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GOVERNMENT NOTICE**SOUTH AFRICAN REVENUE SERVICE****No. 213****6 March 2009****INCOME TAX ACT, 1962****CONVENTION BETWEEN THE REPUBLIC OF SOUTH AFRICA AND THE SWISS CONFEDERATION FOR THE AVOIDANCE OF DOUBLE TAXATION 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 Convention for the avoidance of double taxation with respect to taxes on income set out in the Schedule to this Notice has been entered into with the Swiss Confederation and has been approved by Parliament in terms of section 231(2) of the Constitution.

It is further notified in terms of paragraph 1 of Article 27 of the Convention that the date of entry into force is 27 January 2009.

GOEWERMENTSKENNISGEWING

SUID-AFRIKAANSE INKOMSTEDIENS**No. 213****6 Maart 2009****INKOMSTEBELASTINGWET, 1962****KONVENSIE TUSSEN DIE REPUBLIEK VAN SUID-AFRIKA EN DIE SWITSERSE KONFEDERASIE VIR DIE VERMYDING VAN DUBBELE BELASTING 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 Konvensie vir die vermyding van dubbele belasting met betrekking tot belastings op inkomste wat in die Bylae tot hierdie Kennisgewing vervat is, aangegaan is met die Switserse Konfederasie en deur die Parlement goedgekeur is ingevolge artikel 231(2) van die Grondwet.

Daar word verder bekendgemaak dat ingevolge paragraaf 1 van Artikel 27 van die Konvensie die datum van inwerkingtreding 27 Januarie 2009 is.

CONVENTION BETWEEN THE REPUBLIC OF SOUTH AFRICA AND THE SWISS CONFEDERATION FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME

PREAMBLE

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

AND

THE SWISS FEDERAL COUNCIL

DESIRING to conclude a Convention for the avoidance of double taxation with respect to taxes on income,

HAVE AGREED as follows:

Article 1

Persons Covered

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

Article 2

Taxes Covered

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions or local authorities, 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, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which the Convention shall apply are, in particular:

a) in South Africa:

- (i) the normal tax;
- (ii) the secondary tax on companies; and
- (iii) the withholding tax on royalties;

(hereinafter referred to as "South African tax"); and

KONVENSIE TUSSEN DIE REPUBLIEK VAN SUID-AFRIKA EN DIE SWITSERSE KONFEDERASIE VIR DIE VERMYDING VAN DUBBELE BELASTING MET BETREKKING TOT BELASTINGS OP INKOMSTE

AANHEF

DIE REGERING VAN DIE REPUBLIEK VAN SUID-AFRIKA

EN

DIE SWITSERSE FEDERALE RAAD

HET, uit 'n begeerte om 'n Konvensie te sluit vir die vermyding van dubbele belasting met betrekking tot belasting op inkomste,

Soos volg ooreengekom:

Artikel 1

Persone Gedek

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

Artikel 2

Belastings Gedek

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

2. Alle belasting opgelê op totale inkomste, of op elemente van inkomste, met inbegrip van belasting op winste uit die vervreemding van roerende of onroerende eiendom, belasting op die totale bedrae van lone en salarisse betaal deur ondernemings, asook belasting op kapitaalappresiasie, word geag belasting op inkomste te wees.

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

a) in Suid-Afrika:

- (i) die normale belasting;
- (ii) dié sekondêre belasting op maatskappye; en
- (iii) die terughoudingsbelasting op tantième;

(hierna "Suid-Afrikaanse belasting" genoem); en

b) in Switzerland:

the federal, cantonal and communal taxes on income (total income, earned income, income from capital, industrial and commercial profits, capital gains and other items of income);

(hereinafter referred to as "Swiss tax").

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

5. The Convention shall not apply to the Federal anticipatory tax withheld at the source on prizes in a lottery.

Article 3

General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:

- a) 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;
- b) the term "Switzerland" means the Swiss Confederation;
- c) the terms "a Contracting State" and "the other Contracting State" mean South Africa or Switzerland, as the context requires;
- d) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- e) the term "competent authority" means:
 - (i) in South Africa, the Commissioner for the South African Revenue Service or an authorised representative of the Commissioner; and
 - (ii) in Switzerland, the Director of the Federal Tax Administration or an authorised representative of the Director;
- f) 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;

b) in Switzerland:

die federale, kantonale en gemeenskapsbelastings op inkomste (totale inkomste, verdiende inkomste, inkomste uit kapitaal, nywerheids- en handelswinste, kapitaalwinste en ander inkomste-items);

(hierna "Switserse belasting" genoem).

4. Die Konvensie is ook van toepassing op enige identiese of wesenlik soortgelyke belastings wat benewens, of in plaas van, die bestaande belastings opgelê word ná die datum van ondertekening van die Konvensie. Die bevoegde owerhede van die Kontrakterende State moet mekaar in kennis stel van enige noemenswaardige veranderinge wat aan hulle belastingwette aangebring is.

5. Die Konvensie is nie van toepassing op die Federale afwagtingsbelasting wat by die bron ten opsigte van loterypryse teruggehou word nie.

Artikel 3

Algemene Woordomsrywings

1. Vir doeleindes van hierdie Konvensie, tensy die samehang anders vereis:

- a) 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;
- b) beteken die uitdrukking "Switzerland" die Switserse Konfederasie;
- c) beteken die uitdrukkings "'n Kontrakterende Staat" en "die ander Kontrakterende Staat" Suid-Afrika of Switzerland, na gelang die samehang vereis;
- d) beteken die uitdrukking "maatskappy" enige regspersoon of enige entiteit wat vir belastingdoeleindes as 'n regspersoon behandel word;
- e) beteken die uitdrukking "bevoegde owerheid":
 - (i) in Suid-Afrika, die Kommissaris van die Suid-Afrikaanse Inkomstediens of 'n gemagtigde verteenwoordiger van die Kommissaris; en
 - (ii) in Switzerland, die Direkteur van die Federale Belastingadministrasie of 'n gemagtigde verteenwoordiger van die Direkteur;
- f) 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;

- g) 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;
- h) the term "national", in relation to a Contracting State, means:
 - (i) any individual possessing the nationality or citizenship of that Contracting State; and
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State; and
- i) the term "person" includes an individual, a company and any other body of persons that is treated as an entity for tax purposes.

2. As regards the application of the provisions of the Convention 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 State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4

Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of that person's domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources therein.

2. 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 State in which a permanent home is available to the individual; if a permanent home is available to the individual in both States, the individual shall be deemed to be a resident solely of the State with which the individual's personal and economic relations are closer (centre of vital interests);
- b) if sole residence cannot be determined under the provisions of subparagraph (a), or if the individual has not a permanent home available in either State, the individual shall be deemed to be a resident solely of the State in which the individual has an habitual abode;
- c) if the individual has an habitual abode in both States or in neither of them, the individual shall be deemed to be a resident solely of the State of which the individual is a national;

- g) 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;
- h) beteken die uitdrukking “burger” met betrekking tot 'n Kontrakterende Staat:
 - (i) enige individu wat burgerskap van daardie Kontrakterende Staat het; en
 - (ii) enige regspersoon, vennootskap of vereniging wat sodanige status verkry uit die wette wat in daardie Kontrakterende Staat van krag is; en
- i) sluit die uitdrukking “persoon” 'n individu, 'n maatskappy en enige ander liggaam van persone in wat vir belastingdoeleindes as 'n entiteit behandel word;

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

Artikel 4

Inwoner

1. Vir doeleindes van hierdie Konvensie beteken die uitdrukking “inwoner van 'n Kontrakterende Staat” enige persoon wat kragtens die wette van daardie Staat daarin belastingpligtig is uit hoofde van daardie persoon se domisilie, verblyf, plek van bestuur of enige ander soortgelyke kriterium, en sluit dit ook daardie Staat en enige staatkundige onderafdeling of plaaslike owerheid daarvan in. Hierdie uitdrukking sluit egter nie 'n persoon in nie wat in daardie Staat belastingpligtig is slegs ten opsigte van inkomste uit bronne daarin.

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

- a) die individu word geag 'n inwoner te wees uitsluitlik van die Staat waarin 'n permanente tuiste tot beskikking van die individu is; indien 'n permanente tuiste in albei State tot beskikking van die individu is, word die individu geag 'n inwoner te wees uitsluitlik van die Staat waarmee die individu se persoonlike en ekonomiese betrekkinge die nouste is (tuiste van lewensbelange);
- b) indien die uitsluitlike verblyfplek nie ingevolge die bepalings van subparagraaf (a) vasgestel kan word nie, of indien die individu nie 'n permanente tuiste in enigeen van die State tot beskikking het nie, word die individu geag 'n inwoner te wees uitsluitlik van die Staat waarin die individu 'n gebruikelike verblyfplek het;
- c) indien die individu 'n gebruikelike verblyfplek in albei State het, of in geeneen van hulle nie, word die individu geag 'n inwoner te wees uitsluitlik van die Staat waarvan die individu 'n burger is;

- d) if the individual is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. 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 State in which its place of effective management is situated.

Article 5

Permanent Establishment

1. For the purposes of this Convention, 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, and
- f) a mine, an oil or gas well, a quarry or any other place of extraction or exploitation of natural resources.

3. The term "permanent establishment" also encompasses a building site, a construction, assembly or installation project or any supervisory activity in connection with such site or project, but only where such site, project or activity continues for a period of more than twelve months.

4. 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 advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise; and

- d) indien die individu 'n burger van albei State is, of van geeneen van hulle nie, beslis die bevoegde owerhede van die Kontrakterende State die saak deur middel van onderlinge ooreenkoms.

3. 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 Staat waarin die plek van effektiewe bestuur daarvan geleë is.

Artikel 5

Permanente Saak

1. Vir doeleindes van hierdie Konvensie 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;
- c) 'n kantoor;
- d) 'n fabriek;
- e) 'n werkwinkel, en
- f) 'n myn, 'n olie- of gasbron, 'n steengroef of enige ander plek van ontginning of winning van natuurlike hulpbronne.

3. Die uitdrukking "permanente saak" sluit ook 'n bouterrein, 'n konstruksie-, monteer- of installasieprojek of enige toesighoudende bedrywigheid in verband met sodanige terrein of projek in, maar slegs waar sodanige terrein, projek of bedrywigheid vir 'n tydperk van langer as twaalf maande voortduur.

4. Ondanks die voorgaande bepalings van hierdie Artikel, word die uitdrukking "permanente 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 te adverteer, inligting te verstrek, vir wetenskaplike navorsing of vir soortgelyke bedrywigheede wat van 'n voorlopige of bykomstige aard is, vir die onderneming te beoefen; en

- 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.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 6 applies – is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 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.

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

7. 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 State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

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 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.

- 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.

5. Ondanks die bepalings van paragrafe 1 en 2, waar 'n persoon – uitgesonderd 'n agent met 'n onafhanklike status op wie paragraaf 6 van toepassing is – namens 'n onderneming optree en magtiging het, en dit gewoonlik uitoefen, om in 'n Kontrakterende Staat kontrakte in die naam van die onderneming te sluit, word daardie onderneming geag 'n permanente saak in daardie Staat te hê ten opsigte van enige bedrywighede wat daardie persoon vir die onderneming onderneem, tensy die bedrywighede van sodanige persoon beperk is tot dié in paragraaf 4 genoem wat, indien dit deur middel van 'n vaste besigheidsplek uitgeoefen word, nie hierdie vaste besigheidsplek ingevolge die bepalings van daardie paragraaf 'n permanente saak sou maak nie.

6. 'n Onderneming word nie geag 'n permanente saak in 'n Kontrakterende Staat te hê bloot omdat dit in daardie 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.

7. 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 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.

Artikel 6

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 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 vaste eiendom 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 paragrafe 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.

Article 7

Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other 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.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

4. In so far 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. 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.

7. Where profits include items of income which are dealt with separately in other Articles of this Convention, 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 State.

2. For the purpose of this Article, profits from the operation of ships or aircraft in international traffic shall include:

- a) profits derived from the rental on a bare boat basis of ships or aircraft used in international traffic, and

Artikel 7

Besigheidswinste

1. Die winste van 'n onderneming van 'n Kontrakterende Staat is slegs in daardie Staat belasbaar, tensy die onderneming in die ander Kontrakterende Staat besigheid dryf deur middel van 'n permanente saak daarin geleë. Indien die onderneming soos voormeld besigheid dryf, kan die winste van die onderneming in die ander Staat belas 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 daarin geleë, 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. By die vasstelling van die winste van 'n permanente saak word 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 Staat waarin die permanente saak geleë is of elders.

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. 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.

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

Artikel 8

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 Staat belasbaar.

2. Vir doeleindes van hierdie Artikel sluit winste uit die bedryf van skepe of vliegtuie in internasionale verkeer in:

- a) winste verkry uit die verhuring op 'n sonder-bemanning-basis van skepe of vliegtuie gebruik in internasionale verkeer, en

b) profits derived from the use or rental of containers,

if such profits are incidental to the profits to which the provisions of paragraph 1 apply.

3. 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, or
- 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 State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State, if it agrees that the adjustment made by the first-mentioned State is justified both in principle and as regards the amount, shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

3. A Contracting State shall not change the profits of an enterprise in the circumstances referred to in paragraph 1 after the expiry of the time limits provided in its domestic law and, in any case, after five years from the end of the year in which the profits which would be subject to such change would have accrued to that enterprise. This paragraph shall not apply in the case of fraud or wilful default.

Article 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

b) winste verkry uit die gebruik of verhuring van houters,

indien sodanige winste bykomstig is by die winste waarop die bepalings van paragraaf 1 van toepassing is.

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

Artikel 9

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, of

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 opgelê 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 dienoreenkomstig belas word.

2. Waar 'n Kontrakterende Staat by die winste van 'n onderneming van daardie Staat winste insluit – en dit dienoreenkomstig belas – waarop 'n onderneming van die ander Kontrakterende Staat in daardie ander Staat belas is en die winste aldus ingesluit winste is wat aan die onderneming van eersgenoemde Staat sou toegeval het indien die voorwaardes tussen die twee ondernemings gestel, dieselfde was as dié wat tussen onafhanklike ondernemings gestel sou gewees het, pas daardie ander Staat die bedrag van die belasting wat op daardie winste gehef word, toepaslik aan indien hy saamstem dat die aanpassing deur eersgenoemde Staat gemaak as geregverdig beskou word beide in beginsel en betreffende die bedrag. By die vasstelling van sodanige aanpassing, moet die ander bepalings van hierdie Konvensie behoorlik in ag geneem word en die bevoegde owerhede van die Kontrakterende State mekaar, indien nodig, raadpleeg.

3. 'n Kontrakterende Staat verander nie die winste van 'n onderneming in die omstandighede in paragraaf 1 genoem, na die verstryking van die tydsbeperinge in sy landsreg bepaal, en, in ieder geval, na vyf jaar vanaf die einde van die jaar waarin die winste wat aan sodanige verandering onderworpe sal wees, aan daardie onderneming sou toegeval het. Hierdie paragraaf is nie in die geval van bedrog of opsetlike versuim van toepassing nie.

Artikel 10

Dividende

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

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

- a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 20 per cent of the capital of the company paying the dividends; or
- b) 15 per cent of the gross amount of the dividends in all other cases.

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

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

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

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

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except in so far as such dividends are paid to a resident of that other State or in so far 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 State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11

Interest

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

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 5 per cent of the gross amount of the interest.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

2. Sodanige dividende kan egter ook belas word in die Kontrakterende Staat waarvan die maatskappy wat die dividende betaal, 'n inwoner is, en ooreenkomstig die wette van daardie Staat, maar indien die voordelige eienaar van die dividende 'n inwoner van die ander Kontrakterende Staat is, mag die belasting aldus opgelê nie die volgende te bowe gaan nie:

- a) 5 persent van die bruto bedrag van die dividende indien die voordelige eienaar 'n maatskappy is (behalwe 'n vennootskap) wat regstreeks minstens 20 persent hou van die kapitaal van die maatskappy wat die dividende betaal; of
- b) 15 persent van die bruto bedrag van die dividende in alle ander gevalle.

Die bevoegde owerhede van die Kontrakterende State moet die wyse waarop hierdie beperkinge toegepas word deur onderlinge ooreenkoms bepaal.

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

3. Die uitdrukking "dividende" soos in hierdie Artikel gebruik, beteken inkomste uit aandele of ander ~~regte~~ wat in winste deel (wat nie skuldeise is nie) asook inkomste uit ander regspersoonsregte wat aan dieselfde belastingbehandeling as inkomste uit aandele onderwerp word deur die wette van die Staat waarvan die maatskappy wat die uitkering doen, 'n inwoner is.

4. Die bepalings van paragrawe 1 en 2 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 daarin geleë, of in daardie ander Staat onafhanklike persoonlike dienste verrig vanaf 'n vaste basis daarin geleë en die aandeelbesit 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.

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

Artikel 11

Rente

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

2. Sodanige rente kan egter ook belas word in die Kontrakterende Staat waarin dit ontstaan en ooreenkomstig die wette van daardie Staat, maar indien die voordelige eienaar van die rente 'n inwoner van die ander Kontrakterende Staat is, gaan die belasting aldus opgelê nie 5 persent van die bruto bedrag van die rente te bowe nie.

Die bevoegde owerhede van die Kontrakterende State moet die wyse waarop hierdie beperking toegepas word deur onderlinge ooreenkoms bepaal.

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

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

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

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such 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 Convention.

Article 12

Royalties

1. Royalties arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.

2. 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 films or other means of reproduction used for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

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

3. 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. Boeteheffings vir laat betaling word by die toepassing van hierdie Artikel nie as rente beskou nie.

4. Die bepalings van paragrawe 1 en 2 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 daarin geleë, of in daardie ander Staat onafhanklike persoonlike dienste verrig vanaf 'n vaste basis daarin geleë, 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.

5. Rente word geag in 'n Kontrakterende Staat te ontstaan wanneer die betaler 'n inwoner van daardie 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 Staat waarin die permanente saak of vaste basis geleë is.

6. Waar, vanweë 'n besondere verband tussen die betaler en die voordelige eienaar 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 Konvensie.

Artikel 12

Tantième

1. Tantième wat in 'n Kontrakterende Staat ontstaan en voordelig besit word deur 'n inwoner van die ander Kontrakterende Staat, is slegs in daardie ander Staat belasbaar.

2. Die uitdrukking "tantième" 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 films of ander middele van reproduksie gebruik vir radio- of televisie-uitsending), enige patent, handelsmerk, ontwerp of model, plan, geheime formule of proses, of vir inligting aangaande industriële, kommersiële of wetenskaplike ondervinding.

3. Die bepalings van paragraaf 1 is nie van toepassing nie indien die voordelige eienaar van die tantième, wat 'n inwoner van 'n Kontrakterende Staat is, in die ander Kontrakterende Staat waarin die tantième ontstaan, besigheid dryf deur middel van 'n permanente saak daarin geleë, of in daardie ander Staat onafhanklike persoonlike dienste verrig vanaf 'n vaste basis daarin geleë, en die reg of eiendom ten opsigte waarvan die tantième 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. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the 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 Convention.

Article 13

Capital Gains

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

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

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

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

5. Gains from the alienation of any property other than that referred to in the preceding paragraphs of this Article, 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 State except in the following circumstances, when such income may also be taxed in the other Contracting State:

- a) if the individual has a fixed base regularly available in the other Contracting State for the purpose of performing the individual's activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or

4. Waar, vanweë 'n besondere verband tussen die betaler en die voordelige eienaar of tussen hulle albei en 'n ander persoon, die bedrag van die tantième, 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 bepalinge van hierdie Konvensie.

Artikel 13

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 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 Staat belas word.

3. Winste van 'n onderneming van 'n Kontrakterende Staat 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 Staat belasbaar.

4. Winste uit die vervreemding van aandele wat meer as 50 persent van hulle waarde regstreeks of onregstreeks uit onroerende eiendom wat in die ander Kontrakterende Staat geleë is, verkry, kan in daardie ander Staat belas word.

5. Winste uit die vervreemding van enige ander eiendom as dié bedoel in die voorgaande paragrawe van hierdie Artikel, is slegs belasbaar in die Kontrakterende Staat waarvan die vervreemder 'n inwoner is.

Artikel 14

Onafhanklike Persoonlike Dienste

1. Inkomste verkry deur 'n individu wat 'n inwoner van 'n Kontrakterende Staat is ten opsigte van professionele dienste of ander bedrywigheede van 'n onafhanklike aard, is slegs in daardie Staat belasbaar behalwe in die volgende omstandighede wanneer sodanige inkomste ook in die ander Kontrakterende Staat belas kan word:

- a) indien die individu 'n vaste basis in die ander Kontrakterende Staat gereeld tot beskikking het vir doeleindes van die verrigting van die individu se bedrywigheede; in daardie geval, kan slegs soveel van die inkomste as wat aan daardie vaste basis toeskryfbaar is, in daardie ander Kontrakterende Staat belas word; of

- b) if the individual's stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in the fiscal year of that other State; in that case, only so much of the income as is derived from the activities performed in that other State may be taxed in that other State.

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 and 19, 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 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 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 State if:

- a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year of that other State, and
- b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other 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 may be taxed in that State.

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 of a company which is a resident of the other Contracting State may be taxed in that other State.

- b) indien die individu se verblyf in die ander Kontrakterende Staat vir 'n tydperk of tydperke is wat altesaam 183 dae in die fiskale jaar van daardie Staat te bowe gaan; in daardie geval, kan slegs soveel van die inkomste as wat verkry word uit die individu se bedrywighede wat in daardie ander Staat verrig word, in daardie ander Staat belas word.

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.

Artikel 15

Afhanklike Persoonlike Dienste

1. Behoudens die bepalings van Artikels 16, 18 en 19, is salarisse, lone en ander soortgelyke besoldiging verkry deur 'n inwoner van 'n Kontrakterende Staat ten opsigte van 'n diensbetrekking, slegs in daardie 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 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 Staat belasbaar indien:

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

3. Ondanks die voorgaande bepalings van hierdie Artikel, kan besoldiging verkry ten opsigte van dienste beoefen aan boord van 'n skip of vliegtuig bedryf in internasionale verkeer deur 'n onderneming van 'n Kontrakterende Staat, in daardie Staat belas word.

Artikel 16

Direkteursgelde

Direkteursgelde en ander soortgelyke betalings verkry deur 'n inwoner van 'n Kontrakterende Staat in daardie persoon se hoedanigheid van lid van die direksie van 'n maatskappy wat 'n inwoner van die ander Kontrakterende Staat is, kan in daardie ander Staat belas word.

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 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 paragraph 2 shall not apply if it is established that neither the entertainer or the sportsperson nor persons related to that entertainer or sportsperson, participate directly or indirectly in the profits of the person referred to in that paragraph.

Article 18***Pensions***

Pensions and other similar remuneration in consideration of past employment, and other retirement benefits for which the contributions were deductible in determining taxable income, arising in a Contracting State and paid to a resident of the other Contracting State, may be taxed in the first-mentioned State.

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 State or subdivision or authority shall be taxable only in that 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 State and the individual is a resident of that State who:
 - (i) is a national of that State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.

2. The provisions of Articles 14, 15, 16 and 17 shall apply to salaries, wages and other similar remuneration, 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.

Artikel 17***Verhoogkunstenars en Sportlui***

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 persoonlike bedrywighede as sodanig wat in die ander Kontrakterende Staat beoefen word, in daardie ander 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 bepalings van paragraaf 2 is nie van toepassing nie indien daar vasgestel word dat nóg die verhoogkunstenaar of die sportpersoon nóg persone verwant aan daardie verhoogkunstenaar of sportpersoon, regstreeks of onregstreeks in die winste van die persoon bedoel in daardie paragraaf, deel.

Artikel 18***Pensioene***

Pensioene en ander soortgelyke besoldiging as vergoeding vir eertydse diens en ander aftreevoordele waarvoor die bydraes by die berekening van belasbare inkomste aftrekbaar was, wat in 'n Kontrakterende Staat ontstaan en betaal word aan 'n inwoner van die ander Kontrakterende Staat, kan in die eersgenoemde Staat belas word.

Artikel 19***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 Staat of onderafdeling of owerheid, is slegs in daardie Staat belasbaar.
- b) Sodanige salarisse, lone en ander soortgelyke besoldiging is egter slegs in die ander Kontrakterende Staat belasbaar indien die dienste in daardie Staat gelewer word en die individu 'n inwoner van daardie Staat is wat:
 - (i) 'n burger van daardie Staat is; of
 - (ii) nie 'n inwoner van daardie Staat geword het met die uitsluitlike doel om die dienste te lewer nie.

2. Die bepalings van Artikels 14, 15, 16 en 17 is van toepassing op salarisse, lone en ander soortgelyke besoldiging, ten opsigte van dienste gelewer in verband met 'n besigheid gedryf deur 'n Kontrakterende Staat of 'n staatkundige onderafdeling of 'n plaaslike owerheid daarvan.

Article 20***Students***

A student or business apprentice who is present in a Contracting State solely for the purpose of the student or business apprentice'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 State on payments received from outside that first-mentioned State for the purposes of the student or business apprentice's maintenance, education or training.

Article 21***Other Income***

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that 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 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 22***Elimination of Double Taxation***

1. In South Africa, double taxation shall be eliminated as follows:

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 (which shall not affect the general principle hereof), Swiss tax paid by residents of South Africa in respect of income taxable in Switzerland, in accordance with the provisions of this Convention, 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.

Artikel 20***Studente***

'n Student of besigheidsleerling wat in 'n Kontrakterende Staat teenwoordig is uitsluitlik vir die doel van die 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 Staat vrygestel van belasting op betalings ontvang van buite daardie eersgenoemde Staat vir die doel van die student of besigheidsleerling se onderhoud, onderrig of opleiding.

Artikel 21***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 Konvensie behandel is nie, is slegs in daardie 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 permanente saak daarin geleë, of in daardie ander Staat onafhanklike persoonlike dienste verrig vanaf 'n vaste basis daarin geleë, 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 Artikel 14, na gelang van die geval, van toepassing.

Artikel 22***Uitskakeling van Dubbele Belasting***

1. In Suid-Afrika word dubbele belasting soos volg uitgeskakel:

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 (wat nie die algemene beginsel hiervan sal raak nie), word Switserse belasting betaal deur inwoners van Suid-Afrika ten opsigte van inkomste belasbaar in Switserland ooreenkomstig die bepalings van hierdie Konvensie, 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.

2. In Switzerland, double taxation shall be eliminated as follows:
- a) Where a resident of Switzerland derives income which, in accordance with the provisions of this Convention, may be taxed in South Africa, Switzerland shall, subject to the provisions of subparagraphs (b) and (c), exempt such income from tax but may, in calculating the tax on the remaining income of that person, apply the rate of tax which would have been applicable if the exempted income had not been so exempted; provided, however, that such exemption shall apply to gains referred to in paragraph 4 of Article 13 only if actual taxation in South Africa is demonstrated.
 - b) Where a resident of Switzerland derives dividends or interest which, in accordance with the provisions of Articles 10 or 11, may be taxed in South Africa, Switzerland shall allow, upon request, a relief to such person. The relief may consist of:
 - (i) a deduction from the Swiss tax on the income of that person of an amount equal to the tax levied in South Africa in accordance with the provisions of Articles 10 and 11; such deduction shall not, however, exceed that part of the Swiss income tax, as computed before the deduction is given, which is appropriate to the income which may be taxed in South Africa, or
 - (ii) a lump sum reduction of the Swiss tax, or
 - (iii) a partial exemption of such dividends or interest from Swiss tax, in any case consisting at least of the deduction of the tax levied in South Africa from the gross amount of the dividends or interest derived from South Africa.
- Switzerland shall determine the applicable relief and regulate the procedure in accordance with the Swiss provisions relating to the carrying out of international conventions of the Swiss Confederation for the avoidance of double taxation.
- c) Where a resident of Switzerland derives income covered by Article 18, Switzerland shall allow, upon request, a deduction from the Swiss tax on this income of an amount equal to the tax levied in South Africa in accordance with Article 18; such deduction shall not, however, exceed that part of the Swiss income tax, as computed before the deduction is given, which is appropriate to the income which may be taxed in South Africa.

Article 23

Non-discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other 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 persons who are not residents of one or both of the Contracting States.

2. In Switserland word dubbele belasting soos volg uitgeskakel:
- a) Waar 'n inwoner van Switserland inkomste verkry wat ooreenkomstig die bepalings van hierdie Konvensie in Suid-Afrika belas mag word, stel Switserland, behoudens die bepalings van subparagraawe (b) en (c), sodanige inkomste vry van belasting, maar kan, by die berekening van belasting op die oorblywende inkomste van daardie persoon, die belastingskaal toepas wat van toepassing sou gewees het indien die vrygestelde inkomste nie aldus vrygestel was nie; met dien verstande dat sodanige vrystelling op winste bedoel in paragraaf 4 van Artikel 13 van toepassing sal wees slegs indien werklike belasting in Suid-Afrika bewys word.
 - b) Waar 'n inwoner van Switserland dividende of rente verkry wat ooreenkomstig die bepalings van Artikels 10 of 11 in Suid-Afrika belas mag word, verleen Switserland op versoek verligting aan sodanige persoon. Die verligting mag bestaan uit:
 - (i) 'n aftrekking, van die Switserse belasting op die inkomste van daardie persoon, van 'n bedrag gelyk aan die belasting in Suid-Afrika gehef ooreenkomstig die bepalings van Artikels 10 en 11; sodanige aftrekking mag egter nie daardie gedeelte van die Switserse inkomstebelasting, soos bereken voor die toestaan van die aftrekking, wat van toepassing is op die inkomste wat in Suid-Afrika belas mag word, te bowe gaan nie, of
 - (ii) 'n ronde somvermindering van die Switserse belasting, of
 - (iii) 'n gedeeltelike vrystelling van sodanige dividende of rente van Switserse belasting, wat in enige geval minstens moet bestaan uit die aftrekking van die belasting wat in Suid-Afrika gehef is, van die bruto bedrag van die dividende of rente wat in Suid-Afrika verkry is.
- Switserland bepaal die toepaslike verligting en reël die prosedure ooreenkomstig die Switserse bepalings met betrekking tot die uitvoering van internasionale konvensies van die Switserse Konfederasie vir die vermyding van dubbele belasting.
- c) Waar 'n inwoner van Switserland inkomste verkry deur Artikel 18 gedek, verleen Switserland, op versoek, 'n aftrekking van die Switserse belasting op hierdie inkomste, van 'n bedrag gelyk aan die belasting in Suid-Afrika gehef ooreenkomstig Artikel 18; sodanige aftrekking mag egter nie daardie gedeelte van die Switserse inkomstebelasting, soos bereken voor die toestaan van die aftrekking, wat van toepassing is op die inkomste wat in Suid-Afrika belas mag word, te bowe gaan nie.

Artikel 23

Niediskriminasie

1. Burgers van 'n Kontrakterende Staat mag nie in die ander Kontrakterende Staat onderwerp word aan enige belasting of enige vereiste in verband daarmee wat anders of swaarder is as die belasting en die daaraan verbonde vereistes waaraan burgers van daardie ander Staat 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. 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 State than the taxation levied on enterprises of that other State carrying on the same activities. 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. Except where the provisions of paragraph 1 of Article 9, paragraph 6 of Article 11 or paragraph 4 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 State.

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

5. As long as the exemption from secondary tax on companies currently afforded to branches of companies which are not resident in South Africa is in effect, 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 Switzerland, a tax at a rate which does not exceed the rate of normal tax on companies by more than five percentage points.

6. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Article 24

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 Convention, that person may, irrespective of the remedies provided by the domestic laws of those 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 23, 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 the Convention.

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 the Convention.

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 Staat op 'n minder gunstige wyse gehef as die belasting wat gehef word op ondernemings van daardie ander Staat wat dieselfde bedrywighede beoefen nie. Hierdie bepaling word nie uitgelê 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. Uitgesonderd waar die bepalings van paragraaf 1 van Artikel 9, paragraaf 6 van Artikel 11 of paragraaf 4 van Artikel 12 van toepassing is, is rente, tantième 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 Staat betaal is.

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

5. Vir solank as wat die vrystelling van sekondêre belasting op maatskappye wat huidiglik aan takke van maatskappye wat nie in Suid-Afrika woonagtig is nie, in werking is, verhoed niks in hierdie Artikel vervat, Suid-Afrika daarvan om op die winste wat toegeskryf kan word aan 'n permanente saak in Suid-Afrika, van 'n maatskappy wat 'n inwoner van Switserland 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.

6. Die bepalings van hierdie Artikel is, ondanks die bepalings van Artikel 2, van toepassing op belastings van elke soort en beskrywing.

Artikel 24

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 Konvensie belas word nie, kan daardie persoon, ongeag die regsmiddels waarvoor die landsreg van daardie 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 23 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 die Konvensie 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 die Konvensie is nie.

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 the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

5. If any difficulty or doubt as to the interpretation or application of the Convention cannot be resolved by the competent authorities of the Contracting States in a mutual agreement procedure pursuant to the previous paragraphs of this Article within a period of three years after the question was raised, the case may, at the request of either Contracting State, be submitted for arbitration, but only after fully exhausting the procedures available under paragraphs 1 to 4 of this Article and provided the taxpayer or taxpayers involved agree in writing to be bound by the decision of the arbitration board. The arbitration board shall make a decision within one year after the case was submitted for arbitration. The decision of the arbitration board in a particular case shall be binding on both Contracting States and the taxpayer or taxpayers involved with respect to that case. The composition of the arbitration board and the arbitration procedures shall be determined by the competent authorities of the Contracting States.

Article 25

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information (being information available under the respective taxation laws of the Contracting States) as is necessary for carrying out the provisions of this Convention and, upon request, of the provisions of domestic law concerning tax fraud in relation to the taxes which are the subject of this Convention. Any information so exchanged shall be treated as secret and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment, collection or administration of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. 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. No information shall be exchanged which would disclose any trade, business, industrial or professional secret or any trade process.

2. In no case shall the provisions of this Article be construed as imposing upon either of the Contracting States the obligation to carry out administrative measures at variance with the regulations and practice of either Contracting State or which would be contrary to its sovereignty, security or public policy or to supply particulars which are not procurable under its own legislation or that of the State making the application.

Article 26

Members of Diplomatic Missions and Consular Posts

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

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

4. Die bevoegde owerhede van die Kontrakterende State kan regstreeks, insluitende deur 'n gesamentlike kommissie bestaande uit hulself of hul verteenwoordigers, met mekaar in verbinding tree ten einde tot 'n ooreenkoms te geraak soos in die voorgaande paragrafe beoog.

5. Indien enige probleem of twyfel wat met die vertolking of toepassing van die Konvensie ontstaan, nie deur die bevoegde owerhede van die Kontrakterende State in 'n prosedure vir onderlinge ooreenkoms in ooreenstemming met die vorige paragrafe van hierdie Artikel binne 'n tydperk van drie jaar nadat die vraag geopper is, uit die weg geruim kan word nie, kan die geval, op versoek van enigeen van die Kontrakterende State, vir arbitrasie voorgelê word, maar slegs nadat die prosedures beskikbaar ingevolge paragrafe 1 tot 4 van hierdie Artikel ten volle uitgeput is en onder voorbehoud dat die betrokke belastingpligtige of belastingpligtiges skriftelik instem om aan die besluit van die arbitrasieraad gebonde te wees. Die besluit van die arbitrasieraad in 'n bepaalde geval is bindend vir albei Kontrakterende State en die belastingpligtige of belastingpligtiges betrokke by daardie saak. Die samestelling van die arbitrasieraad en die arbitrasieprosedures sal deur die bevoegde owerhede van die Kontrakterende State bepaal word.

Artikel 25

Uitruil van Inligting

1. Die bevoegde owerhede van die Kontrakterende State ruil sodanige inligting uit (synde inligting beskikbaar ingevolge die onderskeie belastingwette van die Kontrakterende State) as wat nodig is vir die uitvoering van die bepalings van hierdie Konvensie en, op versoek, van die bepalings van die landsreg aangaande belastingbedrog met betrekking tot belastings waarvoor hierdie Konvensie handel. Enige inligting aldus uitgeruil, word as geheim behandel en mag openbaar gemaak word slegs aan persone of owerhede (met inbegrip van howe en administratiewe liggame) betrokke by die aanslaan, invordering of administrasie van, die afdwing of vervolging met betrekking tot, of die beslissing van appèlle in verband met, die belastings deur die Konvensie gedek. Sodanige persone of owerhede mag die inligting slegs vir sodanige doeleindes gebruik. Hulle kan die inligting by openbare hofverrigtinge of by regterlike beslissings openbaar maak. Geen inligting wat enige handels-, besigheids-, nywerheids- of professionele geheim of enige handelsproses sou openbaar, mag uitgeruil word nie.

2. In geen geval word die bepalings van hierdie Artikel uitgelê nie as sou dit enigeen van die Kontrakterende State die verpligting oplê om administratiewe maatreëls uit te voer wat strydig met die regulasies en praktyk van enigeen van die Kontrakterende State is, of wat strydig met sy soewereiniteit, veiligheid of openbare beleid sou wees of besonderhede te verstrek wat nie ingevolge sy eie wetgewing of dié van die Staat wat die aansoek doen, verkrygbaar is nie.

Artikel 26

Lede van Diplomatieke Missies en Konsulêre Poste

1. Niks in hierdie Konvensie raak die fiskale voorregte van lede van diplomatieke missies of konsulêre poste ingevolge die algemene reëls van die volkereg of ingevolge die bepalings van spesiale ooreenkomste nie.

2. Notwithstanding the provisions of Article 4, an individual who is a member of a diplomatic mission, consular post or permanent mission of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed, for the purposes of this Convention, to be a resident of the sending State if:

- a) in accordance with international law the individual is not liable to tax in the receiving Contracting State in respect of income from sources outside that State and
- b) the individual is liable in the sending State to the same obligations in relation to tax on the individual's total income as are residents of that State.

3. The Convention shall not apply to international organisations, to organs or officials thereof and to persons who are members of a diplomatic mission, consular post or permanent mission of a third State, being present in a Contracting State and not treated in either Contracting State as residents in respect of taxes on income.

Article 27

Entry into Force

1. Each of the Contracting States shall notify to the other, through the diplomatic channel, the completion of the procedures required by its law for the bringing into force of this Convention. The Convention shall enter into force on the date of receipt of the later of these notifications.

2. The provisions of the Convention shall apply:

- a) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the first day of January next following the date upon which the Convention enters into force; and
- b) with regard to other taxes, in respect of taxable years beginning on or after the first day of January next following the date upon which the Convention enters into force.

3. The Convention between the Republic of South Africa and the Swiss Confederation for the avoidance of double taxation with respect to taxes on income signed on 3rd July 1967 shall terminate and cease to have effect on the dates on which the provisions of the present Convention take effect.

Article 28

Termination

1. This Convention shall remain in force indefinitely but either of the Contracting States may terminate the Convention, through the diplomatic channel, by giving to the other Contracting State written notice of termination at least six months before the end of the calendar year.

2. Ondanks die bepalings van Artikel 4, word 'n individu wat 'n lid is van 'n diplomatieke missie, konsulêre pos of permanente missie van 'n Kontrakterende Staat wat in die ander Kontrakterende Staat of in 'n derde Staat geleë is, vir doeleindes van hierdie Konvensie geag 'n inwoner van die Senderstaat te wees indien:

- a) ooreenkomstig die volkereg, die individu nie in die ontvanger Kontrakterende Staat aan belasting onderworpe is ten opsigte van inkomste uit bronne vanuit buite daardie Staat nie en
- b) die individu in die Senderstaat onderworpe is aan dieselfde verpligtinge met betrekking tot belasting op die individu se totale inkomste as wat inwoners van daardie Staat is.

3. Die Konvensie is nie van toepassing nie op internasionale organisasies, op liggame of beamptes daarvan en op persone wat lede van 'n diplomatieke missie, konsulêre pos of permanente missie van 'n derde Staat, wat in 'n Kontrakterende Staat teenwoordig is, en nie in enigeen van die Kontrakterende State behandel word as inwoners met betrekking tot belastings op inkomste nie.

Artikel 27

Inwerkingtreding

1. Elk van die Kontrakterende State stel die ander in kennis, langs die diplomatieke kanaal, van die afhandeling van die prosedures wat ingevolge elkeen se reg vereis word om hierdie Konvensie in werking te stel. Die Konvensie tree in werking op die datum van ontvangs van die laaste van hierdie kennisgewings.

2. Die bepalings van die Konvensie is van toepassing:

- a) met betrekking tot belastings wat by die bron teruggehou word, ten opsigte van bedrae betaal of gekrediteer op of ná die eerste dag van Januarie eersvolgende op die datum waarop die Konvensie in werking tree; en
- b) met betrekking tot ander belastings, ten opsigte van belasbare jare beginnende op of ná die eerste dag van Januarie eersvolgende op die datum waarop die Konvensie in werking tree.

3. Die Konvensie tussen die Republiek van Suid-Afrika en die Switserse Konfederasie vir die vermyding van dubbele belasting met betrekking tot belastings op inkomste geteken op 3 Julie 1967 word beëindig en is nie meer van krag nie op die datums waarop die bepalings van hierdie Konvensie van krag word.

Artikel 28

Opsegging

1. Hierdie Konvensie bly vir 'n onbepaalde tyd van krag, maar enigeen van die Kontrakterende State kan die Konvensie langs die diplomatieke kanaal opsê deur aan die ander Kontrakterende Staat skriftelik kennis van opsegging te gee minstens ses maande voor die einde van die kalenderjaar

2. In such event the Convention shall cease to apply:
- a) with regard to taxes withheld at source, in respect of amounts paid or credited after the end of the calendar year in which such notice is given; and
 - b) with regard to other taxes, in respect of taxable years beginning after the end of the calendar year in which such notice is given.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed and sealed this Convention.

DONE at Pretoria, on this 8th day of May in the year 2007 in duplicate in the English and French languages, both texts being equally authentic.

TA MANUEL
FOR THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA

(Mrs) D LEUTHARD
FOR THE
SWISS FEDERAL COUNCIL

2. In sodanige geval is die Konvensie nie meer van krag nie:
- a) met betrekking tot belastings wat by die bron teruggehou word, ten opsigte van bedrae betaal of gekrediteer ná die einde van die kalenderjaar waarin sodanige kennis gegee word; en
 - b) met betrekking tot ander belastings, ten opsigte van belasbare jare beginnende ná die einde van die kalenderjaar waarin sodanige kennis gegee word.

TEN BEWYSE WAARVAN die ondergetekendes, synde behoorlik daartoe gemagtig deur hulle onderskeie Regerings, hierdie Konvensie onderteken en geseël het.

GEDOEN, te Pretoria, op hede die 8 ste dag van Mei 2007, in duplikaat in die Engelse en Franse tale, waarvan albei tekste ewe outentiek is.

TA MANUEL
NAMENS DIE REGERING VAN
DIE REPUBLIEK VAN SUID-AFRIKA

(Mev.) D LEUTHARD
NAMENS DIE SWITSERSE
FEDRALE RAAD

PROTOCOL

The Government of the Republic of South Africa

and

The Swiss Federal Council

Have agreed at the signing at Pretoria on the 8th of May 2007, of the Convention between the two States for the avoidance of double taxation with respect to taxes on income upon the following provisions which shall form an integral part of the said Convention.

1. ad Article 18

- a) It is understood that the term "other retirement benefits" includes:
 - (i) in South Africa, payments made by retirement annuity funds; and
 - (ii) in Switzerland, payments from tied individual savings accounts.
- b) It is likewise understood that income referred to in Article 18 does not only cover periodic payments but also includes lump sum payments.

2. ad Article 22

It is understood that, as long as South Africa levies the secondary tax on companies, Switzerland shall allow, upon request, a relief in accordance with subparagraph (b) of paragraph 2 of Article 22 for this tax, to the extent that the beneficial owner is a resident of Switzerland other than a company referred to in subparagraph (a) of paragraph 2 of Article 10. This relief shall not, however, exceed the lower of the amount of the secondary tax on companies effectively levied in South Africa or 15 per cent of the gross amount of the dividends, respectively.

3. ad Article 25

It is understood that the term "tax fraud" means a fraudulent conduct which constitutes a tax offence which, in both Contracting States, can be punished with imprisonment.

It is furthermore understood that, in cases of tax fraud:

- a) bank secrecy neither prevents the procuring of documentary evidence with banks nor the transmission of such evidence to the competent authority of the requesting State, if the competent authority of the requesting State substantiates a direct link between the fraudulent conduct and the requested measures of administrative assistance;

PROTOKOL

Die Regering van die Republiek van Suid-Afrika

en

Die Switserse Federale Raad

Het by die ondertekening te Pretoria op 8 Mei 2007 van die Konvensie tussen die twee State vir die vermyding van dubbele belasting met betrekking tot belastings op inkomste, ooreengekom op die volgende bepalings wat 'n integreerende deel van bedoelde Konvensie sal uitmaak.

1. ad Artikel 18

- a) Die verstandhouding is dat die uitdrukking "ander aftreevoordele" insluit:
 - (i) in Suid-Afrika, betalings gemaak deur uittredingannuïteitsfondse; en
 - (ii) in Switserland, betalings van vaste individuele spaarrekeninge.
- b) Die verstandhouding is eweneens dat inkomste bedoel in Artikel 18 nie slegs periodieke betalings dek nie, maar ook enkelbedragbetalings.

2. ad Artikel 22

Die verstandhouding is dat vir solank as wat Suid-Afrika die sekondêre belasting op maatskappye hef, Switserland op versoek, ooreenkomstig subparagraaf (b) van paragraaf 2 van Artikel 22, 'n verligting vir hierdie belasting sal verleen tot die mate dat die voordelige eienaar, behalwe 'n maatskappy bedoel in subparagraaf (a) van paragraaf 2 van Artikel 10, 'n inwoner van Switserland is. Hierdie verligting gaan egter nie die laagste van die bedrag van die sekondêre belasting op maatskappye effektiewelik in Suid-Afrika gehef of 15 persent van die bruto bedrag van die dividende, onderskeidelik, te bowe nie.

3. ad Artikel 25

Die verstandhouding is dat die uitdrukking "belastingbedrog" beteken 'n wederregtelike optrede wat 'n belastingmisdryf uitmaak wat in albei Kontrakterende State met gevangenisstraf strafbaar is.

Die verstandhouding is verder dat, in gevalle van belastingbedrog:

- a) bankgeheimhouding nóg die verkryging van dokumentêre bewyse met banke nóg die oorhandiging van sodanige bewyse aan die bevoegde owerheid van die Versoekstaat verhoed, indien die bevoegde owerheid van die Versoekstaat 'n direkte skakel tussen die wederregtelike optrede en die aangevraagde maatreëls om administratiewe bystand, bewys;

- b) the exchange of information is based on the principle of reciprocity and depends on substantial representation of the facts and circumstances by the requesting State;
- c) the exchange of information applies to tax frauds which have been committed on or after the first day of January of the year following upon the entry into force of this Convention.

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

DONE at Pretoria, on this 8th day of May in the year 2007 in duplicate in the English and French languages, both texts being equally authentic.

TA MANUEL
FOR THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA

(Mrs) D LEUTHARD
FOR THE
SWISS FEDERAL COUNCIL

- b) die uitruil van inligting gebasseer is op die beginsel van wederkerigheid en afhang van die werklike voorstelling van die feite en omstandighede deur die Versoekstaat;
- c) die uitruil van inligting van toepassing is op belastingbedrog wat op of na die eerste dag van Januarie van die jaar eersvolgende op die inwerkingtreding van hierdie Konvensie gepleeg word.

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

GEDOEN, te Pretoria, op hede die 8 ste dag van Mei 2007, in duplikaat in die Engelse en Franse tale, waarvan albei tekste ewe outentiek is.

TA MANUEL
NAMENS DIE REGERING VAN
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