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### GOVERNMENT NOTICE GOEWERMENTSKENNISGEWING

#### SOUTH AFRICAN REVENUE SERVICE SUID-AFRIKAANSE INKOMSTEDIENS

**No. 866**

**24 October 2012**

#### INCOME TAX ACT, 1962

#### **CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF THE DEMOCRATIC REPUBLIC OF CONGO FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME**

In terms of section 108(2) of the Income Tax Act, 1962 (Act No 58 of 1962), read in conjunction with section 231(4) of the Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996), it is hereby notified that the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income set out in the Schedule to this Notice has been entered into with the Government of the Democratic Republic of Congo 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 28 of the Convention, that the date of entry into force is 18 July 2012.

**No. 866****24 Oktober 2012****INKOMSTEBELASTINGWET, 1962****KONVENTSIE TUSSEN DIE REGERING VAN DIE REPUBLIEK VAN SUID-AFRIKA EN DIE  
REGERING VAN DIE DEMOKRATIESE REPUBLIEK KONGO VIR DIE VERMYDING VAN  
DUBBELE BELASTING EN DIE VOORKOMING VAN FISKALE ONTDUIKING MET  
BETREKKING TOT BELASTINGS OP INKOMSTE**

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

Daar word verder bekendgemaak dat ingevolge paragraaf 1 van Artikel 28 van die Konvensie, die datum van inwerkingtreding 18 Julie 2012 is.

**CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND  
THE GOVERNMENT OF THE DEMOCRATIC REPUBLIC OF CONGO FOR THE AVOIDANCE  
OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO  
TAXES ON INCOME**

**Preamble**

The Government of the Republic of South Africa and the Government of the Democratic Republic of Congo desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

**HAVE AGREED** as follows:

**Article 1**

***Persons Covered***

This 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.

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

(a) in the Democratic Republic of Congo:

- (i) the tax on rental income;
- (ii) the tax on investment income;
- (iii) the tax on corporate income;
- (iv) the tax on profits of liberal professions; and
- (v) the tax on employment income;

(hereinafter referred to as "Congolese tax"); and

**KONVENTSIE TUSSEN DIE REGERING VAN DIE REPUBLIEK VAN SUID-AFRIKA EN DIE  
REGERING VAN DIE DEMOKRATIESE REPUBLIEK KONGO VIR DIE VERMYDING VAN  
DUBBELE BELASTING EN DIE VOORKOMING VAN FISKALE ONTDUIKING MET  
BETREKKING TOT BELASTINGS OP INKOMSTE**

**Aanhef**

Die Regering van die Republiek van Suid-Afrika en die Regering van die Demokratiese Republiek Congo het, uit 'n begeerte om 'n Konvensie te sluit vir die vermyding van dubbele belasting en die voorkoming van fiskale ontduiking met betrekking tot belastings op inkomste,

**SOOS VOLG** ooreengekom:

**Artikel 1**

***Personae 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 belastings op inkomste opgelê namens 'n Kontrakterende Staat of namens sy staatkundige onderafdelings of plaaslike owerhede, ongeag die wyse waarop dit gehef word.

2. Alle belastings opgelê op totale inkomste, of op elemente van inkomste, met inbegrip van belastings op winste uit die vervreemding van roerende of onroerende eiendom, word geag belastings op inkomste te wees.

3. Die bestaande belastings waarop die Konvensie van toepassing is, is:

(a) in die Demokratiese Republiek Congo:

- (i) die belasting op huurinkomste;
- (ii) die belasting op beleggingsinkomste;
- (iii) die belasting op korporatiewe inkomste;
- (iv) die belasting op winste van veelsydige professies; en
- (v) die belasting op inkomste uit 'n diensbetrekking;

(hierna "Kongolese belasting" genoem); en

(b) 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").

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.

### **Article 3**

#### ***General Definitions***

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

- (a) the term "Democratic Republic of Congo" means the territory of the Democratic Republic of Congo and the areas adjacent to the territorial waters of the Democratic Republic of Congo in which, in accordance with international law, the Democratic Republic of Congo may exercise the rights concerning the seabed, the marine subsoil and the natural resources; and
- (b) 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;
- (c) the terms "a Contracting State" and "the other Contracting State" mean the Democratic Republic of Congo or South Africa, as the context requires;
- (d) the term "business" includes the performance of professional services and of other activities of an independent character;
- (e) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (f) the term "competent authority" means:
  - (i) in the Democratic Republic of Congo, the Director-General of Taxes or an authorised representative; and
  - (ii) in South Africa, the Commissioner for the South African Revenue Service or an authorised representative;
- (g) the term "enterprise" applies to the carrying on of any business;

(b) in Suid-Afrika:

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

(hierna “Suid-Afrikaanse 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.

### **Artikel 3**

#### ***Algemene Woordomskrywings***

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

- (a) beteken die uitdrukking “Demokratiese Republiek Kongo” die grondgebied van die Demokratiese Republiek Kongo en die gebiede aangrensend aan die territoriale waters van die Demokratiese Republiek Kongo waarbinne, ooreenkomstig die volkereg, die Demokratiese Republiek Kongo die regte met betrekking tot die seebodem, die mariene ondergrond en die natuurlike hulpbronne mag uitoefen; en
- (b) 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;
- (c) beteken die uitdrukkings “n Kontrakterende Staat” en “die ander Kontrakterende Staat” die Demokratiese Republiek Kongo of Suid-Afrika, na gelang die samehang vereis;
- (d) sluit die uitdrukking “besigheid” die uitvoering van professionele dienste en van ander bedrywighede van ’n onafhanklike aard in;
- (e) beteken die uitdrukking “maatskappy” enige regspersoon of enige entiteit wat vir belastingdoeleindes as ’n regspersoon behandel word;
- (f) beteken die uitdrukking “bevoegde owerheid”:
  - (i) in die Demokratiese Republiek Kongo, die Direkteur-Generaal van Belastings of ’n gemagtigde verteenwoordiger; en
  - (ii) in Suid-Afrika, die Kommissaris van die Suid-Afrikaanse Inkomstediens of ’n gemagtigde verteenwoordiger;
- (g) het die uitdrukking “onderneming” betrekking op die dryf van enige besigheid;

- (h) 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;
- (i) the term “international traffic” means any transport by a ship, aircraft or rail or road transport vehicle operated by an enterprise of a Contracting State, except when the ship, aircraft or rail or road transport vehicle is operated solely between places in the other Contracting State;
- (j) 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 or association deriving its status as such from the laws in force in that Contracting State; and
- (k) 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.

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), 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;

- (h) beteken die uitdrukking "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;
- (i) beteken die uitdrukking "internasionale verkeer" enige vervoer per skip, vliegtuig of spoor- of padvervoervoertuig bedryf deur 'n onderneming van 'n Kontrakterende Staat, behalwe wanneer die skip, vliegtuig of spoor- of padvervoervoertuig uitsluitlik tussen plekke in die ander Kontrakterende Staat bedryf word;
- (j) beteken die uitdrukking "burger" met betrekking tot 'n Kontrakterende Staat:
  - (i) enige individu wat nasionaliteit of burgerskap van daardie Kontrakterende Staat het; en
  - (ii) enige regspersoon of vereniging wat sodanige status verkry uit die wette wat in daardie Kontrakterende Staat van krag is; en
- (k) 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, terwyl enige betekenis ingevolge die toepaslike belastingwette van daardie Staat voorrang geniet 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.

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 die beskikking van die individu is; indien 'n permanente tuiste in albei State tot die 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 subparagraph (a) vasgestel kan word nie, word die individu geag 'n inwoner te wees uitsluitlik van die Staat waarin die individu 'n gebruiklike verblyfplek het;
- (c) indien die individu 'n gebruiklike 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” likewise encompasses:

- (a) 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 six months;
- (b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by an enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the Contracting State for a period or periods exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned;
- (c) the performance of professional services or other activities of an independent character by an individual, but only where those services or activities continue within a Contracting State for a period or periods exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned.

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;

- (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 hy geag 'n inwoner te wees uitsluitlik van die Kontrakterende Staat waarin die plek van die 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 werkinkel, en
- (f) 'n myn, 'n olie- of gasbron, 'n steengroef of enige ander plek van ontginning of winning van natuurlike hulpbronne.

3. Eweneens omvat die uitdrukking "permanente saak":

- (a) 'n bouterrein, 'n konstruksie-, monteer- of installasieprojek of enige toesighoudende bedrywigheid met betrekking tot sodanige terrein of projek, maar slegs waar sodanige terrein, projek of bedrywigheid vir 'n tydperk van langer as ses maande voortduur;
- (b) die lewering van dienste, met inbegrip van konsultasiedienste, deur 'n onderneming deur middel van werknemers of ander personeel wat deur 'n onderneming vir sodanige doel in diens geneem word, maar slegs waar bedrywighede van daardie aard (vir dieselfde of 'n daaraan verbonde projek) binne die Kontrakterende Staat voortduur vir 'n tydperk of tydperke wat altesaam 183 dae in enige tydperk van twaalf maande, beginnende of eindigende in die betrokke fiskale jaar, te bowe gaan;
- (c) die verrigting van professionele dienste of ander bedrywighede van 'n onafhanklike aard deur 'n individu, maar slegs waar daardie dienste of bedrywighede binne 'n Kontrakterende Staat voortduur vir 'n tydperk of tydperke wat altesaam 183 dae binne enige tydperk van twaalf maande, beginnende of eindigende in die betrokke fiskale jaar, te bowe gaan.

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) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character; and
- (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.

- (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 vir die doel van verwerking deur 'n ander onderneming;
- (d) die instandhouding van 'n vaste besigheidsplek uitsluitlik met die doel om vir die onderneming goedere of handelsware aan te koop of inligting in te win;
- (e) die instandhouding van 'n vaste besigheidsplek uitsluitlik met die doel om enige ander bedrywigheid wat van 'n voorlopige of bykomstige aard is, vir die onderneming te beoefen; en
- (f) die instandhouding van 'n vaste besigheidsplek uitsluitlik vir enige kombinasie van bedrywighede in subparagraphe (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 paragrawe 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 verkry uit onroerende eiendom, met inbegrip van inkomste uit landbou of bosbou, wat geleë is in die ander Kontrakterende Staat, kan in daardie ander Staat belas word.

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, boats, aircraft and rail or road transport vehicles 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.

## **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 the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business 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. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

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

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

4. Die bepalings van paragrawe 1 en 3 is ook van toepassing op die inkomste uit onroerende eiendom van 'n onderneming.

## Artikel 7

### **Besigheidswinst**

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 wat daarin geleë is. 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 wat daarin geleë is, word daar in elke Kontrakterende Staat aan daardie permanente saak die winste toegeskryf wat dit na verwagting sou kon behaal indien dit 'n afsonderlike en aparte onderneming was wat met dieselfde of soortgelyke bedrywighede onder dieselfde of soortgelyke voorwaardes besig is en geheel en al onafhanklik sake doen met die onderneming waarvan dit 'n permanente saak is.

3. 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 Kontrakterende Staat waarin die permanente saak geleë is of elders. Geen sodanige aftrekking word egter toegelaat nie ten opsigte van bedrae, indien enige, betaal deur die permanente saak aan die hoofkantoor van die onderneming of enige van sy ander kantore (behalwe by wyse van vergoeding van werklike uitgawes), by wyse van tantième, gelde of ander soortgelyke betalings in ruil vir die gebruik van patente of ander regte, of by wyse van kommissie vir spesifieke dienste gelewer of vir bestuur, of, behalwe in die geval van 'n bankonderneming, by wyse van rente op gelde wat aan die permanente saak geleent is. Eweneens word daar, by die vasstelling van die winste van 'n permanente saak, buite rekening gelaat bedrae deur die permanente saak ten laste van die hoofkantoor van die onderneming of enige van sy ander kantore opgelê (behalwe vir terugbetaling van werklike uitgawes), by wyse van tantième, gelde of ander soortgelyke betalings in ruil vir die gebruik van patente of ander regte, of by wyse van kommissie vir spesifieke dienste gelewer of vir bestuur, of, behalwe in die geval van 'n bankonderneming, by wyse van rente op gelde geleent aan die hoofkantoor van die onderneming of enige van sy ander kantore.

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**

### ***International Transport***

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

2. For the purposes of this Article, profits from the operation of ships, aircraft or rail or road transport vehicles in international traffic shall include:

- (a) profits derived from the rental on a bare boat basis of ships or aircraft used in international traffic,
- (b) profits derived from the rental of rail or road transport vehicles,

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

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

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

## **Article 9**

### ***Associated Enterprises***

1. Where

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

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 nikks 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 handelsware vir die onderneming nie.

6. Vir doeleindeste 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 teenoende 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**

### ***Internasionale Vervoer***

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

2. Vir doeleindeste van hierdie Artikel sluit winste uit die bedryf van skepe, vliegtuie of spoor- of padvervoervoertuie in internasionale verkeer in:

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

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

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

4. Die bepalings van paragraaf 1 is ook van toepassing op winste verkry 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) 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 may 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.

## 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.

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 25 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 settle the mode of application of these limitations by mutual agreement.

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

- (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 kommersiële- 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 dienooreenkomsdig belas word.

2. Waar 'n Kontrakterende Staat by die winste van 'n onderneming van daardie Staat winste insluit – en dit dienooreenkomsdig 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 die eersgenoemde Staat sou toegeval het indien die voorwaardes tussen die twee ondernemigs gestel, dieselfde was as dié wat tussen onafhanklike ondernemigs gestel sou gewees het, kan daardie ander Staat die bedrag van die belasting wat op daardie winste gehef word, toepaslik aanpas. 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.

## **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. Sodanige dividende kan egter ook belas word in die Kontrakterende Staat waarvan die maatskappy wat die dividende betaal, 'n inwoner is, en ooreenkomsdig die wette van daardie Staat, maar indien die voordelige eienaar van die dividende 'n inwoner van die ander Kontrakterende Staat is, mag die belasting wat aldus opgelê word, 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 25 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 besleg die wyse van toepassing van hierdie beperkinge deur onderlinge ooreenkoms.

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, "jouissance"-aandele of "jouissance"-regte, mynaandele, stigtersaandele of ander regte, wat nie skuldeise is nie, wat aan winste deelneem, 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. 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 and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

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 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 10 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.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State if it is derived and beneficially owned by the Government of the other Contracting State or a political subdivision or a local authority thereof, the Central Bank of Congo, the South African Reserve Bank or any wholly owned institution of that Government or subdivision or authority.

4. 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.

5. 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 and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

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 en die aandelebesit ten opsigte waarvan die dividende betaal word, effektief verbonde is aan sodanige permanente saak. In sodanige geval is die bepalings van Artikel 7 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 aandelebesit ten opsigte waarvan die dividende betaal word effektief verbonde is aan 'n permanente saak geleë in daardie ander Staat, en onderwerp ook nie die maatskappy se onuitgekeerde winste aan 'n belasting op die 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 ooreenkomsdig die wette van daardie Staat, maar indien die voordelige eienaar van die rente 'n inwoner van die ander Kontrakterende Staat is, mag die belasting aldus opgelê, nie 10 persent van die bruto bedrag van die rente te bove gaan nie.

Die bevoegde owerhede van die Kontrakterende State besleg die wyse van toepassing van hierdie beperking deur onderlinge ooreenkoms.

3. Ondanks die bepalings van paragraaf 2 word rente wat in 'n Kontrakterende Staat ontstaan, in daardie Staat van belasting vrygestel indien dit verkry en voordelig besit word deur die Regering van die ander Kontrakterende Staat of 'n staatkundige onderafdeling of 'n plaaslike owerheid daarvan, die Sentrale Bank van Kongo, die Suid-Afrikaanse Reserwebank of enige instelling wat ten volle besit word deur daardie Regering of onderafdeling of owerheid.

4. Die uitdukking "rente" soos in hierdie Artikel gebruik, beteken inkomste uit alle soorte skuldeise, hetsy gesekureer deur verband al dan nie en hetsy dit 'n reg inhoud 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.

5. 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 en die skuldeis ten opsigte waarvan die rente betaal word, effektief verbonde is aan sodanige permanente saak. In sodanige geval is die bepalings van Artikel 7 van toepassing.

6. 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 in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

7. 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 paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, or films, tapes or discs used for radio or television broadcasting, any patent, trademark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

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

6. 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 het in verband waarmee die verskuldigheid ten opsigte waarvan die rente betaal word, aangegaan is, en sodanige rente deur sodanige permanente saak gedra word, word sodanige rente geag te ontstaan in die Staat waarin die permanente saak geleë is.

7. Waar, vanweë 'n besondere verband tussen die betaler en die voordeleige 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 voordeleige eienaar by ontstentenis van sodanige verband sou ooreenkom het, is die bepalings van hierdie Artikel slegs op laasgenoemde bedrag van toepassing. In sodanige geval bly die oormaatdeel van die betalings belasbaar ooreenkomsdig 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 aan 'n inwoner van die ander Kontrakterende Staat betaal word, kan in daardie ander Staat belas word.

2. Sodanige tantième kan egter ook belas word in die Kontrakterende Staat waarin dit ontstaan en ooreenkomsdig die wette van daardie Kontrakterende Staat, maar indien die voordeleige eienaar van die tantième 'n inwoner van die ander Kontrakterende Staat is, mag die belasting aldus opgelê, nie 10 persent van die bruto bedrag van die tantième te bowe gaan nie.

3. 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, of films, bande of skywe vir radio- of televisie-uitsending, enige patent, handelsmerk, ontwerp of model, plan, geheime formule of proses, of vir die gebruik van, of die reg op die gebruik van, industriële, kommersiële of wetenskaplike toerusting, of vir inligting aangaande industriële, kommersiële of wetenskaplike ondervinding.

4. Die bepalings van paragrawe 1 en 2 is nie van toepassing nie indien die voordeleige 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 en die reg of eiendom ten opsigte waarvan die tantième betaal word, effektiief verbonde is aan sodanige permanente saak. In sodanige geval is die bepalings van Artikel 7 van toepassing.

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

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 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, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

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

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of 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**

#### ***Income from Employment***

1. Subject to the provisions of Articles 15, 17 and 18, 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.

6. Waar, vanweë 'n besondere verband tussen die betaler en die voordeleige eienaar of tussen albei van hulle 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 voordeleige 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 ooreenkomsdig die wette van elk van die Kontrakterende State, met behoorlike inagneming van die ander bepalings van hierdie Konvensie.

## Artikel 13

### ***Kapitaalwinste***

1. Winste deur 'n inwoner van 'n Kontrakterende Staat verkry uit die vervreemding van die 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, met inbegrip van sodanige winste uit die vervreemding van so 'n permanente saak (alleen of tesame met die onderneming in sy geheel), kan in daardie ander Staat belas word.

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

4. Winste uit die vervreemding van aandele van die aandelekapitaal van 'n maatskappy waarvan die eiendom regstreeks of onregstreeks hoofsaaklik uit onroerende eiendom bestaan wat in 'n Kontrakterende Staat geleë is, kan in daardie 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

### ***Inkomste uit 'n Diensbetrekking***

1. Behoudens die bepalings van Artikels 15, 17 en 18, 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. 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 any twelve-month period commencing or ending in the fiscal year concerned, 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 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, aircraft or rail or road transport vehicle operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

## **Article 15**

### ***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.

## **Article 16**

### ***Entertainers and Sportspersons***

1. Notwithstanding the provisions of Articles 7 and 14, 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 and 14, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

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 enige tydperk van twaalf maande wat in die betrokke fiskale jaar begin of eindig, te bove 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 wat die werkgewer in die ander Staat het nie.

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

## **Artikel 15**

### ***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.

## **Artikel 16**

### ***Verhoogkunstenaars en Sportlui***

1. Ondanks die bepalings van Artikels 7 en 14 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 en 14, belas word in die Kontrakterende Staat waarin die bedrywighede van die verhoogkunstenaar of sportpersoon beoefen word.

**Article 17*****Pensions and Annuities***

1. Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration, and annuities, arising in a Contracting State and paid to a resident of the other Contracting State, may be taxed in the first-mentioned State.
2. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.
3. Notwithstanding the provisions of paragraph 1, pensions and other payments made under the social security legislation of a Contracting State shall be taxable only in that State.

**Article 18*****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. (a) Any pension paid by, or out of funds created 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 pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.
3. The provisions of Articles 14, 15, 16 and 17 shall apply to salaries, wages and other similar remuneration, and to pensions, in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

## Artikel 17

### **Pensioene en Annuïteite**

1. Behoudens die bepalings van paragraaf 2 van Artikel 18, kan pensioene en ander soortgelyke besoldiging, en annuïteite, wat in 'n Kontrakterende Staat ontstaan en aan 'n inwoner van die ander Kontrakterende Staat betaal word, in eersgenoemde Staat belas word.
2. Die uitdrukking "annuïteit" beteken 'n vermelde bedrag wat periodiek op vermelde tye gedurende lewe of gedurende 'n gespesifieerde of vasstelbare tydperk betaalbaar is ingevolge 'n verpligting om die betalings te doen in ruil vir voldoende en volle vergoeding in geld of geldwaarde.
3. Ondanks die bepalings van paragraaf 1, is pensioene en ander betalings gemaak ingevolge die bestaansbeveiligingswetgewing van 'n Kontrakterende Staat, slegs in daardie Staat belasbaar.

## Artikel 18

### **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 salaris, 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 lever nie.
2. (a) 'n Pensioen betaal deur, of uit fondse geskep 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 pensioen is egter slegs in die ander Kontrakterende Staat belasbaar indien die individu 'n inwoner van en 'n burger van daardie Staat is.
3. Die bepalings van Artikels 14, 15, 16 en 17 is van toepassing op salaris, lone en ander soortgelyke besoldiging, en op pensioene, ten opsigte van dienste gelewer in verband met 'n besigheid gedryf deur 'n Kontrakterende Staat of 'n staatkundige onderafdeling of 'n plaaslike owerheid daarvan.

## Article 19

### ***Students, Apprentices and Trainees***

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

## Article 20

### ***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 and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of the Convention and arising in the other Contracting State may also be taxed in that other State.

## Article 21

### ***Elimination of Double Taxation***

Double taxation shall be eliminated as follows:

- (a) where a resident of the Democratic Republic of Congo derives income from a source outside the Democratic Republic of Congo which, in accordance with the provisions of this Convention, may be taxed in South Africa, the Democratic Republic of Congo shall exempt that income from tax;
- (b) in South Africa, subject to the provisions of the law of South Africa regarding the deduction from tax payable in South Africa of tax payable in any country other than South Africa (which shall not affect the general principle hereof), Congolese tax paid by residents of South Africa in respect of income taxable in the Democratic Republic of Congo, 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 19

### ***Studente, Vakleerlinge en Besigheidsleerlinge***

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

## Artikel 20

### ***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 en die reg of eiendom ten opsigte waarvan die inkomste betaal word, effektiel verbonde is aan sodanige permanente saak. In sodanige geval is die bepalings van Artikel 7 van toepassing.

3. Ondanks die bepalings van paragrawe 1 en 2, kan inkomste-items van 'n inwoner van 'n Kontrakterende Staat wat nie in die voorgaande Artikels van die Konvensie behandel is nie en in die ander Kontrakterende Staat ontstaan, ook in daardie ander Staat belas word.

## Artikel 21

### ***Uitskakeling van Dubbele Belasting***

Dubbele belasting word soos volg uitgeskakel:

- (a) waar 'n inwoner van die Demokratiese Republiek Kongo inkomste verkry uit 'n bron buite die Demokratiese Republiek Kongo wat, ooreenkomstig die bepalings van hierdie Konvensie in Suid-Afrika belas kan word, stel die Demokratiese Republiek Kongo sodanige inkomste van belasting vry;
- (b) in Suid-Afrika, behoudens die bepalings van die reg van Suid-Afrika betreffende die aftrekking vanaf belasting betaalbaar in Suid-Afrika van belasting betaalbaar in enige ander land as Suid-Afrika (wat nie die algemene beginsel hiervan sal raak nie), word Kongo-belasting betaal deur inwoners van Suid-Afrika ten opsigte van inkomste belasbaar in die Demokratiese Republiek Kongo ooreenkomstig die bepalings van hierdie Konvensie, afgetrek van die belastings verskuldig ooreenkomstig die Suid-Afrikaanse fiskale reg. Sodanige aftrekking mag egter nie 'n bedrag te bove gaan wat in dieselfde verhouding tot die totale Suid-Afrikaanse belasting betaalbaar staan as wat die betrokke inkomste tot die totale inkomste staan nie.

## Article 22

### ***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. Stateless persons who are residents of a Contracting State shall not be subjected in either 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 the State concerned in the same circumstances, in particular with respect to residence, are or may be subjected.

3. 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.

4. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11 or paragraph 6 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

5. 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.

6. Nothing contained in this Article shall prevent a Contracting State from imposing on the profits attributable to a permanent establishment in that Contracting State of a company which is a resident of the other Contracting State:

- (a) in the Democratic Republic of Congo, a tax at a rate not exceeding five per cent on the amount of the profits of the permanent establishment, after deduction of the corporate tax relating to such profits; and
- (b) in South Africa, a tax at a rate which does not exceed the rate of normal tax on companies by more than five percentage points.

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

## Artikel 22

### **Nie-diskriminasie**

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 daarvan 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. Staatlose persone wat inwoners van 'n Kontrakterende Staat is, mag nie in enige van die Kontrakterende State onderwerp word aan enige belasting of enige vereiste in verband daarmee wat anders of swaarder is as die belasting en die daarvan verbonde vereistes waaraan burgers van die betrokke Staat onder dieselfde omstandighede, veral met betrekking tot verblyf, onderworpe is of onderwerp kan word nie.

3. 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.

4. Uitgesonderd waar die bepalings van paragraaf 1 van Artikel 9, paragraaf 7 van Artikel 11 of paragraaf 6 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, aftrebaar onder dieselfde voorwaardes as wat sou geld indien dit aan 'n inwoner van eersgenoemde Staat betaal is.

5. 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 daarvan verbonde vereistes waaraan ander soortgelyke ondernemings van eersgenoemde Staat, onderworpe is of onderwerp kan word nie.

6. Niks in hierdie Artikel vervat, verhoed 'n Kontrakterende Staat daarvan om op die winste wat toegeskryf kan word aan 'n permanente saak in daardie Kontrakterende Staat van 'n maatskappy wat 'n inwoner van die ander Kontrakterende Staat is:

- (a) in die Demokratiese Republiek Kongo, 'n belasting te hef teen 'n koers wat nie vyf persent op die bedrag van die winste van die permanente saak, na aftrekking van die maatskappybelasting met betrekking tot sodanige winste, te bove gaan nie; en
- (b) in Suid-Afrika, 'n belasting te hef teen 'n koers wat nie die koers van normale belasting op maatskappye met meer as vyf persentasiepunte te bove gaan nie.

7. Die bepalings van hierdie Artikel is ondanks die bepalings van Artikel 2 van toepassing op belastings van enige aard en beskrywing.

## Article 23

### ***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 law 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 22, 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. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of 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.

## Article 24

### ***Exchange of Information***

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities in so far as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in the first sentence. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

## Artikel 23

### *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 22 ressorteer, aan dié van die Kontrakterende Staat waarvan die persoon 'n burger is. Die saak moet gestel word binne drie jaar vanaf die eerste kennismeting van die handeling wat geleid het tot belasting wat nie ooreenkomstig die bepalings van die Konvensie is nie.

2. Die bevoegde owerheid moet, indien die beswaar vir hom geregtig voorkom en hy nie self 'n gesikte 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. Enige ooreenkoms wat bereik word, moet toegepas word ondanks enige tydsbeperkinge in die landsreg van die Kontrakterende State.

3. Die bevoegde owerhede van die Kontrakterende State moet probeer om enige probleme of twyfel wat in verband met die vertolking of toepassing van die Konvensie ontstaan, deur onderlinge ooreenkoms 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 met mekaar kommunikeer, insluitend deur middel van 'n gesamentlike kommissie bestaande uit hulself of hulle verteenwoordigers, met die doel om tot 'n ooreenkoms te geraak soos in die voorgaande paragrawe beoog.

## Artikel 24

### *Uitruil van Inligting*

1. Die bevoegde owerhede van die Kontrakterende State moet sodanige inligting uitruil as wat nodig is vir die uitvoering van die bepalings van hierdie Konvensie of van die landsreg aangaande belastings van enige aard en beskrywing opgelê namens die Kontrakterende State, of van hul staatkundige onderafdelings of plaaslike owerhede, vir sover die belasting daarkragtens nie strydig met die Konvensie is nie. Die uitruil van inligting word nie deur Artikels 1 en 2 beperk nie. Enige inligting ontvang deur 'n Kontrakterende Staat word as geheim behandel op dieselfde wyse as inligting wat ingevolge die landsreg van daardie Staat verkry word, en mag openbaar gemaak word slegs aan persone of owerhede (met inbegrip van howe en administratiewe liggame) betrokke by die aanslaan of invordering van, die afdwing of vervolging ten opsigte van, of die beslissing van appelle in verband met die belastings in die eerste sin bedoel. Sodanige persone of owerhede mag die inligting slegs vir sodanige doeleindes gebruik. Hulle mag die inligting by openbare hofverrigtinge of by regterlike beslissings openbaar maak.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

## Article 25

### ***Assistance in the Collection of Taxes***

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Convention or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

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

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

## **Artikel 25**

### ***Bystand met die Invordering van Belastings***

1. Die Kontrakterende State verleen aan mekaar bystand met die invordering van 'n belastingeis. Hierdie bystand word nie deur Artikels 1 en 2 beperk nie. Die bevoegde owerhede van die Kontrakterende State kan die wyse waarop hierdie Artikel toegepas word, deur onderlinge ooreenkoms bepaal.

2. Die uitdrukking "belastingeis" soos in hierdie Artikel gebruik, beteken 'n bedrag verskuldig met betrekking tot belastings van enige aard en beskrywing opgelê namens die Kontrakterende State, of van hul staatkundige onderafdelings of plaaslike owerhede, vir sover die belasting daarkragtens nie strydig met die Konvensie is nie of enige ander instrument waartoe die Kontrakterende State partye is, asook rente, administratiewe boetes en invorderings- of bewaringskostes met betrekking tot sodanige bedrag.

3. Wanneer 'n belastingeis van 'n Kontrakterende Staat ingevolge die wette van daardie Staat afdwingbaar is en deur 'n persoon verskuldig is wat, op daardie tydstip, ingevolge die wette van daardie Staat nie die invordering daarvan kan verhoed nie, sal daardie belastingeis, op versoek van die bevoegde owerheid van daardie Staat, deur die bevoegde owerheid van die ander Kontrakterende Staat vir doeleindes van invordering aanvaar word. Daardie belastingeis word deur daardie ander Staat ingevorder ooreenkomstig die bepalings van sy wette van toepassing op die uitvoering en invordering van sy eie belastings asof die belastingeis 'n belastingeis van daardie ander Staat was.

4. Wanneer 'n belastingeis van 'n Kontrakterende Staat 'n eis is ten opsigte waarvan daardie Staat, ingevolge sy reg, maatreëls vir beskerming kan tref met die oog daarop om sy invordering te verseker, word daardie belastingeis, op versoek van die bevoegde owerheid van daardie Staat, aanvaar vir doeleindes van die tref van beskermingsmaatreëls deur die bevoegde owerheid van die ander Kontrakterende Staat. Daardie ander Staat tref beskermingsmaatreëls ten opsigte van daardie belastingeis ooreenkomstig sy wette asof die belastingeis 'n belastingeis van daardie ander Staat is selfs indien, terwyl sodanige maatreëls toegepas word, die belastingeis nie in die eersgenoemde Staat afdwingbaar is nie of deur 'n persoon verskuldig is wat 'n reg het om die invordering daarvan te verhoed.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraphs 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be

- (a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or
- (b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

8. In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to carry out measures which would be contrary to public policy (*ordre public*);
- (c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
- (d) to provide assistance in those cases where the administrative burden of that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

## Article 26

### ***Members of Diplomatic Missions and Consular Posts***

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.

5. Ondanks die bepalings van paragrawe 3 en 4 word 'n belastingeis wat deur 'n Kontrakterende Staat vir doelein des van paragrawe 3 of 4 aanvaar is, nie in daardie Staat onderwerp aan die tydsbeperkings of enige voorkeur van toepassing op 'n belastingeis ingevolge die wette van daardie Staat op grond van die aard daarvan as sodanig, verleen nie. Boonop sal 'n belastingeis deur 'n Kontrakterende Staat aanvaar vir doelein des van paragrawe 3 of 4 in daardie Staat nie enige voorkeur toepaslik op daardie belastingeis ingevolge die wette van die ander Kontrakterende Staat hê nie.

6. Maatreëls met betrekking tot die bestaan, geldigheid of die bedrag van die belastingeis van 'n Kontrakterende Staat mag nie voor die howe of administratiewe liggame van die ander Kontrakterende Staat gebring word nie.

7. Waar, te eniger tyd nadat 'n versoek ingevolge paragraaf 3 of 4 deur 'n Kontrakterende Staat gemaak is en alvorens die ander Kontrakterende staat die betrokke belastingeis ingevorder en aan eersgenoemde Staat oorbetal het, die betrokke belastingeis ophou om

- (a) in die geval van 'n versoek ingevolge paragraaf 3, 'n belastingeis van eersgenoemde Staat te wees wat ingevolge die wette van daardie Staat afdwingbaar en verskuldig is deur 'n persoon wat, op daardie tydstip, ingevolge die wette van daardie Staat, nie die invordering daarvan kan keer nie, of
- (b) in die geval van 'n versoek ingevolge paragraaf 4, 'n belastingeis van eersgenoemde Staat te wees ten opsigte waarvan daardie Staat, ingevolge sy wette, beskermingsmaatreëls kan tref met die oog daarop om die invordering daarvan te verseker

moet die bevoegde owerheid van eersgenoemde Staat die bevoegde owerheid van die ander Staat onmiddellik van daardie feit in kennis stel en, na die keuse van die ander Staat, moet eersgenoemde Staat sy versoek óf opskort óf terugtrek.

8. In geen geval mag die bepalings van hierdie Artikel uitgelê word nie as sou dit 'n Kontrakterende Staat die verpligting ople om:

- (a) administratiewe maatreëls uit te voer wat strydig is met die wette en administratiewe praktyk van daardie of van die ander Kontrakterende Staat;
- (b) om maatreëls uit te voer wat strydig met openbare beleid (*ordre public*) sal wees;
- (c) om bystand te verleen indien die ander Kontrakterende Staat nie alle redelike maatreëls uitgevoer het vir invordering of beskerming, na gelang van die geval, wat ingevolge sy wette of administratiewe praktyk beskikbaar is nie;
- (d) om bystand te verleen in daardie gevalle waar die administratiewe las van daardie Staat duidelik buite verhouding is tot die voordeel wat deur die ander Kontrakterende Staat verkry sal word.

## Artikel 26

### **Lede van Diplomatieke Missies en Konsulêre Poste**

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

**Article 27*****Amendments***

1. The Contracting States may, at any time, amend this Convention by mutual consent in writing through the diplomatic channel.
2. The amendments to the Convention shall be ratified according to the procedures required by the domestic law of each Contracting State. The Contracting States shall notify each other of the completion of these procedures through the diplomatic channel.
3. The amendments shall enter into force on the date of receipt of the later of these notifications.

**Article 28*****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 ratification 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.

**Article 29*****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 not later than 30 June of any calendar year starting ten years after the year in which the Convention entered into force.
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.

**Artikel 27*****Wysigings***

1. Die Kontrakterende State kan, te eniger tyd, hierdie Konvensie wysig deur skriftelik onderling langs die diplomatieke kanaal ooreen te kom.
2. Die wysigings aan die Konvensie word bekragtig ooreenkomsdig die prosedures vereis deur die landsreg van elk van die Kontrakterende State. Die Kontrakterende State stel mekaar langs die diplomatieke kanaal in kennis van die afhandeling van hierdie prosedures.
3. Die wysigings tree in werking op die datum van ontvangs van die laaste van hierdie kennismewings.

**Artikel 28*****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 vir die bekragtiging van hierdie Konvensie. Die Konvensie tree in werking op die datum van ontvangs van die laaste van hierdie kennismewings.
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 na 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 na die eerste dag van Januarie eersvolgende op die datum waarop die Konvensie in werking tree.

**Artikel 29*****Opseggig***

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 nie later nie as 30 Junie van enige kalenderjaar wat begin tien jaar na die jaar waarin die Konvensie in werking getree het, aan die ander Kontrakterende Staat skriftelike kennis van opseggig te gee.
2. In sodanige geval is die Konvensie nie meer van toepassing nie:
  - (a) met betrekking tot belastings wat by die bron teruggehou word, ten opsigte van bedrae betaal of gekrediteer na die einde van die kalenderjaar waarin sodanige kennis gegee word; en
  - (b) met betrekking tot ander belastings, ten opsigte van belasbare jare beginnende na die einde van die kalenderjaar waarin sodanige kennis gegee word.

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

**DONE** at Pretoria in two originals, in the English and French languages, both texts being equally authentic, this 29<sup>th</sup> day of April 2005.

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

**FOR THE GOVERNMENT OF THE  
DEMOCRATIC REPUBLIC OF CONGO**

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

**GEDOEEN**, in tweevoud, te Pretoria, op die 29ste dag van April 2005, in die Engelse en Franse tale, waarvan albei tekste ewe outentiek is.

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

**NAMENS DIE REGERING VAN DIE  
DEMOKRATIESE REPUBLIEK KONGO**

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