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GOVERNMENT NOTICE**SOUTH AFRICAN REVENUE SERVICE****No. 588****12 May 2004****INCOME TAX ACT, 1962**

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

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

It is further notified in terms of paragraph 1 of Article 28 of the Convention, that the date of entry into force is 20 April 2004.

GOEWERMENTSKENNISGEWING

SUID-AFRIKAANSE INKOMSTEDIENS**No. 588****12 Mei 2004****INKOMSTEBELASTINGWET, 1962****KONVENSIE TUSSEN DIE REGERING VAN DIE REPUBLIEK VAN SUID-AFRIKA EN DIE REGERING VAN DIE REPUBLIEK BOTSWANA VIR DIE VERMYDING VAN DUBBELE BELASTING EN DIE VOORKOMING VAN FISKALE ONTDUIKING MET BETREKKING TOT BELASTINGS OP INKOMSTE**

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

Daar word verder bekendgemaak dat ingevolge paragraaf 1 van Artikel 28 van die Konvensie, die datum van inwerkingtreding 20 April 2004 is.

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

The Government of the Republic of South Africa and the Government of the Republic of Botswana desiring to conclude a Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, have agreed as follows:

Article 1

Persons Covered

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

Article 2

Taxes Covered

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

(a) in Botswana:

- (i) the income tax including any withholding tax, or any prepayment or advance tax payment with respect to the aforesaid tax; and
- (ii) the capital gains tax;

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

(b) in South Africa:

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

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

2. Nothing in this Convention shall limit the right of either Contracting State to charge tax on the profits of a mineral enterprise at an effective rate different from that charged on the profits of any other enterprise. The term "a mineral enterprise" means an enterprise carrying on the business of mining.

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

Die Regering van die Republiek van Suid-Afrika en die Regering van die Republiek Botswana het, uit 'n begeerte om 'n Konvensie te sluit vir die Vermyding van Dubbele Belasting en die Voorkoming van Fiskale Ontduiking met betrekking tot Belastings op Inkomste, soos volg ooreengekom:

Artikel 1

Persone Gedek

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

Artikel 2

Belastings Gedek

1. Die bestaande belastings waarop hierdie Konvensie van toepassing is, is:

(a) in Botswana:

- (i) die inkomstebelasting met inbegrip van enige terughoudingsbelasting, of enige voorafbetaling of vooruitbetaling met betrekking tot voormelde belasting; en
- (ii) die kapitaalwinstbelasting;

(hierna "Botswana belasting" genoem); en

(b) in Suid-Afrika:

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

(hierna "Suid-Afrikaanse belasting" genoem).

2. Niks in hierdie Konvensie beperk die reg van enigeen van die Kontrakterende State om belasting te hef op die winste van 'n minerale onderneming teen 'n effektiewe koers wat verskil van dié wat op winste van enige ander onderneming gehef word nie. Die uitdrukking "n minerale onderneming" beteken 'n onderneming wat die besigheid van mynbou dryf.

3. Notwithstanding any other provision of the Convention, where Botswana tax is paid or payable in accordance with a Tax Agreement under the Botswana Income Tax Act, the Convention shall not apply except to such an extent as may be provided in such Tax Agreement and mutually agreed by the competent authorities.

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

Article 3

General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:
 - (a) the term "Botswana" means the Republic of Botswana;
 - (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 Botswana or South Africa, as the context requires;
 - (d) the term "company" means any body corporate or any entity that is treated as a company or body corporate for tax purposes;
 - (e) the term "competent authority" means:
 - (i) in Botswana, the Minister of Finance and Development Planning, represented by the Commissioner of Taxes; and
 - (ii) in South Africa, the Commissioner for the South African Revenue Service or an authorised representative;
 - (f) the term "enterprise" applies to the carrying on of any business;
 - (g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
 - (h) the term "international traffic" means any transport by a ship, aircraft or rail or road transport vehicle operated by an enterprise of a Contracting State, except when the ship, aircraft or rail or road transport vehicle is operated solely between places in the other Contracting State;

3. Ondanks enige ander bepaling van die Konvensie is, waar Botswana belasting ooreenkomstig 'n Belastingooreenkoms ingevolge die Botswana Inkomstebelastingwet betaal of betaalbaar is, is die Konvensie nie van toepassing nie behalwe tot die mate wat in sodanige Belastingooreenkoms bepaal en onderling deur die bevoegde owerhede ooreengekom is.

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

Artikel 3

Algemene Woordomsrywings

1. By die toepassing van hierdie Konvensie, tensy die samehang anders vereis:
 - (a) beteken die uitdrukking "Botswana" die Republiek Botswana;
 - (b) beteken die uitdrukking "Suid-Afrika" die Republiek van Suid-Afrika en, wanneer in geografiese verband gebruik, ook die territoriale waters daarvan en enige gebied buite die territoriale waters, met inbegrip van die kontinentale plat, wat ingevolge die reg van Suid-Afrika en ooreenkomstig die volkereg aangewys is of hierna aangewys word as 'n gebied waarbinne Suid-Afrika soewereine regte of jurisdiksie mag uitoefen;
 - (c) beteken die uitdrukking "n Kontrakterende Staat" en "die ander Kontrakterende Staat" Botswana of Suid-Afrika, na gelang die samehang vereis;
 - (d) beteken die uitdrukking "maatskappy" 'n regspersoon of 'n entiteit wat vir belastingdoeleindes as 'n maatskappy of 'n regspersoon behandel word;
 - (e) beteken die uitdrukking "bevoegde owerheid":
 - (i) in Botswana, die Minister van Finansies en Ontwikkelingsbeplanning, verteenwoordig deur die Kommissaris van Belastinge; en
 - (ii) in Suid-Afrika, die Kommissaris van die Suid-Afrikaanse Inkomstediens of 'n gemagtigde verteenwoordiger;
 - (f) het die uitdrukking "onderneming" betrekking op die dryf van 'n besigheid;
 - (g) beteken die uitdrukking "onderneming van 'n Kontrakterende Staat" en "onderneming van die ander Kontrakterende Staat" onderskeidelik 'n onderneming gedryf deur 'n inwoner van 'n Kontrakterende Staat en 'n onderneming gedryf deur 'n inwoner van die ander Kontrakterende Staat;
 - (h) beteken die uitdrukking "internasionale verkeer" enige vervoer per skip, vliegtuig of spoor- of padvervoervoertuig bedryf deur 'n onderneming van 'n Kontrakterende Staat, behalwe wanneer die skip, vliegtuig of spoor- of padvervoervoertuig uitsluitlik tussen plekke in die ander Kontrakterende Staat bedryf word;

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

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

Article 4

Resident

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

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

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

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

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

Artikel 4

Inwoner

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

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

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

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall settle the question by mutual agreement.

Article 5

Permanent Establishment

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

2. The term "permanent establishment" includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction or exploitation of natural resources; and
- (g) an installation or structure used for the exploration of natural resources, provided that the installation or structure continues for a period of more than six months.

3. The term "permanent establishment" likewise encompasses:

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

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

- (a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;

3. Waar 'n ander persoon as 'n individu uit hoofde van die bepalings van paragraaf 1 'n inwoner van albei Kontrakterende State is, beslis die bevoegde owerhede van die Kontrakterende State die saak deur middel van onderlinge ooreenkoms.

Artikel 5

Permanente Saak

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

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

- (a) 'n plek van bestuur;
- (b) 'n tak;
- (c) 'n kantoor;
- (d) 'n fabriek;
- (e) 'n werkwinkel;
- (f) 'n myn, 'n olie- of gasbron, 'n steengroef of enige ander plek van winning of ontginning van natuurlike hulpbronne; en
- (g) 'n installasie of struktuur gebruik vir die eksplorاسie van natuurlike hulpbronne, met dien verstande dat die installasie of struktuur vir 'n tydperk van langer as ses maande voortduur.

3. Eweneens omvat die uitdrukking "permanente saak":

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

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

- (a) die gebruik van fasiliteite uitsluitlik met die doel om goedere of handelsware wat aan die onderneming behoort te berg of te vertoon;

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

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such person -

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

unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

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

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

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.

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

5. Ondanks die bepalings van paragrafe 1 en 2, waar 'n persoon – uitgesonderd 'n agent met 'n onafhanklike status op wie paragraaf 6 van toepassing is - in 'n Kontrakterende Staat namens 'n onderneming van die ander Kontrakterende Staat optree, word daardie onderneming geag 'n permanente saak in die eersgenoemde Kontrakterende Staat te hê ten opsigte van enige bedrywighede wat daardie persoon vir die onderneming onderneem, indien daardie persoon –

- (a) magtiging het, en dit gewoonlik uitoefen om in daardie Staat kontrakte in die naam van die onderneming te sluit;
- (b) geen sodanige magtiging het nie, maar gewoonlik in die eersgenoemde Staat 'n voorraad goedere of handelsware in stand hou waaruit sodanige goedere of handelsware gereeld namens die onderneming afgelewer word;

tensy die bedrywighede van sodanige persoon beperk is tot dié genoem in paragraaf 4 wat, indien dit deur middel van 'n vaste besigheidsplek uitgeoefen word, nie hierdie vaste besigheidsplek ingevolge die bepalings van daardie paragraaf 'n permanente saak sou maak nie.

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

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

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.

Article 6

Income from Immovable Property

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

Article 7

Business Profits

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

Artikel 6

Inkomste uit Onroerende Eiendom

1. Inkomste deur 'n inwoner van 'n Kontrakterende Staat verkry uit onroerende eiendom, met inbegrip van inkomste uit landbou of bosbou, wat geleë is in die ander Kontrakterende Staat, kan in daardie ander Staat belas word.
2. Die uitdrukking "onroerende eiendom" het die betekenis wat daaraan geheg word ingevolge die reg van die Kontrakterende Staat waarin die betrokke eiendom geleë is. Die uitdrukking sluit in ieder geval in eiendom bykomstig by onroerende eiendom, lewende hawe en toerusting wat in landbou en bosbou gebruik word, regte waarop die bepalings van die algemene reg betreffende grondbesit van toepassing is, geboue, vruggebruik van onroerende eiendom en regte op wisselende of vaste betalings as vergoeding vir die ontginning van, of die reg op die ontginning van mineraalafsettings, bronne en ander natuurlike hulpbronne. Skepe, bote, vliegtuie en spoor- of padvervoervoertuie word nie as onroerende eiendom beskou nie.
3. Die bepalings van paragraaf 1 is van toepassing op inkomste verkry uit die regstreekse gebruik, verhuring of gebruik in enige ander vorm van onroerende eiendom.
4. Die bepalings van paragrawe 1 en 3 is ook van toepassing op inkomste uit onroerende eiendom van 'n onderneming.

Artikel 7

Besigheidswinste

1. Die winste van 'n onderneming van 'n Kontrakterende Staat is slegs in daardie Staat belasbaar, tensy die onderneming in die ander Kontrakterende Staat besigheid dryf deur middel van 'n permanente saak wat daarin geleë is. Indien die onderneming soos voormeld besigheid dryf, kan die winste van die onderneming in die ander Staat belas word, maar slegs soveel daarvan as wat aan daardie permanente saak toeskryfbaar is.
2. Behoudens die bepalings van paragraaf 3, waar 'n onderneming van 'n Kontrakterende Staat in die ander Kontrakterende Staat besigheid dryf deur middel van 'n permanente saak wat daarin geleë is, word daar in elke Kontrakterende Staat aan daardie permanente saak die winste toegeskryf wat dit na verwagting sou kon behaal indien dit 'n afsonderlike en aparte onderneming was wat met dieselfde of soortgelyke bedrywighede onder dieselfde of soortgelyke toestande besig is en geheel en al onafhanklik sake doen met die onderneming waarvan dit 'n permanente saak is.

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

4. 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.

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

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

Article 8

International Transport

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

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

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

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

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

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

4. 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.

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

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

Artikel 8

Internasionale Verkeer

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

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

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

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

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

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

Article 9

Associated Enterprises

1. Where:

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

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

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

Article 10

Dividends

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

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

- (a) 10 per cent of the gross amount of the dividends if the beneficial owner is a company which holds at least 25 per cent of the capital of the company paying the dividends; or

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

Artikel 9

Verwante Ondernemings

1. Waar:

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

en voorwaardes in enigeen van die gevalle tussen die twee ondernemings met betrekking tot hul handels- of finansiële betrekkinge gestel of opgelê word wat verskil van dié wat tussen onafhanklike ondernemings gestel sou word, kan enige winste wat by ontstentenis van daardie voorwaardes aan een van die ondernemings sou toegeval het, maar as gevolg van daardie voorwaardes nie aldus toegeval het nie, by die winste van daardie onderneming ingesluit en 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 was as dié wat tussen onafhanklike ondernemings gestel sou gewees het, kan daardie ander Staat die bedrag van die belasting wat hy op daardie winste hef, toepaslik aanpas. By die vasstelling van sodanige aanpassing, moet die ander bepalinge van hierdie Konvensie behoorlik in ag geneem word en die bevoegde owerhede van die Kontrakterende State mekaar, indien nodig, raadpleeg.

Artikel 10

Dividende

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

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

- (a) 10 persent van die bruto bedrag van die dividende, indien die voordelige eienaar 'n maatskappy is wat minstens 25 persent hou van die kapitaal van die maatskappy wat die dividende betaal; of

- (b) 15 per cent of the gross amount of the dividends in all other cases.

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

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

3. The term "dividends" as used in this Article means income from shares, mining shares, founders' 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 Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

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

Article 11

Interest

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

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

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

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

(b) 15 persent van die bruto bedrag van die dividende, in alle ander gevalle,

te bowe nie.

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

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

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

4. Die bepalinge van paragrawe 1 en 2 is nie van toepassing nie indien die voordelige eienaar van die dividende, wat 'n inwoner van 'n Kontrakterende Staat is, besigheid dryf in die ander Kontrakterende Staat waarvan die maatskappy wat die dividende betaal 'n inwoner is, deur middel van 'n permanente saak daarin geleë en die aandelebesit ten opsigte waarvan die dividende betaal word, effektief verbonde is aan sodanige permanente saak. In sodanige geval is die bepalinge van Artikel 7 van toepassing.

5. Waar 'n maatskappy wat 'n inwoner van 'n Kontrakterende Staat is, winste of inkomste uit die ander Kontrakterende Staat verkry, hef daardie ander Staat nie belasting op die dividende betaal deur die maatskappy nie, behalwe vir sover sodanige dividende betaal word aan 'n inwoner van daardie ander Staat of vir sover die aandelebesit ten opsigte waarvan die dividende betaal word effektief verbonde is aan 'n permanente saak geleë in daardie ander Staat, en onderwerp ook nie die maatskappy se onuitgekeerde winste aan 'n belasting op 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 voordelige eienaar van die rente 'n inwoner van die ander Kontrakterende Staat is, gaan die belasting aldus opgelê, nie 10 persent van die bruto bedrag van die rente te bowe nie.

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

3. Ondanks die bepalinge van paragraaf 2 word 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 onderafdeling of 'n plaaslike owerheid daarvan, of enige agentskap wat ten volle besit en beheer word deur daardie Regering of onderafdeling 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 payment shall not be regarded as interest for the purposes of this Article.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

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

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

Article 12

Royalties

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

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

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

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

5. Die bepalings van paragrawe 1, 2 en 3 is nie van toepassing nie indien die voordelige eienaar van die rente, wat 'n inwoner van 'n Kontrakterende Staat is, in die ander Kontrakterende Staat waarin die rente ontstaan, besigheid dryf deur middel van 'n permanente saak daarin geleë en die skuldeis ten opsigte waarvan die rente betaal word, effektief verbonde is aan sodanige permanente saak. In sodanige geval is die bepalings van Artikel 7 van toepassing.

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

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

Artikel 12

Tantième

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

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

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

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

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

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

Article 13

Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State, or from the alienation of shares in a company the assets of which consist directly or indirectly principally of such property, may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

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

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

4. Die bepalings van paragrawe 1 en 2 is nie van toepassing nie indien die voordelige eienaar van die tantième wat 'n inwoner van 'n Kontrakterende Staat is, in die ander Kontrakterende Staat waarin die tantième ontstaan, besigheid dryf deur middel van 'n permanente saak daarin geleë en die reg of eiendom ten opsigte waarvan die tantième betaal word, effektief verbonde is aan sodanige permanente saak. In sodanige geval is die bepalings van Artikel 7 van toepassing.

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

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

Artikel 13

Kapitaalwinste

1. Winste deur 'n inwoner van 'n Kontrakterende Staat verkry uit die vervreemding van onroerende eiendom in Artikel 6 bedoel en wat in die ander Kontrakterende Staat geleë is, of uit die vervreemding van aandele in 'n maatskappy waarvan die bates regstreeks of onregstreeks hoofsaaklik uit sodanige eiendom bestaan, kan in daardie ander Staat belas word.

2. Winste uit die vervreemding van roerende eiendom wat deel uitmaak van die besigheidseiendom van 'n permanente saak wat 'n onderneming van 'n Kontrakterende Staat in die ander Kontrakterende Staat het, met inbegrip van sodanige winste uit die vervreemding van so 'n permanente saak (alleen of tesame met die onderneming in sy geheel), kan in daardie ander Staat belas word.

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

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

5. Notwithstanding the provisions of paragraph 4, gains from the alienation of shares or other corporate rights of a company which is a resident of one of the Contracting States derived by an individual who was a resident of that State and who after acquiring such shares or rights has become a resident of the other Contracting State, may be taxed in the first-mentioned State if the alienation of the shares or other corporate rights occur at any time during the period of ten years next following the date on which the individual has ceased to be a resident of the first-mentioned State.

Article 14

Income from Employment

1. Subject to the provisions of Articles 15, 17 and 18, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

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

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

Article 15

Directors' Fees

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

5. Ondanks die bepalings van paragraaf 4, kan winste uit die vervreemding van aandele of ander korporatiewe regte van 'n maatskappy wat 'n inwoner van een van die Kontrakterende State is, verkry deur 'n individu wat 'n inwoner van daardie Staat was en wat, ná verkryging van sodanige aandele of regte, 'n inwoner van die ander Kontrakterende Staat geword het, in eersgenoemde Staat belas word indien die vervreemding van die aandele of ander korporatiewe regte te eniger tyd gedurende die tydperk van tien jaar eersvolgende op die datum waarop die individu opgehou het om 'n inwoner van eersgenoemde Staat te wees, plaasvind.

Artikel 14

Inkomste uit 'n Diensbetrekking

1. Behoudens die bepalings van Artikels 15, 17 en 18 is salarisse, lone en ander soortgelyke besoldiging verkry deur 'n inwoner van 'n Kontrakterende Staat ten opsigte van 'n diensbetrekking, slegs in daardie Staat belasbaar, tensy die diensbetrekking in die ander Kontrakterende Staat beoefen word. Indien die diensbetrekking aldus beoefen word, kan sodanige besoldiging as wat daaruit verkry word, in daardie ander Staat belas word.

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

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

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

Artikel 15

Direkteursgelde

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

Article 16

Entertainers and Sportspersons

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

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

3. Income derived by a resident of a Contracting State from activities exercised in the other Contracting State as envisaged in paragraphs 1 and 2, shall be exempt from tax in that other State if the visit to that other State is supported wholly or mainly by public funds of the first-mentioned State, a political subdivision or a local authority thereof.

Article 17

Pensions and Annuities

1. Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration, and annuities, arising in a Contracting State and paid to a resident of the other Contracting State, may be taxed in the first-mentioned State.

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

3. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

Article 18

Government Service

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

Artikel 16***Verhoogkunstenaars en Sportlui***

1. Ondanks die bepalings van Artikels 7 en 14 kan inkomste verkry deur 'n inwoner van 'n Kontrakterende Staat as 'n verhoogkunstenaar, soos 'n teater, rolprent, radio- of televisie-arties, of 'n musikant, of as 'n sportpersoon, uit daardie persoon se persoonlike bedrywighede as sodanig wat in die ander Kontrakterende Staat beoefen word, in daardie ander Staat belas word.
2. Waar inkomste ten opsigte van persoonlike bedrywighede wat deur 'n verhoogkunstenaar of 'n sportpersoon in dié hoedanigheid beoefen word, nie aan die verhoogkunstenaar of sportpersoon self toeval nie maar aan 'n ander persoon, kan daardie inkomste, ondanks die bepalings van Artikels 7 en 14, belas word in die Kontrakterende Staat waarin die bedrywighede van die verhoogkunstenaar of sportpersoon beoefen word.
3. Inkomste verkry deur 'n inwoner van 'n Kontrakterende Staat uit bedrywighede beoefen in die ander Kontrakterende Staat, soos beoog in paragrafe 1 en 2, is vrygestel van belasting in daardie ander Staat indien die besoek aan daardie ander Staat geheel en al of hoofsaaklik ondersteun word deur openbare fondse van eersgenoemde Staat, 'n staatkundige onderafdeling of 'n plaaslike owerheid daarvan.

Artikel 17***Pensioene en Annuïteite***

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

Artikel 18***Regeringsdiens***

1. (a) Salarisse, lone en soortgelyke besoldiging, uitgesonderd 'n pensioen, betaal deur 'n Kontrakterende Staat of 'n staatkundige onderafdeling of 'n plaaslike owerheid daarvan aan 'n individu ten opsigte van dienste gelewer aan daardie Staat of onderafdeling of owerheid, is slegs in daardie Staat belasbaar.

- (b) 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 14, 15, 16 and 17 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.

Article 19

Students, Apprentices and Business Trainees

Students, apprentices or business trainees who are present in a Contracting State solely for the purpose of their education or training and who are, or immediately before being so present were residents 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 purpose of their maintenance, education or training.

Article 20

Technical Fees

- 1. Technical fees arising in a Contracting State which are derived by a resident of the other Contracting State may be taxed in that other State.
- 2. However, such technical fees may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but where such technical fees are derived by a resident of the other Contracting State who is subject to tax in that State in respect thereof, the tax charged in the Contracting State in which the technical fees arise shall not exceed 10 per cent of the gross amount of such fees.

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

- 3. The term "technical fees" as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of an administrative, technical, managerial or consultancy nature.

- (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 onderafdeling of 'n plaaslike owerheid daarvan aan 'n individu ten opsigte van dienste gelewer aan daardie Staat of onderafdeling of owerheid, is slegs in daardie Staat belasbaar.

- (b) Sodanige pensioen is egter slegs in die ander Kontrakterende Staat belasbaar indien die individu 'n inwoner en 'n burger van daardie Staat is.

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

Artikel 19

Studente, Vakleerlinge en Besigheidsleerlinge

Studente, vakleerlinge of besigheidsleerlinge wat in 'n Kontrakterende Staat teenwoordig is uitsluitlik vir die doel van hul onderrig of opleiding en wat inwoners is, of onmiddellik voor sodanige teenwoordigheid inwoners 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 hul onderhoud, onderrig of opleiding.

Artikel 20

Tegniese Gelde

1. Tegniese gelde wat in 'n Kontrakterende Staat ontstaan en verkry word deur 'n inwoner van die ander Kontrakterende Staat, kan in daardie ander Staat belas word.

2. Sodanige tegniese gelde kan egter ook in die Kontrakterende Staat waarin dit ontstaan en ooreenkomstig die wette van daardie Staat belas word, maar waar sodanige tegniese gelde verkry word deur 'n inwoner van die ander Kontrakterende Staat wat in daardie Staat belastingpligtig is ten opsigte daarvan, gaan die belasting opgelê in die Kontrakterende Staat waarin die tegniese gelde ontstaan, nie 10 persent van die bruto bedrag van sodanige gelde te bowe nie.

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

3. Die uitdrukking "tegniese gelde" soos in hierdie Artikel gebruik, beteken betalings van enige aard aan enige persoon, behalwe 'n werknemer van die persoon wat die betalings maak, as vergoeding vir enige dienste van 'n administratiewe, tegniese, bestuurs- of konsulerende aard.

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

5. Technical fees shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the technical fees, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the technical fees was incurred, and such technical fees are borne by that permanent establishment, then such technical fees shall be deemed to arise in the State in which the permanent establishment 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 technical fees paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 21

Other Income

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

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

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

4. Die bepalings van paragrawe 1 en 2 van hierdie Artikel is nie van toepassing nie indien die voordelige eienaar van die tegniese gelde wat 'n inwoner van 'n Kontrakterende Staat, in die ander Kontrakterende Staat waarin die tegniese gelde ontstaan besigheid dryf deur middel van 'n permanente saak daarin geleë en die tegniese gelde effektief verbonde is aan sodanige permanente saak. In sodanige geval is die bepalings van Artikel 7 van toepassing.

5. Tegniese gelde word geag in 'n Kontrakterende Staat te ontstaan wanneer die betaler 'n inwoner van daardie Staat is. Waar die persoon wat die tegniese gelde betaal, hetsy daardie persoon 'n inwoner van 'n Kontrakterende Staat is al dan nie, egter in 'n Kontrakterende Staat 'n permanente saak het in verband waarmee die verpligting om die tegniese gelde te betaal aangegaan is, en sodanige tegniese gelde deur daardie permanente saak gedra word, word sodanige tegniese gelde geag te ontstaan in die Staat waarin die permanente saak geleë is.

6. Waar, vanweë 'n besondere verband tussen die betaler en die voordelige eienaar of tussen hulle albei en 'n ander persoon, die bedrag van die betaalde tegniese gelde om watter rede ook al, die bedrag te bowe gaan waarop die betaler en die voordelige eienaar by ontstentenis van sodanige verband sou ooreengekom het, is die bepalings van hierdie Artikel slegs op laasgenoemde bedrag van toepassing. In sodanige geval bly die oormaat deel van die betalings belasbaar ooreenkomstig die wette van elk van die Kontrakterende State, met behoorlike inagneming van die ander bepalings van hierdie Konvensie.

Artikel 21

Ander Inkomste

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

2. Die bepalings van paragraaf 1 is nie van toepassing op inkomste nie, behalwe inkomste uit onroerende eiendom soos in paragraaf 2 van Artikel 6 omskryf, indien die ontvanger van sodanige inkomste wat 'n inwoner van 'n Kontrakterende Staat is, in die ander Kontrakterende Staat besigheid dryf deur middel van 'n permanente saak daarin geleë en die reg of eiendom ten opsigte waarvan die inkomste betaal word, effektief verbonde is aan sodanige permanente saak. In sodanige geval is die bepalings van Artikel 7 van toepassing.

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

Article 22

Elimination of Double Taxation

1. Double taxation shall be eliminated as follows:

- (a) In Botswana, subject to the provisions of the laws of Botswana regarding the allowance of a credit against Botswana tax of tax payable under the laws of a country outside Botswana, South African tax payable under the laws of South Africa and in accordance with this Convention, whether directly or by deduction, on profits or income liable to tax in South Africa shall be allowed as a credit against any Botswana tax payable in respect of the same profits or income by reference to which the South African tax is computed. However, the amount of such credit shall not exceed the amount of the Botswana tax payable on that income in accordance with the laws of Botswana.
- (b) In South Africa, subject to the provisions of the law of South Africa regarding the deduction from tax payable in South Africa of tax payable in any country other than South Africa, Botswana tax paid by residents of South Africa in respect of income taxable in Botswana, in accordance with the provisions of this Convention, shall be deducted from the taxes due according to South African fiscal law. Such deduction shall not, however, exceed an amount which bears to the total South African tax payable the same ratio as the income concerned bears to the total income.

2. For the purposes of paragraph 1 of this Article, the terms "Botswana tax paid" and "South African tax payable" shall be deemed to include the amount of tax which would have been paid in Botswana or South Africa, as the case may be, but for an exemption or reduction granted in accordance with laws which establish schemes for the promotion of economic development in Botswana or South Africa, as the case may be, such schemes having been mutually agreed by the competent authorities of the Contracting States as qualifying for the purposes of this paragraph.

3. A grant given by a Contracting State or a political subdivision thereof to a resident of the other Contracting State in accordance with laws which establish schemes for the promotion of economic development in Botswana or South Africa, as the case may be, such schemes having been mutually agreed by the competent authorities of the Contracting States as qualifying for the purposes of this paragraph, shall not be taxable in the other State.

Article 23

Non-discrimination

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

Artikel 22***Uitskakeling van Dubbele Belasting*****1. Dubbele belasting word soos volg uitgeskakel:**

- (a) In Botswana, behoudens die bepalinge van die reg van Botswana betreffende die toestaan van 'n krediet teen Botswana belasting van belasting betaalbaar ingevolge die reg van 'n land buite Botswana, word Suid-Afrikaanse belasting betaalbaar ingevolge Suid-Afrikaanse reg en ooreenkomstig hierdie Konvensie, hetsy regstreeks of by aftrekking, ten opsigte van winste of inkomste wat in Suid-Afrika aan belasting onderhewig is, as 'n krediet toegelaat teen enige Botswana belasting betaalbaar ten opsigte van dieselfde winste of inkomste ten opsigte waarvan die Suid-Afrikaanse belasting bereken word. Die bedrag van sodanige krediet gaan egter nie die bedrag van die Botswana belasting betaalbaar ten opsigte van daardie inkomste ingevolge die reg van Botswana, te bowe nie.
- (b) In Suid-Afrika, behoudens die bepalinge van die reg van Suid-Afrika betreffende die aftrekking vanaf belasting betaalbaar in Suid-Afrika van belasting betaalbaar in enige ander land as Suid-Afrika, word Botswana belasting betaal deur inwoners van Suid-Afrika ten opsigte van inkomste belasbaar in Botswana ooreenkomstig die bepalinge van hierdie Konvensie afgetrek van die belastinge verskuldig ooreenkomstig die Suid-Afrikaanse fiskale reg. Sodanige aftrekking mag egter nie 'n bedrag te bowe gaan wat in dieselfde verhouding tot die totale Suid-Afrikaanse belasting betaalbaar staan as wat die betrokke inkomste tot die totale inkomste staan nie.

2. Vir doeleindes van paragraaf 1 van hierdie Artikel word die uitdrukkings "Botswana belasting betaal" en "Suid-Afrikaanse belasting betaalbaar" geag die bedrag aan belasting wat in Botswana of Suid-Afrika, na gelang van die geval, betaal sou gewees het, in te sluit, behalwe vir 'n vrystelling of vermindering toegestaan ingevolge wette ingestel in Botswana of Suid-Afrika, na gelang van die geval, vir die bevordering van ekonomiese ontwikkeling, waar sodanige skemas onderling deur die bevoegde owerhede van die Kontrakterende State ooreengekom word as kwalifiserend vir doeleindes van hierdie paragraaf te wees.

3. 'n Toekenning toegestaan deur 'n Kontrakterende Staat of 'n staatkundige onderafdeling daarvan aan 'n inwoner van die ander Kontrakterende Staat ingevolge wette ingestel vir die bevordering van ekonomiese ontwikkeling in Botswana of Suid-Afrika, na gelang van die geval, waar sodanige skemas onderling deur die bevoegde owerhede van die Kontrakterende State ooreengekom word as kwalifiserend vir doeleindes van hierdie paragraaf te wees, is nie in die ander Staat belasbaar nie.

Artikel 23***Nie-diskriminasie***

1. Burgers van 'n Kontrakterende Staat mag nie in die ander Kontrakterende Staat onderwerp word aan enige belasting of enige vereiste in verband daarmee wat anders of swaarder is as die belasting en die daaraan verbonde vereistes waaraan burgers van daardie ander Staat onder dieselfde omstandighede, veral met betrekking tot verblyf, onderworpe is of onderwerp kan word nie. Hierdie bepaling is, ondanks die bepalinge 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. 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 that first-mentioned State are or may be subjected.

4. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, paragraph 6 of Article 12 or paragraph 6 of Article 20 apply, interest, royalties, technical fees and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

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

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

Article 24

Mutual Agreement Procedure

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

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

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

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

4. Uitgesonderd waar die bepalings van paragraaf 1 van Artikel 9, paragraaf 7 van Artikel 11, paragraaf 6 van Artikel 12 of paragraaf 6 van Artikel 20 van toepassing is, is rente, tantième, tegniese gelde en ander uitbetalings betaal deur 'n onderneming van 'n Kontrakterende Staat aan 'n inwoner van die ander Kontrakterende Staat, vir doeleindes van die vasstelling van die belasbare winste van sodanige onderneming, aftrekbaar onder dieselfde voorwaardes as wat sou geld indien dit aan 'n inwoner van eersgenoemde Staat betaal is.

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

6. In hierdie Artikel beteken die uitdrukking "belasting" die belastings waaroor hierdie Konvensie handel.

Artikel 24

Prosedure vir Onderlinge Ooreenkoms

1. Waar 'n inwoner van 'n Kontrakterende Staat van mening is dat die optrede van een van of van albei die Kontrakterende State tot gevolg het of tot gevolg sal hê dat daardie persoon nie ooreenkomstig hierdie Konvensie belas word nie, kan daardie persoon, ongeag die regsmiddels waarvoor die landsreg van daardie State voorsiening maak, 'n saak stel aan die bevoegde owerheid van die Kontrakterende Staat waarvan die persoon 'n inwoner is of, indien die saak onder paragraaf 1 van Artikel 23 ressorteer, aan dié van die Kontrakterende Staat waarvan die persoon 'n burger is. Die saak moet gestel word binne drie jaar vanaf die eerste kennisgewing van die handeling wat gelei het tot belasting wat nie ooreenkomstig die bepalings van die Konvensie 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 Konvensie is nie. Enige ooreenkoms wat bereik word, moet toegepas word ondanks enige tydsbeperkinge in die landsreg van die Kontrakterende State.

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

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a joint commission consisting of representatives of the competent authorities of the Contracting States.

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

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 or the 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*).

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

4. Die bevoegde owerhede van die Kontrakterende State kan regstreeks met mekaar kommunikeer met die doel om tot 'n ooreenkoms te geraak soos in die voorgaande paragrawe beoog. Wanneer 'n mondelinge wisseling van menings raadsaam geag word ten einde tot 'n ooreenkoms te geraak, kan sodanige meningswisseling plaasvind deur middel van 'n gesamentlike kommissie bestaande uit verteenwoordigers van die bevoegde owerhede van die Kontrakterende State.

Artikel 25

Uitruil van Inligting

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

2. In geen geval mag die bepalings van paragraaf 1 uitgelê word nie as sou dit 'n Kontrakterende Staat die verpligting opleë 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-, industriële, kommersiële of professionele geheim of handelsproses sou openbaar, of inligting te verstrek waarvan die openbaarmaking strydig met openbare beleid (*ordre public*) sal wees.

Article 26

Assistance in Recovery

1. The Contracting States shall, to the extent permitted by their respective domestic law, lend assistance to each other in order to recover the taxes referred to in Article 2 as well as interest and penalties with regard to such taxes, provided that reasonable steps to recover such taxes have been taken by the Contracting State requesting such assistance.

2. Claims which are the subject of requests for assistance shall not have priority over taxes owing in the Contracting State rendering assistance and the provisions of paragraph 1 of Article 25 shall also apply to any information which, by virtue of this Article, is supplied to the competent authority of a Contracting State.

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

Article 27

Members of Diplomatic Missions and Consular Posts

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

Article 28

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 Convention. The Convention shall enter into force on the date of receipt of the later of these notifications.

2. The provisions of the Convention shall apply:

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

3. The Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income between the Government of the Republic of Botswana and the Government of the Republic of South Africa which entered into force on 21 September 1978 shall be terminated with effect from the date of entry into force of this Convention and shall cease to have effect for any period thereafter for which the provisions of this Convention shall apply.

Artikel 26

Bystand met Invordering

1. Die Kontrakterende State verleen, in die mate deur hul onderskeie landswette toegelaat, aan mekaar bystand ten einde die belastings in Artikel 2 bedoel te verhaal, asook rente en boetes met betrekking tot sodanige belastings, met dien verstande dat billike stappe om sodanige belastings te verhaal, deur die Kontrakterende Staat wat sodanige bystand versoek, gedoen is.
2. Eise wat die onderwerp is van versoeke om bystand geniet nie voorkeur bo die belastings verskuldig in die Kontrakterende Staat wat bystand verleen nie en die bepalings van paragraaf 1 van Artikel 25 is ook van toepassing op enige inligting wat, uit hoofde van hierdie Artikel, aan die bevoegde owerheid van 'n Kontrakterende Staat verskaf word.
3. Die bevoegde owerhede van die Kontrakterende State moet die wyse waarop die bepalings van hierdie Artikel toegepas word deur onderlinge ooreenkoms bepaal.

Artikel 27

Lede van Diplomatieke Missies en Konsulêre Poste

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

Artikel 28

Inwerkingtreding

1. Elk van die Kontrakterende State stel die ander in kennis van die afhandeling van die prosedures wat ingevolge elkeen se reg vereis word om hierdie Konvensie in werking te stel. Die Konvensie tree in werking op die datum van ontvangs van die laaste van hierdie kennisgewings.
2. Die bepalings van die Konvensie is van toepassing:
 - (a) met betrekking tot belastings wat by die bron teruggehou word, ten opsigte van bedrae betaal of gekrediteer op of ná die dertigste dag wat volg op die datum waarop die Konvensie in werking tree; en
 - (b) met betrekking tot ander belastings, ten opsigte van belastingjare of jare van aanslag beginnende op of ná die dertigste dag wat volg op die datum waarop die Konvensie in werking tree.
3. Die Ooreenkoms vir die Vermydning van Dubbele Belasting en die Voorkoming van Fiskale Ontduiking met betrekking tot Belastings op Inkomste tussen die Regering van die Republiek Botswana en die Regering van die Republiek van Suid-Afrika wat op 21 September 1978 in werking getree het, word opgesê met ingang van die datum van inwerkingtreding van hierdie Konvensie en is nie meer van krag nie vir enige tydperk waarvoor die bepalings van hierdie Konvensie van krag is.

Article 29**Termination**

1. This Convention shall remain in force indefinitely but either of the Contracting States may terminate the Convention through the diplomatic channel, by giving to the other Contracting State written notice of termination not later than 30 June of any calendar year starting five years after the year in which the Convention entered into force.

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

- (a) with regard to taxes withheld at source, in respect of amounts paid or credited after the end of the calendar year in which such notice is given; and
- (b) with regard to other taxes, in respect of tax years or years of assessment beginning after the end of the calendar year in which such notice is given.

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

DONE at Gaborone in duplicate, this 7th day of August 2003.

**T A MANUEL
FOR THE GOVERNMENT OF
THE REPUBLIC OF SOUTH AFRICA**

**B GAOLATHE
FOR THE GOVERNMENT OF
THE REPUBLIC OF BOTSWANA**

PROTOCOL

On signing the Convention between the Government of the Republic of South Africa and the Government of the Republic of Botswana for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, the signatories being duly authorised thereto, have in addition agreed on the following provisions which shall form an integral part of the said Convention:

1. With reference to Article 3:

It is understood that the term "business" includes the performance of professional services and of other activities of an independent character.

Artikel 29**Opsegging**

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

2. In sodanige geval is die Konvensie nie meer van toepassing nie:

- (a) met betrekking tot belastings wat by die bron teruggehou word, ten opsigte van bedrae betaal of gekrediteer ná die einde van die kalenderjaar waarin sodanige kennis gegee word; en
- (b) met betrekking tot ander belastings, ten opsigte van belastingjare of jare van aanslag beginnende ná die einde van die kalenderjaar waarin sodanige kennis gegee word.

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

GEDOEN, in tweevoud, te Gaborone, op hede die 7de dag van Augustus 2003.

T A MANUEL
NAMENS DIE REGERING VAN
DIE REPUBLIEK VAN SUID-AFRIKA

B GAOLATHE
NAMENS DIE REGERING VAN
DIE REPUBLIEK VAN BOTSWANA

PROTOKOL

By die ondertekening van die Konvensie tussen die Regering van die Republiek van Suid-Afrika en die Regering van die Republiek Botswana vir die Vermydning van Dubbele Belasting en die Voorkoming van Fiskale Ontduiking met betrekking tot Belastings op Inkomste, het die ondertekenaars synde behoorlik daartoe gemagtig, boonop op die volgende bepalinge wat 'n integrerende deel van genoemde Konvensie uitmaak, ooreengekom:

1. Met verwysing na Artikel 3:

Die verstandhouding is dat die uitdrukking "besigheid", die uitvoering van professionele dienste en van ander bedrywighede van 'n onafhanklike aard insluit.

2. With reference to Article 7:

- (a) Where an enterprise of a Contracting State sells goods or merchandise or carries on business in the other Contracting State through a permanent establishment situated therein, the profits of that permanent establishment shall be determined on the basis of the amount which is attributed to the actual activity of the permanent establishment for such sales or business.
- (b) In the case of contracts, in particular for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, where the enterprise has a permanent establishment in the other Contracting State, the profits of such permanent establishment shall be determined on the basis of that part of the contract which is effectively carried out by the permanent establishment in the Contracting State in which it is situated. Profits derived from the supply of goods to that permanent establishment or profits related to the part of the contract which is carried out in the Contracting State in which the head office of the enterprise is situated shall be taxable only in that State.
- (c) It was furthermore agreed that notwithstanding the above-mentioned paragraphs, neither Contracting State is prevented from requisitioning necessary information in relation to such sale of goods or merchandise or carrying out of such contracts and is not prevented from enforcing the provisions of the Convention dealing with "Associated Enterprises".

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

DONE at Gaborone in duplicate, this 7th day of August 2003.

**T A MANUEL
FOR THE GOVERNMENT OF
THE REPUBLIC OF SOUTH AFRICA**

**B GAOLATHE
FOR THE GOVERNMENT OF
THE REPUBLIC OF BOTSWANA**

2. Met verwysing na Artikel 7:

- (a) Waar 'n onderneming van 'n Kontrakterende Staat goedere of handelsware verkoop of 'n besigheid in die ander Kontrakterende Staat dryf deur middel van 'n permanente saak wat daarin geleë is, word die winste van daardie permanente saak vasgestel op grond van die bedrag wat toegeskryf word aan die werklike bedrywighede van die permanente saak vir sodanige verkope of besigheid.
- (b) In die geval van kontrakte, in die besonder vir die opmeet, verskaffing, oprigting of konstruksie van industriële, kommersiële of wetenskaplike toerusting of persele, of vir openbare werke, waar die onderneming 'n permanente saak in die ander Kontrakterende Staat het, word die winste van sodanige permanente saak vasgestel op grond van daardie gedeelte van die kontrak wat effektief deur die permanente saak in die Kontrakterende Staat waarin dit geleë is, gedryf word. Winste verkry uit die verskaffing van goedere aan daardie permanente saak of winste wat betrekking het op die gedeelte van die kontrak wat in die Kontrakterende Staat waarin die hoofkantoor van die onderneming geleë is, gedryf word, is slegs in daardie Staat belasbaar.
- (c) Daar is verder ooreengekom dat, ondanks die bogemelde paragrawe, geeneen van die Kontrakterende State verhoed word om nodige inligting met betrekking tot sodanige verkope van goedere of handelsware of die uitvoering van sodanige kontrakte, aan te vra nie en word nie verhoed om die bepalings van die Konvensie wat met "Verwante Ondernemings" handel, af te dwing nie.

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

GEDOEN, in tweevoud, te Gaborone, op hede die 7de dag van Augustus 2003.

T A MANUEL
NAMENS DIE REGERING VAN
DIE REPUBLIEK VAN SUID-AFRIKA

B GAOLATHE
NAMENS DIE REGERING VAN
DIE REPUBLIEK VAN BOTSWANA

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