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IMPORTANT

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GENERAL NOTICES • ALGEMENE KENNISGEWINGS

SOUTH AFRICAN REVENUE SERVICE**NOTICE 1158 OF 2015****INCOME TAX ACT, 1962****AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF THE REPUBLIC OF KENYA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME**

In terms of section 108(2) of the Income Tax Act, 1962 (Act No 58 of 1962), read in conjunction with section 231(4) of the Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996), it is hereby notified that the Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income set out in the Schedule to this Notice has been entered into with the Government of the Republic of Kenya 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 29 of the Agreement that the date of entry into force is 19 June 2015.

SUID-AFRIKAANSE INKOMSTEDIENS
KENNISGEWING 1158 VAN 2015
INKOMSTEBELASTINGWET, 1962

**OOREENKOMS TUSSEN DIE REGERING VAN DIE REPUBLIEK VAN SUID-AFRIKA EN DIE
REGERING VAN DIE REPUBLIEK KENIA TER VERMYDING VAN DUBBELE BELASTING EN DIE
VOORKOMING VAN FISKALE ONTDUIKING MET BETREKKING TOT BELASTINGS OP
INKOMSTE**

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

Daar word verder bekendgemaak dat ingevolge paragraaf 1 van Artikel 29 van die Ooreenkoms, die datum van inwerkingtreding 19 Junie 2015 is.

SCHEDULE**AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF THE REPUBLIC OF KENYA 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 Republic Kenya of desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

HAVE AGREED as follows:

Article 1***Persons Covered***

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

Article 2***Taxes Covered***

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

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

(a) in Kenya:

the income tax chargeable in accordance with the provisions of the Income Tax Act, Cap. 470, of the laws of Kenya;

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

(b) in South Africa:

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

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

BYLAE**OOREENKOMS TUSSEN DIE REGERING VAN DIE REPUBLIEK VAN SUID-AFRIKA EN DIE REGERING VAN DIE REPUBLIEK KENIA TER VERMYDING VAN DUBBELE BELASTING EN TER VOORKOMING VAN FISKALE ONTDUIKING MET BETREKKING TOT BELASTINGS OP INKOMSTE****Aanhef**

Die Regering van die Republiek van Suid-Afrika en die Regering van die Republiek Kenia, uit 'n begeerte om 'n Ooreenkoms ter vermyding van dubbele belasting en ter voorkoming van fiskale ontduiking ten opsigte van belastings op inkomste aan te gaan,

SOOS VOLG OOREENGEKOM:**Artikel 1*****Persone Gedek***

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

Artikel 2***Belastings Gedek***

1. Hierdie Ooreenkoms is van toepassing op belastings op inkomste wat ten behoeve van 'n Kontrakterende Staat of sy staatkundige onderverdelings of plaaslike owerhede gehef word, ongeag die wyse waarop dit gehef word.

2. Alle belastings wat op totale inkomste gehef word, of op elemente van inkomste, insluitende belastings op winste uit die vervreemding van roerende of onroerende eiendom, asook belastings op die totale bedrae van lone en salarisse wat deur ondernemings betaal word, word as belastings op inkomste beskou.

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

(a) in Kenia:

die inkomstebelasting hefbaar in ooreenstemming met die bepalings van die "Income Tax Act, Cap. 470", van die wette van Kenia;

(hierna "Keniaanse belasting" genoem); en

(b) in Suid-Afrika:

- (i) die normale belasting;
- (ii) die sekondêre belasting op maatskappye;
- (iii) die terughoubelasting op tantième; en
- (iv) die belasting op buitelandse vermaaklikheidskunstenaars en sportpersone;

(hierna "Suid-Afrikaanse belasting" genoem).

4. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement 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 respective taxation laws.

Article 3

General Definitions

1. For the purposes of this Agreement, unless the context otherwise requires:
 - (a) the term “Kenya” means all territory of Kenya in state boundaries, including internal and territorial waters and also special economic zone and continental shelf, and all installations erected thereon as defined in the Continental Shelf Act, over which Kenya exercises its sovereign rights for the purpose of exploiting natural resources of the seabed, its subsoil and the superjacent waters, in accordance with international law; 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 Kenya or South Africa, as the context requires;
 - (d) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
 - (e) the term “competent authority” means:
 - (i) in Kenya, the Minister of Finance or an authorised representative of the Minister; and
 - (ii) in South Africa, the Commissioner for the South African Revenue Service or an authorised representative of the Commissioner;
 - (f) the term “enterprise” applies to the carrying on of any business;
 - (g) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
 - (h) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

4. Die Ooreenkoms is ook van toepassing op enige identiese of wesenlik soortgelyke belastings wat na die datum van ondertekening van die Ooreenkoms benewens of in die plek van die bestaande belastings gehef word. Die bevoegde owerhede van die Kontrakterende State moet mekaar in kennis stel van enige beduidende veranderinge wat aan hulle onderskeie belastingwette aangebring is.

Artikel 3

Algemene Woordomskrywing

1. Vir doeleindes van hierdie Ooreenkoms, tensy dit uit die samehang anders blyk:
 - (a) beteken die uitdrukking "Kenia" die hele gebied van Kenia binne staatsgrense, insluitende interne en territoriale waters en ook die spesiale ekonomiese sone en die vastelandsplat, en alle installasies wat daarop opgerig is soos omskryf is in die "Continental Shelf Act", waaroor Kenia sy soewereine regte uitoefen met die doel om natuurlike hulpbronne van die seabodem, die ondergrond daarvan en die boliggende waters te ontgin, in ooreenstemming met die volkereg; en
 - (b) beteken die uitdrukking "Suid-Afrika" die Republiek van Suid-Afrika en, wanneer dit in 'n geografiese sin gebruik word, ook die territoriale waters daarvan asook enige gebied buite die territoriale waters, insluitende die vastelandsplat, wat ingevolge die wette van Suid-Afrika en ooreenkomstig die volkereg aangewys is of hierna aangewys word as 'n gebied waarin Suid-Afrika soewereine regte of jurisdiksie kan uitoefen;
 - (c) beteken die uitdrukking "'n Kontrakterende Staat" en "die ander Kontrakterende Staat" Kenia of Suid-Afrika, na gelang van die samehang;
 - (d) beteken die uitdrukking "maatskappy" enige regspersoon of enige entiteit wat vir belastingdoeleindes as 'n regspersoon behandel word;
 - (e) beteken die uitdrukking "bevoegde owerheid":
 - (i) in Kenia, die Minister van Finansies of 'n gemagtigde verteenwoordiger van die Minister; en
 - (ii) in Suid-Afrika, die Kommissaris van die Suid-Afrikaanse Inkomstediens of 'n gemagtigde verteenwoordiger van die Kommissaris;
 - (f) het die uitdrukking "onderneming" betrekking op die dryf van enige besigheid;
 - (g) beteken die uitdrukking "onderneming van 'n Kontrakterende Staat" en "onderneming van die ander Kontrakterende Staat" onderskeidelik 'n onderneming wat deur 'n inwoner van 'n Kontrakterende Staat gedryf word en 'n onderneming wat deur 'n inwoner van die ander Kontrakterende Staat gedryf word;
 - (h) beteken die uitdrukking "internasionale verkeer" enige vervoer per skip of lugvaartuig wat deur 'n onderneming van 'n Kontrakterende Staat bedryf word, uitgesonderd waar die skip of lugvaartuig slegs tussen plekke in die ander Kontrakterende Staat bedryf word;

- (i) the term “national”, in relation to a Contracting State, means:
 - (i) any individual possessing the nationality 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
- (j) 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 Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Agreement 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 Agreement, 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 incorporation, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources therein.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then that individual’s status shall be determined as follows:

- (a) the individual shall be deemed to be a resident only 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 only of the State with which the individual’s personal and economic relations are closer (centre of vital interests);
- (b) if the State in which the centre of vital interests is situated cannot be determined, or if the individual has not a permanent home available in either State, the individual shall be deemed to be a resident only 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 only of the State of which the individual is a national;
- (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 only of the State in which its place of effective management is situated.

- (i) beteken die uitdrukking "burger", met betrekking tot 'n Kontrakterende Staat:
- (i) enige individu wat burgerskap van daardie Kontrakterende Staat het; en
 - (ii) enige regspersoon of vereniging wat sy status as sodanig verkry uit die wette wat in daardie Kontrakterende Staat van krag is; en
- (j) beteken die uitdrukking "persoon" ook 'n individu, 'n maatskappy en enige ander liggaam van persone wat vir belastingdoeleindes as 'n entiteit behandel word.

2. Betreffende die toepassing van die bepalings van die Ooreenkoms te eniger tyd deur 'n Kontrakterende Staat het enige uitdrukking wat nie daarin omskryf is nie, tensy dit uit die samehang anders blyk, die betekenis wat dit op daardie tydstip ingevolge die reg van daardie Staat het vir doeleindes van die belastinge waarop die Ooreenkoms van toepassing is, en geniet enige betekenis ingevolge die toepaslike belastingwette van daardie Staat voorrang bo 'n betekenis wat ingevolge ander wette van daardie Staat aan die uitdrukking geheg is.

Artikel 4

Inwoner

1. Vir doeleindes van hierdie Ooreenkoms beteken die uitdrukking "inwoner van 'n Kontrakterende Staat" enige persoon wat ingevolge die wette van daardie Staat aanspreeklik is vir belasting daarin as gevolg van daardie persoon se domisilie, verblyf, plek van inlywing, plek van bestuur of enige ander kriterium van soortgelyke aard, en sluit dit ook daardie Staat en enige staatkundige onderverdeling of plaaslike owerheid daarvan in. Hierdie uitdrukking sluit egter nie 'n persoon in nie wat in daardie Staat belastingpligtig is net ten opsigte van inkomste uit bronne in daardie Staat.

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 net van die Staat waarin 'n permanente tuiste tot die individu se beskikking is; indien 'n permanente tuiste in albei State tot die individu se beskikking is, word die individu geag 'n inwoner te wees net van die Staat waarmee die individu se persoonlike en ekonomiese betrekkinge die nouste is (tuiste van lewensbelange);
- (b) indien die Staat waarin die tuiste van lewensbelange geleë is, nie bepaal kan word nie, of indien die individu nie 'n permanente tuiste in enige van die State beskikbaar het nie, word die individu geag 'n inwoner te wees van net die Staat waarin die individu 'n gebruikelike verblyfplek het;
- (c) indien die individu 'n gebruikelike verblyfplek in albei State of in nie een van hulle het nie, word die individu geag 'n inwoner te wees van net die Staat waarvan die individu 'n burger is;
- (d) indien die individu 'n burger van albei State of van nie een van hulle is nie, moet die bevoegde owerhede van die Kontrakterende State die saak deur onderlinge ooreenkoms beslis.

3. Waar uit hoofde van die bepalings van paragraaf 1 'n ander persoon as 'n individu 'n inwoner van albei Kontrakterende State is, word hy geag 'n inwoner te wees van net die Staat waarin sy plek van effektiewe bestuur geleë is.

Article 5***Permanent Establishment***

1. For the purposes of this Agreement, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term “permanent establishment” includes especially:
 - (a) a place of management;
 - (b) a branch;
 - (c) an office;
 - (d) a factory;
 - (e) a workshop, 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 lasts for 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 if 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.
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 or display of goods or merchandise belonging to the enterprise;
 - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
 - (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.

Artikel 5***Permanente Saak***

1. Vir doeleindes van hierdie Ooreenkoms beteken die uitdrukking "permanente saak" 'n vaste besigheidsplek waardeur die besigheid van 'n onderneming in geheel of gedeeltelik gedryf word.
2. Die uitdrukking "permanente saak" sluit veral in:
 - (a) 'n plek van bestuur;
 - (b) 'n tak;
 - (c) 'n kantoor;
 - (d) 'n fabriek;
 - (e) 'n werkwinkel, en
 - (f) 'n myn, 'n olie- of gasbron, 'n steengroef of enige ander plek van ontginning of benutting van natuurlike hulpbronne.
3. Die uitdrukking "permanente saak" behels eweneens:
 - (a) 'n bouperseel, 'n konstruksie-, monteer- of installeerprojek of enige toesighoudende bedrywigheid in verband met so 'n perseel of projek, maar net waar so 'n perseel, projek of bedrywigheid langer as ses maande duur;
 - (b) die lewering van dienste, insluitende konsultasiedienste, deur 'n onderneming deur middel van werknemers of ander personeel wat vir sodanige doel deur 'n onderneming in diens geneem word, maar slegs as bedrywigheede van daardie aard voortduur (vir dieselfde of 'n daaraan verbonde projek) in die Kontrakterende Staat vir 'n tydperk of tydperke wat altesaam meer is as 183 dae in enige twaalfmaandetydperk wat in die betrokke fiskale jaar begin of eindig.
4. Ondanks die voorgaande bepalings van hierdie Artikel word die uitdrukking "permanente saak" geag nie die volgende in te sluit nie:
 - (a) die gebruik van fasiliteite uitsluitlik met die doel om goedere of handelsware wat aan die onderneming behoort, op te berg of te vertoon;
 - (b) die instandhouding van 'n voorraad goedere of handelsware wat aan die onderneming behoort, uitsluitlik met die doel om dit op te berg of te vertoon;
 - (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 van 'n voorbereidende of bykomstige aard vir die onderneming te beoefen; en
 - (f) die instandhouding van 'n vaste besigheidsplek uitsluitlik vir enige kombinasie van bedrywigheede in subparagrafe (a) tot (e) genoem, met dien verstande dat die oorkoepelende bedrywigheid van die vaste besigheidsplek wat uit hierdie kombinasie voortspruit, van 'n voorbereidende of bykomstige aard is.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 7 applies – is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:

- (a) has and habitually exercises in that State an authority to conclude contracts in the name of 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; or
- (b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which such person regularly delivers goods or merchandise on behalf of the enterprise.

6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other 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. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent enterprises, such agent will not be considered an agent of an independent status within the meaning of this paragraph.

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

Article 6

Income from Immovable Property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term “immovable property” shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.

5. Ondanks die bepalings van paragrawe 1 en 2, waar 'n persoon – uitgesonderd 'n agent met onafhanklike status op wie paragraaf 7 van toepassing is – in 'n Kontrakterende Staat optree namens 'n onderneming van die ander Kontrakterende Staat, word daardie onderneming geag 'n permanente saak in eersgenoemde Kontrakterende Staat te hê ten opsigte van enige bedrywighede wat daardie persoon vir die onderneming hanteer, indien sodanige persoon:

- (a) in daardie Staat gesag het en gewoonlik uitoefen om kontrakte in die naam van die onderneming aan te gaan, tensy die bedrywighede van sodanige persoon beperk is tot dié in paragraaf 4 genoem, wat, indien dit deur 'n vaste besigheidsplek uitgeoefen word, hierdie vaste besigheidsplek nie ingevolge die bepalings van daardie paragraaf 'n permanente saak sal maak nie; of
- (b) geen sodanige gesag het nie maar gewoonlik in eersgenoemde Staat 'n voorraad goedere of handelsware in stand hou waaruit sodanige persoon gereeld goedere of handelsware namens die onderneming lewer.

6. Ondanks die voorgaande bepalings van hierdie Artikel word 'n versekeringsonderneming van 'n Kontrakterende Staat, uitgesonderd met betrekking tot herversekering, geag 'n permanente saak in die ander Kontrakterende Staat te hê indien hy premies invorder in die gebied van daardie ander Staat of risiko's daarin verseker deur 'n ander persoon as 'n agent met onafhanklike status op wie paragraaf 7 van toepassing is.

7. 'n Onderneming van 'n Kontrakterende Staat word nie geag 'n permanente saak in die ander Kontrakterende Staat te hê bloot omdat hy in daardie ander Staat deur 'n makelaar, algemene kommissieagent of enige ander agent met onafhanklike status besigheid dryf nie, met dien verstande dat sulke persone in die gewone loop van hulle besigheid handel. Wanneer die bedrywighede van so 'n agent egter in geheel of bykans in geheel ten bate van daardie onderneming toegewy is, en voorwaardes tussen daardie onderneming en die agent in hulle kommersiële en finansiële verhoudings gestel of gehef word wat verskil van dié wat tussen onafhanklike ondernemings gestel sou word, word sodanige agent nie as 'n agent met onafhanklike status binne die betekenis van hierdie paragraaf beskou nie.

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

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

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7

Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that 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:

- (a) that permanent establishment;
- (b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or
- (c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.

However, the profits derived from the sales or activities described in subparagraphs (b) and (c) shall not be taxable in the other Contracting State if the enterprise demonstrates that such sales or activities have been carried out for reasons other than obtaining a benefit under this Agreement.

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.

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

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

Artikel 7

Besigheidswinste

1. Die winste van 'n onderneming van 'n Kontrakterende Staat is net in daardie Staat belasbaar, tensy die onderneming in die ander Kontrakterende Staat besigheid dryf deur 'n permanente saak wat daarin geleë is. Indien die onderneming besigheid dryf soos voormeld, kan die wins van die onderneming in die ander Staat belas word maar net soveel daarvan as wat toeskryfbaar is aan:

- (a) daardie permanente saak;
- (b) verkope in daardie ander Staat van goedere of handelsware van dieselfde of 'n soortgelyke soort as dié wat deur daardie permanente saak verkoop word; of
- (c) ander besigheidsbedrywighede wat in daardie ander Staat uitgevoer word van dieselfde of 'n soortgelyke soort as dié wat deur daardie permanente saak verrig word.

Die winste verkry uit die verkope of bedrywighede in subparagrawe (b) en (c) beskryf, is egter nie in die ander Kontrakterende Staat belasbaar nie indien die onderneming aantoon dat sodanige verkope of bedrywighede uitgevoer is om ander redes as om 'n voordeel ingevolge hierdie Ooreenkoms te verkry.

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 hy na verwagting sou kon maak as hy 'n aparte en afsonderlike onderneming was wat met dieselfde of soortgelyke bedrywighede besig is onder dieselfde of soortgelyke toestande en heeltemal onafhanklik optree teenoor die onderneming waarvan hy 'n permanente saak is.

3. By die vasstelling van die winste van 'n permanente saak word uitgawes wat vir die doeleindes van die besigheid van die permanente saak aangegaan is, insluitende uitvoerende en algemene administratiewe uitgawes aldus aangegaan, as aftrekkings toegelaat, hetsy in die Staat waarin die permanente saak geleë is of elders. Geen sodanige aftrekking word egter toegelaat nie ten opsigte van bedrae, as daar is, wat die permanente saak aan die hoofkantoor van die onderneming of enige van sy ander kantore betaal (behalwe vir die 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, uitgesonderd in die geval van 'n bankonderneming, by wyse van rente op gelde wat aan die permanente saak geleen is. Insgelyks word daar by die vasstelling van die winste van 'n permanente saak geen ag geslaan nie op bedrae (behalwe vir die terugbetaling van werklike uitgawes) wat deur die permanente saak teen die hoofkantoor van die onderneming of enige van sy ander kantore gehef word 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, uitgesonderd in die geval van 'n bankonderneming, by wyse van rente op gelde wat aan die hoofkantoor van die onderneming of enige van sy ander kantore geleen is.

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 Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

Shipping and Air Transport

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

2. Profits of an enterprise of a Contracting State from the operation of ships in international traffic may be taxed in that State. However, such profits derived from sources within the other Contracting State may also be taxed in that other State provided that the tax so charged in that other State shall be reduced by 50 per cent.

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

4. The provisions of paragraphs 1 and 2 shall apply to profits 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.

5. The provisions of paragraphs 1 and 2 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

4. In soverre dit in 'n Kontrakterende Staat gebruiklik is om die winste wat aan 'n permanente saak toegeskryf moet word, vas te stel op die grondslag van 'n toedeling van die totale winste van die onderneming aan sy onderskeie dele, belet niks in paragraaf 2 daardie Kontrakterende Staat om die winste wat belas moet word, vas te stel deur sodanige toedeling as wat gebruiklik is 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 wins word aan 'n permanente saak toegeskryf nie as gevolg van die blote aankoop deur daardie permanente saak van goedere of handelsware vir die onderneming.

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

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

Artikel 8

Skeeps- en Lugvervoer

1. Wins van 'n onderneming van 'n Kontrakterende Staat uit die bedryf van lugvaartuie in internasionale verkeer is net in daardie Staat belasbaar.

2. Wins van 'n onderneming van 'n Kontrakterende Staat uit die bedryf van skepe in internasionale verkeer kan in daardie Staat belas word. Sulke wins afkomstig uit bronne in die ander Kontrakterende Staat kan egter ook in daardie ander Staat belas word, met dien verstande dat die belasting wat aldus in daardie ander Staat gehef word, met 50 persent verminder moet word.

3. Vir doeleindes van hierdie Artikel sluit wins uit die bedryf van skepe of lugvaartuie in internasionale verkeer wins in wat verkry word uit die verhuring op 'n sonder-bemannings-basis van skepe of lugvaartuie wat in internasionale verkeer gebruik word, indien sodanige wins bykomstig is by die wins waarop die bepalings van paragrawe 1 en 2 van toepassing is.

4. Die bepalings van paragrawe 1 en 2 is van toepassing op wins uit die gebruik of verhuring van houers (insluitende treilers, vragskuite en verwante toerusting vir die vervoer van houers) wat vir die vervoer van goedere of handelsware in internasionale verkeer gebruik word.

5. Die bepalings van paragrawe 1 en 2 is ook van toepassing op wins uit deelname aan 'n poel, 'n gesamentlike besigheid of 'n internasionale bedryfsagentskap.

Article 9

Associated Enterprises

1. Where

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

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

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

3. The provisions of paragraph 2 shall not apply where judicial, administrative or other legal proceedings have resulted in a final ruling that by actions giving rise to an adjustment of profits under paragraph 1, one of the enterprises concerned is liable to penalty with respect to fraud, gross negligence or wilful default.

Article 10

Dividends

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

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 10 per cent of the gross amount of the dividends.

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

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

Artikel 9

Verwante Ondernemings

1. Waar –

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

en in enigeen van die gevalle voorwaardes tussen die twee ondernemings in hulle handels- of finansiële betrekkinge gestel of opgelê word wat verskil van dié wat tussen onafhanklike ondernemings gestel sou word, kan enige wins 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 wins van daardie onderneming ingesluit en dienoooreenkomstig belas word.

2. Waar 'n Kontrakterende Staat by die wins van 'n onderneming van daardie Staat wins insluit – en dit dienoooreenkomstig belas – waarop 'n onderneming van die ander Kontrakterende Staat in daardie ander Staat belas is en die wins aldus ingesluit wins is wat aan die onderneming van eersgenoemde Staat sou toegeval het indien die voorwaardes wat tussen die twee ondernemings gestel is, dieselfde was as dié wat tussen onafhanklike ondernemings gestel sou gewees het, moet daardie ander Staat die bedrag van die belasting wat hy op daardie wins hef, toepaslik aanpas. By die vasstelling van sodanige aanpassing moet daar behoorlik ag geslaan word op die ander bepalings van hierdie Ooreenkoms en moet die bevoegde owerhede van die Kontrakterende State met mekaar oorleg pleeg indien nodig.

3. Die bepalings van paragraaf 2 is nie van toepassing nie waar geregtelike, administratiewe of ander regsverrigtinge gelei het tot 'n finale beslissing dat, deur stappe wat tot 'n aanpassing van wins ingevolge paragraaf 1 lei, een van die betrokke ondernemings vir 'n boete aanspreeklik is met betrekking tot bedrog, growwe nalatigheid of opsetlike versuim.

Artikel 10

Dividende

1. Dividende wat deur 'n maatskappy wat 'n inwoner van 'n Kontrakterende Staat is, aan 'n inwoner van die ander Kontrakterende Staat betaal word, 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 wel ooreenkomstig die wette van daardie Staat, maar as die voordelige eienaar van die dividende 'n inwoner van die ander Kontrakterende Staat is, mag die belasting wat aldus gehef word, nie meer wees nie as 10 persent van die bruto bedrag van die dividende.

Die bevoegde owerhede van die Kontrakterende State moet by onderlinge ooreenkoms besluit oor die wyse van toepassing van hierdie beperkings.

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

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

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

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except in so far as such dividends are paid to a resident of that other State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company’s undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11

Interest

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

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 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. The term “interest” as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor’s profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

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

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

4. Die bepalings van paragrawe 1 en 2 is nie van toepassing nie indien die voordelige eienaar van die dividende, wat 'n inwoner van 'n Kontrakterende Staat is, in die ander Kontrakterende Staat waarvan die maatskappy wat die dividende betaal, 'n inwoner is, besigheid dryf deur middel van 'n permanente saak wat daarin geleë is, of in daardie ander Staat onafhanklike persoonlike dienste lewer vanuit 'n vaste basis wat daarin geleë is, en die aandeelhouding ten opsigte waarvan die dividende betaal word, effektief aan sodanige permanente saak of vaste basis verbonde is. In sodanige geval is die bepalings van Artikel 7 of Artikel 14, na gelang van die geval, van toepassing.

5. Waar 'n maatskappy wat 'n inwoner van 'n Kontrakterende Staat is, wins of inkomste uit die ander Kontrakterende Staat verkry, hef daardie ander Staat geen belasting op die dividende wat deur die maatskappy betaal word nie, uitgesonderd in soverre sodanige dividende aan 'n inwoner van daardie ander Staat betaal word of in soverre die aandeelhouding ten opsigte waarvan die dividende betaal word, effektief verbonde is aan 'n permanente saak of 'n vaste basis wat in daardie ander Staat geleë is, en onderwerp hy ook nie die maatskappy se onuitgekeerde wins aan 'n belasting op onuitgekeerde wins nie, selfs al bestaan die dividende wat betaal word of die onuitgekeerde wins in geheel of gedeeltelik uit wins 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 in die Kontrakterende Staat waarin dit ontstaan en in ooreenstemming met die wette van daardie Staat belas word, maar as die voordelige eienaar van die rente 'n inwoner van die ander Kontrakterende Staat is, mag die belasting wat aldus gehef word, nie meer as 10 persent van die bruto bedrag van die rente wees nie.

Die bevoegde owerhede van die Kontrakterende State moet deur onderlinge ooreenkoms besluit oor die wyse van toepassing van hierdie beperking.

3. Die uitdrukking "rente" soos in hierdie Artikel gebruik, beteken inkomste uit alle soorte skuldeise, hetsy deur 'n verband gesekureer al dan nie en hetsy dit 'n reg inhou om in die skuldenaar se wins te deel al dan nie, en in die besonder inkomste uit staatseffekte en inkomste uit obligasies of skuldbriewe, insluitende premies en pryse verbonde aan sodanige effekte, obligasies of skuldbriewe. Boeteheffings vir laat betaling word vir die doel van hierdie Artikel nie as rente beskou nie.

4. Die bepalings van paragrawe 1 en 2 is nie van toepassing nie indien die voordelige eienaar van die rente wat 'n inwoner van 'n Kontrakterende Staat is, in die ander Kontrakterende Staat waarin die rente ontstaan, besigheid dryf deur 'n permanente saak wat daarin geleë is, of in daardie ander Staat onafhanklike persoonlike dienste lewer vanuit 'n vaste basis wat daarin geleë is en die skuldeis ten opsigte waarvan die rente betaal word, effektief aan sodanige permanente saak of vaste basis verbonde is. In sodanige geval is die bepalings van Artikel 7 of Artikel 14, na gelang van die geval, van toepassing.

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

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

Article 12

Royalties

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

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

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

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, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

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 or a fixed base with which the right or property in respect of which the royalties are paid is effectively connected, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

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

6. Waar, vanweë 'n besondere verhouding tussen die betaler en die voordelige eienaar of tussen hulle albei en 'n ander persoon, die bedrag van die rente, met inagneming van die skuldeis waarvoor dit betaal word, meer is as die bedrag waarop die betaler en die voordelige eienaar sou ooreengekom het by ontstentenis van so 'n verhouding, is die bepalings van hierdie Artikel net op laasgenoemde bedrag van toepassing. In sodanige geval bly die oormaatdeel van die betalings belasbaar ooreenkomstig die wette van elk van die Kontrakterende State, met behoorlike inagneming van die ander bepalings van hierdie Ooreenkoms.

Artikel 12

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 in die Kontrakterende Staat waarin dit ontstaan en ooreenkomstig die wette van daardie Staat belas word, maar as die voordelige eienaar van die tantième 'n inwoner van die ander Kontrakterende Staat is, mag die belasting wat aldus gehef word, nie meer as 10 persent van die bruto bedrag van die tantième wees nie.

Die bevoegde owerhede van die Kontrakterende State moet deur onderlinge ooreenkoms besluit oor die wyse van toepassing van hierdie beperking.

3. Die uitdrukking "tantième" soos dit in hierdie Artikel gebruik word, beteken betalings van enige soort wat ontvang word as vergoeding vir die gebruik, of die reg op die gebruik, van enige outeursreg op letterkundige, artistieke of wetenskaplike werk (insluitende kinematograaffilms en films, bande of skywe vir radio- of televisie-uitsending), enige patent, handelsmerk, ontwerp of model, plan, geheime formule of proses, of vir inligting rakende nywerheids-, handels- of wetenskaplike ondervinding.

4. Die bepalings van paragrawe 1 en 2 is nie van toepassing nie indien die voordelige eienaar van die tantième wat 'n inwoner van 'n Kontrakterende Staat is, in die ander Kontrakterende Staat waarin die tantième ontstaan, besigheid dryf deur middel van 'n permanente saak wat daarin geleë is, of in daardie ander Staat onafhanklike persoonlike dienste lewer vanuit 'n vaste basis wat daarin geleë is, en die reg of eiendom ten opsigte waarvan die tantième betaal word, effektief aan sodanige permanente saak of vaste basis verbonde is. In so 'n geval is die bepalings van Artikel 7 of Artikel 14, na gelang van die geval, 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, in 'n Kontrakterende Staat 'n permanente saak of 'n vaste basis het waaraan die reg of eiendom ten opsigte waarvan die tantième betaal word, effektief verbonde is en sodanige tantième deur sodanige permanente saak of vaste basis gedra word, word sodanige tantième egter geag te ontstaan in die Staat waarin die permanente saak of vaste basis geleë is.

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

Article 13

Capital Gains

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

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

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

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

5. Gains from the alienation of any property other than that referred to in the preceding paragraphs of this Article, shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14

Independent Personal Services

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State:

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

6. Waar, as gevolg van 'n spesiale verhouding tussen die betaler en die voordelige eienaar of tussen hulle albei en 'n ander persoon, die bedrag van die tantième, met inagneming van die gebruik, reg of inligting waarvoor dit betaal word, meer is as die bedrag waarop die betaler en die voordelige eienaar sou ooreengekom het by ontstentenis van so 'n verhouding, is die bepalings van hierdie Artikel net op laasgenoemde bedrag van toepassing. In so 'n geval bly die oormaatdeel van die betalings belasbaar ooreenkomstig die wette van elk van die Kontrakterende State, met behoorlike inagneming van die ander bepalings van hierdie Ooreenkoms.

Artikel 13

Kapitaalwins

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

2. Wins uit die vervreemding van roerende eiendom wat deel uitmaak van die besigheidseiendom van 'n permanente saak wat 'n onderneming van 'n Kontrakterende Staat in die ander Kontrakterende Staat het, of van roerende eiendom behorende by 'n vaste basis tot beskikking van 'n inwoner van 'n Kontrakterende Staat in die ander Kontrakterende Staat vir die doel van die lewering van onafhanklike persoonlike dienste, insluitende sodanige wins uit die vervreemding van so 'n permanente saak (alleen of met die hele onderneming) of van so 'n vaste basis, kan in daardie ander Staat belas word.

3. Wins van 'n onderneming van 'n Kontrakterende Staat uit die vervreemding van skepe of lugvaartuie wat in internasionale verkeer bedryf word of roerende eiendom wat op die bedryf van sodanige skepe of lugvaartuie betrekking het, is net in daardie Staat belasbaar.

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

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

Artikel 14

Onafhanklike Persoonlike Dienste

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

- (a) indien die individu 'n vaste basis in die ander Kontrakterende Staat gereeld beskikbaar het vir die doel om die individu se bedrywighede te verrig; in daardie geval mag net soveel van die inkomste as wat aan daardie vaste basis toeskryfbaar is, in daardie ander Kontrakterende Staat belas word; of

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

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

Article 15

Dependent Personal Services

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

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

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in 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 or fixed base which the employer has in the other State.

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

Article 16

Directors' Fees

Directors' fees and other similar payments derived by a resident of a Contracting State in that person's capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

- (b) indien die individu se verblyf in die ander Kontrakterende Staat vir 'n tydperk of tydperke is wat gesamentlik 183 of meer dae in enige tydperk van twaalf maande is wat in die betrokke fiskale jaar begin of eindig; in daardie geval mag net soveel van die inkomste as wat verkry word uit die bedrywighede wat in daardie ander Staat verrig word, in daardie ander Staat belas word.

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

Artikel 15

Afhanklike Persoonlike Dienste

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

2. Ondanks die bepalings van paragraaf 1 is besoldiging wat deur 'n inwoner van 'n Kontrakterende Staat verkry word ten opsigte van 'n diensbetrekking wat in die ander Kontrakterende Staat uitgeoefen word, net in eersgenoemde Staat belasbaar indien:

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

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

Artikel 16

Direkteursgelde

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

Article 17

Artistes and Sportspersons

1. Notwithstanding the provisions of Articles 7, 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from that person's personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in that person's capacity as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

Article 18

Pensions and Annuities

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration, and annuities, arising in a Contracting State and paid to a resident of the other Contracting State, may be taxed in the first-mentioned 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 paid and other payments made under a public scheme which is part of the social security system of a Contracting State or a political subdivision or a local authority thereof shall be taxable only in that State.

Article 19

Government Service

1. (a) Salaries, wages and other similar remuneration 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.

Artikel 17

Artiste en Sportlui

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

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

Artikel 18

Pensioene en Annuïteite

1. Behoudens die bepalings van paragraaf 2 van Artikel 19 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 'n persoon se lewe of gedurende 'n gespesifiseerde of vasstelbare tydperk betaalbaar word ingevolge 'n verpligting om die betalings te doen in ruil vir voldoende en volle teenprestasie in geld of geldwaarde.

3. Ondanks die bepalings van paragraaf 1 is pensioene en ander betalings ingevolge 'n openbare skema wat deel is van die bestaansbeveiligingstelsel van 'n Kontrakterende Staat of 'n staatkundige onderverdeling of 'n plaaslike owerheid daarvan, net in daardie Staat belasbaar.

Artikel 19

Regeringsdiens

1. (a) Salarisse, lone en ander soortgelyke besoldiging wat deur 'n Kontrakterende Staat of 'n staatkundige onderverdeling of 'n plaaslike owerheid daarvan aan 'n individu betaal word ten opsigte van dienste gelewer aan daardie Staat of onderverdeling of owerheid, is net in daardie Staat belasbaar.

(b) Sodanige salarisse, lone en ander soortgelyke besoldiging is egter in die ander Kontrakterende Staat belasbaar slegs as 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 uitsluitlik met die doel om die dienste te lewer nie.

2. (a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration 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 pensions and other similar remuneration 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 15, 16, 17 and 18 shall apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 20

Professors, Teachers and Researchers

1. An individual who is or was immediately before visiting a Contracting State a resident of the other Contracting State, and who, at the invitation of any university, college, school or other similar educational institution which is recognised by the competent authority in the first-mentioned Contracting State, visits that first-mentioned Contracting State for a period not exceeding two years solely for the purpose of teaching or research or both at such educational institution shall be exempt from tax in the first-mentioned Contracting State on any remuneration for such teaching or research, provided that such remuneration is derived from outside the first-mentioned Contracting State.

2. The provisions of paragraph 1 shall not apply to income from research if such research is undertaken by the individual primarily for the private benefit of a specific person or persons.

Article 21

Students

Payments which a student, business trainee or apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of the student, business trainee or apprentice's education or training receives for the purpose of the student, business trainee or apprentice's maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

Article 22

Other Income

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

2. (a) Ondanks die bepalings van paragraaf 1 is pensioene en ander soortgelyke besoldiging wat betaal word deur, of uit fondse geskep deur, 'n Kontrakterende Staat of 'n staatkundige onderverdeling of 'n plaaslike owerheid daarvan aan 'n individu ten opsigte van dienste gelewer aan daardie Staat of onderverdeling of owerheid, net in daardie Staat belasbaar.
- (b) Sodanige pensioene en ander soortgelyke besoldiging is egter slegs in die ander Kontrakterende Staat belasbaar indien die individu 'n inwoner en 'n burger van daardie Staat is.
3. Die bepalings van Artikels 15, 16, 17 en 18 is van toepassing op salarisse, lone, pensioene en ander soortgelyke besoldiging ten opsigte van dienste gelewer in verband met 'n besigheid wat gedryf word deur 'n Kontrakterende Staat of 'n staatkundige onderverdeling of 'n plaaslike owerheid daarvan.

Artikel 20

Dosente, Onderwysers en Navorsers

1. 'n Individu wat onmiddellik voor 'n besoek aan 'n Kontrakterende Staat 'n inwoner van die ander Kontrakterende Staat is of was en wat, op uitnodiging van 'n universiteit, kollege, skool of ander soortgelyke opvoedkundige inrigting wat deur die bevoegde owerheid in eersgenoemde Kontrakterende Staat erken word, daardie eersgenoemde Kontrakterende Staat vir 'n tydperk van hoogstens twee jaar besoek uitsluitlik met die doel van onderrig of navorsing of albei aan sodanige opvoedkundige inrigting, word in eersgenoemde Kontrakterende Staat vrygestel van belasting op enige besoldiging vir sodanige onderrig of navorsing, met dien verstande dat sodanige besoldiging van buite eersgenoemde Kontrakterende Staat verkry word.
2. Die bepalings van paragraaf 1 is nie op inkomste uit navorsing van toepassing nie indien sodanige navorsing deur die individu gedoen word hoofsaaklik tot private voordeel van 'n bepaalde persoon of persone.

Artikel 21

Studente

Betalings wat 'n student, besigheidsleerling of vakleerling, wat onmiddellik voor 'n besoek aan 'n Kontrakterende Staat 'n inwoner van die ander Kontrakterende Staat is of was en wat uitsluitlik vir die doel van die student, besigheidsleerling of vakleerling se opvoeding of opleiding in eersgenoemde Staat teenwoordig is, ontvang vir die doel van die student, besigheidsleerling of vakleerling se onderhoud, opvoeding of opleiding, word nie in daardie Staat belas nie, met dien verstande dat sodanige betalings uit bronne buite daardie Staat ontstaan.

Artikel 22

Ander Inkomste

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

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

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 Agreement and arising in the other Contracting State may also be taxed in that other State.

Article 23

Elimination of Double Taxation

Double taxation shall be eliminated as follows:

- (a) in Kenya, where a resident of Kenya receives income which, in accordance with the provisions of this Agreement, may be taxed in both Contracting States, then Kenya shall allow as a deduction from the tax on the income of that person, an amount equal to the tax paid in South Africa. Such a deduction, however, shall not exceed that part of the Kenyan tax, as computed before the deduction is given, which is attributable to the income derived from South Africa;
- (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), Kenyan tax paid by residents of South Africa in respect of income taxable in Kenya, in accordance with the provisions of this Agreement, shall be deducted from the taxes due according to South African fiscal law. Such deduction shall not, however, exceed an amount which bears to the total South African tax payable the same ratio as the income concerned bears to the total income.

Article 24

Non-discrimination

1. 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. Die bepalings van paragraaf 1 is nie op inkomste van toepassing nie, uitgesonderd 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 wat daarin geleë is, of in daardie ander Staat onafhanklike persoonlike dienste verrig vanaf 'n vaste basis wat daarin geleë is, en die reg of eiendom ten opsigte waarvan die inkomste betaal word, effektief aan sodanige permanente saak of vaste basis verbonde is. In so 'n geval is die bepalings van Artikel 7 of Artikel 14, na gelang van die geval, 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 Ooreenkoms behandel word nie en in die ander Kontrakterende Staat ontstaan, ook in daardie ander Staat belas word.

Artikel 23

Uitskakeling van Dubbele Belasting

Dubbele belasting word soos volg uitgeskakel:

- (a) in Kenia, waar 'n inwoner van Kenia inkomste ontvang wat, ooreenkomstig die bepalings van hierdie Ooreenkoms, in albei Kontrakterende State belas mag word, moet Kenia 'n bedrag gelyk aan die belasting wat in Suid-Afrika betaal word, toelaat as 'n aftrekking van die belasting op inkomste van daardie persoon. So 'n aftrekking mag egter nie meer wees nie as die deel van die Keniaanse belasting, soos bereken voordat die aftrekking toegestaan is, wat toeskryfbaar is aan die inkomste wat uit Suid-Afrika verkry word;
- (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 raak nie), word Keniaanse belasting wat deur inwoners van Suid-Afrika betaal word ten opsigte van inkomste wat in Kenia belasbaar is, ooreenkomstig die bepalings van hierdie Ooreenkoms, afgetrek van die belastings wat ooreenkomstig die Suid-Afrikaanse fiskale reg verskuldig is. Sodanige aftrekking mag egter nie meer wees nie as 'n bedrag wat tot die totale Suid-Afrikaanse belasting betaalbaar in dieselfde verhouding staan as waarin die betrokke inkomste tot die totale inkomste staan.

Artikel 24

Niediskriminasie

1. Burgers van 'n Kontrakterende Staat mag nie in die ander Kontrakterende Staat onderwerp word aan enige belasting of enige vereiste in verband daarmee nie wat anders of knellender is as die belasting en verwante vereistes waaraan burgers van daardie ander Staat in dieselfde omstandighede, in die besonder met betrekking tot verblyf, onderwerp is of kan word nie. Hierdie bepaling is ondanks die bepalings van Artikel 1 ook van toepassing op persone wat nie inwoners van een van of albei die Kontrakterende State is nie.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
3. Except where the provisions of paragraph 1 of Article 9, paragraph 6 of Article 11 or paragraph 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.
4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.
5. Nothing contained in this Article shall prevent South Africa from imposing on the profits attributable to a permanent establishment in South Africa of a company, which is a resident of Kenya, a tax at a rate which does not exceed the rate of normal tax on companies by more than five percentage points.
6. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Article 25

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for that person in taxation not in accordance with the provisions of this Agreement, that person may, irrespective of the remedies provided by the domestic law of those States, present a case to the competent authority of the Contracting State of which the person is a resident or, if the case comes under paragraph 1 of Article 24, to that of the Contracting State of which the person is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

2. Die belasting op 'n permanente saak wat 'n onderneming van 'n Kontrakterende Staat in die ander Kontrakterende Staat het, word nie in daardie ander Staat minder gunstig gehef as die belasting wat gehef word op ondernemings van daardie ander Staat wat dieselfde bedrywighede beoefen nie. Hierdie bepaling word nie so uitgelê dat dit 'n Kontrakterende Staat verplig om aan inwoners van die ander Kontrakterende Staat enige persoonlike korting, verligting en vermindering vir belastingdoeleindes toe te staan op grond van burgerlike status of gesinsverantwoordelikhede wat hy aan sy eie inwoners toestaan nie.

3. Uitgesonderd waar die bepalings van paragraaf 1 van Artikel 9, paragraaf 6 van Artikel 11 of paragraaf 6 van Artikel 12 van toepassing is, is rente, tantième en ander betalings deur 'n onderneming van 'n Kontrakterende Staat aan 'n inwoner van die ander Kontrakterende Staat, met die doel om die belasbare wins van sodanige onderneming te bepaal, aftrekbaar op dieselfde voorwaardes asof dit aan 'n inwoner van eersgenoemde Staat betaal is.

4. Ondernemings van 'n Kontrakterende Staat, waarvan die kapitaal regstreeks of onregstreeks in geheel of gedeeltelik deur een of meer inwoners van die ander Kontrakterende Staat besit of beheer word, word nie in eersgenoemde Staat onderwerp aan enige belasting of enige vereiste in verband daarmee wat anders of knellender is as die belasting en verwante vereistes waaraan ander soortgelyke ondernemings van eersgenoemde Staat onderhewig is of kan wees nie.

5. Geen bepaling van hierdie Artikel verhinder Suid-Afrika om op die wins toeskryfbaar aan 'n permanente saak in Suid-Afrika van 'n maatskappy wat 'n inwoner van Kenia is, 'n belasting teen 'n koers wat hoogstens vyf persentasiepunte hoër as die koers van normale belasting op maatskappye is, te hef nie.

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

Artikel 25

Prosedure vir Onderlinge Ooreenkoms

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

2. Die bevoegde owerheid moet, indien die beswaar na sy oordeel geregverdig voorkom en indien hy self nie 'n bevredigende oplossing kan kry nie, probeer om die saak by onderlinge ooreenkoms met die bevoegde owerheid van die ander Kontrakterende Staat te besleg met die oog op die vermyding van belasting wat nie in ooreenstemming met die Ooreenkoms is nie. Enige ooreenkoms wat bereik word, moet toegepas word ondanks enige tydbepelings in die landsreg van die Kontrakterende State.

3. Die bevoegde owerhede van die Kontrakterende State moet poog om enige moeilikhede of twyfel wat oor die vertolking of toepassing van die Ooreenkoms ontstaan, deur onderlinge ooreenkoms te besleg. Hulle kan ook saam oorleg pleeg vir die uitskakeling van dubbele belasting in gevalle waarvoor die Ooreenkoms nie voorsiening maak nie.

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. The competent authorities, through consultations, shall develop appropriate bilateral procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article. In addition, a competent authority may devise appropriate unilateral procedures, conditions, methods and techniques to facilitate the above-mentioned bilateral actions and the implementation of the mutual agreement procedure.

Article 26

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as may be necessary for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions in so far as the taxation thereunder is not contrary to the Agreement, in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchanges of information shall be made, including, where appropriate, exchanges of information regarding tax avoidance.

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

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

4. Die bevoegde owerhede van die Kontrakterende State kan regstreeks, insluitende deur 'n gesamentlike kommissie bestaande uit hulself of hulle verteenwoordigers, met mekaar kommunikeer met die doel om tot 'n ooreenkoms te geraak soos in die voorgaande paragrawe beoog. Die bevoegde owerhede moet deur oorlegpleging gepaste bilaterale prosedures, voorwaardes, metodes en tegnieke ontwikkel vir die implementering van die prosedure vir onderlinge ooreenkoms waarvoor hierdie Artikel voorsiening maak. Voorts kan 'n bevoegde owerheid gepaste unilaterale prosedures, voorwaardes, metodes en tegnieke ontwikkel om bogenoemde bilaterale optrede en die implementering van die prosedure vir onderlinge ooreenkoms te fasiliteer.

Artikel 26

Uitruil van Inligting

1. Die bevoegde owerhede van die Kontrakterende State moet die inligting uitruil wat nodig is om die bepalings van hierdie Ooreenkoms uit te voer of vir die administrasie of toepassing van die plaaslike wette rakende belastings van alle soorte en beskrywings wat namens die Kontrakterende State of hulle staatkundige onderverdelings gehef word in soverre die belasting daarkragtens nie strydig met die Ooreenkoms is nie, in die besonder vir die voorkoming van bedrog of die ontduiking van sodanige belastings. Die uitruil van inligting word nie deur Artikels 1 en 2 beperk nie.

2. Enige inligting wat ingevolge paragraaf 1 deur 'n Kontrakterende Staat ontvang word, word as geheim behandel op dieselfde wyse as inligting wat ingevolge die plaaslike wette van daardie Staat verkry is en mag bekend gemaak word slegs aan persone of owerhede (insluitende howe en administratiewe liggame) gemoeid met die aanslaan of invordering van, die afdwing of vervolging ten opsigte van, die beslissing van appèlle met betrekking tot die belastings in paragraaf 1 bedoel, of toesig oor die voorgaande. Sodanige persone of owerhede mag die inligting net vir sodanige doeleindes gebruik. Hulle mag die inligting in openbare hofverrigtinge of by regterlike besluite openbaar maak.

Die bevoegde owerhede moet deur oorlegpleging gepaste voorwaardes, metodes en tegnieke ontwikkel rakende die aangeleenthede ten opsigte waarvan sodanige uitruiling van inligting moet geskied, insluitende, waar gepas, die uitruil van inligting rakende belastingvermyding.

3. In geen geval mag die bepalings van paragrawe 1 en 2 so uitgelê word dat dit aan 'n Kontrakterende Staat die verpligting oplê:

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

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 27

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, in so far as the taxation thereunder is not contrary to this Agreement 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.

4. Indien inligting in ooreenstemming met hierdie Artikel deur 'n Kontrakterende Staat aangevra word, moet die ander Kontrakterende Staat sy inligtinginsamelingsmaatreëls gebruik om die verlangde inligting te verkry, selfs al het daardie ander Staat nie sodanige inligting vir sy eie belastingdoeleindes nodig nie. Die verpligting vervat in die voorgaande sin is onderhewig aan die beperkings van paragraaf 3, maar sodanige beperkings mag in geen geval so uitgelê word dat dit 'n Kontrakterende Staat in staat stel om te weier om inligting te verstrek bloot omdat hy geen plaaslike belang by sodanige inligting het nie.

5. In geen geval mag die bepalings van paragraaf 3 so uitgelê word dat dit 'n Kontrakterende Staat in staat stel om te weier om inligting te verstrek nie bloot omdat die inligting deur 'n bank, ander finansiële instelling, benoemde of persoon wat in 'n agentskap of 'n fidusiêre hoedanigheid optree, gehou word of omdat dit met eienaarskapbelange in 'n persoon verband hou.

Artikel 27

Bystand met die Invordering van Belastings

1. Die Kontrakterende State moet aan mekaar bystand verleen met die invordering van inkomste-eise. Hierdie bystand word nie deur Artikels 1 en 2 beperk nie. Die bevoegde owerhede van die Kontrakterende State kan by onderlinge ooreenkoms besluit oor die wyse van toepassing van hierdie Artikel.

2. Die uitdrukking "inkomste-eis" soos in hierdie Artikel gebruik, beteken 'n bedrag wat verskuldig is ten opsigte van belastings van elke soort en beskrywing wat namens die Kontrakterende State of hulle staatkundige onderverdelings of plaaslike owerhede gehef is, in soverre die belasting daarkragtens nie strydig is nie met hierdie Ooreenkoms of enige ander instrument waarby die Kontrakterende State partye is, asook rente, administratiewe boetes en koste van invordering of bewaring rakende sodanige bedrag.

3. Wanneer 'n inkomste-eis van 'n Kontrakterende Staat ingevolge die wette van daardie Staat afdwingbaar is en verskuldig is deur 'n persoon wat, op daardie tydstip, ingevolge die wette van daardie Staat nie die invordering daarvan kan voorkom nie, moet daardie inkomste-eis, op versoek van die bevoegde owerheid van daardie Staat, vir doeleindes van invordering aanvaar word deur die bevoegde owerheid van die ander Kontrakterende Staat. Daardie inkomste-eis moet deur daardie ander Staat ingevorder word in ooreenstemming met die bepalings van sy wette van toepassing op die afdwinging en invordering van sy eie belastings asof die inkomste-eis 'n inkomste-eis van daardie ander Staat is.

4. Wanneer 'n inkomste-eis van 'n Kontrakterende Staat 'n eis is ten opsigte waarvan daardie Staat ingevolge sy reg bewaringsmaatreëls kan tref om die invordering daarvan te verseker, moet daardie inkomste-eis op versoek van die bevoegde owerheid van daardie Staat aanvaar word met die doel om bewaringsmaatreëls te tref deur die bevoegde owerheid van die ander Kontrakterende Staat. Daardie ander Staat moet bewaringsmaatreëls ten opsigte van daardie inkomste-eis tref in ooreenstemming met die bepalings van sy wette asof die inkomste-eis 'n inkomste-eis van daardie ander Staat is selfs al is die inkomste-eis, op die tydstip wanneer sodanige maatreëls toegepas word, nie in eersgenoemde Staat afdwingbaar nie of al is dit verskuldig deur 'n persoon wat 'n reg het om die invordering daarvan te voorkom.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 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 for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

Article 28

Members of Diplomatic Missions and Consular Posts

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

5. Ondanks die bepalings van paragrafe 3 en 4 mag 'n inkomste-eis wat vir doeleindes van paragraaf 3 of 4 deur 'n Kontrakterende Staat aanvaar is, nie in daardie Staat aan die tydsbepelings onderhewig wees of mag daar nie daaraan enige prioriteit verleen word wat van toepassing is op 'n inkomste-eis ingevolge die wette van daardie Staat as gevolg van sy aard as sodanig nie. Voorts mag 'n inkomste-eis wat vir doeleindes van paragraaf 3 of 4 deur 'n Kontrakterende Staat aanvaar is, nie in daardie Staat enige prioriteit hê wat ingevolge die wette van die ander Kontrakterende Staat op daardie inkomste-eis van toepassing is nie.

6. Verrigtinge met betrekking tot die bestaan, geldigheid of bedrag van 'n inkomste-eis 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 gerig is en voordat die ander Kontrakterende Staat die betrokke inkomste-eis ingevorder en aan eersgenoemde Staat oorbetaal het, die betrokke inkomste-eis ophou om:

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

moet die bevoegde owerheid van eersgenoemde Staat die bevoegde owerheid van die ander Staat onverwyld in kennis stel van daardie feit, en volgens 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 so uitgelê word dat dit aan 'n Kontrakterende Staat die verpligting oplê:

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

Artikel 28

Lede van Diplomatieke Missies en Konsulêre Poste

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

Article 29

Entry into Force

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

2. The provisions of the Agreement shall apply:

(a) in Kenya:

- (i) to taxes withheld at source, on amounts paid or accrued on or after the first day of January next following the date upon which the Agreement enters into force; and
- (ii) to other taxes, on income arising for years of income beginning on or after the first day of January next following the date upon which the Agreement enters into force;

(b) in South Africa:

- (i) 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 Agreement enters into force; and
- (ii) with regard to other taxes, in respect of years of assessment beginning on or after the first day of January next following the date upon which the Agreement enters into force.

Article 30

Termination

1. This Agreement shall remain in force indefinitely but either of the Contracting States may terminate the Agreement, 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 five years after the year in which the Agreement entered into force.

2. In such event the Agreement shall cease to apply:

(a) in Kenya:

- (i) to taxes withheld at source, on amounts paid or accrued after the end of the calendar year in which such notice is given; and
- (ii) to other taxes, on income arising for years of income beginning after the end of the calendar year in which such notice is given;

Artikel 29***Inwerkingtreding***

1. Elk van die Kontrakterende State stel die ander skriftelik in kennis, deur middel van die diplomatieke kanaal, van die voltooiing van die prosedures wat ingevolge sy reg vir die inwerkingtreding van hierdie Ooreenkoms vereis word. Die Ooreenkoms tree in werking op die datum van ontvangs van die laaste van hierdie kennisgewings.

2. Die bepalings van die Ooreenkoms is van toepassing:

(a) in Kenia:

- (i) op belastings wat by die bron teruggehou word, op bedrae wat betaal word of ooploop op of na die eerste dag van Januarie wat volg op die datum waarop die Ooreenkoms van krag word; en
- (ii) op ander belastings, op inkomste wat ontstaan vir jare van inkomste beginnende op of na die eerste dag van Januarie wat volg op die datum waarop die Ooreenkoms van krag word;

(b) in Suid-Afrika:

- (i) met betrekking tot belastings wat by die bron teruggehou word, ten opsigte van bedrae wat betaal of gekrediteer word op of na die eerste dag van Januarie na die datum waarop die Ooreenkoms van krag word; en
- (ii) met betrekking tot ander belastings, ten opsigte van jare van aanslag beginnende op of na die eerste dag van Januarie na die datum waarop die Ooreenkoms van krag word.

Artikel 30***Opsegging***

1. Hierdie Ooreenkoms bly onbepaald van krag, maar enigeen van die Kontrakterende State kan die Ooreenkoms deur middel van die diplomatieke kanaal opsê deur aan die ander Kontrakterende Staat skriftelike kennis van opsegging te gee nie later nie as 30 Junie van enige kalenderjaar wat begin vyf jaar na die jaar waarin die Ooreenkoms in werking getree het.

2. In so 'n geval hou die Ooreenkoms op om van toepassing te wees:

(a) in Kenia:

- (i) op belastings wat by die bron teruggehou word, op bedrae wat betaal word of ooploop na die einde van die kalenderjaar waarin sodanige kennis gegee is; en
- (ii) op ander belastings, op inkomste wat ontstaan vir jare van inkomste beginnende na die einde van die kalenderjaar waarin sodanige kennis gegee is;

- (b) in South Africa:
- (i) 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
 - (ii) with regard to other taxes, in respect of years of assessment beginning after the end of the calendar year in which such notice is given.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have signed and sealed this Agreement in two originals in the English language, both texts being equally authentic.

DONE at Nairobi, on this 26 day of November in the year 2010.

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

**FOR THE GOVERNMENT OF
REPUBLIC OF KENYA**

- (b) in Suid-Afrika:
- (i) met betrekking tot belastinge wat by die bron teruggehou word, ten opsigte van bedrae wat betaal of gekrediteer word na die einde van die kalenderjaar waarin sodanige kennis gegee is; en
 - (ii) met betrekking tot ander belastinge, ten opsigte van jare van aanslag beginnende na die einde van die kalenderjaar waarin sodanige kennis gegee is.

TEN BEWYSE WAARVAN die ondergetekendes, behoorlik gemagtig deur hulle onderskeie Regerings, hierdie Ooreenkoms geteken en geseël het in twee oorspronklike tekste in die Engelse taal, waarvan albei tekste ewe outentiek is.

GEDOEN te Nairobi, op hede die 26 dag van November in die jaar 2010.

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

**VIR DIE REGERING VAN
DIE REPUBLIEK KENIA**

IMPORTANT Information from Government Printing Works

Dear Valued Customers,

Government Printing Works has implemented rules for completing and submitting the electronic Adobe Forms when you, the customer, submits your notice request.

Please take note of these guidelines when completing your form.

GPW Business Rules

1. No hand written notices will be accepted for processing, this includes Adobe forms which have been completed by hand.
2. Notices can only be submitted in Adobe electronic form format to the email submission address submit.egazette@gpw.gov.za. This means that any notice submissions not on an Adobe electronic form that are submitted to this mailbox will be **rejected**. National or Provincial gazette notices, where the Z95 or Z95Prov must be an Adobe form but the notice content (body) will be an attachment.
3. Notices brought into GPW by "walk-in" customers on electronic media can only be submitted in Adobe electronic form format. This means that any notice submissions not on an Adobe electronic form that are submitted by the customer on electronic media will be **rejected**. National or Provincial gazette notices, where the Z95 or Z95Prov must be an Adobe form but the notice content (body) will be an attachment.
4. All customers who walk in to GPW that wish to submit a notice that is not on an electronic Adobe form will be routed to the Contact Centre where the customer will be taken through the completion of the form by a GPW representative. Where a customer walks into GPW with a stack of hard copy notices delivered by a messenger on behalf of a newspaper the messenger must be referred back to the sender as the submission does not adhere to the submission rules.
5. All notice submissions that do not comply with point 2 will be charged full price for the notice submission.
6. The current cut-off of all Gazette's remains unchanged for all channels. (Refer to the GPW website for submission deadlines – www.gpwonline.co.za)
7. Incorrectly completed forms and notices submitted in the wrong format will be rejected to the customer to be corrected and resubmitted. Assistance will be available through the Contact Centre should help be required when completing the forms. (012-748 6200 or email info.egazette@gpw.gov.za)
8. All re-submissions by customers will be subject to the above cut-off times.
9. All submissions and re-submissions that miss the cut-off will be rejected to the customer to be submitted with a new publication date.
10. Information on forms will be taken as the primary source of the notice to be published. Any instructions that are on the email body or covering letter that contradicts the notice form content will be ignored.

You are therefore advised that effective from **Monday, 18 May 2015** should you not comply with our new rules of engagement, all notice requests will be rejected by our new system.

Furthermore, the fax number **012- 748 6030** will also be **discontinued** from this date and customers will only be able to submit notice requests through the email address submit.egazette@gpw.gov.za.

