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GOVERNMENT NOTICE

SOUTH AFRICAN REVENUE SERVICE

No. 1573

21 November 1997

INCOME TAX ACT, 1962

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF MALTA 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 Malta and has been approved by Parliament in terms of section 231 (2) of the Constitution.

GOEWERMENTSKENNISGEWING

SUID-AFRIKAANSE INKOMSTEDIENS

No. 1573

21 November 1997

INKOMSTEBELASTINGWET, 1962

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

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

AGREEMENT BETWEEN SOUTH AFRICA AND MALTA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of South Africa and the Government of Malta

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:

CHAPTER 1**SCOPE OF THE AGREEMENT****Article 1*****Personal Scope***

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

Article 2***Taxes Covered***

1. The existing taxes to which this Agreement shall apply are:

(a) in Malta:

the income tax;

(hereinafter referred to as "Malta tax");

(b) in South Africa:

- (i) the normal tax;
- (ii) the non-resident shareholders' tax; and
- (iii) the secondary tax on companies;

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

2. This Agreement shall apply also to any identical or substantially similar taxes which 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 which have been made in their respective taxation laws.

OOREENKOMS TUSSEN SUID-AFRIKA EN MALTA VIR DIE VERMYDING VAN DUBBELE BELASTING EN DIE VOORKOMING VAN FISCALE ONTDUIKING MET BETREKING TOT BELASTINGS OP INKOMSTE

Die Regering van die Republiek van Suid-Afrika en die Regering van Malta het,

Uit 'n begeerte om 'n Ooreenkoms te sluit vir die vermyding van dubbele belasting en die voorkoming van fiskale ontduiking met betrekking tot belasting op inkomste,

Soos volg ooreengekom:

HOOFSTUK I

OMVANG VAN DIE OOREENKOMS

Artikel 1

Persoonlike Omvang

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

Artikel 2

Belastings Gedek

1. Die bestaande belastingen waarop hierdie Ooreenkoms van toepassing is, is:

(a) in Malta:

die inkomstebelasting;

(hierna "Maltese belasting" genoem);

(b) in Suid-Afrika:

(i) die normale belasting;

(ii) die belasting op buitelandse aandeelhouders; en

(iii) die sekondêre belasting op maatskappye;

(hierna "Suid-Afrikaanse belasting" genoem).

2. Hierdie Ooreenkoms is ook van toepassing op enige identiese of wesenlik soortgelyke belastingen wat bykomend by of in plaas van die bestaande belastingen opgelê word na die datum van ondertekening van die Ooreenkoms. Die bevoegde owerhede van die Kontrakterende State moet mekaar in kennis stel van enige wesenlike veranderinge wat in hul onderskeie belastingwette aangebring is.

3. Notwithstanding the other provisions of this Article, this Agreement shall not apply to tax paid or payable in Malta in accordance with the provisions of subsection (13) of section 56 of the Income Tax Act (Cap. 123) concerning the chargeable income of any person engaged in the production of petroleum produced in Malta or any substantially similar provision which is imposed after the date of signature of this Agreement.

CHAPTER II

DEFINITIONS

Article 3

General Definitions

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

- (a) the term "Malta" means the Republic of Malta and, when used in a geographical sense, means the Island of Malta, the Island of Gozo and the other islands of the Maltese archipelago including the territorial waters thereof, and any area outside the territorial waters of Malta which has been or may hereafter be designated, in accordance with international law and under the law of Malta concerning the continental shelf, as an area within which the rights of Malta with respect to the seabed and subsoil and their natural resources may be exercised;
- (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 Malta or South Africa as the context requires;
- (d) the term "person" includes an individual, a company and any other body of persons;
- (e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (h) the term "competent authority" means:
 - (i) in Malta: the Minister responsible for finance or his authorised representative;
 - (ii) in South Africa: the Commissioner for Inland Revenue or his authorized representative;

3. Ondanks die ander bepalings van hierdie Artikel is hierdie Ooreenkoms nie van toepassing nie op belasting betaal of betaalbaar in Malta ooreenkomstig die bepalings van subartikel (13) van artikel 56 van die Inkomstebelastingwet (Hoofstuk 123) rakende die belasbare inkomste van enige persoon betrokke by die produksie van petroleum in Malta geproduseer of enige wesenlik soortgelyke bepaling wat opgelê word na die datum van ondertekening van hierdie Ooreenkoms.

HOOFSTUK II

WOORDOMSKRYWINGS

Artikel 3

Algemene Woordomsrywings

1. By die toepassing van hierdie Ooreenkoms, tensy die samehang anders vereis:

- (a) beteken die uitdrukking "Malta" die Republiek Malta en, wanneer in geografiese verband gebruik, die Eiland Malta, die Eiland Gozo en die ander eilande van die Maltese Eilandgroep, met inbegrip van die territoriale waters daarvan, en enige deel buite die territoriale waters van Malta wat aangewys is of hierna aangewys word ingevolge die volkereg en ingevolge die reg van Malta met betrekking tot die kontinentale plat, as deel waarin die regte van Malta met betrekking tot die seebodem en ondergrond en die natuurlike hulpbronne daarvan uitgeoefen mag word;
- (b) beteken die uitdrukking "Suid-Afrika" die Republiek van Suid-Afrika en, wanneer in geografiese verband gebruik, ook die territoriale waters daarvan asook enige deel buite die territoriale waters, met inbegrip van die kontinentale plat, wat ingevolge die reg van Suid-Afrika en ooreenkomstig die volkereg aangewys is of hierna aangewys word as 'n deel waarin Suid-Afrika soewereine regte of jurisdiksie mag uitoefen;
- (c) beteken die uitdrukking "n Kontrakterende Staat" en "die ander Kontrakterende Staat" Malta of Suid-Afrika, na gelang die samehang vereis;
- (d) beteken die uitdrukking "persoon" ook 'n individu, 'n maatskappy en enige ander liggaam van persone;
- (e) beteken die uitdrukking "maatskappy" 'n regspersoon of enige entiteit wat vir belastingdoeleindes as 'n regspersoon behandel word;
- (f) beteken die uitdrukking "onderneming van 'n Kontrakterende Staat" en "onderneming van die ander Kontrakterende Staat" onderskeidelik 'n onderneming bedryf deur 'n inwoner van 'n Kontrakterende Staat en 'n onderneming bedryf deur 'n inwoner van die ander Kontrakterende Staat;
- (g) beteken die uitdrukking "internasionale verkeer" enige vervoer per skip of vliegtuig bedryf deur 'n onderneming van 'n Kontrakterende Staat, behalwe wanneer die skip of vliegtuig slegs tussen plekke in die ander Kontrakterende Staat bedryf word;
- (h) beteken die uitdrukking "bevoegde owerheid":
 - (i) in Malta: die Minister verantwoordelik vir finansies of sy gemagtigde verteenwoordiger;
 - (ii) in Suid-Afrika: die Kommissaris van Binnelandse Inkomste of sy gemagtigde verteenwoordiger;

- (i) the term "national" means:
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State.

2. As regards the application of the Agreement by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that State concerning the taxes to which this Agreement applies.

Article 4

Resident

1. For the purposes of this Agreement, the term "resident of a Contracting State" means:
 - (a) in the case of Malta, a person who is resident in Malta for the purposes of Malta tax; and
 - (b) in the case of South Africa, any individual who is ordinarily resident in South Africa and any other person which has its place of effective management in South Africa.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:
 - (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
 - (b) if the State in which he has his centre of vital interests cannot be determined, or if he has no permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
 - (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
 - (d) if he 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 of the State in which its place of effective management is situated, or, if that cannot be established, the competent authorities of the Contracting States shall settle the question by mutual agreement and determine the mode of application of this Agreement to such person.

Article 5

Permanent Establishment

1. For the purpose 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.

(i) beteken die uitdrukking "burger":

(i) 'n individu wat burgerskap van 'n Kontrakterende Staat besit;

(ii) 'n regspersoon, vennootskap of vereniging wat sy status as sodanig verkry van die wette wat in 'n Kontrakterende Staat van krag is.

2. By die toepassing van die Ooreenkoms deur 'n Kontrakterende Staat het 'n uitdrukking wat nie daarin omskryf is nie, tensy die samehang anders vereis, die betekenis wat daaraan geheg word volgens daardie Staat se reg betreffende die belastingen waarvoor hierdie Ooreenkoms handel.

Artikel 4

Inwoner

1. By die toepassing van hierdie Ooreenkoms beteken die uitdrukking "inwoner van 'n Kontrakterende Staat":

- (a) in die geval van Malta, 'n persoon wat 'n inwoner in Malta is vir doeleindes van Maltese belasting; en
- (b) in die geval van Suid-Afrika, 'n individu wat gewoonlik in Suid-Afrika woonagtig is en 'n ander persoon wie se plek van effektiewe bestuur in Suid-Afrika is.

2. Waar 'n individu uit hoofde van die bepalinge van paragraaf 1 'n inwoner van beide Kontrakterende State is, word sy status soos volg bepaal:

- (a) hy word geag 'n inwoner te wees van die Staat waarin hy 'n permanente tuiste tot sy beskikking het; indien hy in beide State 'n permanente tuiste tot sy beskikking het, word hy geag 'n inwoner te wees van die Staat waarmee sy persoonlike en ekonomiese betrekkinge die nouste is (tuiste van lewensbelange);
- (b) indien daar nie bepaal kan word in watter Staat hy sy tuiste van lewensbelange het nie, of indien hy nie 'n permanente tuiste in enigeen van die State tot sy beskikking het nie, word hy geag 'n inwoner te wees van die Staat waarin hy 'n gebruikelike verblyfplek het;
- (c) indien hy 'n gebruikelike verblyfplek in beide State het, of in geeneen van hulle nie, word hy geag 'n inwoner te wees van die Staat waarvan hy 'n burger is;
- (d) indien hy 'n burger van beide State is, of van geeneen van hulle nie, beslis die bevoegde owerhede van die Kontrakterende State die saak deur middel van onderlinge ooreenkoms.

3. Waar uit hoofde van die bepalinge van paragraaf 1 'n ander persoon as 'n individu 'n inwoner van beide Kontrakterende State is, word hy geag 'n inwoner te wees van die Staat waarin sy plek van effektiewe bestuur geleë is, of, indien dit nie vasgestel kan word nie, beslis die owerhede van die Kontrakterende State die saak by onderlinge ooreenkoms en bepaal die wyse van toepassing van hierdie Ooreenkoms ten opsigte van sodanige persoon.

Artikel 5

Permanente Saak

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

2. 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 of natural resources including an offshore drilling site.

3. The term "permanent establishment" likewise encompasses:

- (a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than six months;
- (b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by an enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the Contracting State for a period or periods aggregating more than six months within any 12-month period.

4. An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if equipment is being used or installed in that other State, or supervision thereof is carried out, by, for or under contract with the enterprise during a period or periods aggregating more than six months within any 12-month period.

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

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

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 van natuurlike hulpbronne, insluitende 'n afluiddige boorterrein.

3. Die uitdrukking "permanente saak" omvat eweneens:

- (a) 'n bouterrein, 'n konstruksie-, monteer- of installasieprojek of toesighoudende bedrywighede in verband daarmee, maar slegs indien sodanige terrein, projek of bedrywighede vir 'n tydperk van langer as ses maande voortduur;
- (b) die verskaffing van dienste, met inbegrip van konsultasiedienste, deur 'n onderneming deur werknemers of ander personeel wat deur 'n onderneming vir sodanige doel in diens geneem is, maar slegs waar bedrywighede van daardie aard (vir dieselfde of 'n daaraan verbonde projek) binne die Kontrakterende Staat voortduur vir 'n tydperk of tydperke wat altesaam ses maande binne 'n 12-maandetydperk te bowe gaan.

4. 'n Onderneming van 'n Kontrakterende Staat word geag 'n permanente saak in die ander Kontrakterende Staat te hê indien toerusting in daardie ander Staat gebruik of geïnstalleer word of toesig daarvoor gehou word, deur, vir of volgens kontrak met die onderneming gedurende 'n tydperk of tydperke wat altesaam ses maande binne 'n 12 - maandetydperk te bowe gaan.

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

6. 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 on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 5 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.

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 the transactions between that agent and the enterprise are not made under arm's length conditions, he 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.

CHAPTER III

TAXATION OF INCOME

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 immovable property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, or to explore for, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.

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

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

6. Ondanks die bepalings van paragrafe 1 en 2, waar 'n persoon - uitgesonderd 'n agent met 'n onafhanklike status op wie paragraaf 7 van toepassing is - namens 'n onderneming optree en magtiging het, en dit gewoonlik uitoefen, om in 'n Kontrakterende Staat kontrakte in die naam van die onderneming te sluit, word daardie onderneming geag 'n permanente saak in daardie Staat te hê ten opsigte van enige bedrywighede wat daardie persoon vir die onderneming onderneem, tensy die bedrywighede van sodanige persoon beperk is tot dié in paragraaf 5 genoem wat, indien dit deur middel van 'n vaste besigheidsplek uitgeoefen word, nie hierdie vaste besigheidsplek ingevolge die bepalings van daardie paragraaf 'n permanente saak sou maak nie.

7. 'n Onderneming van 'n Kontrakterende Staat word nie geag 'n permanente saak in die ander Kontrakterende Staat te hê nie bloot omdat hy in daardie ander Staat besigheid dryf deur middel van 'n makelaar, algemene kommissie-agent of enige ander agent met onafhanklike status, mits sodanige persone in die gewone loop van hul besigheid optree. Wanneer die bedrywighede van sodanige agent egter geheel en al of hoofsaaklik ten behoeve van daardie onderneming beoefen word en die transaksies tussen daardie agent en die onderneming nie onder armengte-voorwaardes beding word nie, word hy nie geag 'n agent met onafhanklike status binne die bedoeling van hierdie paragraaf te wees 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 middel van 'n permanente saak of andersins), beteken nie op sigself dat enigeen van die maatskappye 'n permanente saak van die ander is nie.

HOOFSTUK III

BELASTING VAN INKOMSTE

Artikel 6

Inkomste uit Onroerende Eiendom

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

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

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

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

Article 7***Business Profits***

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment or with other associated enterprises with which it deals.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.
4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary. The method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
6. For the purpose 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.
8. The provisions of this Article shall not affect the provisions of the law of a Contracting State regarding the taxation of profits from the business of insurance.

Article 8***International Traffic***

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

Artikel 7***Besigheidswinste***

1. Die winste van 'n onderneming van 'n Kontrakterende Staat is slegs in daardie Staat belasbaar, tensy die onderneming besigheid dryf in die ander Kontrakterende Staat deur middel van 'n permanente saak wat daarin geleë is. Indien die onderneming besigheid dryf soos gemeld, kan die winste van die onderneming in die ander Staat belas word, maar slegs soveel daarvan as wat aan daardie permanente saak toeskryfbaar is.
2. Behoudens die bepalings van paragraaf 3, waar 'n onderneming van 'n Kontrakterende Staat in die ander Kontrakterende Staat besigheid dryf deur middel van 'n permanente saak wat daarin geleë is, word daar in elke Kontrakterende Staat aan daardie permanente saak die winste toegeskryf wat hy na verwagting sou kon behaal as hy 'n afsonderlike en aparte onderneming was wat met dieselfde of soortgelyke bedrywighede onder dieselfde of soortgelyke omstandighede besig is en geheel en al onafhanklik met die onderneming waarvan hy 'n permanente saak is, of met ander verwante ondernemings sake doen.
3. By die vasstelling van die winste van 'n permanente saak word daar as aftrekkings toegelaat uitgawes wat vir doeleindes van die permanente saak aangegaan word, met inbegrip van bestuurs- en algemene administrasiekoste aldus aangegaan, hetsy aangegaan in die Kontrakterende Staat waarin die permanente saak geleë is of elders.
4. Vir sover dit in 'n Kontrakterende Staat gebruiklik is om die winste wat aan 'n permanente saak toegeskryf moet word, vas te stel volgens die grondslag van 'n toedeling van die totale winste van die onderneming aan sy onderskeie dele, belet niks in paragraaf 2 sodanige Kontakterende Staat om die winste wat belas word, vas te stel deur sodanige toedeling as wat gebruiklik is nie. Die metode van toedeling wat gebruik word, moet egter sodanig wees dat die resultaat in ooreenstemming is met die beginsels in hierdie Artikel vervat.
5. Geen winste word aan 'n permanente saak toegeskryf uit hoofde van die blote aankoop deur daardie permanente saak van goedere of handelsware vir die onderneming nie.
6. By die toepassing van die voorgaande paragrawe, tensy daar goeie en afdoende rede tot die teendeel is, word die winste wat aan die permanente saak toegeskryf moet word, jaar na jaar volgens dieselfde metode vasgestel.
7. Waar winste inkomste-items insluit wat afsonderlik in ander Artikels van hierdie Ooreenkoms behandel word, word die bepalings van daardie Artikels nie deur die bepalings van hierdie Artikel geraak nie.
8. Die bepalings van hierdie Artikel raak nie die bepalings van die reg van 'n Kontrakterende Staat betreffende belasting op winste uit die versekeringsbesigheid nie.

Artikel 8***Internasionale Verkeer***

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

2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall include:
 - (a) profits derived from the rental on a bare boat basis of ships or aircraft used in international traffic,
 - (b) profits derived from the use or rental of containers,if such profits are incidental to the profits to which the provisions of paragraph 1 apply.
3. The provisions of paragraph 1 shall also apply to profits derived from the participation in a pool, a joint business or an international operating agency.

Article 9

Associated Enterprises

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

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

2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State 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.

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. By die toepassing van hierdie Artikel sluit winste verkry uit die bedryf van skepe of vliegtuie in internasionale verkeer in:

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

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

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

Artikel 9

Verwante Ondernemings

1. Waar:

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

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

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

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. 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:

- (a) where the dividends are paid by a company which is a resident of Malta to a resident of South Africa who is the beneficial owner thereof, Malta tax on the gross amount of the dividends shall not exceed that chargeable on the profits out of which the dividends are paid;
- (b) where the dividends are paid by a company which is a resident of South Africa to a resident of Malta who is the beneficial owner thereof, the South African tax so charged shall not exceed 5 per cent of the gross amount of the dividends.

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

3. The term "dividends" as used in this Article means income from shares or other rights participating in profits (not being debt-claims), as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the Contracting 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 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 insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other 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 recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State if it is derived by the Government of the other Contracting State or a political sub-division or a local authority thereof, or any agency wholly owned and controlled by that Government or sub-division or authority.

2. Sodanige dividende kan egter ook in die Kontrakterende Staat waarvan die maatskappy wat die dividende betaal, 'n inwoner is, en ooreenkomstig die wette van daardie Staat, belas word, maar:

- (a) waar die dividende betaal word deur 'n maatskappy wat 'n inwoner van Malta is, aan 'n inwoner van Suid-Afrika wat die bevoordeelde eienaar daarvan is, gaan die Maltese belasting op die bruto bedrag van die dividende nie dié wat heef kan word op die winste waaruit die dividende betaal word, te bowe nie;
- (b) waar die dividende betaal word deur 'n maatskappy wat 'n inwoner van Suid-Afrika is, aan 'n inwoner van Malta wat die bevoordeelde eienaar daarvan is, gaan die Suid-Afrikaanse belasting aldus heef, nie 5 persent van die bruto bedrag van die dividende te bowe nie.

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

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

4. Die bepalinge van paragrafe 1 en 2 is nie van toepassing nie indien die bevoordeelde eienaar van die dividende, synde 'n inwoner van 'n Kontrakterende Staat, besigheid dryf in die ander Staat, waarvan die maatskappy wat die dividende betaal 'n inwoner is, deur middel van 'n permanente saak daarin geleë, of in daardie ander Staat onafhanklike persoonlike dienste verrig vanaf 'n vaste basis daarin geleë, en die aandelebesit ten opsigte waarvan die dividende betaal word, effektief verbonde is met sodanige permanente saak of vaste basis. In sodanige geval is die bepalinge van Artikel 7 of Artikel 14, na gelang van die geval, van toepassing.

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

Artikel 11

Rente

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

2. Sodanige rente kan egter ook in die Kontrakterende Staat waarin dit ontstaan en ooreenkomstig die wette van daardie Staat belas word, maar indien die ontvanger die bevoordeelde eienaar van die rente is, gaan die belasting aldus heef, nie 10 persent van die bruto bedrag van die rente te bowe nie.

3. Ondanks die bepalinge van paragraaf 2 is rente wat in 'n Kontrakterende Staat ontstaan, vrygestel van belasting in daardie Staat indien dit verkry word deur die Regering van die ander Kontrakterende Staat of 'n staatkundige onderverdeling of 'n plaaslike owerheid daarvan, of enige liggaam ten volle besit en beheer deur daardie Regering of onderverdeling of owerheid.

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

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, 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.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the interest, whether he 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.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this 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 recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

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

4. Die uitdrukking "rente" soos in hierdie Artikel gebesig, beteken inkomste uit alle soorte skuldeise, hetsy gesekureer deur verband al dan nie en hetsy dit 'n reg inhou om in die skuldenaar se winste te deel al dan nie, en in die besonder inkomste uit staatseffekte en inkomste uit obligasies of skuldbriewe, met inbegrip van premies en pryse aan sodanige effekte, obligasies of skuldbriewe verbonde. Boeteheffings vir laat betalings word by die toepassing van hierdie Artikel nie as rente beskou nie.

5. Die bepalinge van paragrawe 1 en 2 is nie van toepassing nie indien die bevoordeelde eienaar van die rente, synde 'n inwoner van 'n Kontrakterende Staat, in die ander Kontrakterende Staat waarin die rente ontstaan, besigheid dryf deur middel van 'n permanente saak daarin geleë, of in daardie ander Staat onafhanklike persoonlike dienste verrig vanaf 'n vaste basis daarin geleë, en die skuldeise ten opsigte waarvan die rente betaal word, effektief verbonde is met sodanige permanente saak of vaste basis. In sodanige geval is die bepalinge van Artikel 7 of Artikel 14, na gelang van die geval, van toepassing.

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

7. Waar, vanweë 'n besondere verband tussen die betaler en die bevoordeelde eienaar of tussen albei van hulle en 'n ander persoon, die bedrag van die rente, met inagneming van die skuldeise ten opsigte waarvan dit betaal word, die bedrag te bowe gaan waarvoor die betaler en die bevoordeelde eienaar by ontstentenis van sodanige verband sou ooreengekom het, is die bepalinge van hierdie Artikel slegs op laasgenoemde bedrag van toepassing. In sodanige geval bly die oormatige deel van die betalings belasbaar ooreenkomstig die wette van elk van die Kontrakterende State, met behoorlike inagneming van die ander bepalinge van hierdie Ooreenkoms.

Artikel 12

Tantièmes

1. Tantièmes 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 tantièmes kan egter ook in die Kontrakterende Staat waarin hulle ontstaan en ooreenkomstig die wette van daardie Staat belas word, maar indien die ontvanger die bevoordeelde eienaar van die tantièmes is, gaan die belasting aldus opgelê nie 10 persent van die bruto bedrag van die tantièmes te bowe nie.

3. Die uitdrukking "tantièmes" soos in hierdie Artikel gebesig, beteken betalings van enige aard ontvang as vergoeding vir die gebruik van, of die reg op die gebruik van, enige kopiereg van 'n letterkundige, kuns- of wetenskaplike werk, met inbegrip van kinematograaffilms, enige patent, handelsmerk, ontwerp of model, plan, geheime formule of proses, of vir inligting aangaande industriële, handels- of wetenskaplike ondervinding.

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 that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he 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 obligation to pay the royalties was incurred, 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.

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 payment shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 13

Alienation of Property

1. Income or 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. Income or gains from the alienation of shares or comparable interests in a company, the assets of which consist wholly or principally of immovable property, may be taxed in the Contracting State in which the assets or the principle assets of the company are situated.

3. Income or 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 income or gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in the other State.

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

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

4. Die bepalinge van paragrawe 1 en 2 is nie van toepassing nie indien die bevoordeelde eienaar van die tantièmes, synde 'n inwoner van 'n Kontrakterende Staat, in die ander Kontrakterende Staat waarin die tantièmes ontstaan, besigheid dryf deur middel van 'n permanente saak daarin geleë, of in daardie ander Staat onafhanklike persoonlike dienste verrig vanaf 'n vaste basis daarin geleë, en die reg of eiendom ten opsigte waarvan die tantièmes betaal word, effektief verbonde is met sodanige permanente saak of vaste basis. In sodanige geval is die bepalinge van Artikel 7 of Artikel 14, na gelang van die geval, van toepassing.

5. Tantièmes word geag in 'n Kontrakterende Staat te ontstaan wanneer die betaler daardie Staat self, 'n staatkundige onderverdeling, 'n plaaslike owerheid of 'n inwoner van daardie Staat is. Waar die persoon wat die tantièmes betaal, hetsy hy 'n inwoner van 'n Kontrakterende Staat is al dan nie, egter in 'n Kontrakterende Staat 'n permanente saak of vaste basis het ten opsigte waarvan die verpligting om die tantièmes te betaal aangegaan is en sodanige tantièmes deur sodanige permanente saak of vaste basis gedra word, word sodanige tantièmes geag te ontstaan in die Staat waarin die permanente saak of vaste basis geleë is.

6. Waar, vanweë 'n besondere verband tussen die betaler en die bevoordeelde eienaar of tussen albei van hulle en 'n ander persoon, die bedrag van die tantièmes betaal, met inagneming van die gebruik, reg of inligting waarvoor dit betaal word, die bedrag te bowe gaan waaroor die betaler en die bevoordeelde eienaar by ontstentenis van sodanige verband sou ooreengekom het, is die bepalinge van hierdie Artikel slegs op laasgenoemde bedrag van toepassing. In sodanige geval bly die oormatige deel van die betaling ooreenkomstig die wette van elk van die Kontrakterende State belasbaar, met behoorlike inagneming van die ander bepalinge van hierdie Ooreenkoms.

Artikel 13

Vervreemding van Eiendom

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

2. Inkomste of winste uit die vervreemding van aandele of vergelykbare belange in 'n maatskappy, waarvan die bates geheel en al of hoofsaaklik uit onroerende eiendom bestaan, kan in die Kontrakterende Staat waarin die bates of die hoofbates van die maatskappy geleë is, belas word.

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

4. Inkomste of winste uit die vervreemding van skepe of vliegtuie wat in internasionale verkeer bedryf word, deur 'n onderneming van 'n Kontrakterende Staat, of roerende eiendom wat betrekking het op die bedryf van sodanige skepe of vliegtuie, is slegs in daardie Staat belasbaar.

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

Article 14***Independent Personal Services***

1. Income derived by 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. However, such income may be taxed in the other Contracting State in the following circumstances:

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities (in which case only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State); or
- (b) if his 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; or
- (c) if the net income for his services in the other Contracting State is derived from residents of that State and exceeds in the currency of that State the equivalent of 20 000 United States dollars during the fiscal year.

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

Article 15***Dependent Personal Services***

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

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

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

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

Artikel 14***Onafhanklike Persoonlike Dienste***

1. Inkomste verkry deur 'n inwoner van 'n Kontrakterende Staat ten opsigte van professionele dienste of ander bedrywighede van 'n onafhanklike aard, is slegs in daardie Staat belasbaar. Sodanige inkomste kan egter in die volgende omstandighede in die ander Kontrakterende Staat belas word:

- (a) indien hy 'n vaste basis in die ander Kontrakterende Staat gereeld tot sy beskikking het vir doeleindes van die verrigting van sy bedrywighede (in welke geval slegs soveel van die inkomste as wat aan daardie vaste basis toeskryfbaar is in daardie ander Kontrakterende Staat belas mag word); of
- (b) indien sy verblyf in die ander Kontrakterende Staat vir 'n tydperk of tydperke is wat altesaam 183 dae in enige twaalfmaandetydperk beginnende of eindigende in die betrokke fiskale jaar te bowe gaan; of
- (c) indien die netto inkomste vir sy dienste in die ander Kontrakterende Staat van inwoners van daardie Staat verkry word en in die geldeenheid van daardie Staat die ekwivalent van 20 000 Verenigde State-dollar gedurende die fiskale jaar te bowe gaan.

2. Die uitdrukking "professionele dienste" sluit veral in onafhanklike wetenskaplike, letterkundige, kuns-, opvoedkundige of onderwysaktiwiteite, sowel as die onafhanklike aktiwiteite van geneeskundiges, regsgeleerdes, ingenieurs, argitekte, tandartse en rekenmeesters.

Artikel 15***Afhanklike Persoonlike Dienste***

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

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

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

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

Article 16***Directors' Fees***

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

Article 17***Entertainers and Sportsmen***

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 sportsman, from his 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 sportsman in his capacity as such accrues not to the entertainer or sportsman himself 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 sportsman are exercised.

Article 18***Pensions and Annuities***

1. Subject to the provisions of paragraph 2 of Article 19, pensions and 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. Notwithstanding the provisions of paragraph 1, pensions paid and other payments made under the Social Security legislation of a Contracting State shall be taxable only in that State.

Article 19***Government Service***

1. (a) Salaries, wages and similar remuneration, other than a pension, paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

Artikel 16***Direkteursgelde***

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

Artikel 17***Verhoogkunstenaars en Sportlui***

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

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

Artikel 18***Pensioene en Annuïteite***

1. Behoudens die bepalinge van paragraaf 2 van Artikel 19 kan pensioene en 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. Ondanks die bepalinge van paragraaf 1 is pensioene betaal en ander betalings gedoen kragtens die bestaansbeveiligingswetgewing van 'n Kontrakterende Staat, slegs in daardie Staat belasbaar.

Artikel 19***Regeringsdiens***

1. (a) Salarisse, lone en soortgelyke besoldiging, behalwe 'n pensioen, betaal 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, is slegs in daardie Staat belasbaar.

(b) However, such salaries, wages and similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

- (i) is a national of that State; or
- (ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15, 16 and 18 shall apply to salaries, wages and similar remuneration, and to pensions, in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

4. Salaries, wages and similar remuneration paid under a development assistance programme of a Contracting State, out of funds exclusively supplied by that State to a specialist or volunteer seconded to the other Contracting State with the consent of that other State, shall be deemed to have been paid by the first-mentioned State and shall be taxable only in that State.

Article 20

Students and Business Apprentices

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

Article 21

Other Income

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

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

(b) Sodanige salarisse, lone en soortgelyke besoldiging is egter slegs in die ander Kontrakterende Staat belasbaar indien die dienste in daardie Staat gelewer word en die individu 'n inwoner van daardie Staat is wat:

- (i) 'n burger van daardie Staat is; of
- (ii) nie 'n inwoner van daardie Staat geword het met die uitsluitlike doel om die dienste te lewer nie.

2. (a) 'n Pensioen betaal 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, is slegs in daardie Staat belasbaar.

(b) Sodanige pensioen 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 en 18 is van toepassing op salarisse, lone en soortgelyke besoldiging, en op pensioene, ten opsigte van dienste gelewer in verband met 'n besigheid wat deur 'n Kontrakterende Staat of 'n staatkundige onderverdeling of 'n plaaslike owerheid daarvan gedryf word.

4. Salarisse, lone en soortgelyke besoldiging betaal ingevolge 'n ontwikkelingsbystandsprogram van 'n Kontrakterende Staat, uit fondse uitsluitlik verskaf deur daardie Staat aan 'n spesialis of vrywilliger afgestaan aan die ander Kontrakterende Staat met die toestemming van daardie ander Staat, word geag betaal te gewees het deur eersgenoemde Staat en is slegs in daardie Staat belasbaar.

Artikel 20

Studente en Besigheidsvakleerlinge

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

Artikel 21

Ander Inkomste

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

2. Die bepalings van paragraaf 1 is nie van toepassing nie op inkomste behalwe inkomste uit onroerende eiendom soos in paragraaf 2 van Artikel 6 omskryf, indien die ontvanger van sodanige inkomste, synde 'n inwoner van 'n Kontrakterende Staat, in die ander Kontrakterende Staat besigheid dryf deur middel van 'n permanente saak daarin geleë, of in daardie ander Staat onafhanklike persoonlike dienste verrig vanaf 'n vaste basis daarin geleë, en die reg of eiendom ten opsigte waarvan die inkomste betaal word, effektief verbonde is met sodanige permanente saak of vaste basis. In sodanige geval is die bepalings van Artikel 7 of Artikel 14, na gelang van die geval, van toepassing.

CHAPTER IV**ELIMINATION OF DOUBLE TAXATION****Article 22*****Elimination of Double Taxation***

1. In the case of Malta, double taxation shall be eliminated as follows:

Subject to the provisions of the law of Malta regarding the allowance of a credit against Malta tax in respect of foreign tax, where, in accordance with the provisions of this Agreement, there is included in a Malta assessment income from sources within South Africa, the South African tax on such income shall be allowed as a credit against the relative Malta tax payable thereon.

2. In the case of South Africa, double taxation shall be eliminated as follows:

Where South African tax is, in accordance with the provisions of this Agreement, paid by South African residents in respect of income which, in terms of the provisions of this Agreement, is taxable in Malta, Malta tax on such income shall be deducted from the South African tax but in an amount not exceeding that proportion of the South African tax which such items of income bear to the entire income.

3. Where the Agreement provides that income arising in a Contracting State shall be relieved from tax in that State, either in full or in part, and, under the law in force in the other Contracting State, such income is subject to tax by reference to the amount thereof which is remitted to or received in that other State and not by reference to the full amount thereof, then the relief to be allowed in the first-mentioned State shall apply only to so much of the income as is remitted to or received in the other State.

CHAPTER V**SPECIAL PROVISIONS****Article 23*****Non-discrimination***

1. The 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.

HOOFSTUK IV**UITSKAKELING VAN DUBBELE BELASTING****Artikel 22*****Uitskakeling van Dubbele Belasting***

1. In die geval van Malta, word dubbele belasting soos volg uitgeskakel:

Behoudends die bepalings van die reg van Malta met betrekking tot die toestaan as krediet teen Maltese belasting ten opsigte van buitelandse belasting, waar daar, ingevolge die bepalings van hierdie Ooreenkoms, in 'n Maltese aanslag inkomste uit bronne binne Suid-Afrika ingesluit is, word die Suid-Afrikaanse belasting op sodanige inkomste as krediet toegelaat teen die betrokke Maltese belasting betaalbaar daarop.

2. In die geval van Suid-Afrika word dubbele belasting soos volg uitgeskakel:

Waar Suid-Afrikaanse belasting ooreenkomstig die bepalings van hierdie Ooreenkoms deur Suid-Afrikaanse inwoners betaal word ten opsigte van inkomste wat, ingevolge die bepalings van hierdie Ooreenkoms in Malta belasbaar is, word Maltese belasting op sodanige inkomste afgetrek van die Suid-Afrikaanse belasting, maar tot 'n bedrag wat nie meer is as die verhouding van die Suid-Afrikaanse belasting waarin sodanige inkomste-items tot die totale inkomste staan.

3. Waar die Ooreenkoms bepaal dat inkomste wat in 'n Kontrakterende Staat ontstaan, van belasting in daardie Staat onthef word, of ten volle of gedeeltelik, en sodanige inkomste ingevolge die reg van krag in die ander Kontrakterende Staat onderworpe is aan belasting deur verwysing na die bedrag daaraan wat geremitteer is na of ontvang is in daardie ander Staat en nie deur verwysing na die volle bedrag daarvan nie, dan is die verligting wat toegelaat is in eersgenoemde Staat, slegs van toepassing op soveel van die inkomste as wat geremitteer is na of ontvang is in die ander Staat.

HOOFSTUK V**SPESIALE BEPALINGS****Artikel 23*****Nie-diskriminasie***

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

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

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

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

Article 24

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 23, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with 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.

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

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

3. Behalwe waar die bepaling van paragraaf 1 van Artikel 9, paragraaf 7 van Artikel 11 of paragraaf 6 van Artikel 12 van toepassing is, is rente, tantièmes en ander uitbetalings betaal deur 'n onderneming van 'n Kontrakterende Staat aan 'n inwoner van die ander Kontrakterende Staat vir doeleindes van die vasstelling van die belasbare winste van sodanige onderneming, onder dieselfde omstandighede aftrekbaar asof dit aan 'n inwoner van eersgenoemde Staat betaal was.

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

5. In hierdie Artikel beteken die uitdrukking "belasting" die belastings waaroor hierdie Ooreenkoms handel.

Artikel 24

Prosedure vir Onderlinge Ooreenkoms

1. Waar 'n persoon van mening is dat die optrede van een van of van albei die Kontrakterende State tot gevolg het of tot gevolg sal hê dat hy nie ooreenkomstig hierdie Ooreenkoms belas word nie, kan hy, ongeag die regsmiddels waarvoor die landsreg van daardie State voorsiening maak, sy saak stel aan die bevoegde owerheid van die Kontrakterende Staat waarvan hy 'n inwoner is of, as sy saak onder paragraaf 1 van Artikel 23 ressorteer, aan dié van die Kontrakterende Staat waarvan hy 'n burger is. Die saak moet gestel word binne drie jaar vanaf die eerste kennisgewing van die handeling wat lei tot belasting wat nie in ooreenstemming met die bepaling van hierdie Ooreenkoms is nie.

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

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

4. Die bevoegde owerhede van die Kontrakterende State kan regstreeks met mekaar in verbinding tree ten einde tot 'n ooreenkoms te geraak soos in die voorgaande paragrafe beoog.

Article 25***Exchange of Information***

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

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

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

Article 26***Diplomatic Agents and Consular Officers***

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

CHAPTER VI**FINAL PROVISIONS****Article 27*****Entry into Force***

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

Artikel 25***Uitruil van Inligting***

1. Die bevoegde owerhede van die Kontrakterende State ruil sodanige inligting uit as wat nodig is vir die uitvoering van die bepalings van hierdie Ooreenkoms of van die landsreg van die Kontrakterende State aangaande belastings deur die Ooreenkoms gedek vir sover die belasting daarkragtens nie strydig met die Ooreenkoms is nie. Die uitruil van inligting word nie deur Artikel 1 beperk nie. Enige inligting ontvang deur 'n Kontrakterende Staat, word as geheim behandel op dieselfde wyse as inligting wat ingevolge die landsreg van daardie Staat verkry word, en mag openbaar gemaak word slegs aan persone of owerhede (met inbegrip van howe en administratiewe liggame) betrokke by die aanslaan of invordering van, die afdwing van of vervolging met betrekking tot, of die beslissing van appèlle in verband met, die belastings deur hierdie Ooreenkoms gedek. Sodanige persone of owerhede mag die inligting slegs vir sodanige doeleindes gebruik. Hulle kan die inligting by openbare hofverrigtinge of by regterlike beslissings openbaar maak.

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

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

Artikel 26***Diplomatiese Agente en Konsulêre Beamptes***

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

HOOFSTUK VI**FINALE BEPALINGS****Artikel 27*****Inwerkingtreding***

1. Elk van die Kontrakterende State stel die ander in kennis van die afhandeling van die prosedures wat ingevolge sy reg vereis word om hierdie Ooreenkoms in werking te stel. Die Ooreenkoms tree in werking op die datum van die laaste van hierdie kennisgewings.

2. The provisions of this Agreement shall apply:

- (a) in Malta in respect of taxes which are levied for any year of assessment beginning on or after 1 January in the second calendar year immediately following the year in which the Agreement enters into force; and
- (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 this Agreement enters into force; and
 - (ii) with regard to other taxes, in respect of income of taxable years beginning on or after the first day of January next following the date upon which this Agreement enters into force.

Article 28

Termination

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement through the diplomatic channel, by giving notice of termination at least six months before the end of any calendar year beginning after the expiration of a period of five years from the date of its entry into force. In such event, the Agreement shall cease to have effect:

- (a) in Malta:
 - in respect of taxes which are levied for any year of assessment beginning on or after 1 January of the second calendar year next following the year in which such notice is given;
- (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 income derived during any taxable year beginning after the end of the calendar year in which such notice is given.

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

DONE in duplicate at Rome this 16th day of May 1997 in the English language.

FOR THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA

FOR THE GOVERNMENT OF
MALTA

2. Die bepalinge van hierdie Ooreenkoms is van toepassing:

- (a) in Malta met betrekking tot belastinge wat gehef word vir enige jaar van aanslag beginnende op of na 1 Januarie in die tweede kalenderjaar wat onmiddellik volg op die jaar waarin die Ooreenkoms in werking tree; en
- (b) in Suid-Afrika,
 - (i) met betrekking tot belastinge wat by die bron teruggehou word, ten opsigte van bedrae betaal of gekrediteer op of na die eerste dag van Januarie eersvolgende op die datum waarin hierdie Ooreenkoms in werking tree; en
 - (ii) met betrekking tot ander belastinge, ten opsigte van inkomste van belasbare jare beginnende op of na die eerste dag van Januarie eersvolgende op die datum waarin hierdie Ooreenkoms in werking tree.

Artikel 28

Opsegging

1. Hierdie Ooreenkoms bly van krag totdat dit deur 'n Kontrakterende Staat opgesê word. Enigeen van die Kontrakterende State kan die Ooreenkoms langs die diplomatieke kanaal opseë deur kennis van opsegging te gee minstens ses maande voor die einde van enige kalenderjaar beginnende na die verstryking van 'n tydperk van vyf jaar vanaf die datum waarin dit in werking getree het. In sodanige geval is die Ooreenkoms nie maar van krag nie:

(a) in Malta:

ten opsigte van belastinge wat gehef word vir enige jaar van aanslag beginnende op of na 1 Januarie van die tweede kalenderjaar wat volg op die jaar waarin sodanige kennis gegee word;

(b) in Suid-Afrika:

- (i) met betrekking tot belastinge wat by die bron teruggehou word, ten opsigte van bedrae betaal of gekrediteer na die einde van die kalenderjaar waarin sodanige kennis gegee word; en
- (ii) met betrekking tot ander belastinge, ten opsigte van inkomste verkry gedurende enige belasbare jaar beginnende na die einde van die kalenderjaar waarin sodanige kennis gegee word.

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

GEDOEN, in tweevoud, te Rome op hede die 16de dag van Mei 1997, in die Engelse taal.

NAMENS DIE REGERING VAN DIE
REPUBLIEK VAN SUID-AFRIKA

NAMENS DIE REGERING VAN
MALTA

PROTOCOL

At the moment of signing the Agreement between the Government of South Africa and the Government of Malta for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, the undersigned have agreed that the following provisions shall form an integral part of the Agreement.

Concerning Article 10 it is understood that dividends arising outside South Africa are not subjected to South African tax. Should there be any change in this system, or any change in the imputation system presently applied in Malta, the Contracting States will reconsider the provisions of that Article.

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

DONE in duplicate at Rome this 16th day of May 1997 in the English language.

FOR THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA

FOR THE GOVERNMENT OF
MALTA

PROTOKOL

By die ondertekening van die Ooreenkoms tussen die Regering van die Republiek van Suid-Afrika en die Regering van Malta vir die Vermydning van Dubbele Belasting en die Voorkoming van Fiskale Ontduiking met betrekking tot Belastings op Inkomste, het die ondergetekendes ooreengekom dat die volgende bepalinge 'n integrerende deel van die Ooreenkoms uitmaak.

Met betrekking tot Artikel 10 word daar verstaan dat dividende wat buite Suid-Afrika ontstaan, nie aan Suid-Afrikaanse belasting onderworpe is nie. Sou daar enige verandering in hierdie stelsel wees, of enige verandering in die toerekeningstelsel wat tans in Malta geld, hersien die Kontrakterende State die bepalinge van daardie Artikel.

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

GEDOEN, in tweevoud, te Rome op hede die 16de dag van Mei 1997, in die Engelse taal.

NAMENS DIE REGERING VAN DIE
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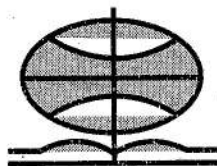
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