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GOVERNMENT NOTICE

GOEWERMENTSKENNISGEWING

SOUTH AFRICAN REVENUE SERVICE

No. R. 1721 15 December 1997

INCOME TAX ACT, 1962

CONVENTION BETWEEN THE REPUBLIC OF SOUTH AFRICA AND THE UNITED STATES OF AMERICA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS

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

SUID-AFRIKAANSE INKOMSTEDIENS

No. R. 1721 15 Desember 1997

INKOMSTEBELASTINGWET, 1962

KONVENSIE TUSSEN DIE REPUBLIEK VAN SUID-AFRIKA EN DIE VERENIGDE STATE VAN AMERIKA VIR DIE VERMYDING VAN DUBBELE BELASTING EN DIE VOORKOMING VAN FISKALE ONTDUIKING MET BETREKKING TOT BELASTING OP INKOMSTE EN KAPITAALWINSTE

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 en kapitaalwinste wat in die Bylae tot hierdie Kennisgewing vervat is, aangegaan is met die Verenigde State van Amerika en deur die Parlement goedgekeur is ingevolge artikel 231 (2) van die Grondwet.

CONVENTION BETWEEN THE REPUBLIC OF SOUTH AFRICA AND THE UNITED STATES OF AMERICA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS

The Government of the Republic of South Africa and the Government of the United States of America desiring to promote and strengthen the economic relations between the two countries

Have agreed as follows:

Article 1

General Scope

1. This Convention shall apply only to persons who are residents of one or both of the Contracting States, except as otherwise provided in the Convention.
2. The Convention shall not restrict in any manner any benefit now or hereafter accorded:
 - a) by the laws of either Contracting State; or
 - b) by any other agreement between the Contracting States.
3. Notwithstanding the provisions of subparagraph 2b):
 - a) the provisions of Article 25 (Mutual Agreement Procedure) of this Convention exclusively shall apply to any dispute concerning whether a measure is within the scope of this Convention, and the procedures under this Convention exclusively shall apply to that dispute; and
 - b) unless the competent authorities determine that a taxation measure is not within the scope of this Convention, the non-discrimination obligations of this Convention exclusively shall apply with respect to that measure, except for such national treatment or most-favoured-nation obligations as may apply to trade in goods under the General Agreement on Tariffs and Trade. No national treatment or most-favoured-nation obligation under any other agreement shall apply with respect to that measure.
 - c) For the purpose of this paragraph, a "measure" is a law, regulation, rule, procedure, decision, administrative action, or any other form of measure.
4. Notwithstanding any provision of the Convention except paragraph 5, the United States may tax its residents (as determined under Article 4 (Residence)), and by reason of citizenship may tax its citizens, as if the Convention had not come into effect. For this purpose, the term "citizen" shall include a former citizen or long-term resident whose loss of such status had as one of its principal purposes the avoidance of tax (as defined under the laws of the United States), but only for a period of ten years following such loss.
5. The provisions of paragraph 4 shall not effect:
 - a) the benefits conferred by a Contracting State under paragraph 2 of Article 9 (Associated Enterprises), paragraphs 2, 4, 5, 6 and 7 of Article 18 (Pensions and Annuities), and under Articles 23 (Elimination of Double Taxation), 24 (Non-Discrimination), and 25 (Mutual Agreement Procedure); and

KONVENSIE TUSSEN DIE REPUBLIEK VAN SUID-AFRIKA EN DIE VERENIGDE STATE VAN AMERIKA VIR DIE VERMYDING VAN DUBBELE BELASTING EN DIE VOORKOMING VAN FISKALE ONTDUIKING MET BETREKKING TOT BELASTINGS OP INKOMSTE EN KAPITAALWINSTE

Die Regering van die Republiek van Suid-Afrika en die Regering van die Verenigde State van Amerika het, uit 'n begeerte om die ekonomiese bande tussen die twee lande te bevorder en te versterk,

soos volg ooreengekom:

Artikel 1

Algemene Omvang

1. Hierdie Konvensie is slegs van toepassing op persone wat inwoners van een van of van albei die Kontrakterende State is, behalwe waar in die Konvensie anders bepaal word.
2. Die Konvensie beperk op geen wyse 'n voordeel verleen nou of hierna:
 - a) by die wette van die een of die ander Kontrakterende Staat; of
 - b) by enige ander ooreenkoms tussen die Kontrakterende State nie.
3. Ondanks die bepaling van subparagraaf 2b):
 - a) is die bepaling van Artikel 25 (Prosedure vir Onderlinge Ooreenkoms) van hierdie Konvensie uitsluitlik van toepassing op enige geskil oor die kwessie of 'n maatreël binne die omvang van hierdie Konvensie is al dan nie, en is die prosedures ingevolge hierdie Konvensie uitsluitlik op daardie geskil van toepassing; en
 - b) tensy die bevoegde owerhede bepaal dat 'n belastingmaatreël nie binne die omvang van hierdie Konvensie is nie, is die nie-diskriminasieverpligtinge van hierdie Konvensie uitsluitlik van toepassing op daardie maatreël, behalwe vir sodanige nasionale behandeling of meesbegunstigdeland-verpligtinge soos wat van toepassing kan wees op handel in goedere ingevolge die Algemene Ooreenkoms vir Tariewe en Handel. Geen nasionale behandeling of meesbegunstigdeland-verpligting ingevolge enige ander ooreenkoms sal ten opsigte van daardie maatreël van toepassing wees nie.
 - c) Vir doeleindes van hierdie paragraaf is 'n "maatreël" 'n wet, regulasie, reël, prosedure, beslissing, administratiewe aksie, of enige ander vorm van maatreël.
4. Ondanks enige bepaling van die Konvensie behalwe paragraaf 5, kan die Verenigde State sy inwoners belas (soos bepaal ingevolge Artikel 4 (Inwoning)), en kan op grond van burgerskap sy burgers belas, asof die Konvensie nie in werking getree het nie. Vir hierdie doel sluit die omskrywing "burger" 'n voormalige burger of langtermyninwoner in wie se verlies van sodanige status die vermyding van belasting (soos omskryf ingevolge die wette van die Verenigde State) as een van sy hoofdoeleindes gehad het, maar slegs vir 'n tydperk van tien jaar na sodanige verlies.
5. Die bepaling van paragraaf 4 raak nie:
 - a) die voordele verleen deur 'n Kontrakterende Staat ingevolge paragraaf 2 van Artikel 9 (Verwante Ondernemings), paragrawe 2, 4, 5, 6 en 7 van Artikel 18 (Pensioene en Annuïteite), en ingevolge Artikels 23 (Uitskakeling van Dubbele Belasting), 24 (Nie-diskriminasie), en 25 (Prosedure vir Onderlinge Ooreenkoms); en

- b) the benefits conferred by a Contracting State under Articles 19 (Government Service), 20 (Students, Apprentices and Business Trainees), and 27 (Diplomatic Agents and Consular Officers), upon individuals who are neither citizens of, nor have been admitted for permanent residence in, that State.

Article 2

Taxes Covered

1. The existing taxes to which the Convention shall apply are in particular:

- a) in the United States: the Federal income taxes imposed by the Internal Revenue Code of 1986 (but excluding social security taxes), and the Federal excise taxes imposed with respect to private foundations;

(hereinafter referred to as "United States tax");

- b) in South Africa:

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

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

2. This Convention shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their respective taxation laws or other laws affecting their obligations under the Convention, and of any official published material concerning the application of the Convention, including explanations, regulations, rulings, or judicial decisions.

Article 3

General Definitions

1. In this Convention, unless the context otherwise requires:

- a) i) the term "United States" means the United States of America; and
ii) when used in a geographical sense, the term "United States" means the States thereof and the District of Columbia. Such term also includes:

aa) the territorial sea thereof;

bb) the seabed and subsoil of the adjacent submarine areas beyond the territorial sea over which the United States exercises sovereign rights in accordance with international law for the purpose of exploration and exploitation of the natural resources of such areas, but only to the extent that the person, property or activity to which this Convention is being applied is connected with such exploration or exploitation;

- 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 which has been or may hereafter be designated, under international law and the laws of South Africa, as areas within which South Africa may exercise sovereign rights or jurisdiction with regard to the exploration or exploitation of natural resources;

- b) die voordele verleen deur 'n Kontrakterende Staat ingevolge Artikels 19 (Regeringsdiens), 20 (Studente, Vakleerlinge en Besigheidsvakleerlinge), en 27 (Diplomatiese Agente en Konsulêre Beamptes), aan individue wat nie burgers is van daardie Staat nie, en aan wie ook nie permanente verblyf in daardie Staat toegestaan is nie.

Artikel 2

Belastings Gedek

1. Die bestaande belastings waarop die Konvensie van toepassing is, is in die besonder:

- a) in die Verenigde State: die Federale inkomstebelastings gehef ingevolge die Interne Belastingskode van 1986 (maar bestaansbeveiligingsbelastings uitgesluit), en die Federale aksynsbelastings gehef met betrekking tot private stigtings;

(hierna "Verenigde State belasting" genoem);

- b) in Suid-Afrika:
- i) die normale belasting;
 - ii) die sekondêre belasting op maatskappye;

(hierna "Suid-Afrikaanse belasting" genoem).

2. Hierdie Konvensie is ook van toepassing op enige identiese of wesenlik soortgelyke belastings wat bykomend by, of in plaas van, die belastings opgelê word na die datum van ondertekening van die Konvensie. Die bevoegde owerhede van die Kontrakterende State stel mekaar in kennis van enige wesenlike veranderinge wat aan hulle onderskeie belastingwette of ander wette rakende hulle verpligtinge ingevolge die Konvensie, aangebring is, en van enige amptelike gepubliseerde materiaal betreffende die toepassing van die Konvensie, insluitende verduidelikings, regulasies, beslissings, of geregtelike uitsprake.

Artikel 3

Algemene Woordomsrywings

1. In hierdie Konvensie, tensy die samehang anders vereis:

- a) i) beteken die uitdrukking "Verenigde State" die Verenigde State van Amerika; en
 ii) wanneer in geografiese verband gebruik, beteken die uitdrukking "Verenigde State" die State daarvan en die Distrik Columbia. Sodanige uitdrukking sluit ook in:
- aa) die territoriale waters daarvan;
 - bb) die seebodem en ondergrond van die aangrensende onderseegebiede buite die territoriale waters waaroor die Verenigde State soewereine regte ooreenkomstig die volkereg vir doeleindes van eksplorasië en ontginning van die natuurlike hulpbronne van sodanige gebiede, uitoefen, maar slegs in die mate wat die persoon, eiendom of aktiwiteit waarop hierdie Konvensie van toepassing is, aan sodanige eksplorasië of ontginning verbonde is;
- b) beteken die uitdrukking "Suid-Afrika" die Republiek van Suid-Afrika en, wanneer in geografiese verband gebruik, die territoriale waters daarvan asook enige deel buite die territoriale waters wat ingevolge internasionale reg en die reg van Suid-Afrika aangewys is of hierna aangewys word as gebied waarbinne Suid-Afrika soewereine regte of jurisdiksie met betrekking tot eksplorasië of ontginning van natuurlike hulpbronne, mag uitoefen;

- c) the term "person" includes an individual, an estate, a trust, a partnership, a company and any other body of persons;
- d) the term "company" means any body corporate or any entity which is treated as a company or body corporate for tax purposes according to the laws of the Contracting State in which it is organised;
- e) 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;
- f) the term "nationals" means all individuals having the citizenship of a Contracting State and all legal persons, partnerships, associations and other entities deriving their status as such from the laws in force in a Contracting State;
- g) the term "competent authority" means:
 - i) in the case of the United States, the Secretary of the Treasury or his delegate; and
 - ii) in the case of South Africa, the Commissioner for Inland Revenue or his authorised representative;
- h) the term "international traffic" means any transport by a ship or aircraft, except when such transport is solely between places in a Contracting State.

2. As regards the application of this Convention at any time by a Contracting State any term not defined therein shall, unless the context otherwise requires or the competent authorities agree to a common meaning pursuant to the provisions of Article 25 (Mutual Agreement Procedure), have the meaning which it has at that time under the law of that State concerning the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4

Residence

1. For the purposes of this Convention the term "resident of a Contracting State" means:

- a) in the case of the United States,
 - i) any person who, under the laws of the United States, is liable to tax therein by reason of his domicile, residence, citizenship, place of incorporation, or any other criterion of a similar nature, provided, however, that this term does not include any person who is liable to tax in the United States in respect only of income from sources therein or of profits attributable to a permanent establishment in the United States; and
 - ii) a legal person organised under the laws of the United States and that is generally exempt from tax in the United States and is established and maintained in the United States either:
 - aa) exclusively for a religious, charitable, educational, scientific, or other similar purpose; or
 - bb) to provide pensions or other similar benefits to employees pursuant to a plan;
- b) in the case of South Africa, any individual who is ordinarily resident in South Africa and any legal person which is incorporated or has its place of effective management in South Africa;
- c) that State, and any political subdivision or local authority thereof;
- d) in the case of an item of income, profit or gain derived through an entity that is fiscally transparent under the laws of either Contracting State, that income shall be considered to be derived by a resident of a State to the extent that the item is treated for purposes of the taxation law of such Contracting State as the income, profit or gain of a resident.

- c) beteken die uitdrukking "persoon" 'n individu, 'n boedel, 'n trust, 'n vennootskap, 'n maatskappy en enige ander liggaam van persone;
- d) beteken die uitdrukking "maatskappy" enige regspersoon of enige entiteit wat vir belastingdoeleindes as 'n maatskappy of regspersoon behandel word ooreenkomstig die wette van die Kontrakterende Staat waarin dit gereël word;
- e) beteken die uitdrukkings "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;
- f) beteken die uitdrukking "burgers" alle individue wat burgerskap van 'n Kontrakterende Staat besit en alle regspersone, vennootskappe, verenigings en ander entiteite wat hul status as sodanig verkry van die wette wat in 'n Kontrakterende Staat van krag is;
- g) beteken die uitdrukking "bevoegde owerheid":
 - i) in die geval van die Verenigde State, die Sekretaris van die Tesourie of sy afgevaardigde; en
 - ii) in die geval van Suid-Afrika, die Kommissaris van Binnelandse Inkomste of sy gemagtigde verteenwoordiger;
- h) beteken die uitdrukking "internasionale verkeer" enige vervoer per skip of vliegtuig, behalwe waar sodanige vervoer slegs tussen plekke in die ander Kontrakterende Staat is.

2. By die toepassing te enige tyd van hierdie Konvensie deur 'n Kontrakterende Staat, het 'n uitdrukking wat nie daarin omskryf is nie, tensy die samehang anders vereis of die bevoegde owerhede instem tot 'n gemeenskaplike betekenis ooreenkomstig die bepalinge van Artikel 25 (Prosedure vir Onderlinge Ooreenkoms), die betekenis wat op daardie tydstip daaraan geheg word volgens die reg van daardie Staat betreffende die belastinge waarvoor die Konvensie handel, en enige betekenis geniet ingevolge die toepaslike belastingwette van daardie Staat voorrang bo die betekenis gegee aan die uitdrukking kragtens ander wette van daardie Staat.

Artikel 4

Inwoning

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

- a) in die geval van die Verenigde State,
 - i) 'n persoon wat, ingevolge die wette van die Verenigde State, daarin belastingpligtig is uit hoofde van sy permanente tuiste, verblyf, burgerskap, plek van inlywing, of enige ander soortgelyke maatstaf, met dien verstande egter dat hierdie uitdrukking nie 'n persoon insluit nie wat in die Verenigde State vir belasting aanspreeklik is slegs ten opsigte van inkomste uit bronne daarin of winste toeskryfbaar aan 'n permanente saak in die Verenigde State; en
 - ii) 'n regspersoon gereël ingevolge die wette van die Verenigde State en wat gewoonlik van belasting in die Verenigde State vrygestel word en wat in die Verenigde State opgerig en in stand gehou word, hetsy:
 - aa) uitsluitlik vir 'n godsdienstige, liefdadigheids-, opvoedkundige, wetenskaplike, of ander soortgelyke doel; of
 - bb) om pensioene of ander soortgelyke voordele aan werknemers kragtens 'n skema te voorsien;
- b) in die geval van Suid-Afrika, enige individu wat gewoonlik in Suid-Afrika woonagtig is en enige regspersoon wat ingelyf is of wie se plek van effektiewe bestuur in Suid-Afrika is;
- c) daardie Staat, en 'n staatkundige onderverdeling of plaaslike owerheid daarvan;
- d) in die geval van 'n inkomste-, wins- of profytem verkry deur 'n entiteit wat fiskaal deursigtig is ingevolge die wette van enigeen van die Kontrakterende State, word daardie inkomste beskou verkry deur 'n inwoner van 'n Staat in die mate wat die item vir doeleindes van die belastingreg van sodanige Kontrakterende Staat as die inkomste, wins of profyt van 'n inwoner behandel word.

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

- a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- b) if the State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a company is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which it is incorporated.

4. Where by reason of the provisions of paragraph 1 a person other than an individual or a company is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavour to settle the question and to determine the mode of application of the Convention to such person.

Article 5

Permanent Establishment

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

2. The term "permanent establishment" includes especially:

- a) a place of management;
- b) a branch;
- c) an office;
- d) a factory;
- e) a workshop;
- f) a mine, an oil or gas well, a quarry or other place of extraction of natural resources;
- g) a warehouse, in relation to a person providing storage facilities for others;
- h) a store or premises used as a sales outlet;
- i) a ship, drilling rig, installation or other structure used for the exploration or exploitation of natural resources, but only if it lasts more than twelve months;
- j) a building site or construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or activities lasts more than twelve months; and
- k) the furnishing of services, including consultancy services, within a Contracting State by an enterprise through employees or other personnel engaged by the enterprise for such purposes, but only if activities of that nature continue (for the same or a connected project) within that State for a period or periods aggregating more than 183 days in any twelve-month period commencing or ending in the taxable year concerned.

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

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

3. Waar 'n maatskappy uit hoofde van die bepalinge van paragraaf 1 'n inwoner van beide Kontrakterende State is, word dit geag 'n inwoner te wees van die Staat waarin dit geïnkorporeer is.

4. Waar 'n persoon, behalwe 'n individu of 'n maatskappy, uit hoofde van die bepalinge van paragraaf 1 'n inwoner van beide Kontrakterende State is, moet die bevoegde owerhede van die Kontrakterende State poog om die saak deur onderlinge ooreenkoms te beslis en die wyse van toepassing van die Konvensie op sodanige persoon te bepaal.

Artikel 5

Permanente Saak

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;
- f) 'n myn, 'n olie- of gasbron, 'n steengroef of ander plek van ontginning van natuurlike hulpbronne;
- g) 'n pakhuis, met betrekking tot 'n persoon wat bergingsfasiliteite vir ander voorsien;
- h) 'n stoor of perseel gebruik as verkoopsafsetplek;
- i) 'n skip, boorinstallasie, installasie of ander struktuur gebruik vir die eksplorاسie of ontginning van natuurlike hulpbronne, maar slegs indien dit langer as twaalf maande bestaan;
- j) 'n bouterrein of konstruksie-, installasie- of monteeprojek of toesighoudende bedrywighede in verband daarmee, waar sodanige terrein, projek of bedrywighede langer as twaalf maande bestaan; en
- k) die verskaffing van dienste, insluitende konsultasiedienste, binne 'n Kontrakterende Staat deur 'n onderneming deur middel van werknemers of ander personeel wat deur die onderneming vir sodanige doel in diens geneem is, maar slegs indien bedrywighede van daardie aard (vir dieselfde of 'n daaraan verbonde projek) binne daardie Staat voortduur vir 'n tydperk of tydperke wat altesaam 183 dae in enige twaalfmaandetydperk beginnende of eindigende in die betrokke belasbare jaar, te bowe gaan.

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

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

4. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 5 applies - is acting on behalf of an enterprise and has and habitually exercises in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 3 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.

5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other 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.

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

Article 6

Income from Immovable Property (Real Property)

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

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

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

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

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

- a) die gebruik van fasiliteite slegs met die doel om goedere of 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, slegs 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, slegs vir die doel van verwerking deur 'n ander onderneming;
- d) die instandhouding van 'n vaste besigheidsplek slegs met die doel om vir die onderneming goedere of handelsware aan te koop of inligting in te win;
- e) die instandhouding van 'n vaste besigheidsplek slegs met die doel om enige ander bedrywigheide, wat van 'n voorlopige of bykomstige aard is, vir die onderneming te beoefen; en
- f) die instandhouding van 'n vaste besigheidsplek slegs vir enige kombinasie van die bedrywigheide in subparagraawe a) tot e) genoem.

4. Ondanks die bepalings van paragraawe 1 en 2, waar 'n persoon - behalwe 'n agent met 'n onafhanklike status op wie paragraaf 5 van toepassing is namens 'n onderneming optree en magtiging het, en dit gewoonlik uitoefen, om in 'n Kontrakterende Staat kontrakte in die naam van die onderneming te sluit, word daardie onderneming geag 'n permanente saak in daardie Staat te hê ten opsigte van enige bedrywigheide wat daardie persoon vir die onderneming onderneem, tensy die bedrywigheide van sodanige persoon beperk is tot dié in paragraaf 3 genoem wat, indien dit deur 'n vaste besigheidsplek beoefen sou word, hierdie vaste besigheidsplek nie ingevolge die bepalings van daardie paragraaf 'n permanente saak sou maak nie.

5. 'n Onderneming van 'n Kontrakterende Staat word nie geag 'n permanente saak in die ander Kontrakterende Staat te hê nie bloot omdat hy in daardie ander Kontrakterende Staat besigheid dryf deur middel van 'n makelaar, algemene kommissie-agent of enige ander agent met 'n onafhanklike status, mits sodanige persone in die gewone loop van hul besigheid optree.

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

Artikel 6

Inkomste uit Onroerende Eiendom (Vaste Eiendom)

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

2. Die uitdrukking "onroerende eiendom (vaste 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, bote en vliegtuie word nie geag onroerende eiendom te wees nie.

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

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

Article 7***Business Profits***

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

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

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

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

5. 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.

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

7. In applying paragraphs 1 and 2 of Article 7 (Business Profits), paragraphs 4 and 6 of Article 10 (Dividends), paragraph 3 of Article 11 (Interest), paragraph 3 of Article 12 (Royalties), paragraph 3 of Article 13 (Capital Gains), Article 14 (Independent Personal Services) and paragraph 2 of Article 21 (Other Income), any income or gain attributable to a permanent establishment or fixed base during its existence is taxable in the Contracting State where such permanent establishment or fixed base is situated even if the payments are deferred until such permanent establishment or fixed base has ceased to exist.

Artikel 7***Besigheidswinste***

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

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

3. By die vasstelling van die winste van 'n permanente saak, word daar as aftrekkings toegelaat uitgawes wat doeleindes van die permanente saak aangegaan word, met inbegrip van 'n redelike toewysing van bestuurs- en algemene administratiewe uitgawes, navorsings- en ontwikkelingsuitgawes, rente, en ander uitgawes aldus aangegaan, hetsy in die Kontrakterende Staat waarin die permanente saak geleë is of elders. Geen sodanige aftrekking word egter toegelaat nie ten opsigte van bedrae, indien enige (anders as met betrekking tot terugbetaling van werklike uitgawes) bestee deur die permanente saak, aan die hoofkantoor van die onderneming of enige van sy ander kantore, by wyse van tantiëmes, gelde of ander soortgelyke betalings in ruil vir die gebruik van patente of ander regte, of by wyse van kommissie of ander koste vir spesifieke dienste gelewer of vir bestuur of by wyse van rente op gelde geleen aan die permanente saak. Eweneens word, by die bepaling van die winste van 'n permanente saak, bedrae wat gedebiteer is (behalwe met betrekking tot terugbetaling van werklike uitgawes), deur die permanente saak teen die hoofkantoor van die onderneming of enige van sy ander kantore, by wyse van tantiëmes, gelde of ander soortgelyke betalings in ruil vir die gebruik van patente of ander regte, of by wyse van kommissie of ander koste vir spesifieke dienste gelewer of vir bestuur of by wyse van rente op gelde geleen aan die hoofkantoor van die onderneming of enige van sy ander kantore, nie in berekening gebring nie.

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

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

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

7. By die toepassing van paragrawe 1 en 2 van Artikel 7 (Besigheidswinste), paragrawe 4 en 6 van Artikel 10 (Dividende), paragraaf 3 van Artikel 11 (Rente), paragraaf 3 van Artikel 12 (Tantiëmes), paragraaf 3 van Artikel 13 (Kapitaalwinste), Artikel 14 (Onafhanklike Persoonlike Dienste) en paragraaf 2 van Artikel 21 (Ander Inkomste), is enige inkomste of winste toeskryfbaar aan 'n permanente saak of vaste basis gedurende sy bestaan belasbaar in die Kontrakterende Staat waar sodanige permanente saak of vaste basis geleë is, selfs al word die betalings uitgestel totdat sodanige permanente saak of vaste basis opgehou het om te bestaan.

Article 8

Shipping and Air Transport

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.
2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include profits derived from the rental of ships or aircraft if such ships or aircraft are operated in international traffic by the lessee or if such rental profits are incidental to other profits described in paragraph 1.
3. Profits of an enterprise of a Contracting State from the use or rental of containers (including trailers, barges and related equipment for the transport of containers) used in international traffic shall be taxable only in that State.
4. The provisions of paragraphs 1 and 3 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9

Associated Enterprises

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

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

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

Article 10

Dividends

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

Artikel 8***Skeepvaart en Lugvervoer***

1. Winste van 'n onderneming van 'n Kontrakterende Staat uit die bedryf van skepe of vliegtuie in internasionale verkeer is slegs in daardie Staat belasbaar.
2. By die toepassing van hierdie Artikel sluit winste uit die bedryf van skepe of vliegtuie in internasionale verkeer in winste verkry uit die verhuring van skepe of vliegtuie indien sodanige skepe of vliegtuie in internasionale verkeer bedryf word deur die huurder of indien sodanige huurwinste bykomstig is by ander winste beskryf in paragraaf 1.
3. Winste van 'n onderneming van 'n Kontrakterende Staat verkry uit die gebruik of verhuring van houters (insluitende treilers, vragskuie en verwante toerusting vir die vervoer van houters) gebruik in internasionale verkeer, is slegs in daardie Staat belasbaar.
4. Die bepalinge van paragrawe 1 en 3 is ook van toepassing op winste ten opsigte van die deelname aan 'n winsdeling, 'n gesamentlike besigheid of 'n internasionale bedryfsagentskap.

Artikel 9***Verwante Ondernemings***

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

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

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

Artikel 10***Dividende***

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

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

- a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 10 per cent of the voting stock of the company paying the dividends; and
- 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.

Subparagraph a) shall not apply in the case of dividends paid by a United States person that is a Regulated Investment Company or a Real Estate Investment Trust. Subparagraph b) shall apply in the case of dividends paid by a Regulated Investment Company. In the case of dividends paid by a Real Estate Investment Trust, subparagraph b) shall apply only if the dividend is beneficially owned by an individual holding a less than 10 percent interest in the Real Estate Investment Trust; otherwise, the rate of withholding applicable under domestic law shall apply.

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 that is subjected to the same taxation treatment as income from shares under the laws of the State of which the payor is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the payor is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the dividends are attributable to such permanent establishment or fixed base. In such case, the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

5. Where a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by that resident except in so far as such dividends are paid to a resident of that other State or in so far as the dividends are attributable to a permanent establishment or a fixed base situated in that other State, even if the dividends paid consist wholly or partly of profits or income arising in such other State.

6. A company that is a resident of one of the Contracting States and that has a permanent establishment in the other Contracting State or, if the United States is the other Contracting State, that is subject to tax in the United States on a net basis on its income that may be taxed there under Article 6 (Income from Immovable Property (Real Property)) or under paragraph 1 of Article 13 (Capital Gains), may be subject in the other Contracting State to a tax, but;

- a) in the case of the United States, such tax may not exceed, in addition to the tax on profits, 5 percent of the portion of the profits of the corporation subject to tax in the United States that represents the dividend equivalent amount of such profits; and
- b) in the case of South Africa, such tax may be imposed at a rate that does not exceed the normal rate of corporate tax by more than 5 percentage points.

2. Sodanige dividende kan egter ook in die Kontrakterende Staat waarvan die betaler 'n inwoner is, en ooreenkomstig die wette van daardie Staat belas word, maar indien die bevoordeelde eienaar van die dividende 'n inwoner van die ander Kontrakterende Staat 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 regstreeks minstens 10 persent hou van die stemdraende aandele van die maatskappy wat die dividende betaal; en
- 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 winste waaruit die dividende betaal word nie.

Subparagraaf a) is nie van toepassing nie in die geval van dividende betaal deur 'n persoon van die Verenigde State wat 'n Gereguleerde Beleggingsmaatskappy of 'n Vaste Eiendom Beleggingstrust is. Subparagraaf b) is van toepassing in die geval van dividende betaal deur 'n Gereguleerde Beleggingsmaatskappy. In die geval van dividende betaal deur 'n Vaste Eiendom Beleggingstrust, is subparagraaf b) van toepassing slegs indien die dividend voordelig besit word deur 'n individu wat 'n belang van minder as 10 persent in die Vaste Eiendom Beleggingstrust hou; andersins is die weerhoudingskoers ingevolge landsreg van toepassing.

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

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 betaler 'n inwoner is, deur middel van 'n permanente saak daarin geleë, of in daardie ander Staat onafhanklike persoonlike dienste verrig vanaf 'n vaste basis daarin geleë, en die dividende aan sodanige permanente saak of vaste basis toeskryfbaar is. In sodanige geval is die bepalings van Artikel 7 (Besigheidswinste) of Artikel 14 (Onafhanklike Persoonlike Dienste), na gelang van die geval, van toepassing.

5. Waar 'n inwoner van 'n Kontrakterende Staat winste of inkomste uit die ander Kontrakterende Staat verkry, mag daardie ander Staat nie belasting hef op die dividende wat deur daardie inwoner betaal word nie, behalwe vir sover sodanige dividende betaal word aan 'n inwoner van daardie ander Staat of vir sover die dividende toeskryfbaar is aan 'n permanente saak of 'n vaste basis wat in daardie ander Staat geleë is, selfs al bestaan die betaalde dividende geheel en al of gedeeltelik uit winste of inkomste wat in sodanige ander Staat ontstaan.

6. 'n Maatskappy wat 'n inwoner van een van die Kontrakterende State is en wat 'n permanente saak in die ander Kontrakterende Staat het of, indien die Verenigde State die ander Kontrakterende Staat is, wat in die Verenigde State aan belasting onderhewig is op 'n netto basis van sy inkomste wat ingevolge Artikel 6 (Inkomste uit Onroerende Eiendom (Vaste Eiendom)) of ingevolge paragraaf 1 van Artikel 13 (Kapitaalwinste) belas kan word, kan in die ander Kontrakterende Staat aan 'n belasting onderwerp word, maar:

- a) in die geval van die Verenigde State, gaan sodanige belasting nie, bykomend tot die belasting op winste, 5 persent van die gedeelte van die winste van die maatskappy wat in die Verenigde State aan belasting onderhewig is wat die dividend ekwivalente bedrag van sodanige winste verteenwoordig, te bowe nie; en
- b) in die geval van Suid-Afrika, kan sodanige belasting gehef word teen 'n koers wat nie die normale koers van maatskappybelasting met meer as 5 persentasiepunte te bowe gaan nie.

7. The term "dividend equivalent amount" as used in paragraph 6, refers to the portion of the profits of a permanent establishment subject to a tax under Article 7 (Business Profits), or that portion of the profits of a resident of one State subject to tax on a net basis in the other State under Article 6 (Income from Immovable Property (Real Property)) or under paragraph 1 of Article 13 (Capital Gains), that is comparable to the amount that would be distributed as a dividend if such income were earned by a locally incorporated subsidiary. The term "dividend equivalent amount" shall have the same meaning that it has under the law of the United States as it may be amended from time to time without changing the general principle of this paragraph.

8. Notwithstanding paragraph 2, dividends may not be taxed in the Contracting State of which the payor is a resident if the beneficial owner of the dividends is:

- a) a Contracting State, and any political subdivision or local authority thereof; or
- b) a pension trust or fund of an entity described in subparagraph a) that is constituted and operated exclusively to administer or provide pension benefits described in Article 19 (Government Service) and that does not control the payor of the dividend.

Article 11

Interest

1. Interest derived and beneficially owned by a resident of a Contracting State shall be taxable only in that State.

2. The term "interest" as used in this Convention 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 or prizes attaching to such securities, bonds or debentures, and all other income that is subjected to the same taxation treatment as income from money lent by the taxation law of the Contracting State in which the income arises. Income dealt with in Article 10 (Dividends) and penalty charges for late payment shall not be regarded as interest for the purposes of this Convention.

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the interest is attributable to such permanent establishment or fixed base. In such case, the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

4. Where, by reason of a special relationship between the payor 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 payor 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.

5. Notwithstanding the provisions of paragraph 1:

- a) interest that is contingent interest of a type that does not qualify as portfolio interest under United States law may be taxed at a rate not exceeding the rate prescribed in subparagraph b) of paragraph 2 of Article 10 (Dividends); and
- b) interest that is an excess inclusion with respect to a residual interest in a real estate mortgage investment conduit may be taxed by the United States in accordance with its domestic law.

7. Die uitdrukking "dividend ekwivalente bedrag" soos in paragraaf 6 gebesig, verwys na die gedeelte van die winste van 'n permanente saak wat ingevolge Artikel 7 (Besigheidswinste) aan 'n belasting onderhewig is, of daardie gedeelte van die winste van 'n inwoner van een Staat wat in die ander Staat ingevolge Artikel 6 (Inkomste uit Onroerende Eiendom (Vaste Eiendom)) of ingevolge paragraaf 1 van Artikel 13 (Kapitaalwinste) op 'n netto basis aan belasting onderhewig is, wat vergelykbaar is met die bedrag wat as 'n dividend uitgereik sal word indien sodanige inkomste deur 'n plaaslik geïnkorporeerde filiaal verdien is. Die uitdrukking "dividend ekwivalente bedrag" het die betekenis wat daaraan geheg word ingevolge die reg van die Verenigde State soos wat dit van tyd tot tyd gewysig mag word sonder om die algemene beginsel van hierdie paragraaf te verander.

8. Ondanks paragraaf 2 kan dividende nie in die Kontrakterende Staat waarvan die betaler 'n inwoner is, belas word nie indien die bevoordeelde eienaar van die dividende:

- a) 'n Kontrakterende Staat, en enige staatkundige onderverdeling of plaaslike owerheid daarvan is; of
- b) 'n pensioentrust of -fonds van 'n entiteit beskryf in subparagraaf a) wat gestig en bedryf word uitsluitlik om pensioenvoordele beskryf in Artikel 19 (Regeringsdiens) te administreer of te voorsien en wat nie die betaler van die dividend beheer nie.

Artikel 11

Rente

1. Rente verkry en voordelig besit deur 'n inwoner van 'n Kontrakterende Staat is slegs in daardie Staat belasbaar.

2. 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 verbonde aan sodanige effekte, obligasies of skuldbriewe, en alle ander inkomste wat onderworpe is aan dieselfde belastingbehandeling as inkomste uit gelde geleen deur die belastingwette van die Kontrakterende Staat waarin die inkomste ontstaan. Inkomste wat in Artikel 10 (Dividende) behandel word en boeteheffings vir laat betaling word by die toepassing van hierdie Konvensie nie as rente beskou nie.

3. Die bepalinge van paragraaf 1 is nie van toepassing nie indien die bevoordeelde eienaar van die rente, synde 'n inwoner van 'n Kontrakterende Staat, in die ander Kontrakterende Staat waarin die rente ontstaan, besigheid dryf deur middel van 'n permanente saak daarin geleë, of in daardie ander Staat onafhanklike persoonlike dienste verrig vanaf 'n vaste basis daarin geleë, en die rente aan sodanige permanente saak of vaste basis toeskryfbaar is. In sodanige geval is die bepalinge van Artikel 7 (Besigheidswinste) of Artikel 14 (Onafhanklike Persoonlike Dienste), na gelang van die geval, van toepassing.

4. 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.

5. Ondanks die bepalinge van paragraaf 1:

- a) kan rente wat voorwaardelike rente is van die tipe wat nie ingevolge die reg van die Verenigde State as portefeuljerente kwalifiseer nie, belas word teen 'n koers wat nie die koers voorgeskryf in subparagraaf b) van paragraaf 2 van Artikel 10 (Dividende) te bowe gaan nie; en
- b) kan rente wat 'n oormatige insluiting is met betrekking tot oorblywende rente in 'n vaste-eiendomverbandbeleggingsgeleibuis deur die Verenigde State in ooreenstemming met sy landsreg belas word.

Article 12**Royalties**

1. Royalties derived and beneficially owned by a resident of a Contracting State shall be taxable only in that State.
2. The term "royalties" as used in this Convention means:
 - a) any consideration for the use of, or the right to use, any copyright of literary, artistic, scientific or other work (including computer software, cinematographic films, audio or video tapes or disks, and other means of image or sound reproduction), any patent, trade mark, design or model, plan, secret formula or process, or other like right or property, or for information concerning industrial, commercial, or scientific experience; and
 - b) gain derived from the alienation of any property described in subparagraph a), provided that such gain is contingent on the productivity, use, or disposition of the property.
3. The provisions of paragraph 1 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State, in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the royalties are attributable to such permanent establishment or fixed base. In such case, the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.
4. Where, by reason of a special relationship between the payor and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payor and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 13**Capital Gains**

1. Gains derived by a resident of a Contracting State that are attributable to the alienation of real property situated in the other Contracting State may be taxed in that other State.
2. For the purposes of this Convention the term "real property situated in the other Contracting State" shall include:
 - a) real property referred to in Article 6 (Income from Immovable Property (Real Property));
 - b) a United States real property interest; and
 - c) an equivalent interest in real property situated in South Africa.
3. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.
4. Gains of an enterprise of a Contracting State from the alienation of ships, aircraft or containers operated in international traffic or movable property pertaining to the operation of such ships, aircraft or containers, shall be taxable only in that State.

Artikel 12***Tantièmes***

1. Tantièmes verkry en voordelig besit deur 'n inwoner van 'n Kontrakterende Staat is slegs in daardie Staat belasbaar.
2. Die uitdrukking "tantièmes", soos in hierdie Konvensie gebesig, beteken:
 - a) enige vergoeding vir die gebruik van, of die reg op die gebruik van, enige kopiereg van letterkundige, kuns-, wetenskaplike of ander werk (insluitende rekenaarsagteware, kinematograaffilms, klank- of videobande of diskette, en ander middele van beeld- of klankreproduksie), enige patent, handelsmerk, ontwerp of model, plan, geheime formule of proses, of ander soortgelyke reg of eiendom, of vir inligting aangaande industriële, handels- of wetenskaplike ondervinding; en
 - b) wins verkry uit die vervreemding van enige eiendom bedoel in subparagraaf a), met dien verstande dat sodanige wins bykomstig is by die produktiwiteit, gebruik, of beskikking van die eiendom.
3. Die bepaling van paragraaf 1 is nie van toepassing nie indien die bevoordeelde eienaar van die tantièmes, synde 'n inwoner van 'n Kontrakterende Staat, in die ander Kontrakterende Staat waarin die tantièmes ontstaan, besigheid dryf deur middel van 'n permanente saak daarin geleë, of in daardie ander Staat onafhanklike persoonlike dienste verrig vanaf 'n vaste basis daarin geleë, en die tantièmes aan sodanige permanente saak of vaste basis toeskryfbaar is. In sodanige geval is die bepaling van Artikel 7 (Besigheidswinste) of Artikel 14 (Onafhanklike Persoonlike Dienste), na gelang van die geval, van toepassing.
4. Waar, vanweë 'n besondere verband tussen die betaler en die bevoordeelde eienaar of tussen albei van hulle en 'n ander persoon, die bedrag van die tantièmes betaal, met inagneming van die gebruik, reg of inligting waarvoor dit betaal word, die bedrag te bowe gaan waarvoor die betaler en die bevoordeelde eienaar by ontstentenis van sodanige verband sou ooreengekom het, is die bepaling 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 13***Kapitaalwinste***

1. Winste verkry deur 'n inwoner van 'n Kontrakterende Staat wat toeskryfbaar is aan die vervreemding van vaste eiendom wat in die ander Kontrakterende Staat geleë is, kan in daardie ander Staat belas word.
2. By die toepassing van hierdie Konvensie sluit die uitdrukking "vaste eiendom geleë in die ander Kontrakterende Staat" in:
 - a) vaste eiendom bedoel in Artikel 6 (Inkomste uit Onroerende Eiendom (Vaste Eiendom));
 - b) 'n Verenigde State vaste-eiendombelang; en
 - c) 'n gelykwaardige belang in vaste eiendom geleë in Suid-Afrika.
3. Winste uit die vervreemding van roerende eiendom wat deel uitmaak van die besigheidseiendom van 'n permanente saak wat 'n onderneming van 'n Kontrakterende Staat in die ander Kontrakterende Staat het, of van roerende eiendom wat betrekking het op 'n vaste basis wat vir 'n inwoner van 'n Kontrakterende Staat in die ander Kontrakterende Staat beskikbaar is vir die doel om onafhanklike persoonlike dienste te verrig, met inbegrip van winste uit die vervreemding van so 'n permanente saak (alleen of tesame met die onderneming in sy geheel) of van sodanige vaste basis, kan in daardie ander Staat belas word.
4. Winste van 'n onderneming van 'n Kontrakterende Staat uit die vervreemding van skepe, vliegtuie of houters wat in internasionale verkeer bedryf word, of roerende eiendom wat betrekking het op die bedryf van sodanige skepe, vliegtuie of houters, is slegs in daardie Staat belasbaar.

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

Article 14

Independent Personal Services

Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless such services are performed in the other Contracting State and such individual has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base. For the purposes of this Convention, where an individual who is a resident of a Contracting State stays in the other Contracting State for a period or periods exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned, he shall be deemed to have a fixed base regularly available to him in that other State and the income that is derived from his activities that are performed in that other State shall be attributable to that fixed base.

Article 15

Dependent Personal Services

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

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

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

3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment as a member of the complement of a ship or aircraft operated in international traffic may be taxed only in that State.

Article 16

Directors' Fees

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

5. Winste uit die vervreemding van enige eiendom, behalwe dié in die voorgaande paragrawe bedoel, is slegs in die Kontrakterende Staat waarvan die vervreemder 'n inwoner is, belasbaar.

Artikel 14

Onafhanklike Persoonlike Dienste

Inkomste verkry deur 'n individu wat 'n inwoner van 'n Kontrakterende Staat is ten opsigte van professionele dienste of ander bedrywighede van 'n onafhanklike aard, is slegs in daardie Staat belasbaar, tensy sodanige dienste in die ander Kontrakterende Staat verrig word en sodanige individu 'n vaste basis in die ander Kontrakterende Staat gereeld tot sy beskikking het vir die doel van die verrigting van sy bedrywighede. Indien hy so 'n vaste basis het, kan die inkomste in die ander Staat belas word, maar slegs soveel daarvan as wat aan daardie vaste basis toeskryfbaar is. By die toepassing van hierdie Konvensie, waar 'n individu wat 'n inwoner van 'n Kontrakterende Staat is in die ander Kontrakterende Staat bly vir 'n tydperk of tydperke wat altesaam 183 dae in enige twaalfmaandetydperk wat in die betrokke fiskale jaar begin of eindig, word hy geag 'n vaste basis in daardie ander Staat gereeld tot sy beskikking te hê en die inkomste wat verkry word uit sy bedrywighede wat in daardie ander Staat verrig word, is aan daardie vaste basis toeskryfbaar.

Artikel 15

Afhanklike Persoonlike Dienste

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

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

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

3. Ondanks die voorgaande bepalinge van hierdie Artikel, is besoldiging verkry deur 'n inwoner van 'n Kontrakterende Staat ten opsigte van 'n diensbetrekking as 'n lid van die bemanning van 'n skip of vliegtuig bedryf in internasionale verkeer, slegs in daardie Staat belasbaar.

Artikel 16

Direkteursgelde

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

Article 17***Entertainers and Sportsmen***

1. Income derived by a resident of a Contracting State as an entertainer such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, which income would not be liable to tax in that other Contracting State under the provisions of Articles 7 (Business Profits), 14 (Independent Personal Services) and 15 (Dependent Personal Services), may be taxed in that other State except where the amount of the gross receipts derived by such entertainer or sportsman from such activities, including expenses reimbursed to him or borne on his behalf, does not exceed seven thousand five hundred United States dollars (\$7,500) or its equivalent in South African rand for the taxable year concerned.
2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7 (Business Profits), 14 (Independent Personal Services) and 15 (Dependent Personal Services), be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised, unless it is established that neither the entertainer or sportsman nor persons related to such entertainer or sportsman participate directly or indirectly in the profits of that other person in any manner, including the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions or other distributions.
3. Income referred to in the preceding paragraphs of this Article, derived by a resident of a Contracting State in respect of activities exercised in the other Contracting State, shall not be taxed in that other State if the visit of the entertainers or sportsmen to that other State is supported wholly or mainly from the public funds of the Government of the first-mentioned State or of a political subdivision or local authority thereof.
4. The Contracting States may, through the exchange of diplomatic notes agree to increase the amount referred to in paragraph 1 to reflect economic or monetary developments.

Article 18***Pensions and Annuities***

1. Subject to the provisions of Article 19 (Government Service), pension distributions and other similar remuneration derived from sources within a Contracting State and beneficially owned by a resident of the other Contracting State, whether paid periodically or as a single sum, may be taxed by the first-mentioned State under the following conditions:
 - a) where the United States is the first-mentioned Contracting State, the tax imposed on the pension or similar remuneration may not exceed 15 percent of the gross amount of the pension or similar remuneration, provided that such pension or similar remuneration is not subject to a penalty for early withdrawal; and
 - b) where South Africa is the first-mentioned Contracting State:
 - i) the beneficial owner of the pension or similar remuneration has been employed in South Africa for a period or periods aggregating two years or more during the ten year period immediately preceding the date from which the pension first became due; and
 - ii) the beneficial owner of the pension or similar remuneration was employed in South Africa for a period or periods aggregating ten years or more.
2. Notwithstanding paragraph 1 of this Article and paragraph 2b) of Article 19 (Government Service), social security benefits and other similar public pensions paid by a Contracting State to a resident of the other Contracting State or to a citizen of the United States shall be taxable only in the first-mentioned State.

Artikel 17**Verhoogkunstenaars en Sportlui**

1. Inkomste verkry deur 'n inwoner van 'n Kontrakterende Staat as 'n verhoogkunstenaar, soos 'n teater-, rolprent-, radio- of televisie-arties, of as 'n musikant, of as 'n sportman, uit sy persoonlike bedrywighe as sodanig wat in die ander Kontrakterende Staat beoefen word, welke inkomste ingevolge die bepalings van Artikels 7 (Besigheidswinste), 14 (Onafhanklike Persoonlike Dienste), 15 (Afhanklike Persoonlike Dienste) nie in daardie ander Kontrakterende Staat aan belasting onderworpe is nie, kan in daardie ander Staat belas word, behalwe waar die bedrag van die bruto ontvangste verkry deur sodanige verhoogkunstenaar of sportman uit sodanige aktiwiteite, met inbegrip van uitgawes aan hom terugbetaal of namens hom gedra, nie seweduisend vyfhonderd Amerikaanse dollars (\$7 500) of die ekwivalent in Suid-Afrikaanse rand vir die betrokke belasbare jaar te bowe gaan nie.
2. Waar inkomste ten opsigte van persoonlike bedrywighe wat deur 'n verhoogkunstenaar of 'n sportman in dié hoedanigheid beoefen word, nie aan die verhoogkunstenaar of sportman self toeval nie, maar aan 'n ander persoon, kan daardie inkomste, ondanks die bepalings van Artikels 7 (Besigheidswinste), 14 (Onafhanklike Persoonlike Dienste) en 15 (Afhanklike Persoonlike Dienste), belas word in die Kontrakterende Staat waarin die bedrywighe van die verhoogkunstenaar of sportman beoefen word, tensy daar vasgestel word dat nóg die verhoogkunstenaar of sportman, nóg persone verwant aan sodanige verhoogkunstenaar of sportman op enige wyse regstreeks of onregstreeks in die winste van daardie ander persoon deel, insluitende die ontvangs van uitgestelde besoldiging, bonusse, fooie, dividende, vennootskapsverdelings of ander verdelings.
3. Inkomste waarna in die voorgaande paragrawe van hierdie Artikel verwys word, verkry deur 'n inwoner van 'n Kontrakterende Staat ten opsigte van bedrywighe in die ander Kontrakterende Staat beoefen, sal nie in daardie ander Staat belas word nie indien die besoek van die verhoogkunstenaars of sportlui aan daardie ander Staat geheel en al of hoofsaaklik uit staatsgeld van die Regering van eersgenoemde Staat of 'n staatkundige onderverdeling of plaaslike owerheid daarvan, ondersteun word.
4. Die Kontrakterende State kan, deur die uitruil van diplomatieke notas instem om die bedrag waarna in paragraaf 1 verwys word, te verhoog om ekonomiese of monetêre ontwikkelinge te weerspieël.

Artikel 18**Pensioene en Annuïteite**

1. Behoudens die bepalings van Artikel 19 (Regeringsdiens) kan pensioenuitkerings en ander soortgelyke besoldiging verkry uit bronne binne 'n Kontrakterende Staat en wat voordelig besit word deur 'n inwoner van die ander Kontrakterende Staat, hetsy periodiek of as 'n enkelsom betaal, ingevolge die volgende voorwaardes deur die eersgenoemde Staat belas word:
 - a) waar die Verenigde State die eersgenoemde Kontrakterende Staat is, gaan die belasting gehef op die pensioen of soortgelyke besoldiging nie 15 persent van die bruto bedrag van die pensioen of soortgelyke besoldiging te bowe nie, met dien verstande dat sodanige pensioen of soortgelyke besoldiging nie aan 'n boete vir vroeë onttrekking onderworpe is nie; en
 - b) waar Suid-Afrika die eersgenoemde Kontrakterende Staat is:
 - i) die bevoordeelde eienaar van die pensioen of soortgelyke besoldiging in Suid-Afrika vir 'n tydperk of tydperke van altesaam twee jaar of meer gedurende die tienjaartydperk wat die datum waarop die pensioen vir die eerste maal verskuldig geword het, onmiddellik voorafgaan, in diens was; en
 - ii) die bevoordeelde eienaar van die pensioen of soortgelyke besoldiging in Suid-Afrika vir 'n tydperk of tydperke van altesaam tien jaar of meer, in diens was.
2. Ondanks paragraaf 1 van hierdie Artikel en paragraaf 2b) van Artikel 19 (Regeringsdiens) is bestaansbeveiligingsvoordele en ander soortgelyke openbare pensioene wat deur 'n Kontrakterende Staat aan 'n inwoner van die ander Kontrakterende Staat of aan 'n burger van die Verenigde State betaal word, slegs in eersgenoemde Staat belasbaar.

3. Annuities beneficially derived by a resident of a Contracting State shall be taxable only in that State unless the annuity was purchased in the other Contracting State while such person was a resident of that other State, in which case the annuity may also be taxed in that other State. The term "annuities" as used in this paragraph means a stated sum paid periodically at stated times during life or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration (other than services rendered).

4. Alimony paid by a resident of a Contracting State, and deductible therein, to a resident of the other Contracting State shall be taxable only in the first-mentioned State. Alimony paid by a resident of a Contracting State, and not deductible therein, to a resident of the other Contracting State shall be exempt from tax in both States. The term "alimony" as used in this paragraph means periodic payments made pursuant to a written separation agreement or a decree of divorce, separate maintenance or compulsory support.

5. Periodic payments, not dealt with in paragraph 4, for the support of a minor child made pursuant to a written separation agreement or a decree of divorce, separate maintenance or compulsory support, paid by a resident of a Contracting State to a resident of the other Contracting State, and not deductible in the first-mentioned State, shall be exempt from tax in both Contracting States.

6. For purposes of this Convention, where an individual who is a participant in a pension plan that is established and recognized under the legislation of one of the Contracting States performs personal services in the other Contracting State:

- a) Contributions paid by or on behalf of the individual to the plan during the period that he performs such services in the other State shall be deductible (or excludable) in computing his taxable income in that State. Any benefits accrued under the plan or payments made to the plan by or on behalf of his employer during that period shall not be treated as part of the employee's taxable income and shall be allowed as a deduction in computing the profits of his employer in that other State.
- b) Income earned but not distributed by the plan shall not be taxable in the other State until such time and to the extent that a distribution is made from the plan.
- c) Distributions from the plan to the individual shall not be subject to taxation in the other Contracting State if the individual contributes such amounts to a similar plan established in the other State within a time period and in accordance with any other requirements imposed under the laws of the other State.
- d) The provisions of this paragraph shall not apply unless:
 - i) contributions by or on behalf of the individual to the plan (or to another similar plan for which this plan was substituted) were made before he arrived in the other State; and
 - ii) the competent authority of the other State has agreed that the pension plan generally corresponds to a pension plan recognized for tax purposes by that State.

The benefits granted under this paragraph shall not exceed the benefits that would be allowed by the other State to its residents for contributions to, or benefits otherwise accrued under a pension plan recognized for tax purposes by the other State.

7. For the purposes of this Convention, a pension or similar remuneration is deemed to arise from sources within a Contracting State to the extent that the pensionable service to which it relates is performed in that State.

Article 19

Government Service

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

3. Annuïteite voordelig verkry deur 'n inwoner van 'n Kontrakterende Staat is slegs in daardie Staat belasbaar tensy die annuïteit in die ander Kontrakterende Staat gekoop is terwyl sodanige persoon 'n inwoner van daardie ander Staat was, in welke geval die annuïteit ook in daardie ander Staat belas kan word. Die uitdrukking "annuïteite" soos in hierdie paragraaf gebesig, beteken 'n vermelde bedrag wat periodiek op vermelde tye gedurende lewe of gedurende 'n gespesifiseerde aantal jare betaal word, ingevolge 'n verpligting om die betalings te doen in ruil vir voldoende en volle vergoeding (behalwe dienste gelewer).

4. Alimentasie betaal deur 'n inwoner van 'n Kontrakterende Staat, en aftrekbaar daarin, aan 'n inwoner van die ander Kontrakterende Staat is slegs in eersgenoemde Staat belasbaar. Alimentasie betaal deur 'n inwoner van 'n Kontrakterende Staat, en nie aftrekbaar daarin nie, aan 'n inwoner van die ander Kontrakterende Staat, is in beide State van belasting vrygestel. Die uitdrukking "alimentasie" soos in hierdie paragraaf gebesig, beteken periodieke betalings gemaak ingevolge 'n skriftelike skeidingsooreenkoms of 'n bevel tot egskeiding, afsonderlike onderhoud of verpligte onderhoud.

5. Periodieke betalings, wat nie in paragraaf 4 behandel is nie, vir die onderhoud van 'n minderjarige kind ingevolge 'n skriftelike skeidingsooreenkoms of 'n bevel tot egskeiding, afsonderlike onderhoud of verpligte onderhoud, betaal deur 'n inwoner van 'n Kontrakterende Staat aan 'n inwoner van die ander Kontrakterende Staat, en nie aftrekbaar in die eersgenoemde Staat nie, is in beide Kontrakterende State van belasting vrygestel.

6. Vir doeleindes van hierdie Konvensie, waar 'n individu wat 'n deelnemer is in 'n pensioenplan wat ingestel en erken word ingevolge die wetgewing van een van die Kontrakterende State, persoonlike dienste in die ander Kontrakterende Staat verrig:

- a) Is bydraes betaal deur of ten behoeve van die individu aan die plan gedurende die tydperk waartydens hy sodanige dienste in die ander Staat verrig, aftrekbaar (of uitsluitbaar) by die berekening van sy belasbare inkomste in daardie Staat. Enige voordele opgeloopte ingevolge die plan of betalings gemaak aan die plan deur of ten behoeve van sy werkgewer gedurende daardie tydperk, word nie as deel van die werknemer se belasbare inkomste behandel nie en word as 'n aftrekking toegelaat by die berekening van die winste van sy werkgewer in daardie ander Staat.
- b) Inkomste verdien, maar nie deur die plan uitgekeer nie, is nie in die ander Staat belasbaar nie tot tyd en wyl en in die mate dat 'n uitkering uit die plan gemaak word.
- c) Uitkerings uit die plan aan die individu is nie in die ander Kontrakterende Staat aan belasting onderworpe nie indien die individu sodanige bedrae bydra tot 'n soortgelyke plan wat in die ander Staat ingestel is binne 'n tydperk en in ooreenstemming met enige ander vereistes opgelê ingevolge die wette van die ander Staat.
- d) Die bepalinge van hierdie paragraaf is nie van toepassing nie tensy:

- i) bydraes deur of ten behoeve van die individu tot die plan (of tot 'n ander soortgelyke plan wat deur hierdie plan vervang is) gemaak is voordat hy in die ander Staat aangekom het; en
- ii) die bevoegde owerheid van die ander Staat daartoe ingestem het dat die pensioenplan in die algemeen ooreenstem met 'n pensioenplan wat vir belastingdoeleindes deur daardie Staat erken word.

Die voordele verleen ingevolge hierdie paragraaf gaan nie die voordele te bowe nie wat deur die ander Staat aan sy inwoners toegelaat sal word vir bydraes aan, of voordele andersins toegeval ingevolge 'n pensioenplan wat vir belastingdoeleindes deur die ander Staat erken word.

7. By die toepassing van hierdie Konvensie word 'n pensioen of soortgelyke besoldiging geag te ontstaan uit bronne binne 'n Kontrakterende Staat in die mate dat die pensioendraende diens waarop dit betrekking het, in daardie Staat verrig word.

Artikel 19

Regeringsdiens

1. a) Besoldiging, behalwe 'n pensioen, betaal deur, of uit fondse geskep deur, 'n Kontrakterende Staat of 'n staatkundige ondervdeling of 'n plaaslike owerheid daarvan aan 'n individu ten opsigte van dienste gelewer aan daardie Staat of ondervdeling of owerheid daarvan, is slegs in daardie Staat belasbaar.

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

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

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

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

3. The provisions of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the Contracting States, a political subdivision or a local authority thereof.

Article 20

Students, Apprentices and Business Trainees

A student, apprentice or business trainee who is present in a Contracting State for the purpose of his full-time education or training and who is, or immediately before being so present was, a resident of the other Contracting State, shall be exempt from tax in the first-mentioned State on payments which arise from sources outside that first-mentioned State for the purposes of his maintenance, education or training. The exemption from tax provided by this Article shall apply to an apprentice or trainee for a period of time not exceeding one year from the date he first arrives in the first-mentioned Contracting State for the purpose of his apprenticeship or training.

Article 21

Other Income

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

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6 (Income from Immovable Property (Real Property)), if the beneficial owner of the income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the income is attributable to such permanent establishment or fixed base. In such case, the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

Article 22

Limitation on Benefits

1. A resident of a Contracting State shall be entitled to benefits otherwise accorded to residents of a Contracting State by this Convention only to the extent provided in this Article.

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

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

2. a) Enige pensioen betaal deur, of uit fondse geskep deur, 'n Kontrakterende Staat of 'n staatkundige onderverdeling of 'n plaaslike owerheid daarvan aan 'n individu ten opsigte van dienste gelewer aan daardie Staat of onderverdeling of owerheid, is slegs in daardie Staat belasbaar.

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

3. Die bepaling van hierdie Artikel is nie van toepassing op betalings ten opsigte van dienste gelewer met betrekking tot 'n bedryf of besigheid wat deur enigen van die Kontrakterende State, 'n staatkundige onderverdeling of 'n plaaslike owerheid daarvan bedryf word nie.

Artikel 20

Studente, Vakleerlinge en Besigheidsvakleerlinge

'n Student, vakleerling of besigheidsvakleerling wat in 'n Kontrakterende Staat teenwoordig is vir die doel van sy voltydse onderrig of opleiding en wat 'n inwoner is, of onmiddellik voor sodanige teenwoordigheid 'n inwoner was, van die ander Kontrakterende Staat, is in eersgenoemde Staat vrygestel van belasting op betalings wat vanuit bronne buite daardie eersgenoemde Staat ontstaan vir die doel van sy onderhoud, onderrig of opleiding. Die vrystelling van belasting deur hierdie Artikel voorsien is van toepassing op 'n vakleerling of kwekeling vir 'n tydperk wat nie een jaar te bowe gaan nie vanaf die datum van sy eerste aankoms in eersgenoemde Kontrakterende Staat vir die doel van sy vakleerlingskap of opleiding.

Artikel 21

Ander Inkomste

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

2. Die bepaling van paragraaf 1 is nie van toepassing op inkomste nie, behalwe inkomste uit onroerende eiendom soos omskryf in paragraaf 2 van Artikel 6 (Inkomste uit Onroerende Eiendom (Vaste Eiendom)), indien die bevoordeelde eienaar van die inkomste, synde 'n inwoner van 'n Kontrakterende Staat, in die ander Kontrakterende Staat besigheid dryf deur middel van 'n permanente saak daarin geleë, of in daardie ander Staat onafhanklike persoonlike dienste verrig vanaf 'n vaste basis daarin geleë, en die inkomste toeskryfbaar is aan sodanige permanente saak of vaste basis. In sodanige geval is die bepaling van Artikel 7 (Besigheidswinste) of Artikel 14 (Onafhanklike Persoonlike Dienste), na gelang van die geval, van toepassing.

Artikel 22

Beperking op Voordele

1. 'n Inwoner van 'n Kontrakterende Staat is slegs in die mate in hierdie Artikel bepaal, geregtig op voordele wat andersins ingevolge hierdie Konvensie aan inwoners van 'n Kontrakterende Staat toegestaan word.

2. A resident of a Contracting State shall be entitled to all the benefits of this Convention if the resident is:
- a) an individual;
 - b) a Contracting State, political subdivision or local authority thereof;
 - c) a company, if:
 - i) all the shares in the class or classes of shares representing more than 50 percent of the voting power and value of the company are regularly traded on a recognized stock exchange, or
 - ii) at least 50 percent of each class of shares in the company is owned directly or indirectly by companies entitled to benefits under clause i), provided that in the case of indirect ownership, each intermediate owner is a person entitled to the benefits of the Convention under this paragraph;
 - d) a legal person organized under the laws of a Contracting State that is generally exempt from tax in that State under laws relating to charitable and other similar organizations;
 - e) a legal person organized under the laws of a Contracting State that is generally exempt from tax in that State, and is established and maintained in that State to provide pensions or other similar benefits to employees pursuant to a plan, provided that more than 50 percent of the beneficiaries, members or participants are individuals resident in either Contracting State;
 - f) a person other than an individual or a trust, if:
 - i) on at least half the days of the taxable year persons described in subparagraphs a), b), c), d) or e) own, directly or indirectly (through a chain of ownership in which each person is entitled to benefits of the Convention under this paragraph), at least 50 percent of each class of shares or other beneficial interests in the person, and
 - ii) less than 50 percent of the person's gross income for the taxable year is paid or accrued, directly or indirectly, to persons who are not residents of either Contracting State (unless the payment is attributable to a permanent establishment situated in either State), in the form of payments that are deductible for income tax purposes in the person's State of residence;
 - g) a trust, if:
 - i) on at least 274 days of the taxable year persons described in subparagraphs a), b), c), d), e) or f) own, directly or indirectly (through a chain of ownership in which each person is entitled to benefits of the Convention under this paragraph), at least 80 percent of the aggregate beneficial interests in the trust, and
 - ii) less than 50 percent of the trust's gross income for the taxable year is paid or accrued, directly or indirectly, to persons who are not residents of either Contracting State (unless the payment is attributable to a permanent establishment situated in either State), in the form of payments that are deductible for income tax purposes in the trust's State of residence.
3. a) A resident of a Contracting State not otherwise entitled to benefits shall be entitled to the benefits of this Convention with respect to an item of income derived from the other State, if:
- i) the resident is engaged in the active conduct of a trade or business in the first-mentioned State,
 - ii) the income is connected with or incidental to the trade or business, and
 - iii) the trade or business is substantial in relation to the activity of the resident (and any related parties) in the other State generating the income.
- b) For purposes of this paragraph, the business of making or managing investments will not be considered an active trade or business unless the activity is banking, insurance or securities activity conducted by a bank, insurance company or registered securities dealer, respectively.

2. 'n Inwoner van 'n Kontrakterende Staat is op al die voordele van hierdie Konvensie geregtig indien die inwoner:

- a) 'n individu is;
- b) 'n Kontrakterende Staat, staatkundige onderverdeling of plaaslike owerheid daarvan is;
- c) 'n maatskappy is, indien:
 - i) al die aandele in die klas of klasse van aandele wat meer as 50 persent van die stemreg en waarde van die maatskappy verteenwoordig, gereeld op 'n erkende effektebeurs verhandel word, of
 - ii) ten minste 50 persent van elke klas van aandele in die maatskappy regstreeks of onregstreeks deur maatskappye besit word wat geregtig is op voordele ingevolge klousule i), met dien verstande dat in die geval van onregstreekse eienaarskap, elke tusseneienaar 'n persoon is wat ingevolge hierdie paragraaf geregtig is op die voordele van die Konvensie;
- d) 'n regspersoon is gereël ingevolge die wette van 'n Kontrakterende Staat wat in die algemeen in daardie Staat van belasting vrygestel is ingevolge wette wat betrekking het op liefdadigheids- en ander soortgelyke organisasies;
- e) 'n regspersoon is gereël ingevolge die wette van 'n Kontrakterende Staat wat in die algemeen in daardie Staat van belasting vrygestel is, en in daardie Staat ingestel en in stand gehou word om ingevolge 'n plan, pensioene of ander soortgelyke voordele aan werknemers te voorsien, met dien verstande dat meer as 50 persent van die begunstigdes, lede of deelnemers, individue is wat in enigeen van die Kontrakterende Staat woonagtig is;
- f) 'n persoon behalwe 'n individu of 'n trust is, indien:
 - i) op ten minste die helfte van die dae van die belasbare jaar, persone bedoel in subparagraawe a), b), c), d) of e) regstreeks of onregstreeks (deur middel van 'n eienaarskapketting waarin elke persoon geregtig is op die voordele van hierdie Konvensie ingevolge hierdie paragraaf), ten minste 50 persent van elke klas van aandele of ander voordelige belange in die persoon besit, en
 - ii) minder as 50 persent van die persoon se bruto inkomste vir die belasbare jaar betaal word of toeval, regstreeks of onregstreeks, aan persone wat nie inwoners van enigeen van die Kontrakterende State is nie (tensy die betaling toeskryfbaar is aan 'n permanente saak wat in enigeen van die State geleë is), in die vorm van betalings wat aftrekbaar is vir belastingdoeleindes in die Staat waarin die persoon woonagtig is;
- g) 'n trust is, indien:
 - i) op ten minste 274 dae van die belasbare jaar, persone bedoel in subparagraawe a), b), c), d), e), of f), regstreeks of onregstreeks (deur middel van 'n eienaarskapketting waarin elke persoon geregtig is op die voordele van die Konvensie ingevolge hierdie paragraaf), ten minste 80 persent van die totale voordelige belange in die trust besit, en
 - ii) minder as 50 persent van die trust se bruto inkomste vir die belasbare jaar betaal word of toeval, regstreeks of onregstreeks, aan persone wat nie inwoners van enigeen van die Kontrakterende State is nie (tensy die betaling toeskryfbaar is aan 'n permanente saak wat in enigeen van die State geleë is), in die vorm van betalings wat aftrekbaar is vir belastingdoeleindes in die Staat waarin die trust woonagtig is.

3. a) 'n Inwoner van 'n Kontrakterende Staat wat nie andersins op voordele geregtig is nie, is geregtig op die voordele van hierdie Konvensie met betrekking tot 'n inkomste-item verkry vanaf die ander Staat, indien:

- i) die inwoner betrokke is in die aktiewe bestuur van 'n bedryf of besigheid in eersgenoemde Staat,
 - ii) die inkomste verband hou met of bykomend is by die bedryf of besigheid, en
 - iii) die bedryf of besigheid aansienlik is met betrekking tot die bedrywigheid van die inwoner (en enige verwante partye) in die ander Staat wat die inkomste genereer.
- b) By die toepassing van hierdie paragraaf word die besigheid van die maak of bestuur van beleggings nie as 'n aktiewe bedryf of besigheid beskou nie tensy die bedrywigheid bank-, versekerings- of effektebedrywigheide is, bedryf deur onderskeidelik 'n bank, versekeringsmaatskappy of geregistreerde effektehandelaar.

- c) Whether a trade or business is substantial for purposes of this paragraph will be determined based on all the facts and circumstances. In any case, however, a trade or business will be deemed substantial if, for the preceding taxable year, or for the average of the three preceding taxable years, the asset value, the gross income, and the payroll expense that are related to the trade or business in the first-mentioned State equal at least 7.5 percent of the resident's (and any related parties') proportionate share of the asset value, gross income and payroll expense, respectively, that are related to the activity that generated the income in the other State, and the average of the three ratios exceeds 10 percent.
- d) Income is derived in connection with a trade or business if the activity in the other State generating the income is a line of business that forms a part of or is complementary to the trade or business. Income is incidental to a trade or business if it facilitates the conduct of the trade or business in the other State.

4. A resident of a Contracting State not otherwise entitled to benefits may be granted benefits of the Convention if the competent authority of the State from which benefits are claimed so determines.

5. For purposes of this Article the term "recognized stock exchange" means:

- a) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the U.S. Securities and Exchange Commission as a national securities exchange under the U.S. Securities Exchange Act of 1934;
- b) the Johannesburg Stock Exchange; and
- c) any other exchange agreed upon by the competent authorities of the Contracting States.

6. Notwithstanding the other provisions of this Convention:

- a) where an enterprise of South Africa derives income from the United States;
- b) that income is attributable to a permanent establishment which that enterprise has in a third jurisdiction; and
- c) the enterprise is not liable to tax in South Africa on the profits attributable to the permanent establishment;

the United States tax benefits that otherwise would apply under the other provisions of this Convention will not apply to any item of income on which the combined tax in South Africa and in the third jurisdiction is less than 50 percent of the tax that would be imposed in South Africa if the income were earned by the South African enterprise and were not attributable to the permanent establishment in the third jurisdiction. Any interest or royalties to which this paragraph applies will be subject to United States tax at a rate not exceeding 15 percent of the gross amount thereof.

The preceding sentences of this paragraph shall not apply:

- a) to interest derived in connection with or incidental to the active conduct of a trade or business carried on by the permanent establishment in the third jurisdiction (other than the business of making or managing investments, unless these activities are banking or insurance activities carried on by a bank or insurance company, respectively);
- b) to royalties that are received as a compensation for the use of, or the right to use, intangible property produced or developed by the permanent establishment itself; and
- c) to income derived by an enterprise of South Africa if the United States taxes the profits of such enterprise according to the provisions of subpart F of part III of subchapter N of chapter 1 of subtitle A of the Internal Revenue Code of 1986, as it may be amended from time to time without changing the general principle thereof.

- c) Of 'n bedryf of besigheid wesenlik is vir doeleindes van hierdie paragraaf, sal op grond van al die feite en omstandighede bepaal word. 'n Bedryf of besigheid sal egter in elk geval geag word wesenlik te wees indien, vir die voorgaande belasbare jaar, of vir die gemiddelde van die drie voorgaande belasbare jare, die batewaarde, die bruto inkomste, en die betaalstaaituitgawe wat verband hou met die bedryf of besigheid in eersgenoemde Staat gelyk is aan ten minste 7.5 persent van die inwoner (en enige verwante partye) se proporsionele aandeel van die batewaarde, bruto inkomste en betaalstaaituitgawe, onderskeidelik, wat verband hou met die bedrywigheid wat die inkomste in die ander Staat genereer het, en die gemiddelde van die drie verhoudinge 10 persent te bowe gaan.
- d) Inkomste word verkry met betrekking tot 'n bedryf of besigheid indien die bedrywigheid in die ander Staat wat die inkomste genereer 'n bedryf is wat deel uitmaak van of komplementêr is tot die bedryf of besigheid. Inkomste is bykomend by 'n bedryf of besigheid indien dit die bestuur van die bedryf of besigheid in die ander Staat vergemaklik.

4. 'n Inwoner van 'n Kontrakterende Staat wat nie andersins op voordele geregtig is nie kan voordele van die Konvensie verleen word indien die bevoegde owerheid van die Staat van wie voordele geëis word, aldus bepaal.

5. By die toepassing van hierdie Artikel beteken die uitdrukking "erkende effektebeurs":

- a) die "NASDAQ System" besit deur die "National Association of Securities Dealers, Inc." en die effektebeurs geregistreer by die "U.S. Securities and Exchange Commission" as 'n nasionale effektebeurs ingevolge die "U.S. Securities Exchange Act of 1934";
- b) die Johannesburgse Effektebeurs; en
- c) enige ander beurs goedgekeur deur die bevoegde owerhede van die Kontrakterende State.

6. Ondanks die ander bepalinge van hierdie Konvensie waar:

- a) 'n onderneming van Suid-Afrika inkomste vanuit die Verenigde State verkry;
- b) daardie inkomste toeskryfbaar is aan 'n permanente saak wat daardie onderneming in 'n derde regsgebied het; en
- c) die onderneming nie in Suid-Afrika aan belasting onderhewig is op die winste toeskryfbaar aan die permanente saak nie;

is die Verenigde State belastingvoordele wat andersins ingevolge die ander bepalinge van hierdie Konvensie van toepassing sal wees, nie van toepassing nie op enige inkomste-item waarop die gekombineerde belasting in Suid-Afrika en in die derde regsgebied minder as 50 persent is van die belasting wat in Suid-Afrika gehef sal word indien die inkomste deur die Suid-Afrikaanse onderneming verdien sou gewees het en nie aan die permanente saak in die derde regsgebied toeskryfbaar was nie. Enige rente of tantiemes waarop hierdie paragraaf van toepassing is, is aan Verenigde State belasting onderworpe teen 'n koers wat nie 15 persent van die bruto bedrag daarvan te bowe gaan nie.

Die voorgaande sinne van hierdie paragraaf is nie van toepassing nie:

- a) op rente verkry met betrekking tot of bykomstig by die aktiewe bedryf van 'n bedryf of besigheid gedryf deur die permanente saak in die derde regsgebied (behalwe die besigheid van die maak of bestuur van beleggings, tensy hierdie bedrywigheede bank- of versekeringsbedrywigheede is wat onderskeidelik deur 'n bank of versekeringsmaatskappy beoefen word);
- b) op tantiemes wat ontvang word as 'n vergoeding vir die gebruik van, of die reg op die gebruik van, ontasbare eiendom geproduseer of ontwikkel deur die permanente saak self; en
- c) op inkomste verkry deur 'n onderneming van Suid-Afrika indien die Verenigde State die winste van sodanige onderneming belas volgens die bepalinge van subdeel F van deel III van subhoofstuk N van hoofstuk 1 van subtitel A van die "Internal Revenue Code of 1986", soos wat dit van tyd tot tyd gewysig kan word sonder om die algemene beginsels daarvan te verander.

Article 23***Elimination of Double Taxation***

1. In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), the United States shall allow to a resident or a citizen of the United States as a credit against the United States tax on income:

- a) the South African tax paid or accrued by or on behalf of such citizen or resident; and
- b) in the case of a United States company owning at least 10 per cent of the voting stock of a company which is a resident of South Africa and from which the United States company receives dividends, the South African income tax paid by or on behalf of the distributing company with respect to the profits out of which the dividends are paid.

2. Where a United States citizen is a resident of South Africa:

- a) with respect to items of income that under the provisions of this Convention are exempt from United States tax or that are subject to a reduced rate of United States tax when derived by a resident of South Africa who is not a United States citizen, South Africa shall allow as a credit against South African tax, only the tax paid, if any, that the United States may impose under the provisions of this Convention, other than taxes that may be imposed solely by reason of citizenship under the saving clause of paragraph 4 of Article 1 (General Scope);
- b) for purposes of computing United States tax on those items of income referred to in subparagraph a), the United States shall allow as a credit against United States tax the income tax paid to South Africa after the credit referred to in subparagraph a); the credit so allowed shall not reduce the portion of the United States tax that is creditable against the South African tax in accordance with subparagraph a); and
- c) for the exclusive purpose of relieving double taxation in the United States under subparagraph b), items of income referred to in subparagraph a) shall be deemed to arise in South Africa to the extent necessary to avoid double taxation of such income under subparagraph b).

3. United States taxes paid by South African residents in respect of income taxable in the United States, in accordance with the provisions of this Convention, other than taxes that may be imposed solely by reason of citizenship under paragraph 4 of Article 1 (General Scope), shall be deducted from the South African 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 taxable in South Africa.

Article 24***Non-discrimination***

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. This provision shall, notwithstanding the provisions of Article 1 (General Scope), also apply to persons who are not residents of one or both of the Contracting States. However, for the purposes of United States taxation, United States nationals who are subject to tax on a worldwide basis are not in the same circumstances as South African nationals who are not residents of the United States.

2. The taxation on a permanent establishment or fixed base that a resident or enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises or residents of that other State carrying on the same activities.

Artikel 23***Uitskakeling van Dubbele Belasting***

1. Ingevolge die bepalings van en onderworpe aan die beperkings van die reg van die Verenigde State (soos wat dit van tyd tot tyd gewysig kan word sonder om die algemene beginsels hiervan te verander), laat die Verenigde State aan 'n inwoner of burger van die Verenigde State as 'n krediet teen die Verenigde State belasting op inkomste toe:

- a) die Suid-Afrikaanse belasting betaal of toegeval deur of ten behoeve van sodanige burger of inwoner; en
- b) in die geval van 'n Verenigde State maatskappy wat ten minste 10 persent besit van die stemdraende aandele van 'n maatskappy wat 'n inwoner van Suid-Afrika is en waarvandaan die Verenigde State maatskappy dividende ontvang, die Suid-Afrikaanse inkomstebelasting betaal deur of ten behoeve van die distribusiemaatskappy met betrekking tot die winste waaruit die dividende betaal word.

2. Waar 'n Verenigde State burger 'n inwoner van Suid-Afrika is:

- a) laat Suid-Afrika, met betrekking tot inkomste-items wat ingevolge die bepalings van hierdie Konvensie van Verenigde State belasting vrygestel is of wat onderworpe is aan 'n verminderde koers van Verenigde State belasting wanneer verkry deur 'n inwoner van Suid-Afrika wat nie 'n burger van die Verenigde State is nie, as 'n krediet toe teen Suid-Afrikaanse belasting slegs die belasting betaal, indien enige, wat die Verenigde State kan op lê ingevolge die bepalings van hierdie Konvensie, behalwe belasting wat opgelê kan word uitsluitlik op grond van burgerskap ingevolge die voorbehoudsbepaling van paragraaf 4 van Artikel 1 (Algemene Omvang);
- b) vir doeleindes van die bepaling van Verenigde State belasting op daardie inkomste-items bedoel in subparagraaf a), laat die Verenigde State as 'n krediet toe teen Verenigde State belasting die inkomstebelasting betaal aan Suid-Afrika na die krediet bedoel in subparagraaf a); die krediet aldus toegelaat, verminder nie die gedeelte van die Verenigde State belasting wat ingevolge subparagraaf a) teen die Suid-Afrikaanse belasting gekrediteer kan word nie; en
- c) vir die uitsluitlike doel om dubbele belasting in die Verenigde State ingevolge subparagraaf b) te vermy, word inkomste-items bedoel in subparagraaf a) geag in Suid-Afrika te ontstaan in die mate nodig vir die vermyding van dubbele belasting van sodanige inkomste ingevolge subparagraaf b).

3. Verenigde State belasting betaal deur Suid-Afrikaanse inwoners ten opsigte van inkomste belasbaar in die Verenigde State, word ingevolge die bepalings van hierdie Konvensie, behalwe belasting wat opgelê kan word uitsluitlik op grond van burgerskap ingevolge paragraaf 4 van Artikel 1 (Algemene Omvang), afgetrek van die Suid-Afrikaanse belasting verskuldig ingevolge 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 belasbaar in Suid-Afrika staan, te bowe nie.

Artikel 24***Nie-diskriminasie***

1. Die burgers van 'n Kontrakterende Staat mag nie in die ander Kontrakterende Staat onderwerp word aan enige belasting of enige vereiste in verband daarmee wat anders is of swaarder druk as die belasting en die daarmee verbonde vereistes waaraan burgers van daardie ander Staat onder dieselfde omstandighede onderworpe is of onderwerp kan word nie. Hierdie bepaling is ondanks die bepalings van Artikel 1 (Algemene Omvang) ook van toepassing op persone wat nie inwoners van een van of van beide die Kontrakterende State is nie. Vir doeleindes van Verenigde State belasting is burgers van die Verenigde State wat op 'n wêreldwye grondslag aan belasting onderhewig is egter nie in dieselfde omstandighede as Suid-Afrikaanse burgers wat nie burgers van die Verenigde State is nie.

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

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

4. Nothing in this Article shall 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.

5. Except where the provisions of paragraph 1 of Article 9 (Associated Enterprises), paragraph 4 of Article 11 (Interest) or paragraph 4 of Article 12 (Royalties) apply, interest, royalties and other disbursements paid by a resident of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of the first-mentioned resident, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

6. Nothing in this Article shall be construed as preventing either Contracting State from imposing a tax as described in paragraph 6 of Article 10 (Dividends).

7. The provisions of this Article shall, notwithstanding the provisions of Article 2 (Taxes Covered), apply to taxes of every kind and description imposed by a Contracting State or a political subdivision or local authority thereof.

Article 25

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of either Contracting State. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Convention (or in the case of tax collected at source within three years from the date of collection).

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

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

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. The competent authorities, through consultations, shall develop appropriate bilateral procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article. In addition, a competent authority may devise appropriate unilateral procedures, conditions, methods and techniques to facilitate the above-mentioned bilateral actions and the implementation of the mutual agreement procedure.

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

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

5. Behalwe waar die bepalings van paragraaf 1 van Artikel 9 (Verwante Ondernemings), paragraaf 4 van Artikel 11 (Rente) of paragraaf 4 van Artikel 12 (Tantièmes) van toepassing is, is rente, tantièmes en ander uitbetalings betaal deur 'n inwoner van 'n Kontrakterende Staat aan 'n inwoner van die ander Kontrakterende Staat, vir doeleindes van die vasstelling van die belasbare winste van eersgenoemde inwoner, onder dieselfde omstandighede aftrekbaar asof dit aan 'n inwoner van eersgenoemde Staat betaal was.

6. Niks in hierdie Artikel word uitgelê nie as sou dit enigeen van die Kontrakterende State verhoed om 'n belasting op te lê soos beskryf in paragraaf 6 van Artikel 10 (Dividende).

7. Die bepalings van hierdie Artikel is, ondanks die bepalings van Artikel 2 (Belastings Gedek), van toepassing op belastings van elke soort en beskrywing gehef deur 'n Kontrakterende Staat of 'n staatkundige onderverdeling of 'n plaaslike owerheid daarvan.

Artikel 25

Prosedure vir Onderlinge Ooreenkoms

1. Waar 'n persoon van mening is dat die optrede van een of van albei die Kontrakterende State tot gevolg het of sal hê dat hy nie ooreenkomstig hierdie Konvensie belas word nie, kan hy, ongeag die regsmiddels waarvoor die landsreg van daardie State voorsiening maak, sy saak stel aan die bevoegde owerheid van enigeen van die Kontrakterende State. Die saak moet gestel word binne drie jaar vanaf die eerste kennisgewing van die handeling wat tot dubbele belasting lei wat nie in ooreenstemming met die bepalings van hierdie Konvensie is nie (of in die geval van belasting by die bron gevorder, binne drie jaar vanaf die datum van vordering).

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

4. Die bevoegde owerhede van die Kontrakterende State kan regstreeks met mekaar in verbinding tree ten einde tot 'n ooreenkoms te geraak soos in die voorgaande paragrawe beoog. Deur middel van konsultasie moet die bevoegde owerhede geskikte bilaterale prosedures, voorwaardes, metodes en tegnieke ontwikkel vir die implementering van die prosedure vir onderlinge ooreenkoms waarvoor hierdie Artikel voorsiening maak. 'n Bevoegde owerheid kan daarbenewens geskikte eensydige prosedures, voorwaardes, metodes en tegnieke opstel om bogemelde bilaterale handeling en die implementering van die prosedure vir onderlinge ooreenkoms te vergemaklik.

5. In particular the competent authorities of the Contracting States may agree:

- a) to the same attribution of income, deductions, credits, or allowances of an enterprise of a Contracting State to its permanent establishment situated in the other Contracting State;
- b) to the same allocation of income, deductions, credits, or allowances between persons;
- c) to the same characterization of particular items of income;
- d) to the same characterization of persons;
- e) to the same application of source rules with respect to particular items of income; and
- f) to a common meaning of a term.

Article 26

Exchange of Information and Administrative Assistance

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 this Convention in so far as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1 (General Scope). Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment, collection or administration of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this 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).

3. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall obtain the information to which the request relates in the same manner and to the same extent as if the tax of the first-mentioned State were the tax of that other State. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under this Article in the form of depositions of witnesses and authenticated copies of unedited original documents (including books, papers, statements, records, accounts and writings), to the same extent such depositions and documents can be obtained under the laws and administrative practices of that other State with respect to its own taxes.

4. Each of the Contracting States shall endeavour to collect on behalf of the other Contracting State such amounts as may be necessary to ensure that relief granted by the Convention from taxation imposed by that other State does not inure to the benefit of persons not entitled thereto.

5. Paragraph 4 of this Article shall not impose upon either of the Contracting States the obligation to carry out administrative measures which are of a different nature from those used in the collection of its own taxes, or which would be contrary to its sovereignty, security or public policy.

6. For the purposes of this Article, the Convention shall apply, notwithstanding the provisions of Article 2 (Taxes Covered), to taxes of every kind administered by the competent authorities (but not including customs duties).

5. In die besonder kan die bevoegde owerhede van die Kontrakterende State ooreenkom oor:

- a) dieselfde toeskrywing van inkomste, aftrekkings, krediete, of toegewings van 'n onderneming van 'n Kontrakterende Staat aan sy permanente saak geleë in die ander Kontrakterende Staat;
- b) dieselfde toewysing van inkomste, aftrekkings, krediete, of toegewings tussen persone;
- c) dieselfde karakterisering van spesifieke inkomste-items;
- d) dieselfde karakterisering van persone;
- e) dieselfde toepassing van bronreëls met betrekking tot spesifieke inkomste-items; en
- f) 'n algemene betekenis van 'n uitdrukking.

Artikel 26

Uitruil van Inligting en Administratiewe Bystand

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 belasting deur hierdie Konvensie gedek vir sover die belasting daarkragtens nie strydig met die Konvensie is nie. Die uitruil van inligting word nie deur Artikel 1 (Algemene Omvang) beperk nie. Enige inligting ontvang deur 'n Kontrakterende Staat word as geheim behandel op dieselfde wyse as inligting wat ingevolge die landsreg van daardie Staat verkry word, en mag openbaar gemaak word slegs aan persone of owerhede (met inbegrip van howe en administratiewe liggame) betrokke by die aanslaan, invordering of administrasie van, die afdwing of vervolging met betrekking tot, of die beslissing van appèlle in verband met, die belasting deur hierdie 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 opleë om:

- a) administratiewe maatreëls uit te voer wat strydig is met die wette of 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.

3. Indien inligting deur 'n Kontrakterende Staat ooreenkomstig hierdie Artikel versoek word, verkry die ander Kontrakterende Staat die inligting waarop die versoek betrekking het op dieselfde wyse en in dieselfde mate asof die belasting van eersgenoemde Staat die belasting van daardie ander Staat is. Indien uitdruklik daartoe versoek deur die bevoegde owerheid van 'n Kontrakterende Staat, voorsien die bevoegde owerheid van die ander Kontrakterende Staat inligting ingevolge hierdie Artikel by wyse van verklarings van getuies en gewaarmerkte kopieë van ongeredigeerde oorspronklike dokumente (insluitende boeke, stukke, verklarings, rekords, rekeninge en geskrifte), in dieselfde mate wat sodanige verklarings en dokumente ingevolge die wette en administratiewe praktyke van daardie ander Staat met betrekking tot sy eie belasting verkry kan word.

4. Elk van die Kontrakterende State moet probeer om namens die ander Kontrakterende Staat sodanige bedrae te vorder as wat nodig mag wees om te verseker dat verligting verleen deur die Konvensie van belasting deur daardie ander Staat opgelê, nie aangewend word tot voordeel van persone wat nie daarop geregtig is nie.

5. Paragraaf 4 van hierdie Artikel lê op geeneen van die Kontrakterende State die verpligting om administratiewe maatreëls uit te voer wat van 'n ander aard is as dié wat by die invordering van sy eie belasting gebruik word, of wat teenstrydig is met sy soewereiniteit, veiligheid of openbare beleid nie.

6. Vir doeleindes van hierdie Artikel is die Konvensie, ondanks die bepalings van Artikel 2 (Belasting Gedek), van toepassing op alle soorte belasting deur die bevoegde owerhede (maar nie met inbegrip van doeaneregte nie) geadministreer.

7. The competent authority of the requested State shall allow representatives of the applicant State to enter the requested State to interview individuals and examine books and records with the consent of the persons subject to examination.

Article 27

Diplomatic Agents and Consular Officers

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

Article 28

Entry into Force

1. The Contracting States shall notify each other that the constitutional requirements for the entry into force of this Convention have been complied with.

2. This Convention shall enter into force thirty days after the date of the later of the notifications referred to in paragraph 1 and its provisions shall apply:

- a) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the first day of January next following the date upon which the Convention enters into force; and
- b) with regard to other taxes, in respect of taxable periods beginning on or after the first day of January next following the date upon which the Convention enters into force.

Article 29

Termination

1. This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention by giving notice of termination, through the diplomatic channel, at least six months before the end of any calendar year starting five years after the year in which the Convention entered into force.

2. In such event, the Convention shall cease to have effect:

- a) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the first day of January next following the year in which the notice is given; and
- b) with regard to other taxes, in respect of taxable periods beginning on or after the first day of January next following the year in which the notice is given.

7. Die bevoegde owerheid van die ontvangerstaat sal verteenwoordigers van die aansoekerstaat toelaat om die ontvangerstaat binne te gaan om onderhoude met individue te voer en boeke en rekords te ondersoek met die goedkeuring van die persone onderworpe aan ondersoek.

Artikel 27

Diplomatiese Agente en Konsulêre Beamptes

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

Artikel 28

Inwerkingtreding

1. Die Kontrakterende State stel mekaar daarvan in kennis dat die konstitusionele vereistes vir die inwerkingtreding van hierdie Konvensie nagekom is.
2. Hierdie Konvensie tree in werking dertig dae na die datum van die laaste van die kennisgewings bedoel in paragraaf 1, en die bepalinge daarvan is van toepassing:

- a) met betrekking tot belastinge wat by die bron teruggehou word, ten opsigte van bedrae betaal of gekrediteer op of na die eerste dag van Januarie eersvolgende op die datum waarin die Konvensie in werking tree; en
- b) met betrekking tot ander belastinge, ten opsigte van belasbare tydperke beginnende op of na die eerste dag van Januarie eersvolgende op die datum waarin die Konvensie in werking tree.

Artikel 29

Opsegging

1. Hierdie Konvensie bly van krag totdat dit deur 'n Kontrakterende Staat opgesê word. Enigeen van die Kontrakterende State kan die Konvensie opses deur langs die diplomatiese kanaal kennis van opsegging te gee, minstens ses maande voor die einde van enige kalenderjaar wat begin vyf jaar na die jaar waarin die Konvensie in werking getree het.
2. In sodanige geval is die Konvensie nie meer van krag nie:

- a) met betrekking tot belastinge wat by die bron teruggehou word, ten opsigte van bedrae betaal of gekrediteer op of na die eerste dag van Januarie eersvolgende op die jaar waarin kennis gegee word; en
- b) met betrekking tot ander belastinge, ten opsigte van belasbare tydperke beginnende op of na die eerste dag van Januarie eersvolgende op die jaar waarin kennis gegee word.

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

DONE at Cape Town in duplicate in the English language, this 17th day of February of the year 1997.

FOR THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA

The Department of State refers the Embassy of the Republic of South Africa to the Convention Between the United States of America and the Republic of South Africa for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, signed at Cape Town, February 17, 1997.

In reviewing the text of the Convention, discrepancies have been discovered in both the United States and the South African signed original documents. Therefore, the Department of State proposes that the texts be corrected as follows:

Article 7, paragraph 3, last sentence - the comma following the parenthetical phrase should be deleted;

Article 10, paragraph 8 a) - "and" should read "or";

Article 23, paragraph 1 b) - the phrase "the South African income tax paid" should read "the South African tax paid"; and

Article 23, paragraph 2 b) - the phrase "the income tax paid to South Africa" should read "the tax paid to South Africa".

Discrepancies have also been discovered in the South African original text. The Department of State proposes that these discrepancies should also be corrected as follows:

Article 12, paragraph 2 a) - "trade mark" should read "trademark";

Article 15, paragraph 2 a) - "and" following the semi-colon should be deleted; and

Article 17, paragraph 4 - a comma should be inserted after the phrase "through the exchange of diplomatic notes".

The Department of State further proposes that this note and the Embassy's note in reply accepting the corrections shall constitute a correction of the text of the Convention.

Department of State,
Washington, June 9, 1997

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

GEDOEN in tweevoud te Kaapstad, in die Engelse taal, op hede die 17de dag van Februarie van die jaar 1997.

NAMENS DIE REGERING VAN DIE
REPUBLIEK VAN SUID-AFRIKA

NAMENS DIE REGERING VAN DIE
VERENIGDE STATE VAN AMERIKA

Die Departement van Buitelandse Sake verwys die Ambassade van die Republiek van Suid-Afrika na die Konvensie tussen die Verenigde State van Amerika en die Republiek van Suid-Afrika vir die Vermydning van Dubbele Belasting en die Voorkoming van Fiskale Ontduiking met Betrekking tot Belastings op Inkomste en Kapitaalinwinst, geteken te Kaapstad, Februarie 17, 1997.

Met die nasien van die teks van die Konvensie, is verskille in beide die Verenigde State en die Suid-Afrikaanse getekende oorspronklike dokumente gevind. Die Departement van Buitelandse Sake stel derhalwe voor dat die tekste as volg reggestel word:

Artikel 7, paragraaf 3, die laaste sin - die komma wat volg op die frase tussen hakies moet geskrap word;

Artikel 10, paragraaf 8 a) - "en" moet lees "of";

Artikel 23, paragraaf 1 b) - die frase "die Suid-Afrikaanse inkomstebelasting betaal" moet lees "die Suid-Afrikaanse belasting betaal"; en

Artikel 23, paragraaf 2 b) - die frase "die inkomstebelasting betaal aan Suid-Afrika" moet lees "die belasting betaal aan Suid-Afrika".

Verskille is ook in die Suid-Afrikaanse oorspronklike teks gevind. Die Departement van Buitelandse Sake stel voor dat hierdie verskille ook as volg reggestel moet word:

Artikel 12, paragraaf 2 a) - "trade mark" moet lees "trademark";

Artikel 15, paragraaf 2 a) - "en" wat volg op die kommapunt moet geskrap word; en

Artikel 17, paragraaf 4 - 'n komma moet na die frase "deur die uitruil van diplomatieke notas" ingevoeg word.

Die Departement van Buitelandse Sake stel verder voor dat hierdie nota en die Ambassade se antwoordnota as aanvaarding van die regstellings, 'n regstelling van die teks van die Konvensie uitmaak.

Departement van Buitelandse Sake,
Washington, Junie 9, 1997.

The Embassy of the Republic of South Africa presents its compliments to the Department of State and has the honour to refer to the latter's Note of 9 June 1997, which reads as follows:

"The Department of State refers the Embassy of the Republic of South Africa to the Convention Between the United States of America and the Republic of South Africa for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, signed at Cape Town, February 17, 1997.

In reviewing the text of the Convention, discrepancies have been discovered in both the United States and the South African signed original documents. Therefore, the Department of State proposes that the texts be corrected as follows:

Article 7, paragraph 3, last sentence - the comma following the parenthetical phrase should be deleted;

Article 10, paragraph 8 a) - "and" should read "or";

Article 23, paragraph 1 b) - the phrase "the South African income tax paid" should read "the South African tax paid"; and

Article 23, paragraph 2 b) - the phrase "the income tax paid to South Africa" should read "the tax paid to South Africa".

Discrepancies have also been discovered in the South African original text. The Department of State proposes that these discrepancies should also be corrected as follows:

Article 12, paragraph 2 a) - "trade mark" should read "trademark";

Article 15, paragraph 2 a) - "and" following the semi-colon should be deleted; and

Article 17, paragraph 4 - a comma should be inserted after the phrase "through the exchange of diplomatic notes".

The Department of State further proposes that this note and the Embassy's note in reply accepting the corrections shall constitute a correction of the text of the Convention."

The Government of the Republic of South Africa accepts that the Department of State's Note of 9 June 1997 and this reply Note constitutes a correction of the text of the Convention, as stated above.

The Embassy of the Republic of South Africa avails itself of the opportunity to renew to the Department of State the assurance of its highest consideration.

Washington, DC
9 June 1997

Die Ambassade van die Republiek van Suid-Afrika bied sy komplimente aan die Departement van Buitelandse Sake en het die eer om na laasgenoemde se Nota van 9 Junie 1997 wat as volg lees, te verwys:

"Die Departement van Buitelandse Sake verwys die Ambassade van die Republiek van Suid-Afrika na die Konvensie tussen die Verenigde State van Amerika en die Republiek van Suid-Afrika vir die Vermydning van Dubbele Belasting en die Voorkoming van Fiskale Ontduiking met Betrekking tot Belasting op Inkomste en Kapitaalwinste, geteken te Kaapstad, Februarie 17, 1997.

Met die nasien van die teks van die Konvensie, is verskille in beide die Verenigde State en die Suid-Afrikaanse getekende oorspronklike dokumente gevind. Die Departement van Buitelandse Sake stel derhalwe voor dat die tekste as volg reggestel word:

Artikel 7, paragraaf 3, die laaste sin - die komma wat volg op die frase tussen hakies moet geskrap word;

Artikel 10, paragraaf 8 a) - "en" moet lees "of";

Artikel 23, paragraaf 1 b) - die frase "die Suid-Afrikaanse inkomstebelasting betaal" moet lees "die Suid-Afrikaanse belasting betaal"; en

Artikel 23, paragraaf 2 b) - die frase "die inkomstebelasting betaal aan Suid-Afrika" moet lees "die belasting betaal aan Suid-Afrika".

Verskille is ook in die Suid-Afrikaanse oorspronklike teks gevind. Die Departement van Buitelandse Sake stel voor dat hierdie verskille ook as volg reggestel moet word:

Artikel 12, paragraaf 2 a) - "trade mark" moet lees "trademark";

Artikel 15, paragraaf 2 a) - "en" wat volg op die kommapunt moet geskrap word; en

Artikel 17, paragraaf 4 - 'n komma moet na die frase "deur die uitruil van diplomatieke notas" ingevoeg word.

Die Departement van Buitelandse Sake stel verder voor dat hierdie nota en die Ambassade se antwoordnota as aanvaarding van die regstellings, 'n regstelling van die teks van die Konvensie uitmaak."

Die Regering van die Republiek van Suid-Afrika aanvaar dat die Departement van Buitelandse Sake se Nota van 9 Junie 1997 en hierdie antwoordnota, 'n regstelling van die teks van die Konvensie, soos hierbo gemeld, uitmaak.

Die Ambassade van die Republiek van Suid-Afrika maak van die geleentheid gebruik om aan die Departement van Buitelandse Sake die versekering van sy hoogste agting te hernieu.

Washington, DC
9 Junie 1997

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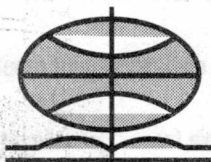
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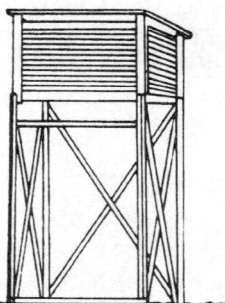
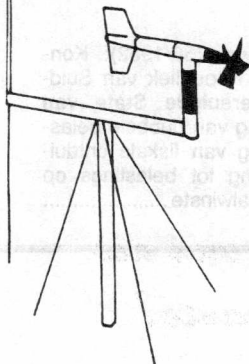
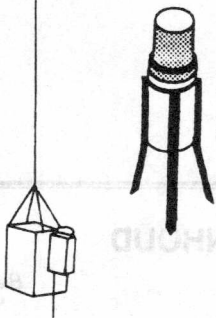
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