taxable only in the first-mentioned Contracting State.

2. Die uitdrukking "professionele dienste" sluit veral in onafhanklike wetenskaplike, letterkundige, artistieke, opvoedkundige of onderwysbedrywighede, asook die onafhanklike bedrywighede van geneeskundiges, regsgeleerdes, ingenieurs, argitekte, tandartse en rekenmeesters.

Artikel15

Afhanklike Persoonlike Dienste

1. Behoudens die bepalings van Artikels 16, 18, 19, 20 en 21, is salarisse, lone en ander soortgelyke besoldiging verkry deur 'n inwoner van 'n Kontrakterende Staat ten opsigte van 'n diensbetrekking, slegs in daardie Kontrakterende Staat belasbaar, tensy die diensbetrekking in die ander Kontrakterende Staat beoefen word. Indien die diensbetrekking aldus beoefen word, kan sodanige besoldiging as wat daaruit verkry word, in daardie ander Kontrakterende Staat belas word.

2. Ondanks die bepalings van paragraaf 1, is besoldiging verkry deur 'n inwoner van 'n Kontrakterende Staat ten opsigte van 'n diensbetrekking beoefen in die ander Kontrakterende Staat, slegs in eersgenoemde Kontrakterende Staat belasbaar indien daar aan al die volgende voorwaardes voldoen word:

- a) die ontvanger in die ander Kontrakterende Staat teenwoordig is vir 'n tydperk of tydperke wat altesaam nie 183 dae in enige tydperk van twaalf maande wat in die betrokke fiskale jaar begin of eindig, te bowe gaan nie;
- b) die besoldiging betaal word deur, of namens, 'n werkgewer wat nie 'n inwoner van die ander Kontrakterende Staat is nie;
- c) die besoldiging nie gedra word deur 'n permanente saak of 'n vaste basis wat die werkgewer in die ander Kontrakterende Staat het nie.

3. Ondanks die voorgaande paragrawe van hierdie Artikel, is besoldiging verkry ten opsigte van 'n diensbetrekking beoefen aan boord van 'n skip of vliegtuig bedryf in internasionale verkeer deur 'n onderneming van 'n Kontrakterende Staat, slegs in daardie Kontrakterende Staat belasbaar.

4. 'n Individu wat beide 'n burger van 'n Kontrakterende Staat en 'n werknemer van 'n onderneming van daardie Kontrakterende Staat is waarvan die vernaamste bedrywigheid die bedryf van vliegtuie in internasionale verkeer is, en sodanige individu besoldiging verkry ten opsigte van dienste gelewer in die ander Kontrakterende Staat, is slegs in die eersgenoemde Kontrakterende Staat belasbaar ten opsigte van die besoldiging verkry uit die individu se diensbetrekking met daardie onderneming.

Artikel16

Direkteursgelde

Direkteursgelde en ander soortgelyke betalings verkry deur 'n inwoner van 'n Kontrakterende Staat in daardie persoon se hoedanigheid van lid van die direksie of ander soortgelyke orgaan van 'n maatskappy wat 'n inwoner van die ander Kontrakterende Staat is, is slegs in die eersgenoemde Kontrakterende Staat belasbaar.

Article 17***Entertainers and Sportspersons***

1. Notwithstanding the provisions of Articles 7, 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from that person's personal activities as such exercised in the other Contracting State, may be taxed in that other Contracting State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in that person's capacity as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply to income derived by entertainers or sportspersons who are residents of a Contracting State from personal activities as such exercised in the other Contracting State if their visit to that other Contracting State is wholly or mainly supported from the public funds of the first-mentioned Contracting State, including those of any political subdivision, a local authority or statutory body thereof, nor to income derived by a non-profit making organization in respect of such activities provided no part of its income is payable to, or is otherwise available for the personal benefit of its proprietors, founders or members.

Article 18***Pensions and Annuities***

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration, and annuities, arising in a Contracting State and paid to a resident of the other Contracting State, may be taxed in the first-mentioned Contracting State.

2. Notwithstanding the provisions of paragraph 1, pensions and other payments made under the social security legislation of a Contracting State shall be taxable only in that Contracting State.

3. As used in this Article:

- a) the term "pensions and other similar remuneration" means periodic payments made after retirement in consideration of past employment or by way of compensation for injuries received in connection with past employment;
- b) the term "annuity" means a stated sum payable to an individual periodically at stated times during life, or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

Artikel17

Verhoogkunstenaars en Sportful

1. Ondanks die bepalings van Artikels 7, 14 en 15, kan inkomste verkry deur 'n inwoner van 'n Kontrakterende Staat as 'n verhoogkunstenaar, soos 'n teater-, rolprent-, radio- of televisie-arties, of 'n musikant, of as 'n sportpersoon, uit daardie persoon se persoon/ike bedrywighede as sodanig wat in die ander Kontrakterende Staat beoefen word, in daardie ander Kontrakterende Staat belas word.

2. Waar inkomste ten opsigte van persoonlike bedrywighede deur 'n verhoogkunstenaar of 'n sportpersoon in dié hoedanigheid beoefen, nie aan die verhoogkunstenaar of sportpersoon self toeval nie, maar aan 'n ander persoon, kan daardie inkomste, ondanks die bepalings van Artikels 7, 14 en 15, belas word in die Kontrakterende Staat waarin die bedrywighede van die verhoogkunstenaar of sportpersoon beoefen word.

3. Die bepa/ings van paragrawe 1 en 2 is nie van toepassing nie op inkomste verkry deur verhoogkunstenaars of sportpersone wat inwoners van 'n Kontrakterende Staat is uit persoonlike bedrywighede beoeten in die ander Kontrakterende Staat indien hulle besoek aan daardie ander Kontrakterende Staat geheel en al of hoofsaaklik ondersteun word deur die openbare fondse van die eersgenoemde Kontrakterende Staat, met inbegrip van dié van enige staatkundige onderafdeling, 'n plaaslike owerheid of statutere liggaam daarvan, nòg op inkomste verkry deur 'n organisasie sender winsbejag met betrekking tot sodanige bedrywighede, met dien verstande dat geen deel van die inkomste betaalbaar is aan, of andersins beskikbaar is vir die persoonlike voordeel van die eienaars, stigters of lede nie.

Artikel18

Pensioene en Annuileite

1. Behoudens die bepalings van paragraaf 2 van Artike/ 19, kan pensioene en ander soortgelyke beso/diging, en annuileite, wat in 'n Kontrakterende Staat ontstaan en aan 'n inwoner van die andel' Kontrakterende Staat betaal word, in eersgenoemde Kontrakterende Staat belas word.

2. Ondanks die bepalings van paragraaf 1, is pensioene en ander betalings gemaak kragtens die bestaansbeveiligingswetgewing van 'n Kontrakterende Staat, slegs in daardie Kontrakterende Staat belasbaar.

3. Vir doeleindes van hierdie Artikel:

- a) beteken die uitdrukking "pensioene en ander soortgelyke besoldiging" periodieke betalings wat na aftrede gemaak word as vergoeding vir eertydse diens of by wyse van vergoeding vir beserings opgedoen in verband met eertydse diens;
- b) beteken die uitdrukking "annultert" 'n vermelde bedrag wat periodiek op verme/de tye gedurende lewe of gedurende 'n gespesifiseerde of vasstelbare tydperk betaalbaar is aan 'n individu ingevolge 'n verpligting om die betalings te doen in ruil vir voldoende en volle vergoeding in geld of geldware.

Article 19***Government Service***

1.
 - a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Contracting State or subdivision or authority shall be taxable only in that Contracting State.
 - b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that Contracting State and the individual is a resident of that Contracting State and has fulfilled one of the following conditions:
 - (1) is a national of that Contracting State;
 - (2) did not become a resident of that Contracting State solely for the purpose of rendering the services.
2.
 - a) Any pension paid by a Contracting State or a political subdivision or a local authority thereof or out of funds created by that Contracting State to an individual in respect of services rendered to that Contracting State or subdivision or authority shall be taxable only in that Contracting State.
 - b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that Contracting State.
3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages and other similar remuneration, and to pensions, in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 20***Teachers and Researchers***

1. An individual who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who, at the invitation of the Government of the first-mentioned Contracting State or of a university, college, school, museum or other cultural institution in that first-mentioned Contracting State or under an official programme of cultural exchange, is present in that Contracting State for a period not exceeding two consecutive years solely for the purpose of teaching, giving lectures or carrying out research at such institution or under such programme shall be exempt from tax in that Contracting State on remuneration for such activity, provided that such remuneration is derived from outside the first-mentioned Contracting State.
2. The provisions of this Article shall not apply to income from research if such research is undertaken solely for the private benefit of a specific person or persons.

Artikel19

Regeringsdiens

1. a) Salarisse, lone en ander soortgelyke besoldiging, uitgesonderd 'n pensioen, betaal deur 'n Kontrakterende Staat of 'n staatkundige onderafdeling of 'n plaaslike owerheid daarvan aan 'n individu ten opsigte van dienste gelewer aan daardie Kontrakterende Staat of onderafdeling of owerheid, is slegs in daardie Kontrakterende Staat belasbaar.
 - b) Sodanige salarisse, lone en ander soortgelyke besoldiging is egter slegs in die ander Kontrakterende Staat belasbaar indien die dienste in daardie Kontrakterende Staat gelewer word en die individu 'n inwoner van daardie Kontrakterende Staat is en een van die volgende voorwaardes nagekom het:
 - (1) 'n burger van daardie Kontrakterende Staat is;
 - (2) nie 'n inwoner van daardie Kontrakterende Staat geword het met die uitsluitlike doel om die dienste te lewer nie.
 2. a) Enige pensioen betaal deur 'n Kontrakterende Staat of 'n staatkundige onderafdeling of 'n plaaslike owerheid daarvan of uit fondse geskep deur daardie Kontrakterende Staat aan 'n individu ten opsigte van dienste gelewer aan daardie Kontrakterende Staat of onderafdeling of owerheid, is slegs in daardie Kontrakterende Staat belasbaar.
 - b) Sodanige pensioen is egter slegs in die ander Kontrakterende Staat belasbaar indien die individu 'n inwoner van, en 'n burger van, daardie Kontrakterende Staat is.
3. Die bepalings van Artikels 15, 16, 17 en 18 is van toepassing op salarisse, lone en ander soortgelyke besoldiging, en op pensioene, ten opsigte van dienste gelewer in verband met 'n besigheid gedryf deur 'n Kontrakterende Staat of 'n staatkundige onderafdeling of 'n plaaslike owerheid daarvan,

Artikel20

Onderwysers en Navorsers

1. 'n Individu wat 'n inwoner is of onmiddellik voor die besoek aan 'n Kontrakterende Staat 'n inwoner van die ander Kontrakterende Staat was en wat, op uitnodiging van die Regering van eersgenoemde Kontrakterende Staat of van 'n universiteit, kollege, skool, museum of ander kulturele instelling in daardie eersgenoemde Kontrakterende Staat, of ingevolge 'n amptelike program van kulturele uitruiling, in daardie Kontrakterende Staat teenwoordig is vir 'n tydperk wat nie twee opeenvolgende jare te bowe gaan nie met die uitsluitlike doel om te onderrig, lesings te gee of navorsing by sodanige instelling te doen of ingevolge sodanige program, is in daardie Kontrakterende Staat vrygestel van belasting op besoldiging vir sodanige bedrywigheid, met dien verstande dat sodanige besoldiging van buite die eersgenoemde Kontrakterende Staat verkry word.
2. Die bepalings van hierdie Artikel is nie van toepassing nie op inkomste uit navorsing indien sodanige navorsing uitsluitlik vir die private voordeel van 'n **spesifieke** persoon of persone onderneem word.

Article 21

Students and Trainees

1. A student or business trainee who is present in a Contracting State solely for the purpose of that student or business trainee's education or training and who is, or immediately before being so present was, a resident of the other Contracting State, shall be exempt from tax in the first-mentioned Contracting State on payments received from outside that first-mentioned Contracting State for the purposes of the student or business trainee's maintenance, education or training.

2. In respect of grants, scholarships and remuneration from employment not covered by paragraph 1, a student or business trainee described in paragraph 1 shall, in addition, be entitled during such education or training to the same exemptions, reliefs or reductions in respect of taxes available to residents of the Contracting State which the student or business trainee is visiting.

Article 22

Other Income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that Contracting State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the right or property in respect of which the income 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.

Article 23

Elimination of Double Taxation

It is agreed that double taxation shall be avoided in accordance with the following provisions:

a) in the case of Kuwait:

Where a resident of Kuwait derives income which, in accordance with the provisions of this Agreement, may be taxed in South Africa, Kuwait shall allow as a deduction from the Kuwaiti tax of that resident, an amount equal to the South African tax paid. Such deduction shall not, however, exceed that part of the Kuwaiti tax, as computed before the deduction is given, which is attributable to the income which may be taxed in South Africa.

Artikel21

Studente en Besigheidsleerlinge

1. 'n Student of besigheidsleerling wat in 'n Kontrakterende Staat teenwoordig is uitsluitlik vir die doel van daardie student of besigheidsleerling se onderrig of opleiding en wat 'n inwoner is, of onmiddellik voor sodanige teenwoordigheid 'n inwoner was, van die ander Kontrakterende Staat, is in eersgenoemde Kontrakterende Staat vrygestel van belasting op betalings ontvang van buite daardie eersgenoemde Kontrakterende Staat vir die doel van die student of besigheidsleerling se onderhoud, onderrig of opleiding.

2. Ten opsigte van skenkings, studiebeurse en besoldiging uit 'n diensbetrekking nie deur paragraaf 1 gedek nie, is 'n student of besigheidsleerling beoog in paragraaf 1, boonop gedurende sodanige onderrig of opleiding geregtig op diesetfde vrystellings, verligtings of verminderings ten opsigte van belastings wat vir inwoners van die Kontrakterende Staat wat die student of besigheidsleerling besoek, beskikbaar is.

Artikel22

Ander Inkomste

1. Inkomste-items van 'n inwoner van 'n Kontrakterende Staat, waar dit ook al ontstaan, wat nie in die voorgaande Artikels van hierdie Ooreenkoms behandel is nie, is slegs in daardie Kontrakterende Staat belasbaar.

2. Die bepalings van paragraaf 1 is nie van toepassing op inkomste nie, behalwe inkomste uit onroerende eiendom soos in paragraaf 2 van Artikel 6 omskryf, indien die ontvanger van sodanige inkomste, wat 'n inwoner van 'n Kontrakterende Staat is, in die ander Kontrakterende Staat besigheid dryf deur middel van 'n permanents saak daarin gelee, of in daardie ander Kontrakterende Staat onafhanklike persoonlike dienste verrig vanaf 'n vaste basis daarin gelee, en die reg of eiendom ten opsigte waarvan die inkomste betaal word, effektief verbonde is aan sodanige permanente saak of vaste basis. In sodanige geval, is die bepalings van Artikel 7 of Artikel14, na gelang van die geval, van toepassing.

Artikel23

Uitskakeling van Dubbele Belasting

Daar word ooreengekom dat dubbele belasting ooreenkomstig die volgende bepalings vermy sal word:

a) in die geval van Koeweit:

Waar 'n inwoner van Koeweit inkomste verkry wat ooreenkomstig die bepalings van hierdie Ooreenkoms in Suid-Afrika belas kan word, laat Koeweit as 'n aftrekking van die Koeweitse belasting van daardie inwoner, 'n bedrag toe gelyk aan die Suid-Afrikaanse belasting betaal, Sodanige aftrekking mag egter nie daardie deel van die Koeweitse belasting, soos bereken voor die aftrekking toegestaan word, wat toeskryfbaar is aan die inkomste wat in Suid-Afrika be/as kan word, te bowe gaan nie.

b) in the case of South Africa:

subject to the provisions of the law of South Africa regarding the deduction from tax payable in South Africa of tax payable in any country other than South Africa, Kuwaiti tax paid by residents of South Africa in respect of income taxable in Kuwait, in accordance with the provisions of this Agreement, shall be deducted from the taxes due according to South African fiscal law. Such deduction shall not, however, exceed an amount which bears to the total South African tax payable the same ratio as the income concerned bears to the total income.

Article 24

Non-discrimination

1. Individuals possessing the nationality of a Contracting State shall not be subjected in the other Contracting State to any taxation or any obligations connected therewith, which is other or more burdensome than the taxation and connected obligations to which individuals possessing the nationality of that other Contracting State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to individuals who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other Contracting State than the taxation levied on enterprises of third states, carrying on the same activities in the same circumstances. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Enterprises of a Contracting State, the capital of which is wholly or partly owned or which is controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any obligations connected therewith which is other or more burdensome than the taxation and connected obligations to which other similar enterprises the capital of which is wholly or partly owned or which is controlled directly or indirectly by one or more residents of any third state are or may be subjected.

4. Except where the provisions of paragraph 1 of Article 9, paragraph 5 of Article 11 or paragraph 6 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned Contracting State.

5. Nothing in this Article shall be interpreted as imposing a legal obligation on a Contracting State to extend to the residents of the other Contracting State, the benefit of any treatment, preference or privilege which may be accorded to any third state or its residents by virtue of the formation of a customs union, economic union, a free trade area or any regional or sub-regional arrangement relating wholly or mainly to taxation or movement of capital to which the first-mentioned Contracting State may be a party.

b) in die geval van Suid-Afrika:

behoudens die bepalings van die reg van Suid-Afrika betreffende die aftrekking vanaf belasting betaalbaar in Suid-Afrika van belasting betaalbaar in enige ander land as Suid-Afrika, word Koeweitse belasting betaal deur inwoners van Suid-Afrika ten opsigte van inkomste belasbaar in Koeweit, ooreenkomstig die bepalings van hierdie Ooreenkoms afgetrek van die belastings verskuldig ooreenkomstig Suid-Afrikaanse fiskale reg. Sodanige aftrekking mag egter nie 'n bedrag te bowe gaan wat in dieselfde verhouding tot die totale Suid-Afrikaanse belasting betaalbaar staan as wat die betrokke inkomste tot die totale inkomste staan nie.

Artikel24

Niediskriminasie

1. Individue wat burgerskap van 'n Kontrakterende Staat het, mag nie in die ander Kontrakterende Staat onderwerp word aan enige belasting of enige verpligtinge in verband daarmee wat anders of swaarder is as die belasting en die daaraan verbonde verpligtinge waaraan individue wat burgerskap van daardie ander Kontrakterende Staat het, onder dieselfde omstandighede, veral met betrekking tot verblyf, onderworpe is of onderwerp kan word nie. Hierdie bepaling is, ondanks die bepalings van Artikel 1, ook van toepassing op persone wat nie inwoners van een van of van albei die Kontrakterende State is nie.

2. Die belasting op 'n permanente saak wat 'n onderneming van 'n Kontrakterende Staat in die ander Kontrakterende Staat het, word nie in daardie ander Kontrakterende Staat op 'n minder gunstige wyse gehef as die belasting wat gehef word op ondernemings van derde state wat dieselfde bedrywighede onder dieselfde omstandighede beoefen nie. Hierdie bepaling word nie uitgele as sou dit 'n Kontrakterende Staat verplig om aan inwoners van die ander Kontrakterende Staat enige persoonlike kortings, verligtings en verminderings vir belastingdoeleindes toe te staan uit hoofde van burgerlike status of gesinsverantwoordelikhede wat aan sy eie inwoners toegestaan word nie.

3. Ondernemings van 'n Kontrakterende Staat waarvan die kapitaal ten volle of gedeeltelik besit word of wat regstreeks of onregstreeks beheer word deur een of meer inwoners van die ander Kontrakterende Staat, mag nie in eersgenoemde Kontrakterende Staat onderwerp word aan enige belasting of enige verpligtinge in verband daarmee wat anders of swaarder is as die belasting en die daaraan verbonde verpligtinge waaraan ander soortgelyke ondernemings waarvan die kapitaal ten volle of gedeeltelik besit word of wat regstreeks of onregstreeks beheer word deur een of meer inwoners van enige derde staat, onderworpe is of onderwerp kan word nie.

4. Uitgesonderd waar die bepalings van paragraaf 1 van Artikel 9, paragraaf 5 van Artikel11 of paragraaf 6 van Artikel12 van toepassing is, is rente, tantieme en ander uitbetalings betaal deur 'n onderneming van 'n Kontrakterende Staat aan 'n inwoner van die ander Kontrakterende Staat, vir doeleindes van die vasstelling van die belasbare winste van sodanige onderneming, aftrekbaar onder dieselfde voorwaardes as wat sou geld indien dit aan 'n inwoner van eersgenoemde Kontrakterende Staat betaal is.

5. Niks in hierdie Artikel word uitgele as sou dit 'n wetlike verpligting op 'n Kontrakterende Staat lê om aan inwoners van die ander Kontrakterende Staat die voordeel van enige behandeling, voorkeur of voorregte wat aan enige derde state of hulle inwoners uit hoofde van die stigting van 'n doeane-unie, ekonomiese unie, 'n vryhandelsgebied of enige streeks-of substreeksreeling wat geheel en al of hoofsaaklik betrekking het op belasting of kapitaalbeweging waartoe die eersgenoemde Kontrakterende Staat 'n party kan wees, te verleen nie.

6. Nothing contained in this Article shall prevent South Africa from imposing on the profits attributable to a permanent establishment in South Africa of a company, which is a resident of Kuwait, a tax at a rate which does not exceed the rate of normal tax on companies by more than five percentage points.

7. In this Article, the term "taxation" means taxes which are the subject of this Agreement.

Article 25

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for that person in taxation not in accordance with the provisions of this Agreement, that person may, irrespective of the remedies provided by the domestic law of those Contracting States, present a case to the competent authority of the Contracting State of which the person is a resident or, if the case comes under paragraph 1 of Article 24, to that of the Contracting State of which the person is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with this Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

6. Niks in hierdie Artikel vervat, verhoed Suid-Afrika daarvan om op die winste wat toeskryfbaar is aan 'n permanente saak in Suid-Afrika van 'n maatskappy wat 'n inwoner van Koeweit is, 'n belasting te hef teen 'n koers wat nie die koers van normale belasting op maatskappye met meer as vyf persentasiepunte te bowe gaan nie.

7. In hierdie Artikel beteken die uitdrukking "belasting" die belastings waarvoor hierdie Ooreenkoms handel.

Artikel 25

Prosedure vir Onderlinge Ooreenkoms

1. Waar 'n persoon van mening is dat die optrede van een van of van albei die Kontrakterende State tot gevolg het of tot gevolg sal hê dat daardie persoon nie ooreenkomstig die bepalings van hierdie Ooreenkoms belas word nie, kan daardie persoon, ongeag die regsmiddels waarvoor die landsreg van daardie Kontrakterende State voorsiening maak, 'n saak stel aan die bevoegde owerheid van die Kontrakterende Staat waarvan die persoon 'n inwoner is of, indien die saak onder paragraaf 1 van Artikel 24 ressorteer, aan dié van die Kontrakterende Staat waarvan die persoon 'n burger is. Die saak moet gestel word binne drie jaar vanaf die eerste kennisgewing van die handeling wat gelei het tot belasting wat nie ooreenkomstig die bepalings van hierdie Ooreenkoms gehef word nie.

2. Die bevoegde owerheid moet, indien die beswaar vir hom geregverdig voorkom en hy nie self 'n geskikte oplossing kan vind nie, probeer om die saak deur onderlinge ooreenkoms met die bevoegde owerheid van die ander Kontrakterende Staat te besleg ten einde belasting te vermy wat nie in ooreenstemming met hierdie Ooreenkoms is nie. Enige ooreenkoms wat bereik word, moet toegepas word ondanks enige tydsbeperkings in die landsreg van die Kontrakterende State.

3. Die bevoegde owerhede van die Kontrakterende State moet probeer om enige probleme of twyfel wat in verband met die vertolking of toepassing van hierdie Ooreenkoms ontstaan, deur onderlinge ooreenkoms uit die weg te ruim. Hu/le kan mekaar ook raadpleeg met die oog op die uitskakeling van dubbele belasting in gevalle waarvoor daar nie in hierdie Ooreenkoms voorsiening gemaak word nie.

4. Die bevoegde owerhede van die Kontrakterende State kan regstreeks met mekaar kommunikeer met die doel om tot 'n ooreenkoms te geraak soos in die voorgaande paragrawe beoog.

Article 26

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions insofar as the taxation thereunder is not contrary to this Agreement. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that Contracting 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 the first sentence. 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.

2. In no case shall the provisions of paragraph 1 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*).

Article 27

Miscellaneous Rules

1. The provisions of this Agreement shall not be construed to restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded:

- a) by the laws of a Contracting State in the determination of the tax imposed by that Contracting State;
- b) by any other special arrangement on taxation between the Contracting States or between one of the Contracting States and residents of the other Contracting State.

2. The competent authorities of each Contracting State may prescribe regulations in order to carry out the provisions of this Agreement.

Artikel26

Uitruil van Inligting

1. Die bevoegde owerhede van die Kontrakterende State moet sodanige inligting uitruil as wat nodig is vir die uitvoering van die bepalings van hierdie Ooreenkoms of van die landsreg aangaande belastings van enige aard en beskrywing opgele namens die Kontrakterende State, of van hul staatkundige onderafdelings, vir sover die belasting daarkragtens nie strydig met hierdie Ooreenkoms is nie. Enige inligting ontvang deur 'n Kontrakterende Staat word as geheim behandel op dieselfde wyse as inligting wat ingevolge die landsreg van daardie Kontrakterende Staat verkry word, en word openbaar gemaak slegs aan persone of owerhede (met inbegrip van houe en administratiewe liggame) betrokke by die aanslaan of invordering van, die afdwing of vervolging ten opsigte van, of die beslissing van appelle in verband met die belastings in die eerste sin bedoel. Sodanige persone of owerhede mag die inligting slegs vir sodanige doeleindes gebruik. Hulle mag die inligting by openbare hofverrigtinge of by regterlike beslissings openbaar maak.

2. In geen geval mag die bepalings van paragraaf 1 uitgele word nie as sou dit 'n Kontrakterende Staat die verpligting ople om:

- a) administratiewe maatreels uit te voer wat strydig is met die wette en administratiewe praktyk van daardie of van die ander Kontrakterende Staat;
- b) inligting te verstrek wat nie kragtens die wette of in die normale loop van die administrasie van daardie of van die ander Kontrakterende Staat verkrygbaar is nie;
- c) inligting te verstrek wat enige handels-, besigheids-, ndustriële, kornmersiele of professionele geheim of handelsproses sou openbaar, of inligting te verstrek waarvan die openbaarmaking strydig met openbare beleid (*ordre public*) sal wees.

Artikel27

Diverse Reëls

1. Die bepalings van hierdie Ooreenkoms word nie uitgele nie as sou dit op enige wyse 'n beperking plaas op enige uitsluiting, vrystelling, aftrekking, krediet, of ander korting nou of hiema toegestaan:

- a) deur die wette van 'n Kontrakterende Staat by die vasstelling van die belasting deur daardie Kontrakterende Staat opgele;
- b) deur enige ander spesiale reeling ten opsigte van belasting tussen die Kontrakterende State of tussen een van die Kontrakterende State en inwoners van die ander Kontrakterende Staat.

2. Die bevoegde owerhede van elke Kontrakterende Staat kan regulasies voorskryf ten einde die bepalings van hierdie Ooreenkoms uit te voer.

Article 28

Members of Diplomatic Missions and Consular Posts

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts or members of permanent missions to international organizations under the general rules of international law or under the provisions of special agreements.

Article 29

Entry into Force

Each of the Contracting States shall notify to the other in writing the completion of its constitutional procedures for the entry into force of this Agreement. This Agreement shall enter into force on the date of receipt of the later of these notifications and its provisions shall thereupon have effect in both Contracting States:

- a) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of the second month next following the date upon which this Agreement enters into force;
- b) in respect of other taxes, for taxable periods beginning on or after the first day of the second month next following the date upon which this Agreement enters into force.

Article 30

Duration and Termination

This Agreement shall remain in force for a period of five years and shall continue in force thereafter for a similar period or periods unless either Contracting State notifies the other in writing, at least six months before the expiry of the initial or any subsequent period, of its intention to terminate this Agreement. In such event, this Agreement shall cease to have effect in both Contracting States:

- a) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of January of the year next following that in which the notice of termination is given;
- b) in respect of other taxes, for taxable periods beginning on or after the first day of January of the year next following that in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Agreement.

Artikel28

Lede van Diplomatieke Missies en Konsulere Paste

Niks in hierdie Ooreenkoms raak die fiskale voorregte van lede van diplomatieke missies of van konsulere paste of lede van permanente missies by internasionale organisasies ingevolge die algemene reëls van die volkereg of ingevolge die bepalings van spesiale ooreenkomste nie.

Artikel29

Inwerkingtreding

Elk van die Kontrakterende State stel die ander skriftelik in kennis van die afhandeling van sy konstitusionele prosedures vir die inwerkingtreding van hierdie Ooreenkoms. Hierdie Ooreenkoms tree in werking op die datum van ontvangs van die laaste van hierdie kennisgewings en die bepalings daarvan is daarna in albei Kontrakterende State van toepassing:

- a) ten opsigte van belastings wat by die bran teruggehou word, vir bedrae betaal of gekrediteer op of na die eerste dag van die tweede maand eersvolgende op die datum waarop hierdie Ooreenkoms in werking tree;
- b) ten opsigte van ander belastings, vir belasbare tydperke beginnende op of na die eerste dag van die tweede maand eersvolgende op die datum waarop hierdie Ooreenkoms in werking tree.

Artikel30

Duur en Opsegging

Hierdie Ooreenkoms bly vir 'n tydperk van vyf jaar van krag en sal daarna voortgaan am van krag te bly vir 'n soortgelyke tydperk of tydperke tensy enigeen van die Kontrakterende State die ander skriftelik in kennis stel, minstens ses maande voor die verstryking van die eerste of enige daaropvolgende tydperk, van sy voorneme am hierdie Ooreenkoms op te sê. In sodanige geval is hierdie Ooreenkoms in albei Kontrakterende State nie meer van krag nie:

- a) ten opsigte van belastings wat by die bran teruggehou word, vir bedrae betaal of gekrediteer op of na die eerste dag van Januarie van die jaar eersvolgende op dié waarin die kennis van opsegging gegee word;
- b) ten opsigte van ander belastings, vir belasbare tydperke beginnende op of na die eerste dag van Januarie van die jaar eersvolgende op dié waarin die kennis van opsegging gegee word.

TEN BEWYSE WAARVAN die ondergetekendes, synde behoorlik daartoe gemagtig, hierdie Ooreenkoms onderteken het.

DONE at Kuwait this 26 Thu Al Hija day of 1424 H corresponding to the 17th day of February 2004, in two originals, in the English and Arabic languages, both texts being equally authentic.

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

AZIZ PAHAD
DEPUTY MINISTER OF FOREIGN AFFAIRS

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

KHALID S. AL-JARALLAH
UNDERSECRETARY
OF FOREIGN AFFAIRS

GEDOEN, te Koeweit, hierdie 26ste Thulhija dag van 1424 H wat ooreenstem met die 17de dag van Februarie 2004, in twee oorspronklikes, in die Engelse en Arabiese tale, waarvan albei tekste ewe outentiek is.

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

AZIZPAHAD
ADJUNK-MINISTER
VAN BUITELANDSE SAKE

**NAMENS DIE REGERING VAN
DIE STAAT KOEWERR**

KHALID S. AL-JARALLAH
ONDERSEKRETARIS
VAN BUITELANDSE SAKE
