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KONVENSIË TUSSEN DIE REGERING VAN DIE REPUBLIEK VAN SUID-AFRIKA EN DIE REGERING VAN JAPAN 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 Japan en deur die Parlement goedgekeur is ingevolge artikel 231 (2) van die Grondwet.

SCHEDULE**CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF JAPAN 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 Japan,

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

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

Article 2

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

(a) in Japan:

- (i) the income tax;
- (ii) the corporation tax; and
- (iii) the local inhabitant taxes

(hereinafter referred to as "Japanese tax");

(b) in South Africa:

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

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

2. The Convention shall apply also to any identical or substantially similar taxes, whether national or local, which are imposed by a Contracting State or a political subdivision or local authority thereof after the date of signature of the Convention in addition to, or in place of, those referred to in paragraph 1. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws within a reasonable period of time after such changes.

BYLAE

KONVENSIE TUSSEN DIE REGERING VAN DIE REPUBLIEK VAN SUID-AFRIKA EN DIE REGERING VAN JAPAN 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 Japan het,

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

Soos volg ooreengekom:

Artikel 1

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

Artikel 2

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

(a) in Japan:

- (i) die inkomstebelasting;
- (ii) die maatskappybelasting; en
- (iii) die plaaslike inwonerbelastinge

(hierna "Japannese belasting" genoem);

(b) in Suid-Afrika:

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

(hierna "Suid-Afrikaanse belasting" genoem).

2. Die Konvensie is ook van toepassing op enige identiese of wesenlik soortgelyke belastinge, hetsy nasionaal of plaaslik, wat bykomend by of in plaas van dié bedoel in paragraaf 1, deur 'n Kontrakterende Staat of 'n staatkundige onderverdeling of plaaslike owerheid daarvan opgelê word na die datum van ondertekening van die Konvensie. Die bevoegde owerhede van die Kontrakterende State moet mekaar in kennis stel van enige wesenlike veranderinge wat in hulle onderskeie belastingwette aangebring is binne 'n redelike tydperk na sodanige veranderinge.

Article 3

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

- (a) the term "Japan", when used in a geographical sense, means all the territory of Japan, including its territorial sea, in which the laws relating to Japanese tax are in force, and all the area beyond its territorial sea, including the sea-bed and subsoil thereof, over which Japan has jurisdiction in accordance with international law and in which the laws relating to Japanese tax are in force;
- (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 Japan or South Africa, as the context requires;
- (d) the term "person" includes an individual, a company and any other body of persons which is treated as an entity for tax purposes;
- (e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (h) the term "competent authority" means:
 - (i) in the case of Japan, the Minister of Finance or his authorized representative;
 - (ii) in the case of South Africa, the Commissioner for Inland Revenue or his authorized representative;
- (i) the term "nationals" means:
 - (i) in the case of Japan, all individuals possessing the nationality of Japan and all juridical persons created or organized under the laws of Japan and all organizations without juridical personality treated for the purposes of Japanese tax as juridical persons created or organized under the laws of Japan;
 - (ii) in the case of South Africa, all individuals possessing the nationality of South Africa and all legal persons and associations deriving their status as such from the laws in force in South Africa; and
- (j) the term "tax" means Japanese tax or South African tax, as the context requires.

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

Artikel 3

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

- (a) beteken die uitdrukking "Japan" wanneer in geografiese verband gebruik, die hele grondgebied van Japan, met inbegrip van sy territoriale waters waarin die wette van Japan met betrekking tot Japannese belasting van krag is, en die hele gebied buite sy territoriale waters, met inbegrip van die seebodem en ondergrond daarvan waaroor Japan jurisdiksie het ingevolge die volkereg en waarin die wette met betrekking tot Japannese belasting van krag is;
- (b) beteken die uitdrukking "Suid-Afrika" die Republiek van Suid-Afrika en, wanneer in geografiese verband gebruik, ook die territoriale waters daarvan asook enige deel buite die territoriale waters, met inbegrip van die kontinentale plat, wat ingevolge die reg van Suid-Afrika en ooreenkomstig die volkereg aangewys is of hierna aangewys word as 'n deel waarbinne Suid-Afrika soewereine regte of jurisdiksie mag uitoefen;
- (c) beteken die uitdrukking "'n Kontrakterende Staat" en "die ander Kontrakterende Staat" Japan of Suid-Afrika, na gelang die samehang vereis;
- (d) beteken die uitdrukking "persoon" ook 'n individu, 'n maatskappy en enige ander liggaam van persone wat vir belastingdoeleindes as 'n entiteit behandel word;
- (e) beteken die uitdrukking "maatskappy" 'n regspersoon of enige entiteit wat vir belastingdoeleindes as 'n regspersoon behandel word;
- (f) beteken die uitdrukking "onderneming van 'n Kontrakterende Staat" en "onderneming van die ander Kontrakterende Staat" onderskeidelik 'n onderneming bedryf deur 'n inwoner van 'n Kontrakterende Staat en 'n onderneming bedryf deur 'n inwoner van die ander Kontrakterende Staat;
- (g) beteken die uitdrukking "internasionale verkeer" enige vervoer per skip of vliegtuig bedryf deur 'n onderneming van 'n Kontrakterende Staat, behalwe wanneer die skip of vliegtuig slegs tussen plekke in die ander Kontrakterende Staat bedryf word;
- (h) beteken die uitdrukking "bevoegde owerheid":
 - (i) in die geval van Japan, die Minister van Finansies of sy gemagtigde verteenwoordiger;
 - (ii) in die geval van Suid-Afrika, die Kommissaris van Binnelandse Inkomste of sy gemagtigde verteenwoordiger;
- (i) beteken die uitdrukking "burgers":
 - (i) in die geval van Japan, alle individue wat burgerskap van Japan besit en alle regspersone geskep of gereël ingevolge die reg van Japan en alle organisasies sonder regspersoonlikheid wat vir doeleindes van Japannese belasting behandel word as regspersone geskep of gereël ingevolge die reg van Japan;
 - (ii) in die geval van Suid-Afrika, alle individue wat burgerskap van Suid-Afrika besit en alle regspersone en verenigings wat hul status as sodanig verkry van die wette wat in Suid-Afrika van krag is; en
- (j) beteken die uitdrukking "belasting" Japannese belasting of Suid-Afrikaanse belasting na gelang die samehang vereis.

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

Article 4

1. For the purposes of this Convention, the term "resident of a Contracting State" means:
 - (a) in relation to Japan, any person who, under the laws of Japan, is liable to tax therein by reason of his domicile, residence, place of head or main office or any other criterion of a similar nature;
 - (b) in relation to South Africa, any individual who, under the laws of South Africa, is ordinarily resident in South Africa and any person other than an individual which has its place of effective management in South Africa.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:
 - (a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests);
 - (b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
 - (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
 - (d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then the competent authorities of the Contracting States shall determine by mutual agreement the Contracting State of which that person shall be deemed to be a resident for the purposes of the Convention.

Article 5

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term "permanent establishment" includes especially:
 - (a) a place of management;
 - (b) a branch;
 - (c) an office;
 - (d) a factory;
 - (e) a workshop; and
 - (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
3. A building site, a construction, installation or assembly project or supervisory activities in connection therewith, constitute a permanent establishment only if such site, project or activities last more than twelve months.

Artikel 4

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

- (a) met betrekking tot Japan, 'n persoon wat, kragtens die wette van Japan daarin belastingpligtig is uit hoofde van sy domisilie, verblyf, plek van hoof- of vernaamste kantoor of enige ander soortgelyke maatstaf;
- (b) met betrekking tot Suid-Afrika, 'n persoon wat, kragtens die wette van Suid-Afrika gewoonlik in Suid-Afrika woonagtig is en 'n ander persoon behalwe 'n individu wat sy plek van effektiewe bestuur in Suid-Afrika het.

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

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

3. Waar uit hoofde van die bepalings van paragraaf 1 'n ander persoon as 'n individu 'n inwoner van beide Kontrakterende State is, bepaal die bevoegde owerhede van die Kontrakterende State by onderlinge ooreenkoms van watter Kontrakterende Staat daardie persoon geag word 'n inwoner te wees vir doeleindes van die Konvensie.

Artikel 5

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

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

- (a) 'n plek van bestuur;
- (b) 'n tak;
- (c) 'n kantoor;
- (d) 'n fabriek;
- (e) 'n werkwinkel; en
- (f) 'n myn, 'n olie- of gasbron, 'n steengroef of enige ander plek van ontginning van natuurlike hulpbronne.

3. 'n Bouterrein, 'n konstruksie-, installasie- of monteeprojek of enige toesighoudende bedrywighede in verband daarmee maak 'n permanente saak uit slegs indien sodanige terrein, projek of bedrywighede langer as twaalf maande bestaan.

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

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

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom the provisions of paragraph 6 apply - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that Contracting State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

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

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

Article 6

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 Contracting State.

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

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

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

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

5. Ondanks die bepalings van paragrawe 1 en 2, waar 'n persoon - uitgesonderd 'n agent met onafhanklike status op wie paragraaf 6 van toepassing is - namens 'n onderneming optree en magtiging het, en dit gewoonlik uitoefen, om in 'n Kontrakterende Staat kontrakte in die naam van die onderneming te sluit, word daardie onderneming geag 'n permanente saak in daardie Kontrakterende Staat te hê ten opsigte van enige bedrywighede wat daardie persoon vir die onderneming onderneem, tensy die bedrywighede van sodanige persoon beperk is tot dié in paragraaf 4 genoem wat, indien dit deur middel van 'n vaste besigheidsplek uitgeoefen sou 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 nie bloot omdat hy in daardie Kontrakterende Staat besigheid dryf deur middel van 'n makelaar, algemene kommissie-agent of enige ander agent met onafhanklike status, mits sodanige persone in die gewone loop van hul besigheid optree.

7. Die feit dat 'n maatskappy wat 'n inwoner van 'n Kontrakterende Staat is, beheer het oor of beheer word deur 'n maatskappy wat 'n inwoner van die ander Kontrakterende Staat is, of wat in daardie ander Staat besigheid dryf (hetsy deur middel van 'n permanente saak of andersins), beteken nie op sigself dat enigeen van die maatskappye 'n permanente saak van die ander is nie.

Artikel 6

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

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

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

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

Article 7

1. The profits of an enterprise of a Contracting State shall be taxable only in that Contracting 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 Contracting State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

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

4. In so far as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

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

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

Article 8

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

2. In respect of the operation of ships or aircraft in international traffic carried on by an enterprise of a Contracting State, that enterprise, if an enterprise of South Africa, shall be exempt from the enterprise tax in Japan, and, if an enterprise of Japan, shall be exempt from any tax similar to the enterprise tax in Japan which may hereafter be imposed in South Africa.

3. The provisions of the preceding paragraphs of this Article shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

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

Artikel 7

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

2. Behoudens die bepalinge van paragraaf 3, waar 'n onderneming van 'n Kontrakterende Staat in die ander Kontrakterende Staat besigheid dryf deur middel van 'n permanente saak wat daarin geleë is, word daar in elke Kontrakterende Staat aan daardie permanente saak die winste toegeskryf wat hy na verwagting sou kon behaal as hy 'n afsonderlike en aparte onderneming was wat met dieselfde of soortgelyke bedrywighede onder dieselfde of soortgelyke omstandighede besig is en geheel en al onafhanklik met die onderneming waarvan hy 'n permanente saak is, sake doen.

3. By die vasstelling van die winste van 'n permanente saak word daar as aftrekkings toegelaat uitgawes wat vir doeleindes van die permanente saak aangegaan word, insluitende bestuurs- en algemene administrasiekoste aldus aangegaan, hetsy in die Kontrakterende Staat waarin die permanente saak geleë is of elders.

4. Vir sover dit in 'n Kontrakterende Staat gebruiklik is om die winste wat aan 'n permanente saak toegeskryf moet word, vas te stel volgens die grondslag van 'n toedeling van die totale winste van die onderneming aan sy onderskeie dele, belet niks in paragraaf 2 daardie Kontrakterende Staat om die winste wat belas moet word deur sodanige toedeling as wat gebruiklik is, vas te stel nie; die metode van toedeling wat aanvaar word, moet egter sodanig wees dat die resultaat in ooreenstemming is met die beginsels in hierdie Artikel vervat.

5. Geen winste word aan 'n permanente saak toegeskryf uit hoofde van die blote aankoop deur daardie permanente saak van goedere of handelsware vir die onderneming nie.

6. By die toepassing van die bepalinge van die voorgaande paragrawe van hierdie Artikel, tensy daar goeie en afdoende rede tot die teendeel is, word die winste wat aan die permanente saak toegeskryf moet word, jaar na jaar volgens dieselfde metode vasgestel.

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

Artikel 8

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

2. Ten opsigte van die bedryf van skepe of vliegtuie in internasionale verkeer deur 'n onderneming van 'n Kontrakterende Staat gedryf, is daardie onderneming, indien dit 'n onderneming van Suid-Afrika is, vrygestel van die ondernemingsbelasting in Japan en, indien dit 'n onderneming van Japan is, vrygestel van enige belasting wat soortgelyk is aan die ondernemingsbelasting in Japan wat hierna in Suid-Afrika heef kan word.

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

Article 9**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 accordance with the provisions of paragraph 1, in the profits of an enterprise of that Contracting State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other Contracting State and where the competent authorities of the Contracting States agree, upon consultation, that all or part of the profits so included are profits which would have accrued to the enterprise of the first-mentioned Contracting State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Contracting State shall make an appropriate adjustment to the amount of the tax charged therein on those agreed profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention.

Article 10

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 Contracting 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 Contracting State, but if the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed:

- (a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which owns at least 25 per cent of the voting shares of the company paying the dividends during the period of six months immediately before the end of the accounting period for which the distribution of profits takes place;
- (b) 15 per cent of the gross amount of the dividends in all other cases.

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

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

Artikel 9**1. Waar:**

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

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

2. Waar 'n Kontrakterende Staat ingevolge die bepalings van paragraaf 1 by die winste van 'n onderneming van daardie Kontrakterende Staat winste insluit -en dit dienoreenkomstig belas- waarop 'n onderneming van die ander Kontrakterende Staat in daardie ander Kontrakterende Staat belas is en waar die bevoegde owerhede van die Kontrakterende State na oorlegpleging ooreenkom dat die totale of 'n gedeelte van die winste aldus ingesluit winste is wat aan die onderneming van eersgenoemde Kontrakterende Staat sou toegeval het indien die voorwaardes tussen die twee ondernemings gestel dieselfde sou gewees het as dié wat tussen onafhanklike ondernemings gestel sou gewees het, maak daardie ander Kontrakterende Staat 'n toepaslike aanpassing aan die bedrag van die belasting daarin gehê op daardie ooreengekome winste. By die bepaling van sodanige aanpassing word die ander bepalings van hierdie Konvensie behoorlik in ag geneem.

Artikel 10

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

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

- (a) 5 persent van die bruto bedrag van die dividende indien die bevoordeelde eienaar 'n maatskappy is wat gedurende die tydperk van ses maande onmiddellik voor die einde van die rekeningkundige tydperk waarvoor die uitkering van winste plaasvind minstens 25 persent besit van die stemdraende aandele van die maatskappy wat die dividende betaal;
- (b) 15 persent van die bruto bedrag van die dividende in alle ander gevalle.

Die bepalings van hierdie paragraaf raak nie die belasting van die maatskappy ten opsigte van die winste waaruit die dividende betaal word nie.

3. Die uitdrukking "dividende" soos in hierdie Artikel gebesig, beteken inkomste uit aandele of ander regte, wat nie skuldeise is nie, wat in winste deel, asook inkomste uit ander korporatiewe regte 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. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other Contracting 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 Contracting State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other Contracting State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other Contracting State.

Article 11

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

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

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and derived by the Government of the other Contracting State, a political subdivision or local authority thereof, the Central Bank of that other Contracting State or any financial institution wholly owned by that Government, or by any resident of the other Contracting State with respect to debt-claims guaranteed, insured or indirectly financed by the Government of that other Contracting State, a political subdivision or local authority thereof, the Central Bank of that other Contracting State or any financial institution wholly owned by that Government shall be exempt from tax in the first-mentioned Contracting State.

4. For the purposes of the provisions of paragraph 3, the terms "the Central Bank" and "financial institution wholly owned by that Government" mean:

(a) in the case of Japan:

- (i) the Bank of Japan;
- (ii) the Export-Import Bank of Japan;
- (iii) the Overseas Economic Cooperation Fund;
- (iv) the Japan International Cooperation Agency; and
- (v) such other financial institution the capital of which is wholly owned by the Government of Japan as may be agreed upon from time to time between the Governments of the two Contracting States;

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

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

Artikel 11

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

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

3. Ondanks die bepalings van paragraaf 2, is rente wat in 'n Kontrakterende Staat ontstaan en verkry word deur die Regering van die ander Kontrakterende Staat, 'n staatkundige onderverdeling of plaaslike owerheid daarvan, die Sentrale Bank van daardie ander Kontrakterende Staat of 'n finansiële instelling wat ten volle deur daardie Regering besit word, of deur 'n inwoner van die ander Kontrakterende Staat met betrekking tot skuldeise gewaarborg, verseker of onregstreeks gefinansier deur die Regering van daardie ander Kontrakterende Staat, 'n staatkundige onderverdeling of plaaslike owerheid daarvan, die Sentrale Bank van daardie ander Kontrakterende Staat of 'n finansiële instelling wat ten volle deur daardie Regering besit word, in eersgenoemde Kontrakterende Staat van belasting vrygestel.

4. By die toepassing van die bepalings van paragraaf 3, beteken die uitdrukkings "die Sentrale Bank" en "finansiële instelling wat ten volle besit word deur daardie Regering":

(a) in die geval van Japan:

- (i) die Bank van Japan;
- (ii) die Uitvoer-Invoer Bank van Japan;
- (iii) die Oorsese Ekonomiese Samewerkingsfonds;
- (iv) die Japan Internasionale Samewerkingsagentskap; en
- (v) sodanige ander finansiële instelling waarvan die kapitaal ten volle deur die Regering van Japan besit word, soos wat van tyd tot tyd tussen die Regerings van die twee Kontrakterende State ooreengekom word;

(b) in the case of South Africa:

- (i) the South African Reserve Bank; and
- (ii) such other financial institution the capital of which is wholly owned by the Government of South Africa as may be agreed upon from time to time between the Governments of the two Contracting States.

5. 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.

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

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

8. 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

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

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

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including software, cinematograph films and films or tapes 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, as well as receipts from a bare boat charter of ships or aircraft (other than those dealt with in Article 8).

(b) in die geval van Suid-Afrika:

- (i) die Suid-Afrikaanse Reserwebank; en
- (ii) sodanige ander finansiële instelling waarvan die kapitaal ten volle deur die Regering van Suid-Afrika besit word, soos wat van tyd tot tyd tussen die Regerings van die twee Kontrakterende State ooreengekom word.

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

6. Die bepalinge van paragrawe 1, 2 en 3 is nie van toepassing nie indien die bevoordeelde eienaar van die rente, synde 'n inwoner van 'n Kontrakterende Staat, in die ander Kontrakterende Staat waarin die rente ontstaan, besigheid dryf deur middel van 'n permanente saak daarin geleë, of in daardie ander Kontrakterende Staat onafhanklike persoonlike dienste verrig vanaf 'n vaste basis daarin geleë, en die skuldeise ten opsigte waarvan die rente betaal word, effektief verbonde is met sodanige permanente saak of vaste basis. In sodanige geval is die bepalinge van Artikel 7 of Artikel 14, na gelang van die geval, van toepassing.

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

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

Artikel 12

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

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

3. Die uitdrukking "tantièmes" soos in hierdie Artikel gebesig, beteken betalings van enige aard ontvang as vergoeding vir die gebruik van, of die reg op die gebruik van, enige kopiereg van 'n letterkundige, kuns- of wetenskaplike werk, met inbegrip van sagteware, kinematograaffilms en films of bande vir radio- of televisie-uitsending, enige patent, handelsmerk, ontwerp of model, plan, geheime formule of proses, of vir die gebruik, of die reg op die gebruik van industriële, handels- of wetenskaplike toerusting, of vir inligting aangaande industriële, handels- of wetenskaplike ondervinding asook ontvangstes van 'n "sonder-bemannig" verhuring van skepe of vliegtuie (behalwe dié in Artikel 8 behandel).

4. Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political subdivision or local authority thereof or a resident of that Contracting State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

5. The provisions of paragraphs 1, 2 and 4 of this Article shall likewise apply to proceeds arising from the alienation of any copyright of literary, artistic or scientific work including software, cinematograph films and films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, or secret formula or process, except when the provisions of paragraph 2 of Article 13 are applicable to the gains to be derived from such proceeds.

6. The provisions of paragraphs 1, 2 and 5 shall not apply if the beneficial owner of the royalties or proceeds, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or proceeds arise, through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties or proceeds are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

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 royalties or proceeds, 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

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

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

3. Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic and any property, other than immovable property, pertaining to the operation of such ships or aircraft shall be taxable only in that Contracting State.

4. Gains derived by a resident of a Contracting State from the alienation of any property other than that referred to in paragraph 5 of Article 12 and the preceding paragraphs of this Article and arising in the other Contracting State may be taxed in that other Contracting State.

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

5. Die bepalings van paragrawe 1, 2 en 4 van hierdie Artikel is eweneens van toepassing op opbrengstes voortspruitend uit die vervreemding van enige kopiereg van 'n letterkundige, kuns- of wetenskaplike werk, met inbegrip van sagteware, kinematograaffilms en films of bande vir radio of televisie-uitsending, enige patent, handelsmerk, ontwerp of model, plan of geheime formule of proses, behalwe waar die bepalings van paragraaf 2 van Artikel 13 van toepassing is op die winste wat uit sodanige opbrengstes verkry kan word.

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

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

Artikel 13

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

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

3. Winste deur 'n onderneming van 'n Kontrakterende Staat verkry uit die vervreemding van skepe of vliegtuie wat in internasionale verkeer bedryf word en enige eiendom, behalwe onroerende eiendom, wat betrekking het op die bedryf van sodanige skepe of vliegtuie, is slegs in daardie Kontrakterende Staat belasbaar.

4. Winste verkry deur 'n inwoner van 'n Kontrakterende Staat uit die vervreemding van enige eiendom, behalwe dié bedoel in paragraaf 5 van Artikel 12 en die voorgaande paragrawe van hierdie Artikel en wat in die ander Kontrakterende Staat ontstaan, kan in daardie ander Kontrakterende Staat belas word.

Article 14

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that Contracting State unless:

- (a) he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; or
- (b) he is present in that other Contracting State for a period or periods amounting to or exceeding in the aggregate 183 days in the calendar year concerned.

If he has such a fixed base or remains in that other Contracting State for the aforesaid period or periods, the income may be taxed in that other Contracting State but only so much of it as is attributable to that fixed base or is derived in that other Contracting State during the aforesaid period or periods.

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

Article 15

1. Subject to the provisions of Articles 16 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 Contracting 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 Contracting 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 Contracting State if:

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

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

Article 16

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

Artikel 14

1. Inkomste verkry deur 'n inwoner van 'n Kontrakterende Staat ten opsigte van professionele dienste of ander bedrywighede van 'n onafhanklike aard, is slegs in daardie Kontrakterende Staat belasbaar, tensy:

- (a) hy 'n vaste basis in die ander Kontrakterende Staat gereeld tot sy beskikking het vir die doel van die verrigting van sy bedrywighede; of
- (b) hy in die ander Kontrakterende Staat teenwoordig is vir 'n tydperk of tydperke wat altesaam 183 dae in die betrokke kalenderjaar te bowe gaan.

Indien hy sodanige vaste basis het of vir die voormelde tydperk of tydperke in daardie ander Kontrakterende Staat bly, kan die inkomste in daardie ander Kontrakterende Staat belas word maar slegs soveel daarvan as wat aan daardie vaste basis toeskryfbaar is of gedurende die voormelde tydperk of tydperke in daardie ander Kontrakterende Staat verkry word.

2. Die uitdrukking "professionele dienste" sluit veral in onafhanklike wetenskaplike, letterkundige, kuns-, opvoedkundige of onderwysbedrywighede, asook die onafhanklike bedrywighede van geneeskundiges, regsgeleerdes, ingenieurs, argitekte, tandartse en rekenmeesters.

Artikel 15

1. Behoudens die bepalinge van Artikels 16 en 18 is salarisse, lone en ander soortgelyke besoldiging wat deur 'n inwoner van 'n Kontrakterende Staat ten opsigte van 'n diensbetrekking verkry word, slegs in daardie Kontrakterende 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 Kontrakterende Staat belas word.

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

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

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

Artikel 16

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

Article 17

1. Notwithstanding the provisions of Articles 7, 14 and 15, income derived by an individual who is a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other Contracting State.

2. Where income in respect of personal activities exercised in a Contracting State by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person who is a resident of the other Contracting State, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived by a resident of a Contracting State from activities exercised in the other Contracting State, as envisaged in the said paragraphs, shall be exempt from tax in that other Contracting State if such income is derived from such activities pursuant to a special programme for cultural exchange agreed upon between the Governments of the Contracting States.

Article 18

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

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

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

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

3. The provisions of Articles 15, 16, 17 and 20 shall apply to salaries, wages and other similar remuneration, and to pensions, in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or local authority thereof.

Article 19

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

Artikel 17

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

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

3. Ondanks die bepalinge van paragrawe 1 en 2, is inkomste verkry deur 'n inwoner van 'n Kontrakterende Staat uit bedrywighede in die ander Kontrakterende Staat beoefen, soos beoog in gemelde paragrawe, vrygestel van belasting in daardie ander Kontrakterende Staat indien sodanige inkomste verkry word uit sodanige bedrywighede ooreenkomstig 'n spesiale program vir kulturele uitruiling waarvoor die Regerings van die Kontrakterende State ooreengekom het.

Artikel 18

1. (a) Salarisse, lone en ander soortgelyke besoldiging, behalwe 'n pensioen, betaal deur 'n Kontrakterende Staat of 'n staatkundige onderverdeling of 'n plaaslike owerheid daarvan aan 'n individu ten opsigte van dienste gelewer aan daardie Kontrakterende Staat of 'n staatkundige onderverdeling of plaaslike owerheid daarvan by die uitoefening van regeringsfunksies, is slegs in daardie Kontrakterende Staat belasbaar.

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

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

2. (a) 'n Pensioen betaal deur, of uit fondse waartoe bydraes gemaak word deur, 'n Kontrakterende Staat of 'n staatkundige onderverdeling of 'n plaaslike owerheid daarvan aan 'n individu ten opsigte van dienste gelewer aan daardie Kontrakterende Staat of staatkundige onderverdeling of plaaslike owerheid daarvan, is slegs in daardie Kontrakterende Staat belasbaar.

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

3. Die bepalinge van Artikels 15, 16, 17 en 20 is van toepassing op salarisse, lone en ander soortgelyke besoldiging, en op pensioene, ten opsigte van dienste gelewer in verband met 'n besigheid wat deur 'n Kontrakterende Staat of 'n staatkundige onderverdeling of 'n plaaslike owerheid daarvan gedryf word.

Artikel 19

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

Article 20

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 Contracting State.

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

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

Article 21

1. Subject to the laws of Japan regarding the allowance as a credit against Japanese tax of tax payable in any country other than Japan:

(a) Where a resident of Japan derives income from South Africa which may be taxed in South Africa in accordance with the provisions of this Convention, the amount of South African tax payable in respect of that income shall be allowed as a credit against the Japanese tax imposed on that resident. The amount of credit, however, shall not exceed that part of the Japanese tax which is appropriate to that income.

(b) Where the income derived from South Africa is a dividend paid by a company which is a resident of South Africa to a company which is a resident of Japan and which owns not less than 25 per cent either of the voting shares issued by the company paying the dividend, or of the total shares issued by that company, the credit shall take into account the South African tax payable by the company paying the dividend in respect of its income.

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

Japanese tax paid by residents of South Africa in respect of income taxable in Japan, 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.

Article 22

The provisions of this Convention in respect of taxation on income shall not apply to a person (other than an individual) who has become a resident of a Contracting State in order primarily to enjoy the benefits of this Convention.

Artikel 20

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 Kontrakterende Staat belasbaar.

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

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

Artikel 21

1. Behoudens die reg van Japan met betrekking tot die toelaat as krediet teen Japannese belasting van belasting betaalbaar in enige land behalwe Japan:

(a) Waar 'n inwoner van Japan inkomste vanuit Suid-Afrika verkry wat ingevolge die bepaling van hierdie Konvensie in Suid-Afrika belas kan word, word die bedrag van Suid-Afrikaanse belasting betaalbaar ten opsigte van daardie inkomste as 'n krediet toegelaat teen die Japannese belasting gehef op daardie inwoner. Die bedrag van die krediet gaan egter nie daardie deel van die Japannese belasting wat toeskryfbaar aan daardie inkomste is, te bowe nie.

(b) Waar die inkomste verkry uit Suid-Afrika 'n dividend is betaal deur 'n maatskappy wat 'n inwoner van Suid-Afrika is aan 'n maatskappy wat 'n inwoner van Japan is en wat nie minder nie as 25 persent besit hetsy van die stemdraende aandeel in die maatskappy wat die dividende betaal, of van die totale aandeel uitgereik deur die maatskappy, neem die krediet die Suid-Afrikaanse belasting betaalbaar deur die maatskappy wat die dividende ten opsigte van sy inkomste betaal, in ag.

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

Japannese belasting betaal deur inwoners van Suid-Afrika ten opsigte van inkomste wat in Japan belasbaar is ingevolge die bepaling van hierdie Konvensie, word afgetrek van die belasting verskuldig ooreenkomstig Suid-Afrikaanse fiskale reg. Sodanige aftrekking gaan egter nie 'n bedrag wat in dieselfde verhouding tot die totale Suid-Afrikaanse belasting betaalbaar staan as die verhouding waarin die betrokke inkomste tot die totale inkomste staan, te bowe nie.

Artikel 22

Die bepaling van hierdie Konvensie ten opsigte van belasting op inkomste is nie van toepassing nie op 'n persoon (behalwe 'n individu) wat 'n inwoner van 'n Kontrakterende Staat geword het hoofsaaklik om die voordele van die Konvensie te geniet.

Article 23

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 Contracting State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. 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 Contracting State than the taxation levied on enterprises of that other Contracting State carrying on the same activities.

This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 8 of Article 11, or paragraph 7 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned Contracting State.

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

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

Article 24

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

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

Artikel 23

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

2. Die belasting op 'n permanente saak wat 'n onderneming van 'n Kontrakterende Staat in die ander Kontrakterende Staat het, mag nie in daardie ander Kontrakterende Staat op 'n minder gunstige wyse gehef word as die belasting wat gehef word op ondernemings van daardie ander Kontrakterende Staat wat dieselfde bedrywigheede beoefen nie.

Hierdie bepaling word nie uitgelê as sou dit 'n Kontrakterende Staat verplig om aan inwoners van die ander Kontrakterende Staat enige persoonlike toelatings, verligtings en verminderings vir belastingdoeleindes uit hoofde van burgerlike status of gesinsverantwoordelikhede toe te staan wat hy aan sy eie inwoners toestaan nie.

3. Behalwe waar die bepaling van paragraaf 1 van Artikel 9, paragraaf 8 van Artikel 11 of paragraaf 7 van Artikel 12 van toepassing is, is rente, tantièmes en ander uitbetalings betaal deur 'n onderneming van 'n Kontrakterende Staat aan 'n inwoner van die ander Kontrakterende Staat, vir doeleindes van die vasstelling van die belasbare winste van sodanige onderneming, onder dieselfde omstandighede aftrekbaar asof dit aan 'n inwoner van eersgenoemde Kontrakterende Staat betaal was.

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

5. Die bepaling van hierdie Artikel is ondanks die bepaling van Artikel 2 van toepassing op belasting van alle soorte en beskrywings.

Artikel 24

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

3. Die bevoegde owerhede van die Kontrakterende State moet probeer om enige probleme of twyfel wat in verband met die uitleg of toepassing van die 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. 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 of this Article.

Article 25

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

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

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

Article 26

1. Each of the Contracting States shall endeavour to collect such taxes imposed by the other Contracting State as will ensure that any exemption or reduced rate of tax granted under this Convention by that other Contracting State shall not be enjoyed by persons not entitled to such benefits. The Contracting State making such collections shall be responsible to the other Contracting State for the sums thus collected.

2. In no case shall the provisions of paragraph 1 be construed so as to impose upon either of the Contracting States endeavouring to collect the taxes the obligation to carry out administrative measures at variance with the laws and administrative practice of that Contracting State or which would be contrary to the public policy (ordre public) of that Contracting State.

Article 27

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

1. This Convention shall be approved in accordance with the legal procedures of each of the Contracting States, and shall enter into force on the thirtieth day after the date of exchange of notes indicating such approval.

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

Artikel 25

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

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

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

Artikel 26

1. Elk van die Kontrakterende State moet poog om sodanige belastinge opgelê deur die ander Kontrakterende Staat te vorder as wat sal verseker dat 'n vrystelling of verlaagde belastingkoers verleen ingevolge hierdie Konvensie deur daardie ander Kontrakterende Staat nie geniet word deur persone wat nie op die voordele geregtig is nie. Die Kontrakterende Staat wat sodanige invordering doen, is aan die ander Kontrakterende Staat verantwoordelik vir die bedrae aldus gevorder.

2. In geen geval word die bepalings van paragraaf 1 uitgelê as sou dit enigeen van die Kontrakterende State wat poog om die belastinge te vorder, die verpligting oplê om administratiewe maatreëls uit te voer wat strydig is met die wette en administratiewe praktyk van daardie Kontrakterende Staat of wat strydig sou wees met die openbare beleid (ordre public) van daardie Kontrakterende Staat nie.

Artikel 27

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

Artikel 28

1. Hierdie Konvensie word goedgekeur ingevolge die regsprosedures van elkeen van die Kontrakterende State en tree in werking op die dertigste dag na die datum van die uitruil van notas wat sodanige goedkeuring aantoon.

2. The Convention shall be applicable:**(a) in Japan,**

- (i) with respect to taxes withheld at source, for amounts taxable on or after the first day of January of the calendar year next following that in which the Convention enters into force;
- (ii) with respect to taxes on income which are not withheld at source, as regards income for any taxable year beginning on or after the first day of January of the calendar year next following that in which the Convention enters into force;
- (iii) with respect to other taxes, as regards taxes for any taxable year beginning on or after the first day of January of the calendar year next following that in which the Convention enters into force.

(b) in South Africa,

in respect of taxes for any year of assessment beginning on or after the first day of January next following the date upon which the Convention enters into force.

Article 29

This Convention shall continue in effect indefinitely but either Contracting State may, on or before the thirtieth day of June of any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give to the other Contracting State, through the diplomatic channel, written notice of termination and, in such event, the Convention shall cease to have effect:

(a) in Japan,

- (i) with respect to taxes withheld at source, for amounts taxable on or after the first day of January of the calendar year next following that in which the notice of termination is given;
- (ii) with respect to taxes on income which are not withheld at source, as regards income for any taxable year beginning on or after the first day of January of the calendar year next following that in which the notice of termination is given;
- (iii) with respect to other taxes, as regards taxes for any taxable year beginning on or after the first day of January of the calendar year next following that in which the notice of termination is given.

(b) in South Africa,

in respect of taxes for any year of assessment beginning after the end of the calendar year in which such notice is given.

2. Die Konvensie is van toepassing:

(a) in Japan,

- (i) met betrekking tot belasting wat by die bron teruggehou word, vir bedrae belasbaar op of na die eerste dag van Januarie van die kalenderjaar eersvolgende op dié waarin die Konvensie van krag word;
- (ii) met betrekking tot belasting op inkomste wat nie by die bron teruggehou word nie, ten opsigte van inkomste vir enige belasbare jaar beginnende op of na die eerste dag van Januarie van die kalenderjaar eersvolgende op dié waarin die Konvensie in werking tree;
- (iii) met betrekking tot ander belasting, ten opsigte van belasting vir enige belasbare jaar beginnende op of na die eerste dag van Januarie van die kalenderjaar eersvolgende op dié waarin die Konvensie in werking tree;

(b) in Suid-Afrika,

ten opsigte van belasting vir enige jaar van aanslag beginnende op of na die eerste dag van Januarie eersvolgende op die datum waarin die Konvensie in werking tree.

Artikel 29

Hierdie Konvensie bly onbepaald van krag maar enigeen van die Kontrakterende State kan op of voor die dertigste dag van Junie van enige kalenderjaar beginnende na die verstryking van 'n tydperk van vyf jaar vanaf die datum waarop dit in werking getree het, langs die diplomatieke kanaal skriftelik kennis van opsegging aan die ander Kontrakterende Staat gee, in welke geval die Konvensie nie meer van krag is nie:

(a) in Japan:

- (i) met betrekking tot belasting wat by die bron teruggehou word, vir bedrae belasbaar op of na die eerste dag van Januarie van die kalenderjaar eersvolgende op dié waarin kennis van opsegging gegee word;
- (ii) met betrekking tot belasting op inkomste wat nie by die bron teruggehou word nie, wat betref inkomste vir enige belasbare jaar beginnende op of na die eerste dag van Januarie van die kalenderjaar eersvolgende op dié waarin kennis van opsegging gegee word;
- (iii) met betrekking tot ander belasting, wat betref belasting vir enige belasbare jaar beginnende op die eerste dag van die kalenderjaar eersvolgende waarin kennis van opsegging gegee word.

(b) in Suid-Afrika,

ten opsigte van belasting vir enige jaar van aanslag beginnende na die einde van die kalenderjaar waarin sodanige kennis gegee word.

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

DONE in duplicate at Cape Town this seventh day of March, 1997, in the English language.

FOR THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA

FOR THE GOVERNMENT OF
JAPAN

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

GEDOEN, in tweevoud in die Engelse taal, te Kaapstad, op hede die sewende dag van Maart, 1997.

NAMENS DIE REGERING VAN DIE
REPUBLIEK VAN SUID-AFRIKA

NAMENS DIE REGERING VAN
JAPAN

PROTOCOL

At the signing of the Convention between the Government of the Republic of South Africa and the Government of Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (hereinafter referred to as "the Convention"), the undersigned have agreed upon the following provisions which shall form an integral part of the Convention:

1. With reference to Article 8 of the Convention, it is understood that profits from the operation of ships or aircraft in international traffic shall include:

- (a) profits derived from the rental on a bare boat basis of ships or aircraft; and
- (b) profits derived from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used in international traffic;

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

2. With reference to Article 22 of the Convention, a person shall be regarded as having become a resident of a Contracting State primarily to enjoy the benefits of the Convention if such person is not engaged in substantive business operations in a fixed facility, including an office or factory, in that Contracting State which is considered as necessary for conducting its principal business.

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

DONE in duplicate at Cape Town this seventh day of March, 1997, in the English language.

FOR THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA

FOR THE GOVERNMENT OF
JAPAN

PROTOKOL

By die ondertekening van die Konvensie tussen die Regering van die Republiek van Suid-Afrika en die Regering van Japan vir die Vermydning van Dubbele Belasting en die Voorkoming van Fiskale Ontduiking met betrekking tot Belastings op Inkomste (hierna genoem "die Konvensie"), het die ondergetekendes op die volgende bepalinge ooreengekom wat 'n integreerende deel van die Konvensie vorm:

1. Met betrekking tot Artikel 8 van die Konvensie, word daar verstaan dat winste uit die bedryf van skepe of vliegtuie in internasionale verkeer sal insluit:

- (a) winste verkry uit die verhuring op 'n "sonder bemanning"-basis van skepe of vliegtuie; en
- (b) winste verkry uit die gebruik, onderhoud of verhuring van houters (met inbegrip van treilers en verwante toerusting vir die vervoer van houters) gebruik in internasionale verkeer;

indien sodanig winste bykomstig is by die winste waarop die bepalinge van paragraaf 1 van daardie Artikel van toepassing is.

2. Met betrekking tot Artikel 22 van die Konvensie, word 'n persoon geag 'n inwoner van 'n Kontrakterende Staat te geword het hoofsaaklik om die voordele van die Konvensie te geniet, indien sodanige persoon nie betrokke is by wesenlike besigheidswerkzaamhede in 'n vaste instelling, insluitend van 'n kantoor of fabriek in daardie Kontrakterende Staat wat as nodig vir die uitvoering van sy vernaamste besigheid beskou kan word nie.

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

GEDOEN, in tweevoud in die Engelse taal, te Kaapstad, op hede die sewende dag van Maart, 1997.

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

**NAMENS DIE REGERING VAN
JAPAN**

Cape Town, 7 March 1997

Madame

I have the honour to refer to the Convention between the Government of Japan and the Government of the Republic of South Africa for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed today (hereinafter referred to as "the Convention") and to confirm, on behalf of the Government of Japan, the following understanding reached between the two Governments:

The agreement contained in the Exchange of Notes between the two Governments dated October 21, 1968 concerning the avoidance of double taxation on income derived from the operation of ships or aircraft in international traffic shall terminate and cease to have effect as respects income or taxes to which the Convention shall have effect in accordance with the provisions of paragraph 2 of Article 28 thereof.

I have further the honour to request you to be good enough to confirm the foregoing understanding on behalf of your Government.

I avail myself of the opportunity to extend to you the assurance of my high consideration.

(Signed) Yoshizo Konishi
Ambassador Extraordinary
and Plenipotentiary of Japan
to the Republic of South Africa

(Signed) Ms Gill Marcus
Deputy Minister of Finance
of the Republic of South Africa

Kaapstad, 7 Maart 1997

Madame

Ek het die eer om na die Konvensie tussen die Regering van Japan en die Regering van die Republiek van Suid-Afrika vir die Vermydning van Dubbele Belasting en die Voorkoming van Fiskale Ontduiking met betrekking tot Belastings op Inkomste wat vandag onderteken is (hierna genoem "die Konvensie") te verwys en om, namens die Regering van Japan, die volgende verstandhouding wat tussen die twee Regerings bereik is, te bevestig.

Die ooreenkoms vervat in die Uitrui van Notas tussen die twee Regerings, gedateer 21 Oktober 1968, aangaande die vermyding van van dubbele belasting op inkomste verkry uit die bedryf van skepe of vliegtuie in internasionale verkeer, word opgesê en is nie meer van krag nie met betrekking tot inkomste en belastings waaroor die Konvensie ingevolge die bepalings van paragraaf 2 van Artikel 28 daarvan van krag sal wees.

Ek het verder die eer om u te versoek om so goed te wees om die voorgaande verstandhouding namens u Regering te bevestig.

Ek maak van die geleentheid gebruik om aan u die versekering van my hoë agting te bied.

(Geteken) Yoshizo Konishi
Buitengewone en Gevolgmagtigde
Ambassadeur van Japan
aan die Republiek van Suid-Afrika

(Geteken) Me Gill Marcus
Adjunk-Minister van Finansies
van die Republiek van Suid-Afrika

Cape Town, 7 March 1997

His Excellency
Mr Yoshizo Konishi
Ambassador Extraordinary and Plenipotentiary
of Japan to the Republic of South Africa
PRETORIA

Excellency

I have the honour to acknowledge the receipt of Your Excellency's Note of today's date which reads as follows:

"I have the honour to refer to the Convention between the Government of Japan and the Government of the Republic of South Africa for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect of Taxes on Income signed today (hereinafter referred to as "the Convention") and to confirm, on behalf of the Government of Japan, the following understanding reached between the two Governments:

The agreement contained in the Exchange of Notes between the two Governments dated October 21, 1968 concerning the avoidance of double taxation on income derived from the operation of ships or aircraft in international traffic shall terminate and cease to have effect as respects income or taxes to which the Convention shall have effect in accordance with the provisions of paragraph 2 of Article 28 thereof.

I have further the honour to request you to be good enough to confirm the foregoing understanding on behalf of your Government.

I avail myself of the opportunity to extend too you the assurance of my high consideration.

I have further the honour to confirm the understanding contained in Your Excellency's Note, on behalf of the Government of the Republic of South Africa.

I avail myself of this opportunity to extend to Your Excellency the assurance of my highest consideration.

(Signed) Ms Gill Marcus
Deputy Minister of Finance
of the Republic of South Africa

Kaapstad, 7 Maart 1997

Sy Eksellensie
Mnr Yoshizo Konishi
Buitengewone en Gevolmagtigde Ambassadeur
van Japan aan die Republiek van Suid-Afrika
Pretoria

Eksellensie

Ek het die eer om ontvangs te erken van u Eksellensie se Nota met vandag se datum, wat soos volg lui:

"Ek het die eer om na die Konvensie tussen die Regering van Japan en die Regering van die Republiek van Suid-Afrika vir die Vermydning van Dubbele Belasting en die Voorkoming van Fiskale Ontduiking met betrekking tot Belastings op Inkomste wat vandag onderteken is (hierna genoem "die Konvensie") te verwys en om, namens die Regering van Japan, die volgende verstandhouding wat tussen die twee Regerings bereik is, te bevestig.

Die ooreenkoms vervat in die Uitruil van Notas tussen die twee Regerings, gedateer 21 Oktober 1968, aangaande die vermyding van van dubbele belasting op inkomste verkry uit die bedryf van skepe of vliegtuie in internasionale verkeer, word opgesê en is nie meer van krag nie met betrekking tot inkomste en belastings waarvoor die Konvensie ingevolge die bepaling van paragraaf 2 van Artikel 28 daarvan van krag sal wees.

Ek het verder die eer om u te versoek om so goed te wees om die voorgaande verstandhouding namens u Regering te bevestig.

Ek maak van die geleentheid gebruik om aan u die versekering van my hoë agting te bied."

Ek het verder die eer om die verstandhouding vervat in u Eksellensie se Nota namens die Regering van die Republiek van Suid-Afrika te bevestig.

Ek maak van hierdie geleentheid gebruik om aan u Eksellensie die versekering van my hoogste agting te bied

(Geteken) Me Gill Marcus
Adjunk-minister van Finansies
van die Republiek van Suid-Afrika

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