

**EXPLANATORY MEMORANDUM**  
**ON THE DOUBLE TAXATION AGREEMENT**  
**BETWEEN**  
**THE REPUBLIC OF SOUTH AFRICA**  
**AND**  
**THE KINGDOM OF LESOTHO**

It is the practice in most countries for income tax to be imposed both on the world-wide income derived by residents of the country and on income derived by non-residents which arises in the country. The effect of such a system is that income derived by a resident of one country from a source in another country is subjected to tax in both countries. As this position clearly discourages foreign investment, it is normal for countries which have trade relations to conclude double taxation agreements. Such agreements commonly provide that income of a particular nature will either be taxable in only one of the countries, or may be taxed in both countries with one of them allowing a credit for the tax imposed by the other.

The Agreement concluded with Lesotho closely follows the OECD Model. In the explanation which follows, the general principles of each Article of the Agreement are set out.

The entire text has been made gender neutral.

**Preamble**

The Preamble records that the object of the Agreement is to avoid double taxation and prevent fiscal evasion.

**Article 1**

***Persons Covered***

The Agreement is made applicable to persons who are residents of one or both of the Contracting States. This means, *inter alia*, that a citizen of one of the States who is resident in a third State will not enjoy the benefits of the Agreement, apart from the non-discrimination provisions.

## **Article 2**

### ***Taxes Covered***

Paragraphs 1 and 2 of this Article provide that the Agreement will apply to all taxes on income imposed by the two States irrespective of the manner in which they are levied.

Paragraph 3 lists the existing taxes imposed by each State and paragraph 4 provides that the Agreement will also apply to identical or substantially similar taxes that are subsequently imposed by either State.

## **Article 3**

### ***General Definitions***

This Article defines various expressions which are used in the body of the Agreement. Several of these definitions are self-evident and are not further explained.

The definition of "South Africa" includes not only the sovereign territory but also those areas outside its territorial sea over which it may exercise jurisdiction in accordance with international law, for example, in relation to the exploitation of natural resources.

"International traffic" is defined as any transport by ship, aircraft or rail or road transport vehicle operated by an enterprise of a Contracting State, except where the ship, aircraft or rail or road transport vehicle is operated solely between places in the other State. Special provisions are contained in Article 8 for the taxation of international traffic. The effect of the exclusion mentioned above is that should a Lesotho company operate a purely domestic airline operation within South Africa, that operation will not fall to be dealt with under Article 8, but rather under Article 7 which deals with business profits in general. This provision is intended to place that operation on the same footing as South African domestic airlines. It should be noted that the definition of "international traffic" includes a reference to rail or road transport vehicles as there is continual cross-border traffic of this nature which should be dealt with on the same basis as other international traffic.

"Person" is defined to include an individual, a company and any other body of persons that is treated as an entity for tax purposes. The underlined words are of particular relevance to partnerships. Partnerships are not regarded as taxable entities in South Africa, rather, the income of a partnership is taxed in the hands of the partners. Accordingly, should a partnership consisting of a Lesotho resident and a resident of a third State derive income in South Africa, only the Lesotho resident will be entitled to the benefits of the Agreement on his/her share of the partnership income.

Paragraph 2 follows the OECD Model in providing that expressions not defined in the Agreement bear the meaning that they have under the domestic taxation laws of the States at the time of application of the provisions of the Agreement. Any meaning under the taxation laws will take precedence over a meaning under other laws of the State.

## **Article 4**

### ***Resident***

The concept of “resident of a Contracting State” is used throughout the Agreement and is of importance in three cases:

- (a) in determining the Agreement’s personal scope of application as set out in Article 1;
- (b) in solving cases where double taxation arises because of dual residence;
- (c) in solving cases where double taxation arises as a consequence of taxation in the State of residence and in the State in which the income arose, the State of source.

This Article defines the meaning of the term and further solves cases of dual residence.

In paragraph 1, the term “resident of a Contracting State” is defined. The definition refers to the concept of residence adopted in the domestic law of each of the Contracting States. As criteria for taxation as a resident, domicile, residence, place of management or any other criterion of a similar nature are used in the definition.

The term “resident” also includes specific reference to the State itself.

Paragraph 2 provides solutions to the cases where individuals are residents of both Contracting States and sets out a step by step method of finally deciding which State has a preferent right in claiming the individual as its resident.

Paragraph 3 deals with companies and other bodies of persons who are not individuals but who are residents of both States and specifies that in these cases the competent authorities shall by mutual agreement decide which State will have the preferent right to claim the company or body of persons as its resident. The paragraph further provides that in the absence of such an agreement, the person is denied benefits under the Agreement.

## **Article 5**

### ***Permanent Establishment***

One of the main goals of the Agreement is to determine the right of a Contracting State to tax the profits of an enterprise of the other Contracting State which arise through a permanent establishment situated in the first-mentioned State. The Article defines what is to be regarded as a permanent establishment.

Paragraph 1 gives a general definition of a “permanent establishment” as being a fixed place of business through which the business of an enterprise is carried on.

Paragraph 2 contains a list, which is not exhaustive, of what is regarded to be a permanent establishment.

Paragraph 3(a) provides expressly that a building site or construction, assembly or installation project only constitutes a permanent establishment if it continues for more than six months. Supervisory activities carried on in a Contracting State in connection with such a site or project will also constitute a permanent establishment if they continue for more than six months and irrespective of the fact that the enterprise carrying on such activities has no fixed place of business in that State.

Paragraph 3(b) introduces provisions dealing with the furnishing of services through employees or other personnel engaged by that enterprise for such purpose and specifies that a permanent establishment will be deemed to exist, despite there being no fixed place of business, if such services are rendered in a State for a period or periods exceeding in the aggregate 90 days in any twelve-month period commencing or ending in the fiscal year concerned.

Paragraph 3(c) introduces provisions dealing with the income from professional services and other activities of an independent character by an individual and specifies that a permanent establishment will exist if the services or activities continue within that State for a period or periods exceeding in the aggregate 90 days in any twelve-month period commencing or ending in the fiscal year concerned.

A number of preparatory or auxiliary activities which are treated as exceptions to the general definition laid down in paragraph 1 are set out in paragraph 4. The paragraph specifies that the term "permanent establishment" will not include the various activities set out therein and the Contracting State in which these activities take place will consequently not be able to tax any profits which might arise if these are the only activities which occur.

Paragraph 5 sets out the generally accepted principle that an enterprise will be treated as having a permanent establishment in a Contracting State if it carries on business in that State through an agent situated in that State, provided that the agent is not of an independent status and provided that such agent has the power to conclude contracts in the name of the enterprise.

Paragraph 6 deals with the situation where an enterprise carries on business through an independent agent in the other Contracting State and provides that no permanent establishment will be deemed to exist if the activities are carried on through such an agent who is acting in the normal course of business.

Paragraph 7 sets out the principle that the existence of a subsidiary company does not, of itself, constitute that subsidiary company a permanent establishment of its parent company. This follows from the principle that for tax purposes a subsidiary company constitutes an independent legal entity and will be taxed in its State of residence on its own profits.

## **Article 6**

### ***Income from Immovable Property***

Paragraph 1 provides that income from immovable property may be taxed in the State in which the property is situated. Income from agriculture and forestry is specifically included in this rule.

Paragraph 2 establishes the general rule that what constitutes fixed property will be decided under the law of the State in which the property is situated. Nevertheless, property accessory to fixed property and livestock and equipment used in agriculture and forestry are specifically included. So too are usufructs and payments for the right to extract minerals and other natural resources.

Paragraph 3 makes it clear that the rule established in paragraph 1 applies irrespective of the manner in which the property is exploited.

Paragraph 4 provides that the provisions of paragraphs 1 and 3 also apply to income derived from fixed property owned by an enterprise. In the absence of this provision, it might be argued that this income should be dealt with in terms of the provisions of Article 7 which establishes somewhat different rules for the treatment of business profits.

## **Article 7**

### ***Business Profits***

This Article deals with the taxation of business profits and is to be read together with Article 5 as it uses the test of "permanent establishment" in determining where such profits are to be taxed.

Paragraph 1 specifies that the profits of an enterprise which is a resident of a Contracting State are taxable in that State unless it carries on business in the other Contracting State through a permanent establishment situated in that other State in which case that other State may tax the profits which are attributable to that permanent establishment.

Paragraph 2 deals with the allocation of profits to a permanent establishment and specifies that the profits which are to be attributed to the permanent establishment are those which it would have made if it had been dealing with entirely separate enterprises under arms-length conditions and not with its head office.

Paragraph 3 recognises the fact that in calculating the profits of a permanent establishment, allowance must be made for certain expenses, wherever incurred, which were incurred for the purposes of the permanent establishment. For example, if the head office incurs general administrative expenses it is most likely that a portion of those expenses was in fact incurred on behalf of the permanent establishment and it will therefore be necessary to allocate that portion of the expenses to the permanent establishment in determining its profits. The emphasis here is on the fact that the expenses must have been actually incurred - notional charges are excluded, for example, management fees.

Paragraph 4 provides for profits attributable to a permanent establishment to be determined on the basis of apportionment if this method is customary in a Contracting State. However, the proviso specifies that the result of this method should still be in accordance with the principles in this Article.

Paragraph 5 deals with the situation where a permanent establishment which, although carrying on other business, also carries on purchasing for its head office. The paragraph provides that the profits which are attributed to the permanent establishment cannot be increased by the addition of a notional figure for profits from such purchases which are actually earned by the head office.

Paragraph 6 stipulates that the method of allocation of profits to the permanent establishment should not be changed merely for the reason that a different method may result in more profit becoming taxable in the State of residence of the permanent establishment. This also establishes a degree of certainty regarding the tax treatment to be expected in the State in which the permanent establishment is situated.

It is possible that the term “profits” could include other items of income which are dealt with in other Articles of the Agreement. Paragraph 7 stipulates that the preceding provisions of Article 7 shall not affect the provisions of such other Articles. An example of this is where profits include interest which is dealt with separately under Article 11.

## **Article 8**

### ***International Transport***

Paragraph 1 provides that profits derived by an enterprise of a Contracting State from the operation of ships, aircraft or rail or road transport vehicles in international traffic are taxable only in that State. Thus, for example, profits derived by South African Airways from its flights into and out of airports in Lesotho are taxable only in South Africa.

Paragraph 2 specifies that the profits derived from activities which are incidental to international traffic operations, in particular, profits from the rental on a bare boat basis of ships or aircraft used in international traffic, the rental of rail or road transport vehicles and the use or rental of containers, are also taxable in accordance with Article 8. It should be noted that where such income is not incidental to international traffic operations, but rather constitutes an independent business in its own right, it will fall to be dealt with under Article 7 as business income.

Paragraph 3 makes the above rules also applicable where the business is conducted through a pool, a joint business venture or an international operating agency.

## **Article 9**

### ***Associated Enterprises***

This Article deals with associated enterprises and in paragraph 1 provides that a Contracting State may recalculate the profits of the enterprises if they have created conditions between themselves which would not be created by enterprises dealing at arms-length with each other. This paragraph is effective in dealing with the effects of transfer pricing between associated enterprises. The concept of what is regarded as being an associated enterprise is also set out in this paragraph.

The recalculation of profits envisaged in paragraph 1 may of course result in double taxation if, for example, one of the Contracting States increases the profits of its enterprise, and subjects the increased amount to tax, although such increased amount may already have been subjected to tax in the hands of its associated enterprise in the other Contracting State.

The provisions of paragraph 2 allow that other State to make a corresponding adjustment to the profits of the associated enterprise and, in so doing, avoid double taxation. It should be noted that the paragraph provides for consultation between the States in deciding on such adjustment.

## **Article 10**

### ***Dividends***

Paragraphs 1 and 2 of this Article provide for the common international tax treatment of cross-border dividends, in terms of which the State in which the dividends are declared may impose a limited withholding tax and the State in which the dividends are received may impose full tax.

The limitation on withholding tax rates in the source State imposed by paragraph 2 is as follows:

- (a) where the shareholder is a company which holds at least 10 per cent of the capital of the company declaring the dividend, the tax is limited to 10 per cent of the gross dividend. This limitation is intended to encourage substantial (i.e. at least 10 per cent) investment by companies in one State in subsidiaries in the other State;
- (b) where the minimum holding of 10 per cent is not met (i.e. portfolio share investments) the rate of tax is limited to 15 per cent.

Both the above limitations apply only if the registered shareholder is also the beneficial holder, i.e. the limitation does not apply to nominee shareholders.

Paragraph 3 contains the standard definition of what constitutes a dividend.

Paragraph 4 provides that the provisions of this Article will not apply in cases where a resident of one State carries on business in the other State through a permanent establishment and derives dividends from shares the holding of which is effectively connected with the permanent establishment. For example, if a South African company carrying on a manufacturing business through a permanent establishment in Lesotho were to purchase the shares of a Lesotho company which supplies it with raw materials, the dividends derived by the South African company on those shares could be taxed in Lesotho as part of the business profits of the permanent establishment.

Paragraph 5 deals with the limitation of the right of one of the States to impose tax on dividends declared by, or the undistributed profits of, a company which is a resident of the other State. One situation in which tax may be imposed, is where the shareholding is effectively connected with a permanent establishment, as mentioned in relation to paragraph 4 above.

The second situation can best be explained through an example of a Lesotho company which carries on business through a branch in South Africa. The paragraph provides that South Africa may not impose tax on the dividends declared by the Lesotho company, even though its profits are partly derived in South Africa, except in so far as the dividends are received by South African resident shareholders.

Paragraph 6 provides that branch profits tax may be imposed on the repatriated profits of a branch which a permanent establishment has in one of the States provided that such tax is limited to 10 per cent of the amount of the repatriated income.

## **Article 11**

### ***Interest***

This Article deals with the taxation of income in the form of interest.

Paragraph 1 specifies that interest which arises in a Contracting State and is paid to a resident of the other Contracting State may be taxed in the State of residence.

Paragraph 2 gives a right of taxation to the source State but limits the amount of tax to 10 per cent of the gross amount of the interest, provided that the beneficial owner of the interest is a resident of the other State.

Paragraph 3 contains the standard definition of what is to be regarded as interest.

Paragraph 4 specifies that if the beneficial owner of interest carries on business in the Contracting State in which the interest arises through a permanent establishment situated in that State, the interest may be taxed in that State if the debt-claim in respect of which the interest is paid is effectively connected to that permanent establishment. The provisions of Article 11 will not apply to such interest but rather the provisions in Article 7. This paragraph is similar to paragraph 4 of Article 10 dealing with dividends.

Paragraph 5 lays down the principle that the State of source of the interest is the State of which the payer of the interest is a resident. It also provides for an exception to this rule in the case of interest-bearing loans which have an economic link with a permanent establishment operated in the other Contracting State by the payer of the interest. If the loan was contracted for the requirements of the permanent establishment and the interest is borne by such establishment, the paragraph specifies that the source of the interest is the Contracting State in which the permanent establishment is situated.

The purpose of paragraph 6 is to restrict the operation of the provisions of this Article with regard to the taxation of interest in cases where there is a special relationship between the beneficial owner of the interest and the payer or between both of them and a third party. If, in the presence of this relationship, the interest paid exceeds the interest which would have been paid in the absence of such a relationship, the provisions of this Article will not apply to the amount of the interest which is considered to be excessive and such excessive amount will remain taxable in accordance with the laws of both Contracting States. The limitation placed on the source State under paragraph 2 will in such circumstances be negated. This is an anti-avoidance provision.

## Article 12

### *Royalties*

This Article deals with royalties and paragraph 1 provides that royalties which arise in a Contracting State and are paid to a resident of the other Contracting State may be taxed in the State of residence.

Paragraph 2 gives a right of taxation to the source State but limits the amount of tax to 10 per cent of the gross amount of the royalties, provided that the beneficial owner of the royalties is a resident of the other State.

Paragraph 3 defines which payments will constitute royalties for purposes of the Article. It includes amounts normally understood as royalties, such as patents, copyrights, trade marks, etc, and also includes payments for the use of, or right to use, industrial, commercial or scientific experience (know-how).

Paragraph 4 provides that the provisions of paragraphs 1 and 2 will not apply if the recipient of the royalties carries on business in the State in which the royalties arise through a permanent establishment, and the royalties are effectively connected with that permanent establishment. In this case, the royalties are in effect regarded as part of the business profits of the permanent establishment and may be taxed by the source State. This paragraph is similar to paragraph 4 of Article 10 dealing with dividends and paragraph 4 of Article 11 dealing with interest.

An example of where this paragraph would apply, would be a Lesotho company with a permanent office in South Africa through which it sold franchise rights for the use of its product brand. South Africa would in this case be entitled to tax the franchise payments received by the Lesotho company.

Paragraph 5 lays down the principle that the State of source of the royalties is the State of which the payer of the royalties is a resident. It also provides for an exception to this rule in the case of royalties which have an economic link with a permanent establishment operated in the other Contracting State by the payer of the royalties. If the obligation to pay the royalties was incurred by the permanent establishment and the royalties are borne by such establishment, the paragraph specifies that the source of the royalties is the Contracting State in which the permanent establishment is situated.

Paragraph 6 contains an anti-transfer pricing provision. Where the payer and recipient of a royalty are connected persons and the royalty is excessive, the source State may tax the portion which is excessive according to its laws - in other words, the limitation set out in paragraph 2 would only apply to the portion of the royalty which meets the arms-length test.

## Article 13

### *Technical Fees*

This Article deals with technical fees and paragraph 1 provides that technical fees which arise in a Contracting State and are paid to a resident of the other Contracting State may be taxed in the State of residence.

Paragraph 2 gives a right of taxation to the source State but limits the amount of tax to 10 per cent of the gross amount of the technical fees, provided that the beneficial owner of the technical fees is a resident of the other State.

Paragraph 3 defines which payments will constitute technical fees for purposes of the Article. It includes payments for services of a technical, managerial or consultancy nature.

Paragraph 4 provides that the provisions of paragraphs 1 and 2 will not apply if the beneficial owner of the technical fees carries on business in the State in which the technical fees arise through a permanent establishment and the technical fees are effectively connected with that permanent establishment. In this case, the technical fees are in effect regarded as part of the business profits of the permanent establishment and may be taxed as business profits by the source State. This paragraph is similar to paragraph 4 of Article 10 dealing with dividends, paragraph 4 of Article 11 dealing with interest as well as paragraph 4 of Article 12 dealing with royalties.

An example of where this paragraph would apply, would be a Lesotho company with a permanent office in South Africa through which it provided consultancy services to South African clients. South Africa would in this case be entitled to tax the technical fees received by the Lesotho company as part of the business profits of the permanent establishment.

Paragraph 5 lays down the principle that the State of source of the technical fees is the State of which the payer of the technical fees is a resident. It also provides for an exception to this rule in the case of technical fees which have an economic link with a permanent establishment operated in the other Contracting State by the payer of the technical fees. If the obligation to pay the technical fees was incurred by the permanent establishment and the technical fees are borne by such establishment, the paragraph specifies that the source of the technical fees is the Contracting State in which the permanent establishment is situated.

Paragraph 6 contains an anti-transfer pricing provision. Where the payer and the beneficial owner of the technical fees are connected persons and the technical fees are excessive, the source State may tax the portion which is excessive according to its laws - in other words, the limitation set out in paragraph 2 would only apply to the portion of the technical fees which meets the arms-length test.

## **Article 14**

### ***Capital Gains***

The Article deals with the taxation of capital gains and covers all kinds of taxes which are imposed on such gains.

Paragraph 1 specifies that the right to tax gains derived from the alienation of immovable property is also given to the Contracting State in which the property is situated although the alienator may be a resident of the other Contracting State.

Paragraph 2 deals with the alienation of movable property which forms part of a permanent establishment which a resident of a Contracting State has in the other Contracting State. It provides that gains from the alienation of such property may also be taxed in the State in which such permanent establishment is situated and also includes gains from the alienation of the permanent establishment as such.

Paragraph 3 provides that gains from the alienation of ships, aircraft or rail or road transport vehicles operated in international traffic and movable property related to the operation of such ships, aircraft or rail or road transport vehicles are taxable only in the State in which the enterprise is resident. This follows the principle laid down in Article 8 with regard to the taxation of the business profits of such an enterprise.

Paragraph 4 specifies that gains arising from the alienation of shares in a company deriving more than 50 per cent of their value directly or indirectly from immovable property located in the other Contracting State, may be taxed in that other State.

Paragraph 5 specifies that gains from the alienation of any property not covered by the preceding paragraphs of this Article may only be taxed in the State of residence of the alienator.

## **Article 15**

### ***Income from Employment***

Paragraph 1 lays down the principle that remuneration in respect of an employment is taxable in the State of residence of the employee unless the services in respect thereof are rendered in the other Contracting State, in which case the remuneration arising from the services rendered in the other State may also be taxed in that other State.

Paragraph 2 limits the right of taxation of the State in which the services are rendered (the source State) in that remuneration for services rendered in that State is taxable only in the State of residence if the following conditions are met:

- (a) the employee is present in the source State for a period or periods not exceeding 182 days in any twelve-month period commencing or ending in the fiscal year concerned, and

- (b) the employer who pays the remuneration, or on whose behalf the remuneration is paid, is not a resident of the source State, and
- (c) the relevant remuneration is not borne by a permanent establishment which the employer has in the source State.

It is important to note that all three requirements must be met before the provisions of the paragraph operate.

Paragraph 3 deals with remuneration derived by employees in respect of employment aboard a ship, aircraft or rail or road transport vehicle operated in international traffic and specifies that such remuneration may be taxed in the State of residence of the operator of such ship, aircraft or rail or road transport vehicle.

## **Article 16**

### ***Directors' Fees***

The Article provides that directors' fees may be taxed by the State in which the company concerned is resident. It does not, however, prevent the director from also being taxed on those fees in the director's State of residence.

## **Article 17**

### ***Entertainers and Sportspersons***

In terms of paragraph 1 the income derived by entertainers and sportspersons may be taxed in the Contracting State in which their activities are exercised.

Paragraph 2 expands the principle laid down in paragraph 1 in that it specifies that in cases where income in respect of the activities of entertainers and sportspersons accrues to some other person rather than the entertainer or sportsperson, such income may still be taxed in the Contracting State in which such activities are exercised. This paragraph covers the frequent situation in which a professional sportsperson forms a company and competes in a sporting event in another country not in a personal capacity, but rather as an employee of that person's company. Because the sportsperson's activities in the country continue for a very short period and do not constitute a permanent establishment, neither the sportsperson nor the company would under the normal provisions of the Agreement be taxable in that country.

In cases where the activities of entertainers or sportspersons in a Contracting State are supported wholly or mainly out of public funds of either State, paragraph 3 specifies that any income derived from those activities in a State are exempt from tax in that State.

## **Article 18**

### ***Pensions and Annuities***

Paragraph 1 provides that pensions and other similar remuneration, and annuities, may be taxed in the State in which they arise. The State of residence may also tax but must then give a credit for the source State tax.

Paragraph 2 gives the standard definition of an annuity.

Paragraph 3 gives the State of source of pension payments and other payments made under its social security system the sole taxing right, notwithstanding the provisions of paragraph 1.

## **Article 19**

### ***Government Service***

Subparagraph 1(a) provides that salaries, wages and other similar remuneration, paid by a Contracting State, a political subdivision or a local authority thereof to an individual for services rendered, is taxable only in that State.

However, subparagraph 1(b) provides that such salaries, wages and other similar remuneration is taxable only in the other Contracting State if the services are rendered in that other State by a resident who is also a national of that other State and did not become resident of the other State with the express purpose of rendering the services. An example of this is a South African national, normally resident in South Africa, who is employed by the Lesotho High Commission. Such person would be taxable in South Africa even though his salary is paid by Lesotho.

Paragraph 2 provides that, notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by a Contracting State, a political subdivision or a local authority thereof for services rendered, shall be taxable only in that State. The pension and other similar remuneration would only be taxable in the other State if the recipient is both a resident and a national of that other State.

Paragraph 3 provides that the provisions of paragraphs 1 and 2 will not apply in respect of salaries, wages, pensions and other similar remuneration paid by a Contracting State, a political subdivision or a local authority thereof in respect of services rendered in relation to any business carried on by them. In such circumstances, the provisions of Articles 15, 16, 17, 18 and 20 dealing with salaries, wages, pensions and other similar remuneration other than of a public nature, will apply.

## **Article 20**

### ***Students and Business Apprentices***

In terms of this Article, students and business apprentices who are residents of one State but are undergoing education or training in the other State, will not be taxed in the last-mentioned State on payments received for the purposes of their maintenance, education or training, if those payments are received from outside that State.

## **Article 21**

### ***Professors and Teachers***

Paragraph 1 specifies that a professor or teacher who makes a temporary visit to one of the Contracting States and who is, or immediately before such visit was a resident of the other Contracting State for the purpose of teaching or carrying out research activities at educational institutions in the first-mentioned State during a visit of less than two years, shall be exempted from tax in that first-mentioned State in respect of remuneration for such activities, provided that such remuneration is derived from outside that State.

Paragraph 2 specifies that the provisions of the Article will not apply in respect of research which is undertaken for the private benefit of a person or persons.

## **Article 22**

### ***Other Income***

This Article deals with the treatment of income which is not dealt with in other Articles of the Agreement and specifies in paragraph 1 that such items of income will be taxable only in the State of residence of the recipient thereof.

Paragraph 2 reintroduces the principle established in paragraph 4 of Article 10 dealing with dividends and paragraph 4 of Article 11 dealing with income from debt-claims that if such income is connected to a permanent establishment which a resident of a Contracting State has in the other Contracting State, then such income may be included in the profits which are attributable to the permanent establishment as envisaged in Article 7 and taxed in that other Contracting State.

Paragraph 3 states that notwithstanding paragraphs 1 and 2, the source State also retains a taxing right in respect of other income.

## Article 23

### *Elimination of Double Taxation*

The provisions of this Article are designed to allow for the actual mechanisms required for the elimination of double taxation.

In paragraph 1 the position with regard to the manner in which Lesotho will provide relief in cases of double taxation of its residents is set out while the South African position with regard to its residents is set out in paragraph 2. Both States use the credit method.

Paragraph 3 makes provision for the granting of tax sparing by both States in respect of incentives for economic development, provided that the competent authorities of the Contracting States have mutually agreed that such schemes qualify for purposes of paragraph 3.

## Article 24

### *Non-discrimination*

Paragraph 1 provides that a State may not impose upon nationals of the other State any tax or requirement connected therewith which is other or more burdensome than that which it imposes on its own nationals in the same circumstances. The underlined words above are crucial to understanding the effect of this paragraph. By way of example, if Lesotho imposed a withholding tax (NRST) on dividends paid to non-residents, but did not impose a similar tax on residents, NRST would be paid by South African shareholders but not by Lesotho shareholders. Nevertheless, this tax does not contravene the provisions of this paragraph, because the shareholders are not in the same circumstances, as they are resident in different States. A Lesotho national taking up residence in South Africa would also become liable for NRST and the discrimination is thus on the basis of residence and not nationality. This is permitted.

The paragraph extends the application of the non-discrimination provisions to nationals of one of the States who are resident in a third State and on the basis of nationality to companies, defining the nationality of a company as its place of incorporation.

Paragraph 2 provides that where an enterprise of one State has a permanent establishment in the other State, that permanent establishment shall not be less favourably taxed than enterprises of the home State which carry on similar activities. An exception is made, however, in the case of personal allowances, reliefs and reductions on account of civil status or family responsibilities. An example of such an allowance or relief would be the child rebates previously granted by South Africa. These reliefs may be withheld from non-residents.

Paragraph 3 provides that interest, royalties, technical fees and other disbursements paid by non-residents deriving income in a State are to be allowed as a deduction by that State in the same manner as that State grants those deductions to residents. It is provided, however, that this paragraph does not override Articles 9(1), 11(6), 12(6) and 13(6) which allow a State to make adjustments in cases where excessive payments are made because of a special relationship between payer and recipient.

Paragraph 4 prevents a State from giving less favourable taxation treatment to foreign-held enterprises than it gives to locally-held enterprises. The paragraph deals only with the taxation of the enterprise - it is still permissible, as discussed in relation to paragraph 1 above, to impose a different tax regime on the owners of the enterprise.

Paragraph 5 states that nothing in the Agreement shall prevent South Africa from imposing a tax on the profits attributable to a permanent establishment in South Africa of a company resident in Lesotho, at a rate which does not exceed the rate of normal tax on companies by more than five percentage points.

The Agreement generally applies only to the taxes listed in Article 2 but paragraph 6 provides that the non-discrimination provisions of this Article will apply to all taxes of every kind and description.

## **Article 25**

### ***Mutual Agreement Procedure***

This Article institutes a mutual agreement procedure for difficulties arising out of the application of the Agreement. In paragraphs 1 and 2 it provides that the competent authorities of the Contracting States shall endeavour by mutual agreement to solve the situation of taxpayers subjected to taxation not in accordance with the provisions of the Agreement.

In paragraph 3, the competent authorities of the two States are authorised to resolve by mutual agreement any problems relating to the interpretation and application of the Agreement, and, furthermore, to consult together for the elimination of double taxation in cases not provided for in the Agreement.

Finally, for practical purposes, paragraph 4 authorises the competent authorities to communicate directly with each other for the purpose of reaching mutual agreement in respect of any of these matters.

## **Article 26**

### ***Exchange of Information***

Paragraph 1 provides that the States shall exchange such information as may be foreseeably relevant both for carrying out the provisions of the Agreement and for applying the domestic taxation laws concerning any tax imposed on behalf of the Contracting States or of their political subdivisions. The underlined words are intended to provide for the exchange of information in tax matters to the widest possible extent on, for example, value-added tax or sales tax, as the case may be and also to clarify that Contracting States are not at liberty to engage in "fishing expeditions" or to request information which is unlikely to be relevant to the tax affairs of a specific taxpayer. The exchange of information is not restricted by Articles 1 and 2. Thus, should South Africa obtain tax information relating to a resident of a third State who is liable for Lesotho tax, it may make that information available to Lesotho.

Paragraph 2 provides that information obtained by a State under this provision must be treated with the same degree of secrecy as applies to information obtained under the domestic laws of that State. In addition to this general stipulation on secrecy, it is specifically provided that information obtained under this Article may be disclosed only to persons or authorities involved in the administration of the taxes imposed on behalf of a Contracting State or its political subdivisions, and that those persons and authorities shall use the information only for the purposes of such administration.

In terms of paragraph 3, the provisions of paragraphs 1 and 2 will not impose on a State the obligation:

- (a) to do anything which is contrary to the laws and administrative practice of either State;
- (b) to supply information which is not obtainable under the laws of either State or in the normal course of the administration of either State;
- (c) to supply information which discloses any business secret, or information the disclosure of which is contrary to public policy.

In terms of paragraph 4 a Contracting State is obliged to exchange information even in cases where the requested information is not needed by that State for domestic tax purposes. Paragraph 4 further makes it clear that the obligation to exchange information is subject to the limitations of paragraph 3 provided that the said limitations cannot be construed to form the basis for declining to supply the requested information where the requested State's laws or practices include a domestic interest requirement.

Paragraph 5 provides that the requested Contracting State shall not decline to supply information to the requesting Contracting State solely because the requested information is held by a bank or other financial institution. Paragraph 5 therefore overrides the provisions of paragraph 3 to the extent that paragraph 3 would otherwise permit the requested State to decline to supply the requested information on grounds of bank secrecy. Paragraph 5 further provides that the requested State shall not refuse to supply the requested information on grounds that the information is held by persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest in a person, including companies and partnerships, foundations or similar organisational structures.

## **Article 27**

### ***Assistance in the Collection of Taxes***

Paragraph 1 contains the principle that the Contracting States are obliged to assist each other in the collection of taxes which are owed by a taxpayer. The paragraph also provides that the assistance provided under this Article is not restricted by Articles 1 and 2. Paragraph 1 further provides that the provisions of paragraph 1 of Article 24 will apply to the exchange of information for purposes of the provisions of this Article.

Paragraph 2 defines the term “revenue claim” for purposes of this Article. It applies to an amount owed in respect of all taxes that are imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, but only insofar as the imposition of such taxes is not contrary to the Agreement or any other instrument to which the Contracting States are parties. Interest, administrative penalties and costs of collection or conservancy that are related to such an amount are also included.

Paragraph 3 stipulates the conditions under which a request for assistance in collection can be made. The requesting State must, under its internal law, have a right to collect the revenue claim which is owed by the taxpayer who, at that time, has no administrative or judicial rights to prevent its collection, in other words, the revenue claim has to be enforceable under the law of the requesting State. Paragraph 3 further regulates the way in which the revenue claim is to be collected by the requested State. Even if the requested State has, for its own purposes, no need to take collection actions related to the taxpayer, it is obliged to collect the revenue claim owed by that taxpayer to the requesting State as though the revenue claim was the requested State’s own revenue claim.

Paragraph 4 enables the requesting State in cases where the determination of a revenue claim is not yet final by reason of it being subject to appeal or other proceedings, to ask the requested State to take interim measures for conservancy on its behalf in order to protect its revenues.

Paragraph 5 provides that where a revenue claim has been accepted by the requested State, either under paragraph 3 (that is, a revenue claim that is enforceable in the requesting State) or under paragraph 4 (that is, where the requesting State can take measures of conservancy), then any time limitations beyond which a revenue claim cannot be enforced or collected under the laws of that State shall not apply. Paragraph 5 further provides that a revenue claim of the requesting State shall not take priority over taxes owing to the requested State.

Paragraph 6 provides that no legal or administrative proceedings, for example, a request for judicial review, shall be undertaken in the requested State as regards existence, validity or the amount of a revenue claim of the requesting State.

Paragraph 7 provides that if, after a request has been made under either paragraph 3 or paragraph 4, and before the revenue claim has been collected and remitted to the requesting State, the conditions that applied when such a request was made cease to apply (for example, the revenue claim ceases to be enforceable in the requesting State), the requesting State must promptly notify the requested State of the change in the situation. On receipt of such notice the requested State has the option to ask the requesting State to either suspend or withdraw the request for assistance.

Paragraph 8 contains certain limitations to the obligations imposed on the requested State.

Subparagraph (a) provides that, in fulfilling its obligations under this Article, the requested State is not bound to go beyond its own internal laws and administrative practice or those of the requesting State.

Subparagraph (b) includes a limitation with regard to assistance which may affect the vital interests of the requested State.

Under subparagraph (c), the requested State is not obliged to satisfy a request from the requesting State if that State has not pursued all reasonable measures of collection or conservancy available under its laws or administrative practice.

Under subparagraph (d) the requested State may, for practical considerations, reject a request from the requesting State, for instance if the costs that it would incur in collecting the revenue claim of the requesting State would exceed the amount of the revenue claim.

## **Article 28**

### ***Members of Diplomatic Missions and Consular Posts***

The Article ensures that members of diplomatic missions and consular posts are not deprived of any right which is accorded to them under international law or special agreements between Contracting States. In effect this normally means that the remuneration which they receive from their State of residence while they are stationed in the other Contracting State is not subjected to tax in that other State.

## **Article 29**

### ***Entry into Force***

Paragraph 1 provides that the Contracting States shall notify each other once the legal procedures required in each country for the bringing into force of the Agreement have been completed. The Agreement will then enter into force on the date of receipt of the later of these notifications.

Paragraph 2 specifies the date on which the provisions will begin to operate, in both States on or after the thirtieth day following the date of entry into force of the Agreement.

Paragraph 3 terminates the Agreement between the two Contracting States which entered into force on 9 January 1997.

## **Article 30**

### ***Termination***

The Article provides that the Agreement shall remain in force for a minimum period of five years after which it may be terminated by giving written notice prior to 30 June of any calendar year. It will then cease to operate from 1 January in the calendar year following such notice of termination on the basis set out in paragraph 2.

## **Protocol**

Paragraph 1 of the Protocol specifies that should Lesotho subsequently conclude an Agreement for the avoidance of double taxation with any other State in which a lower rate than that specified in Article 11, 12 or 13 of this Agreement is provided for, then Lesotho agrees that the lower rate shall apply in respect of this Agreement.

Paragraph 2 of the Protocol provides that the tax sparing provisions provided for in paragraph 3 of Article 23 shall not apply in the case of financial intermediation activities such as banking and insurance, the licencing of intellectual property, shell businesses which are not engaged in substantive business operations or passive income. This is a confirmation of the normal interpretation placed on paragraph 3 of Article 23.

**AGREEMENT**

**BETWEEN**

**THE GOVERNMENT OF THE KINGDOM OF LESOTHO**

**AND**

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

**FOR THE AVOIDANCE OF DOUBLE TAXATION AND**

**THE PREVENTION OF FISCAL EVASION WITH RESPECT TO**

**TAXES ON INCOME**

## **Preamble**

The Government of the Kingdom of Lesotho and the Government of the Republic of South Africa desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

**HAVE AGREED** as follows:

### **Article 1**

#### *Persons Covered*

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

### **Article 2**

#### *Taxes Covered*

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property.
3. The existing taxes to which the Agreement shall apply are:
  - (a) in Lesotho, the taxes imposed under the Income Tax Act, 1993 (Act No 9 of 1993), as at the date of signature of this Agreement;  
  
(hereinafter referred to as "Lesotho tax"); and
  - (b) in South Africa:
    - (i) the normal tax;
    - (ii) the secondary tax on companies; and
    - (iii) the withholding tax on royalties;  
(hereinafter referred to as "South African tax").
4. This Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their taxation laws.

### Article 3

#### *General Definitions*

1. For the purposes of this Agreement, unless the context otherwise requires:
  - (a) the term “Lesotho” means the sovereign Kingdom of Lesotho comprising all the areas that immediately before 4 October 1966 were comprised in the former colony of Basutoland together with such other areas that may, in accordance with international law, be declared by an Act of the Lesotho Parliament to form part of Lesotho; and
  - (b) the term “South Africa” means the Republic of South Africa and, when used in a geographical sense, includes the territorial sea thereof as well as any area outside the territorial sea, including the continental shelf, which has been or may hereafter be designated, under the laws of South Africa and in accordance with international law, as an area within which South Africa may exercise sovereign rights or jurisdiction;
  - (c) the terms “a Contracting State” and “the other Contracting State” mean Lesotho or South Africa as the context requires;
  - (d) the term “business” includes the performance of professional services and of other activities of an independent character;
  - (e) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
  - (f) the term “competent authority” means:
    - (i) in Lesotho, the Commissioner General for the Lesotho Revenue Authority or an authorised representative of the Commissioner General; and
    - (ii) in South Africa, the Commissioner for the South African Revenue Service or an authorised representative of the Commissioner;
  - (g) the term “enterprise” applies to the carrying on of any business;
  - (h) 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;
  - (i) the term “international traffic” means any transport by a ship, aircraft or rail or road transport vehicle operated by an enterprise of a Contracting State, except when the ship, aircraft or rail or road transport vehicle is operated solely between places in the other Contracting State;

- (j) the term “national”, in relation to a Contracting State, means:
    - (i) any individual possessing the nationality or citizenship of that Contracting State; and
    - (ii) any legal person or association deriving its status as such from the laws in force in that Contracting State; and
  - (k) the term “person” includes an individual, a company and any other body of persons that is treated as an entity for tax purposes.
2. As regards the application of the provisions of the Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

#### **Article 4**

##### *Resident*

1. For the purposes of this Agreement, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of that person’s domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources therein.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then that individual’s status shall be determined as follows:
- (a) the individual shall be deemed to be a resident only of the State in which a permanent home is available to the individual; if a permanent home is available to the individual in both States, the individual shall be deemed to be a resident only of the State with which the individual’s personal and economic relations are closer (centre of vital interests);
  - (b) if the State in which the centre of vital interests is situated cannot be determined, or if the individual has not a permanent home available in either State, the individual shall be deemed to be a resident only of the State in which the individual has an habitual abode;
  - (c) if the individual has an habitual abode in both States or in neither of them, the individual shall be deemed to be a resident only of the State of which the individual is a national;
  - (d) if the individual is a national of both States or of neither of them, the

competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavour to determine the mode of application of the Agreement to the person. In the absence of such agreement by the competent authorities of the Contracting States, the person shall not be entitled to any relief or exemption from tax provided by the Agreement.

## **Article 5**

### *Permanent Establishment*

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term "permanent establishment" includes especially:
  - (a) a place of management;
  - (b) a branch;
  - (c) an office;
  - (d) a factory;
  - (e) a workshop;
  - (f) a mine, an oil or gas well, a quarry or any other place of extraction or exploitation of natural resources;
  - (g) an installation or structure used for exploration for natural resources.
3. The term "permanent establishment" likewise encompasses:
  - (a) a building site, a construction, assembly or installation project or any supervisory activity in connection with such site or project, but only where such site, project or activity continues for a period of more than six months;
  - (b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by an enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the Contracting State for a period or periods exceeding in the aggregate 90 days in any twelve-month period commencing or ending in the fiscal year concerned;
  - (c) the performance of professional services or other activities of an independent character by an individual, but only where those services or activities continue within a Contracting State for a period or periods exceeding in the aggregate 90 days in any twelve-month period commencing or ending in the fiscal

year concerned.

4. Notwithstanding the preceding provisions of this Article the term “permanent establishment” shall be deemed not to include:
  - (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
  - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
  - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
  - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;
  - (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character; and
  - (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
5. Notwithstanding the provisions of paragraphs 1 and 2, where a person — other than an agent of an independent status to whom paragraph 6 applies — is acting 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 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.
6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.
7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

## **Article 6**

### *Income from Immovable Property*

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

## **Article 7**

### *Business Profits*

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

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.
4. In so far as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary. The method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

## **Article 8**

### ***International Transport***

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

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

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

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

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

## **Article 9**

### *Associated Enterprises*

1. Where

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

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

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

## **Article 10**

### *Dividends*

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

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

- (a) 10 per cent of the gross amount of the dividends if the beneficial owner is a company which holds at least 10 per cent of the capital of the company paying the dividends; or
- (b) 15 per cent of the gross amount of the dividends in all other cases.

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

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

3. The term "dividends" as used in this Article means income from shares or other rights participating in profits (not being debt-claims), as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the company making the distribution is a resident.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.
5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except in so far as such dividends are paid to a resident of that other State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.
6. Nothing in this Agreement shall be construed as preventing a Contracting State from imposing an income tax (referred to as a "branch profits tax") on the repatriated income of a company which is a resident of the other Contracting State in addition to the income tax imposed on the chargeable income of the company; provided that any branch profits tax so imposed shall not exceed 10 per cent of the amount of the repatriated income.

## **Article 11**

### *Interest*

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

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

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

3. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.
5. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.
6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

## **Article 12**

### *Royalties*

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

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

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films and films, tapes or discs for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment with which the right or property in respect of which the royalties are paid is effectively connected, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated.
6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

### **Article 13**

#### *Technical Fees*

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

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



3. The term “technical fees” as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any service of a technical, managerial or consultancy nature.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the technical fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the technical fees arise through a permanent establishment situated therein and the technical fees are effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.
5. Technical fees shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the technical fees, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the technical fees was incurred, and such technical fees are borne by such permanent establishment, then such technical fees shall be deemed to arise in the State in which the permanent establishment is situated.
6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the technical fees paid exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

#### **Article 14**

##### ***Capital Gains***

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.
3. Gains of an enterprise of a Contracting State from the alienation of ships, aircraft or rail or road transport vehicles operated in international traffic or movable property pertaining to the operation of such ships, aircraft or rail or road transport vehicles, shall be taxable only in that State.
4. Gains derived by a resident of a Contracting State from the alienation of shares deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in

that other State.

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

## **Article 15**

### *Income from Employment*

1. Subject to the provisions of Articles 16, 18, and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
  - (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 182 days in any twelve-month period commencing or ending in the fiscal year concerned, and
  - (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
  - (c) the remuneration is not borne by a permanent establishment which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship, aircraft or rail or road transport vehicle operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

## **Article 16**

### *Directors' Fees*

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

## **Article 17**

### *Entertainers and Sportspersons*

1. Notwithstanding the provisions of Articles 7 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from that person's personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in that person's capacity as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Articles 7 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.
3. The provisions of paragraphs 1 and 2 shall not apply to income derived by a resident of a Contracting State from activities exercised in the other Contracting State as envisaged in paragraphs 1 and 2, if the visit to that other State is supported wholly or mainly by public funds of the first-mentioned Contracting State, a political subdivision or a local authority thereof. In such case, the income shall be taxable only in the first-mentioned Contracting State.

## **Article 18**

### *Pensions and Annuities*

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration, and annuities, arising in a Contracting State and paid to a resident of the other Contracting State, may be taxed in the first-mentioned State.
2. The term "annuity" as used in this Article means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.
3. Notwithstanding the provisions of paragraph 1, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State, a political subdivision or a local authority thereof shall be taxable only in that State.

**Article 19**

*Government Service*

1. (a) Salaries, wages and other similar remuneration paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
- (b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
  - (i) is a national of that State; or
  - (ii) did not become a resident of that State solely for the purpose of rendering the services.
2. (a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
- (b) However, such pensions and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.
3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

**Article 20**

*Students and Business Apprentices*

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

## **Article 21**

### ***Professors and Teachers***

1. Notwithstanding the provisions of Article 15, a professor or teacher who makes a temporary visit to one of the Contracting States for a period not exceeding two years from the date of first arrival in that State, solely for the purpose of teaching or carrying out research at a university, college, school or other recognised educational institution in that State and who is, or immediately before such visit was, a resident of the other Contracting State shall, in respect of remuneration for such teaching or research, be exempt from tax in the first-mentioned State, provided that such remuneration is derived by the professor or teacher from outside that State and is not borne by a university, college, school or other recognised educational institution in the first-mentioned State.
2. The provisions of this Article shall not apply to income from research if such research is undertaken not in the public interest but wholly or mainly for the private benefit of a specific person or persons.

## **Article 22**

### ***Other Income***

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement, shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.
3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of the Agreement and arising in the other Contracting State may also be taxed in that other State.

## **Article 23**

### ***Elimination of Double Taxation***

Double taxation shall be eliminated as follows:

1. In Lesotho, subject to the provisions of the law of Lesotho, from time to time in force, which relates to the allowance of credit against Lesotho tax of tax paid in a country outside Lesotho (which shall not affect the general principle of this Article), South African tax paid under the law of South Africa and in accordance

with this Agreement, whether directly or by deduction, in respect of income derived by a person who is a resident of Lesotho shall be allowed as a credit against Lesotho tax payable in respect of that income.

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2. In South Africa, subject to the provisions of the law of South Africa regarding the deduction from tax payable in South Africa of tax payable in any country other than South Africa (which shall not affect the general principle hereof), taxes paid by South African residents in respect of income taxable in Lesotho, in accordance with the provisions of this Agreement, shall be deducted from the taxes due according to the 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.
3. For the purposes of paragraphs 1 and 2, the terms "Lesotho tax payable" and "South African tax payable" shall be deemed to include the amount of tax which would have been paid in Lesotho or South Africa, as the case may be, but for an exemption or reduction granted in accordance with laws which establish schemes for the promotion of economic development in Lesotho or South Africa, as the case may be, such schemes having been mutually agreed by the competent authorities of the Contracting States as qualifying for the purposes of this paragraph.

#### **Article 24**

##### *Non-discrimination*

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
3. Except where the provisions of paragraph 1 of Article 9, paragraph 6 of Article 11, paragraph 6 of Article 12 or paragraph 6 of Article 13 apply, interest, royalties, technical fees and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.
4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other

Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.

5. Nothing contained in this Article shall prevent South Africa from imposing on the profits attributable to a permanent establishment in South Africa of a company, which is a resident of Lesotho, a tax at a rate which does not exceed the rate of normal tax on companies by more than five percentage points.
6. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

## **Article 25**

### *Mutual Agreement Procedure*

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

## **Article 26**

### *Exchange of Information*

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions in so far as the taxation thereunder is not contrary to the Agreement. The exchange of information is not

restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.
3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:
  - (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
  - (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
  - (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).
4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.
5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

## **Article 27**

### ***Assistance in the Collection of Taxes***

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.
2. The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the

Contracting States, or of their political subdivisions or local authorities, in so far as the taxation thereunder is not contrary to this Agreement or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

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3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.
4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.
5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.
6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.
7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be,
  - (a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or
  - (b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection,

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

8. In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:
  - (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
  - (b) to carry out measures which would be contrary to public policy (*ordre public*);
  - (c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
  - (d) to provide assistance in those cases where the administrative burden of that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

#### **Article 28**

##### ***Members of Diplomatic Missions and Consular Posts***

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

#### **Article 29**

##### ***Entry into Force***

1. Each of the Contracting States shall notify to the other in writing, through the diplomatic channel, of the completion of the procedures required by its law for the bringing into force of this Agreement. The Agreement shall enter into force on the date of receipt of the later of these notifications.
2. The provisions of this Agreement shall apply:
  - (a) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the thirtieth day following the date upon which the Agreement enters into force; and
  - (b) with regard to other taxes, in respect of years of assessment beginning on or after the thirtieth day following the date upon which the Agreement enters into force.
3. The Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income between the Government of the Kingdom of Lesotho and the Government of the Republic of South Africa which entered into force on 9 January 1997 shall be terminated with effect from the

date of entry into force of this Agreement and shall cease to have effect for any period thereafter for which the provisions of this Agreement shall apply.

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### Article 30

#### Termination

1. This Agreement shall remain in force indefinitely but either of the Contracting States may terminate the Agreement, through the diplomatic channel, by giving to the other Contracting State written notice of termination not later than 30 June of any calendar year starting five years after the year in which the Agreement entered into force.
2. In such event the Agreement shall cease to have effect:
  - (a) with regard to taxes withheld at source, in respect of amounts paid or credited after the end of the calendar year in which such notice is given; and
  - (b) with regard to other taxes, in respect of years of assessment beginning after the end of the calendar year in which such notice is given.

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

DONE at ..... on this ..... day of ..... in the year 200....

**FOR THE GOVERNMENT OF  
THE KINGDOM OF LESOTHO  
AFRICA**

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

**PROTOCOL**

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

1. Where in any Agreement entered into between Lesotho and any other State for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income subsequent to this Agreement, a lower rate than that specified in Article 11, 12 or 13 of this Agreement is provided for, Lesotho agrees that such lower rate shall apply to this Agreement.
2. With regard to paragraph 3 of Article 23, it is understood that the benefits thereof will not apply in respect of:
  - (a) financial intermediation activities such as banking and insurance;
  - (b) the licencing of intellectual property;
  - (c) shell businesses which are not engaged in substantive business operations; or
  - (d) passive income.

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

DONE at ..... on this ..... day of ..... in the year 200....

**FOR THE GOVERNMENT OF  
THE KINGDOM OF LESOTHO  
AFRICA**

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



<p style="text-align: center;"><b>OECD MODEL TAX CONVENTION ON INCOME AND ON CAPITAL</b></p> <p>Convention between (State A) and (State B) with respect to taxes on income and on capital</p> <p style="text-align: center;"><b>PREAMBLE TO THE CONVENTION</b></p> <p style="text-align: center;"><b>CHAPTER I</b></p> <p style="text-align: center;"><b>SCOPE OF THE CONVENTION</b></p> <p style="text-align: center;"><b>Article 1</b></p> <p>Persons Covered</p> <p>This Convention shall apply to persons who are residents of one or both of the Contracting States.</p>	<p style="text-align: center;"><b>SOUTH AFRICAN MODEL AGREEMENT FOR THE AVOIDANCE OF DOUBLE TAXATION</b></p> <p style="text-align: center;">Preamble</p> <p>The Government of ..... and the Government of the Republic of South Africa desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,</p> <p>HAVE AGREED as follows:</p> <p style="text-align: center;"><b>Article 1</b></p> <p style="text-align: center;"><b>Persons Covered</b></p> <p>This Agreement shall apply to persons who are residents of one or both of the Contracting States.</p>	<p style="text-align: center;"><b>AGREEMENT BETWEEN SOUTH AFRICA AND LESOTHO FOR THE AVOIDANCE OF DOUBLE TAXATION</b></p> <p style="text-align: center;">Preamble</p> <p>The Government of the Republic of South Africa and the Government of the Kingdom of Lesotho desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,</p> <p>HAVE AGREED as follows:</p> <p style="text-align: center;"><b>Article 1</b></p> <p style="text-align: center;"><b>Persons Covered</b></p> <p>This Agreement shall apply to persons who are residents of one or both of the Contracting States.</p>
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	<b>Article 2</b>	<b>Article 2</b>
<i>Article 2</i>	<b>Taxes Covered</b>	<b>Taxes Covered</b>
<p><b>Taxes Covered</b></p> <p>1. This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.</p>	<p>1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions, irrespective of the manner in which they are levied.</p>	<p>1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions, irrespective of the manner in which they are levied.</p>
<p>2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.</p>	<p>2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property.</p>	<p>2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property.</p>
<p>3. The existing taxes to which the Convention shall apply are in particular:</p> <p>a) (in State A): .....</p> <p>b) (in State B): .....</p>	<p>3. The existing taxes to which the Agreement shall apply are:</p> <p>(a) in .....:</p> <p>(i) .....;</p> <p>(ii) .....;</p> <p>(iii) .....; and</p> <p>(iv) .....;</p> <p>(hereinafter referred to as "..... tax"); and</p> <p>(b) in South Africa:</p> <p>(i) the normal tax;</p> <p>(ii) the secondary tax on</p>	<p>3. The existing taxes to which the Agreement shall apply are:</p> <p>(a) in Lesotho, the taxes imposed under the Income Tax Act, 1993 (Act No 9 of 1993), as at the date of signature of this Agreement;</p> <p>(hereinafter referred to as "Lesotho tax"); and</p> <p>(b) in South Africa:</p> <p>(i) the normal tax;</p> <p>(ii) the secondary tax on</p>

<p>4. The Convention shall apply also to any identical or substantially similar taxes that 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 taxation laws.</p> <p style="text-align: center;"><b>CHAPTER II</b></p> <p style="text-align: center;"><b>DEFINITIONS</b></p> <p style="text-align: center;"><b>Article 3</b></p> <p>General Definitions</p> <p>1. For the purposes of this Convention, unless the context otherwise requires:</p> <p>a) the term "person" includes an individual, a company and any other body of persons;</p>	<p style="text-align: center;">(iii) companies; and the withholding tax on royalties;</p> <p style="text-align: center;">(hereinafter referred to as "South African tax").</p> <p>4. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their taxation laws.</p> <p style="text-align: center;"><b>Article 3</b></p> <p style="text-align: center;"><b>General Definitions</b></p> <p>1. For the purposes of this Agreement, unless the context otherwise requires:</p> <p>(a) the term "....." means .....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....; and</p>	<p style="text-align: center;">(iii) companies; and the withholding tax on royalties;</p> <p style="text-align: center;">(hereinafter referred to as "South African tax").</p> <p>4. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their taxation laws.</p> <p style="text-align: center;"><b>Article 3</b></p> <p style="text-align: center;"><b>General Definitions</b></p> <p>1. For the purposes of this Agreement, unless the context otherwise requires:</p> <p>(a) the term "Lesotho" means the sovereign Kingdom of Lesotho comprising all the areas that immediately before 4 October 1966 were comprised in the former colony of Basutoland together with such other areas that may, in accordance with international law, be declared by an Act of the Lesotho Parliament to form</p>
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<p>b) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;</p> <p>c) the term “enterprise” applies to the carrying on of any business;</p> <p>d) 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;</p> <p>e) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise that has its</p>	<p>(b) the term “South Africa” means the Republic of South Africa and, when used in a geographical sense, includes the territorial sea thereof as well as any area outside the territorial sea, including the continental shelf, which has been or may hereafter be designated, under the laws of South Africa and in accordance with international law, as an area within which South Africa may exercise sovereign rights or jurisdiction;</p> <p>(c) the terms “a Contracting State” and “the other Contracting State” mean ..... or South Africa, as the context requires;</p> <p>(d) the term “business” includes the performance of professional services and of other activities of an independent character;</p> <p>(e) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;</p>	<p>part of Lesotho; and</p> <p>(b) the term “South Africa” means the Republic of South Africa and, when used in a geographical sense, includes the territorial sea thereof as well as any area outside the territorial sea, including the continental shelf, which has been or may hereafter be designated, under the laws of South Africa and in accordance with international law, as an area within which South Africa may exercise sovereign rights or jurisdiction;</p> <p>(c) the terms “a Contracting State” and “the other Contracting State” mean Lesotho or South Africa as the context requires;</p> <p>(d) the term “business” includes the performance of professional services and of other activities of an independent character;</p> <p>(e) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;</p>
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<p>place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;</p> <p>f) the term “competent authority” means:</p> <p>(i) (in State A): .....</p> <p>(ii) (in State B): .....</p> <p>g) the term “national”, in relation to a Contracting State, means:</p> <p>(i) any individual possessing the nationality or citizenship of that Contracting State; and</p> <p>(ii) any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State;</p> <p>h) the term “business” includes the performance of professional services and of other activities of an independent character.</p>	<p>(f) the term “competent authority” means:</p> <p>(i) in ....., ..... or an authorised representative of the .....; and</p> <p>(ii) in South Africa, the Commissioner for the South African Revenue Service or an authorised representative of the Commissioner;</p> <p>(g) the term “enterprise” applies to the carrying on of any business;</p> <p>(h) 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;</p> <p>(i) the term “international traffic” means any transport by a ship or aircraft</p>	<p>(f) the term “competent authority” means:</p> <p>(i) in Lesotho, the Commissioner General for the Lesotho Revenue Authority or an authorised representative of the Commissioner General; and</p> <p>(ii) in South Africa, the Commissioner for the South African Revenue Service or an authorised representative of the Commissioner;</p> <p>(g) the term “enterprise” applies to the carrying on of any business;</p> <p>(h) 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;</p> <p>(i) the term “international traffic” means any transport by a ship, aircraft or rail or</p>
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<p>2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over</p>	<p>operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;</p> <p>(j) the term “national”, in relation to a Contracting State, means:</p> <p>(i) any individual possessing the nationality or citizenship of that Contracting State; and</p> <p>(ii) any legal person or association deriving its status as such from the laws in force in that Contracting State; and</p> <p>(k) the term “person” includes an individual, a company and any other body of persons that is treated as an entity for tax purposes.</p> <p>2. As regards the application of the provisions of the Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.</p> <p style="text-align: center;"><b>Article 4</b></p>	<p>road transport vehicle operated by an enterprise of a Contracting State, except when the ship, aircraft or rail or road transport vehicle is operated solely between places in the other Contracting State;</p> <p>(j) the term “national”, in relation to a Contracting State, means:</p> <p>(i) any individual possessing the nationality or citizenship of that Contracting State; and</p> <p>(ii) any legal person or association deriving its status as such from the laws in force in that Contracting State; and</p> <p>(k) the term “person” includes an individual, a company and any other body of persons that is treated as an entity for tax purposes.</p> <p>2. As regards the application of the provisions of the Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.</p> <p style="text-align: center;"><b>Article 4</b></p>
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<p>a meaning given to the term under other laws of that State.</p> <p style="text-align: center;"><b>Article 4</b></p> <p>Resident</p> <p>1. For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.</p> <p>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:</p> <p style="padding-left: 20px;">a) he shall be deemed to be a resident only 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 only of the State with which his personal and economic relations are closer (centre of vital interests);</p>	<p style="text-align: center;"><b>Resident</b></p> <p>1. For the purposes of this Agreement, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of that person’s domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources therein.</p> <p>2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then that individual’s status shall be determined as follows:</p> <p style="padding-left: 20px;">(a) the individual shall be deemed to be a resident only of the State in which a permanent home is available to the individual; if a permanent home is available to the individual in both States, the individual shall be deemed to be a resident only of the State with which the individual’s personal and economic relations are closer (centre of vital interests);</p> <p style="padding-left: 20px;">(b) if the State in which the centre of vital interests is situated cannot be determined, or if the individual has not a permanent home available in either State, the individual shall be deemed</p>	<p style="text-align: center;"><i>Resident</i></p> <p>1. For the purposes of this Agreement, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of that person’s domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources therein.</p> <p>2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then that individual’s status shall be determined as follows:</p> <p style="padding-left: 20px;">(a) the individual shall be deemed to be a resident only of the State in which a permanent home is available to the individual; if a permanent home is available to the individual in both States, the individual shall be deemed to be a resident only of the State with which the individual’s personal and economic relations are closer (centre of vital interests);</p> <p style="padding-left: 20px;">(b) if the State in which the centre of vital interests is situated cannot be determined, or if the individual has not a permanent home available in either State, the individual shall be deemed to</p>
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<p>b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;</p> <p>c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;</p> <p>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.</p> <p>3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.</p>	<p>to be a resident only of the State in which the individual has an habitual abode;</p> <p>(c) if the individual has an habitual abode in both States or in neither of them, the individual shall be deemed to be a resident only of the State of which the individual is a national;</p> <p>(d) if the individual is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.</p> <p>3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.</p> <p style="text-align: center;"><b>Article 5</b></p> <p style="text-align: center;"><b>Permanent Establishment</b></p> <p>1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business</p>	<p>be a resident only of the State in which the individual has an habitual abode;</p> <p>(c) if the individual has an habitual abode in both States or in neither of them, the individual shall be deemed to be a resident only of the State of which the individual is a national;</p> <p>(d) if the individual is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.</p> <p>3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavour to determine the mode of application of the Agreement to the person. In the absence of such agreement by the competent authorities of the Contracting States, the person shall not be entitled to any relief or exemption from tax provided by the Agreement.</p> <p style="text-align: center;"><b>Article 5</b></p> <p style="text-align: center;"><b>Permanent Establishment</b></p> <p>1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an</p>
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<b>Article 5</b>	of an enterprise is wholly or partly carried on.	enterprise is wholly or partly carried on.
<p>Permanent Establishment</p> <p>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.</p> <p>2. The term “permanent establishment” includes especially:</p> <p>a) a place of management;  b) a branch;  c) an office;  d) a factory;  e) a workshop, and  f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.</p> <p>3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.</p>	<p>2. The term “permanent establishment” includes especially:</p> <p>(a) a place of management;  (b) a branch;  (c) an office;  (d) a factory;  (e) a workshop, and  (f) a mine, an oil or gas well, a quarry or any other place of extraction or exploitation of natural resources.</p> <p>3. The term “permanent establishment” likewise encompasses:</p> <p>(a) a building site, a construction, assembly or installation project or any supervisory activity in connection with such site or project, but only where such site, project or activity continues for a period of more than ..... months;</p> <p>(b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by an enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the Contracting State for a period or periods exceeding in the aggregate 183 days in any twelve-month period</p>	<p>2. The term “permanent establishment” includes especially:</p> <p>(a) a place of management;  (b) a branch;  (c) an office;  (d) a factory;  (e) a workshop;  (f) a mine, an oil or gas well, a quarry or any other place of extraction or exploitation of natural resources;  (g) an installation or structure used for exploration for natural resources.</p> <p>3. The term “permanent establishment” likewise encompasses:</p> <p>(a) a building site, a construction, assembly or installation project or any supervisory activity in connection with such site or project, but only where such site, project or activity continues for a period of more than six months;</p> <p>(b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by an enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the Contracting State for a period or periods exceeding in the aggregate 90 days in any twelve-month period commencing</p>

<p>4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:</p> <p>a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;</p> <p>b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;</p>	<p>commencing or ending in the fiscal year concerned;</p> <p>(c) the performance of professional services or other activities of an independent character by an individual, but only where those services or activities continue within a Contracting State for a period or periods exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned.</p> <p>4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:</p> <p>(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;</p> <p>(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;</p> <p>(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;</p> <p>(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or</p>	<p>or ending in the fiscal year concerned;</p> <p>(c) the performance of professional services or other activities of an independent character by an individual, but only where those services or activities continue within a Contracting State for a period or periods exceeding in the aggregate 90 days in any twelve-month period commencing or ending in the fiscal year concerned.</p> <p>4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:</p> <p>(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;</p> <p>(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;</p> <p>(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;</p> <p>(d) the maintenance of a fixed place of business solely for the purpose of</p>
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<p>c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;</p> <p>d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;</p> <p>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;</p> <p>f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.</p> <p>5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 6 applies – is acting 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</p>	<p>of collecting information, for the enterprise;</p> <p>(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</p> <p>(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.</p> <p>5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 6 applies – is acting 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 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.</p>	<p>purchasing goods or merchandise, or of collecting information, for the enterprise;</p> <p>(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</p> <p>(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.</p> <p>5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 6 applies – is acting 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 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.</p>
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<p>undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.</p> <p>6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.</p> <p>7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.</p> <p style="text-align: center;"><b>CHAPTER III</b></p> <p style="text-align: center;"><b>TAXATION OF INCOME</b></p> <p style="text-align: center;"><b>Article 6</b></p> <p style="text-align: center;"><b>Income from Immovable Property</b></p>	<p>6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.</p> <p>7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.</p> <p style="text-align: center;"><b>Article 6</b></p> <p style="text-align: center;"><b>Income from Immovable Property</b></p> <p>1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.</p> <p>2. The term "immovable property" shall have the meaning which it has under the law of the</p>	<p>6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.</p> <p>7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.</p> <p style="text-align: center;"><b>Article 6</b></p> <p style="text-align: center;"><b>Income from Immovable Property</b></p> <p>1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.</p> <p>2. The term "immovable property" shall have the</p>
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<p>1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.</p> <p>2. The term “immovable property” shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.</p> <p>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.</p> <p>4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise.</p> <p style="text-align: center;"><b>Article 7</b></p>	<p>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.</p> <p>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.</p> <p>4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise.</p> <p style="text-align: center;"><b>Article 7</b></p> <p style="text-align: center;"><b>Business Profits</b></p> <p>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.</p>	<p>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, aircraft and rail or road transport vehicles shall not be regarded as immovable property.</p> <p>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.</p> <p>4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise.</p> <p style="text-align: center;"><b>Article 7</b></p> <p style="text-align: center;"><i>Business Profits</i></p> <p>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</p>
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<p>Business Profits</p> <ol style="list-style-type: none"> <li>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.</li> <li>2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.</li> <li>3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated</li> </ol>	<ol style="list-style-type: none"> <li>2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.</li> <li>3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.</li> </ol>	<p>that permanent establishment.</p> <ol style="list-style-type: none"> <li>2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.</li> <li>3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment.</li> </ol>
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<p>or elsewhere.</p> <p>4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result</p>	<p>4. In so far as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary. The method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.</p> <p>5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.</p> <p>6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.</p>	<p>Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise by way of interest on moneys lent to the head office of the enterprise or any of its other offices.</p> <p>4. In so far as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary. The method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.</p> <p>5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.</p> <p>6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and</p>
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<p>shall be in accordance with the principles contained in this Article.</p> <p>5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.</p> <p>6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.</p> <p>7. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.</p> <p style="text-align: center;"><b>Article 8</b></p> <p style="text-align: center;"><b>Shipping, Inland Waterways Transport and Air Transport</b></p> <p>1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.</p> <p>2. Profits from the operation of boats engaged in inland waterways transport shall be taxable only in the Contracting State in which the place of effective management of the enterprise is</p>	<p>7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.</p> <p style="text-align: center;"><b>Article 8</b></p> <p style="text-align: center;"><b>Shipping and Air Transport</b></p> <p>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.</p> <p>2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall include profits derived from the rental on a bare boat basis of ships or aircraft used in international traffic, if such profits are incidental to the profits to which the provisions of paragraph 1 apply.</p> <p>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 for the transport in international traffic of goods or merchandise shall be taxable only in that State.</p>	<p>sufficient reason to the contrary.</p> <p>7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.</p> <p style="text-align: center;"><b>Article 8</b></p> <p style="text-align: center;"><i>International Transport</i></p> <p>1. Profits of an enterprise of a Contracting State from the operation of ships, aircraft or rail or road transport vehicles in international traffic shall be taxable only in that State.</p> <p>2. For the purposes of this Article, profits from the operation of ships, aircraft or rail or road transport vehicles in international traffic shall include:</p> <p>(a) profits derived from the rental on a bare boat basis of ships or aircraft used in international traffic,</p> <p>(b) profits derived from the rental of rail or road transport vehicles,</p> <p>(c) profits derived from the use or rental of containers,</p> <p>if such profits are incidental to the profits to</p>
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<p>situated.</p> <p>3. If the place of effective management of a shipping enterprise or of an inland waterways transport enterprise is aboard a ship or boat, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship or boat is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship or boat is a resident.</p> <p>4. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.</p> <p style="text-align: center;"><b>Article 9</b></p> <p style="text-align: center;"><b>Associated Enterprises</b></p> <p>1. Where</p> <p>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</p> <p>b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a</p>	<p>4. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.</p> <p style="text-align: center;"><b>Article 9</b></p> <p style="text-align: center;"><b>Associated Enterprises</b></p> <p>1. Where</p> <p>(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</p> <p>(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,</p> <p>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.</p> <p>2. Where a Contracting State includes in the</p>	<p>which the provisions of paragraph 1 apply.</p> <p>3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.</p> <p style="text-align: center;"><b>Article 9</b></p> <p style="text-align: center;"><b>Associated Enterprises</b></p> <p>1. Where</p> <p>(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</p> <p>(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,</p> <p>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.</p>
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<p>Contracting State and an enterprise of the other Contracting State,</p> <p>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.</p> <p>2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.</p> <p style="text-align: center;"><b>Article 10</b></p>	<p>profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State may make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.</p> <p style="text-align: center;"><b>Article 10</b></p> <p style="text-align: center;"><b>Dividends</b></p> <p>1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.</p> <p>2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:</p>	<p>2. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.</p> <p style="text-align: center;"><b>Article 10</b></p> <p style="text-align: center;"><b>Dividends</b></p> <p>1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.</p> <p>2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not</p>
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<p>Dividends</p> <p>1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.</p> <p>2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:</p> <p>a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends;</p> <p>b) 15 per cent of the gross amount of the dividends in all other cases.</p> <p>The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.</p> <p>This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.</p> <p>3. The term “dividends” as used in this Article</p>	<p>(a) ... per cent of the gross amount of the dividends if the beneficial owner is a company which holds at least 25 per cent of the capital of the company paying the dividends; or</p> <p>(b) ... per cent of the gross amount of the dividends in all other cases.</p> <p>The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.</p> <p>This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.</p> <p>3. The term “dividends” as used in this Article means income from shares or other rights participating in profits (not being debt-claims), as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.</p> <p>4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein and the holding in respect of</p>	<p>exceed:</p> <p>(a) 10 per cent of the gross amount of the dividends if the beneficial owner is a company which holds at least 10 per cent of the capital of the company paying the dividends; or</p> <p>(b) 15 per cent of the gross amount of the dividends in all other cases.</p> <p>The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.</p> <p>This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.</p> <p>3. The term “dividends” as used in this Article means income from shares or other rights participating in profits (not being debt-claims), as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the company making the distribution is a resident.</p> <p>4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a</p>
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<p>means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.</p> <p>4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.</p> <p>5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income</p>	<p>which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.</p> <p>5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except in so far as such dividends are paid to a resident of that other State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.</p> <p style="text-align: center;"><b>Article 11</b></p> <p style="text-align: center;"><b>Interest</b></p>	<p>resident, through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.</p> <p>5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except in so far as such dividends are paid to a resident of that other State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.</p> <p>6. Nothing in this Agreement shall be construed as preventing a Contracting State from imposing an income tax (referred to as a "branch profits tax") on the repatriated income of a company which is a resident of the other Contracting State in addition to the income tax imposed on the chargeable income of the company; provided that any branch profits tax so imposed shall not exceed 10 per cent of the amount of the repatriated income.</p> <p style="text-align: center;"><b>Article 11</b></p>
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<p>arising in such other State.</p> <p style="text-align: center;"><b>Article 11</b></p> <p>Interest</p> <ol style="list-style-type: none"> <li>1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.</li> <li>2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.</li> </ol>	<ol style="list-style-type: none"> <li>1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.</li> <li>2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed ..... per cent of the gross amount of the interest.</li> </ol> <p>The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.</p> <ol style="list-style-type: none"> <li>3. The term "interest" as used in this Article means income from debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.</li> <li>4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein and the debt-claim in respect of which the interest is paid is</li> </ol>	<p><b>Interest</b></p> <ol style="list-style-type: none"> <li>1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.</li> <li>2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.</li> </ol> <p>The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.</p> <ol style="list-style-type: none"> <li>3. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.</li> <li>4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries</li> </ol>
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<p>3. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.</p>	<p>effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.</p>	<p>on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.</p>
<p>4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.</p>	<p>5. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.</p>	<p>5. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.</p>
<p>5. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.</p>	<p>6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.</p>	<p>6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.</p>

<p>6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.</p> <p style="text-align: center;"><b>Article 12</b></p> <p>Royalties</p> <p>1. Royalties arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.</p>	<p style="text-align: center;"><b>Article 12</b></p> <p style="text-align: center;"><b>Royalties</b></p> <p>1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.</p> <p>2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed .... per cent of the gross amount of the royalties.</p> <p style="text-align: center;">The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.</p> <p>3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films and films, tapes or discs for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.</p> <p>4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent</p>	<p style="text-align: center;"><b>Article 12</b></p> <p style="text-align: center;"><b>Royalties</b></p> <p>1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.</p> <p>2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.</p> <p style="text-align: center;">The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.</p> <p>3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films and films, tapes or discs for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.</p>
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<p>2. The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.</p> <p>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 and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.</p>	<p>establishment situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.</p> <p>5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment with which the right or property in respect of which the royalties are paid is effectively connected, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated.</p> <p>6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.</p>	<p>4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.</p> <p>5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment with which the right or property in respect of which the royalties are paid is effectively connected, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated.</p> <p>6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the</p>
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<p>4. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.</p>		<p>excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.</p> <p style="text-align: center;"><b>Article 13</b></p> <p style="text-align: center;"><i>Technical Fees</i></p> <ol style="list-style-type: none"> <li>1. Technical fees arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.</li> <li>2. However, such technical fees may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the technical fees is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the technical fees.</li> </ol> <p style="text-align: center;">The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.</p> <ol style="list-style-type: none"> <li>3. The term “technical fees” as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any service of a technical, managerial or consultancy nature.</li> <li>4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the technical fees, being a resident of a Contracting State,</li> </ol>
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	<p style="text-align: center;"><b>Article 13</b></p> <p style="text-align: center;"><b>Capital Gains</b></p> <p>1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in</p>	<p>carries on business in the other Contracting State in which the technical fees arise through a permanent establishment situated therein and the technical fees are effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.</p> <p>5. Technical fees shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the technical fees, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the technical fees was incurred, and such technical fees are borne by such permanent establishment, then such technical fees shall be deemed to arise in the State in which the permanent establishment is situated.</p> <p>6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the technical fees paid exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.</p> <p style="text-align: right;"><b>Article 14</b></p>
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**Article 13**

Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.
3. Gains from the alienation of ships or aircraft

the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.
3. Gains of an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.
4. Gains derived by a resident of a Contracting State from the alienation of shares deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.
5. Gains from the alienation of any property other than that referred to in the preceding paragraphs of this Article, shall be taxable only in the Contracting State of which the alienator is a resident.

**Capital Gains**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.
3. Gains of an enterprise of a Contracting State from the alienation of ships, aircraft or rail or road transport vehicles operated in international traffic or movable property pertaining to the operation of such ships, aircraft or rail or road transport vehicles, shall be taxable only in that State.
4. Gains derived by a resident of a Contracting State from the alienation of shares deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.

<p>operated in international traffic, boats engaged in inland waterways transport or movable property pertaining to the operation of such ships, aircraft or boats, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.</p> <p>4. Gains derived by a resident of a Contracting State from the alienation of shares deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.</p> <p>5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4, shall be taxable only in the Contracting State of which the alienator is a resident.</p> <p style="text-align: center;"><b>[Article 14 Independent Personal Services]</b></p> <p style="text-align: center;">Article Deleted</p> <p style="text-align: center;"><b>Article 15</b></p> <p>Income from Employment</p> <p>1. Subject to the provisions of Articles 16, 18 and</p>	<p style="text-align: center;"><b>Article 14</b></p> <p style="text-align: center;"><b>Income from Employment</b></p> <p>1. Subject to the provisions of Articles 15, 17 and 18, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.</p> <p>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:</p> <p>(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</p> <p>(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and</p>	<p>5. Gains from the alienation of any property other than that referred to in the preceding paragraphs of this Article, shall be taxable only in the Contracting State of which the alienator is a resident.</p> <p style="text-align: center;"><b>Article 15</b></p> <p style="text-align: center;"><i>Income from Employment</i></p> <p>1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.</p> <p>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:</p> <p>(a) the recipient is present in the other State for a period or periods not exceeding in</p>
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<p>19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.</p> <p>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:</p> <p>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</p> <p>b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and</p> <p>c) the remuneration is not borne by a permanent establishment which the employer has in the other State.</p> <p>3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, or aboard a boat engaged in inland waterways transport, may be taxed in the Contracting</p>	<p>(c) the remuneration is not borne by a permanent establishment which the employer has in the other State.</p> <p>3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State.</p> <p style="text-align: center;"><b>Article 15</b> <b>Directors' Fees</b></p> <p>Directors' fees and other similar payments derived by a resident of a Contracting State in that person's capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.</p> <p style="text-align: center;"><b>Article 16</b> <b>Entertainers and Sportspersons</b></p> <p>1. Notwithstanding the provisions of Articles 7 and 14, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from that person's personal activities as such</p>	<p>the aggregate 182 days in any twelve-month period commencing or ending in the fiscal year concerned, and</p> <p>(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and</p> <p>(c) the remuneration is not borne by a permanent establishment which the employer has in the other State.</p> <p>3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship, aircraft or rail or road transport vehicle operated in international traffic by an enterprise of a Contracting State may be taxed in that State.</p> <p style="text-align: center;"><b>Article 16</b> <b>Directors' Fees</b></p> <p>Directors' fees and other similar payments derived by a resident of a Contracting State in that person's capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.</p>
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<p>State in which the place of effective management of the enterprise is situated.</p> <p style="text-align: center;"><i>Article 16</i></p> <p>Directors' Fees</p> <p>Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.</p> <p style="text-align: center;"><b>Article 17</b></p> <p>Artistes and Sportsmen</p> <p>1. Notwithstanding the provisions of Articles 7 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.</p> <p>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</p>	<p>exercised in the other Contracting State, may be taxed in that other State.</p> <p>2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in that person's capacity as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.</p> <p style="text-align: center;"><b>Article 17</b></p> <p style="text-align: center;"><b>Pensions and Annuities</b></p> <p>1. Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration, and annuities, arising in a Contracting State and paid to a resident of the other Contracting State, may be taxed in the first-mentioned State.</p>	<p style="text-align: center;"><b>Article 17</b></p> <p style="text-align: center;"><b>Entertainers and Sportspersons</b></p> <p>1. Notwithstanding the provisions of Articles 7 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from that person's personal activities as such exercised in the other Contracting State, may be taxed in that other State.</p> <p>2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in that person's capacity as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Articles 7 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.</p> <p>3. The provisions of paragraphs 1 and 2 shall not apply to income derived by a resident of a Contracting State from activities exercised in the other Contracting State as envisaged in paragraphs 1 and 2, if the visit to that other State is supported wholly or mainly by public funds of the first-mentioned Contracting State, a political subdivision or a local authority thereof. In such case, the income shall be taxable only in the first-mentioned Contracting State.</p> <p style="text-align: center;"><b>Article 18</b></p>
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<p>provisions of Articles 7 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.</p> <p style="text-align: center;"><b>Article 18</b></p> <p>Pensions</p> <p>Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.</p>	<p>2. The term “annuity” means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money’s worth.</p> <p style="text-align: center;"><b>Article 18</b></p> <p style="text-align: center;"><b>Government Service</b></p> <p>1. (a) Salaries, wages and other similar remuneration paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.</p> <p>(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:</p> <p>(i) is a national of that State; or</p> <p>(ii) did not become a resident of that</p>	<p style="text-align: center;"><b>Pensions and Annuities</b></p> <p>1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration, and annuities, arising in a Contracting State and paid to a resident of the other Contracting State, may be taxed in the first-mentioned State.</p> <p>2. The term “annuity” means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money’s worth.</p> <p>3. Notwithstanding the provisions of paragraph 1, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State, a political subdivision or a local authority thereof shall be taxable only in that State.</p> <p style="text-align: center;"><b>Article 19</b></p> <p style="text-align: center;"><b>Government Service</b></p> <p>1. (a) Salaries, wages and other similar remuneration paid by a Contracting State or a political subdivision or a local authority thereof to an individual in</p>
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<p style="text-align: center;"><b>Article 19</b></p> <p>Government Service</p> <p>1. a) Salaries, wages and other similar remuneration paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.</p> <p>b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:</p> <p>(i) is a national of that State; or (ii) did not become a resident of that State solely for the purpose of rendering the services.</p>	<p style="text-align: center;">State solely for the purpose of rendering the services.</p> <p>2. (a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.</p> <p>(b) However, such pensions and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.</p> <p>3. The provisions of Articles 14, 15, 16 and 17 shall apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.</p> <p style="text-align: center;"><b>Article 19</b></p> <p style="text-align: center;"><b>Students</b></p> <p>A student who is present in a Contracting State solely for the purpose of the student's education or training and who is, or immediately before being so present was, a resident of the other Contracting State, shall be</p>	<p>respect of services rendered to that State or subdivision or authority shall be taxable only in that State.</p> <p>(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:</p> <p>(i) is a national of that State; or (ii) did not become a resident of that State solely for the purpose of rendering the services.</p> <p>2. (a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.</p> <p>(b) However, such pensions and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.</p> <p>3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages, pensions, and other similar remuneration in respect of services</p>
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<p>2. a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.</p> <p>b) However, such pensions and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.</p> <p>3. The provisions of Articles 15, 16, 17, and 18 shall apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.</p> <p style="text-align: center;"><b>Article 20</b></p> <p>Students</p> <p>Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in</p>	<p>exempt from tax in the first-mentioned State on payments received from outside that first-mentioned State for the purposes of the student's maintenance, education or training.</p>	<p>rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.</p> <p style="text-align: center;"><b>Article 20</b></p> <p style="text-align: center;"><b>Students and Business Apprentices</b></p> <p>A student or business apprentice who is present in a Contracting State solely for the purpose of the student or business apprentice's education or training and who is, or immediately before being so present was, a resident of the other Contracting State, shall be exempt from tax in the first-mentioned State on payments received from outside that first-mentioned State for the purposes of the student or business apprentice's maintenance, education or training.</p> <p style="text-align: center;"><b>Article 21</b></p> <p style="text-align: center;"><b>Professors and Teachers</b></p> <p>1. Notwithstanding the provisions of Article 15, a professor or teacher who makes a temporary visit to one of the Contracting States for a period not exceeding two years from the date of first arrival in that State, solely for the purpose of teaching or carrying out research at a university, college, school or other recognised educational institution in that State and who is, or immediately before such visit was, a resident of the other Contracting State shall, in respect of remuneration for such teaching or research, be exempt from tax in the first-mentioned State,</p>
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<p>that State, provided that such payments arise from sources outside that State.</p> <p style="text-align: center;"><b>Article 21</b></p>	<p style="text-align: center;"><b>Article 20</b></p> <p style="text-align: center;"><b>Other Income</b></p> <ol style="list-style-type: none"> <li>1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.</li> <li>2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.</li> <li>3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of the Agreement and arising in the other Contracting State may also be taxed in that other State.</li> </ol>	<p>provided that such remuneration is derived by the professor or teacher from outside that State and is not borne by a university, college, school or other recognised educational institution in the first-mentioned State.</p> <ol style="list-style-type: none"> <li>2. The provisions of this Article shall not apply to income from research if such research is undertaken not in the public interest but wholly or mainly for the private benefit of a specific person or persons.</li> </ol> <p style="text-align: center;"><b>Article 22</b></p> <p style="text-align: center;"><b>Other Income</b></p> <ol style="list-style-type: none"> <li>1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement, shall be taxable only in that State.</li> <li>2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.</li> </ol>
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<p>Other Income</p> <p>1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.</p> <p>2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.</p> <p style="text-align: center;"><b>CHAPTER IV</b> <b>TAXATION OF CAPITAL</b></p> <p style="text-align: center;"><b>Article 22</b></p>	<p style="text-align: center;"><b>Article 21</b> <b>Elimination of Double Taxation</b></p> <p>Double taxation shall be eliminated as follows:</p> <p>(a) in ....., .....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....;</p>	<p>3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of the Agreement and arising in the other Contracting State may also be taxed in that other State.</p> <p style="text-align: center;"><b>Article 23</b> <b>Elimination of Double Taxation</b></p>
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<p>Capital</p> <p><i>The Article on Capital is not found in the South African Model Agreement neither in the Agreement with Lesotho.</i></p> <p style="text-align: center;"><b>CHAPTER V</b></p> <p style="text-align: center;"><b>METHODS FOR ELIMINATION OF DOUBLE TAXATION</b></p> <p style="text-align: center;"><b>Article 23 A</b></p> <p>Exemption Method</p> <p><i>The exemption method is not applied by either Lesotho or South Africa.</i></p> <p style="text-align: center;"><b>Article 23 B</b></p> <p style="text-align: center;"><b>Credit Method</b></p> <p>1. Where a resident of a Contracting State derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in the other Contracting State, the first-mentioned State shall allow:</p>	<p>(b) in South Africa, subject to the provisions of the law of South Africa regarding the deduction from tax payable in South Africa of tax payable in any country other than South Africa (which shall not affect the general principle hereof), ..... tax paid by residents of South Africa in respect of income taxable in ....., in accordance with the provisions of this Agreement, shall be deducted from the taxes due according to South African fiscal law. Such deduction shall not, however, exceed an amount which bears to the total South African tax payable the same ratio as the income concerned bears to the total income.</p>	<p>Double taxation shall be eliminated as follows:</p> <ol style="list-style-type: none"> <li>1. In Lesotho, subject to the provisions of the law of Lesotho, from time to time in force, which relates to the allowance of credit against Lesotho tax of tax paid in a country outside Lesotho (which shall not affect the general principle of this Article), South African tax paid under the law of South Africa and in accordance with this Agreement, whether directly or by deduction, in respect of income derived by a person who is a resident of Lesotho shall be allowed as a credit against Lesotho tax payable in respect of that income.</li> <li>2. In South Africa, subject to the provisions of the law of South Africa regarding the deduction from tax payable in South Africa of tax payable in any country other than South Africa (which shall not affect the general principle hereof), taxes paid by South African residents in respect of income taxable in Lesotho, in accordance with the provisions of this Agreement, shall be deducted from the taxes due according to the 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.</li> </ol>
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<p>a) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in that other State;</p> <p>b) as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in that other State.</p> <p>Such deduction in either case shall not, however, exceed that part of the income tax or capital tax, as computed before the deduction is given, which is attributable, as the case may be, to the income or the capital which may be taxed in that other State.</p> <p>2. Where in accordance with any provision of the Convention income derived or capital owned by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.</p>	<p style="text-align: center;"><b>Article 22</b></p> <p style="text-align: center;"><b>Non-discrimination</b></p> <p>1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.</p> <p>2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less</p>	<p>3. For the purposes of paragraphs 1 and 2, the terms “Lesotho tax payable” and “South African tax payable” shall be deemed to include the amount of tax which would have been paid in Lesotho or South Africa, as the case may be, but for an exemption or reduction granted in accordance with laws which establish schemes for the promotion of economic development in Lesotho or South Africa, as the case may be, such schemes having been mutually agreed by the competent authorities of the Contracting States as qualifying for the purposes of this paragraph.</p> <p style="text-align: center;"><b>Article 24</b></p> <p style="text-align: center;"><b>Non-discrimination</b></p> <p>1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of</p>
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**CHAPTER VI**  
**SPECIAL PROVISIONS**

**Article 24**

Non-discrimination

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

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

3. Except where the provisions of paragraph 1 of Article 9, paragraph 6 of Article 11 or paragraph 6 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.
4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome

Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
3. Except where the provisions of paragraph 1 of Article 9, paragraph 6 of Article 11, paragraph 6 of Article 12 or paragraph 6 of Article 13 apply, interest, royalties, technical fees and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such

<p>residence, are or may be subjected.</p> <p>3. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.</p> <p>4. Except where the provisions of paragraph 1 of Article 9, paragraph 6 of Article 11, or paragraph 4 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.</p> <p>5. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled,</p>	<p>than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.</p> <p>5. Nothing contained in this Article shall prevent South Africa from imposing on the profits attributable to a permanent establishment in South Africa of a company, which is a resident of ....., a tax at a rate which does not exceed the rate of normal tax on companies by more than five percentage points.</p> <p>6. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.</p> <p style="text-align: center;"><b>Article 23</b></p> <p style="text-align: center;"><b>Mutual Agreement Procedure</b></p> <p>1. Where a person considers that the actions of one or both of the Contracting States result or will result for that person in taxation not in accordance with the provisions of this Agreement, that person may, irrespective of the remedies provided by the domestic law of those States, present a case to the competent authority of the Contracting State of which the person is a resident or, if the case comes under paragraph 1 of Article 22, to that of the Contracting State of which the person is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance</p>	<p>enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.</p> <p>4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.</p> <p>5. Nothing contained in this Article shall prevent South Africa from imposing on the profits attributable to a permanent establishment in South Africa of a company, which is a resident of Lesotho, a tax at a rate which does not exceed the rate of normal tax on companies by more than five percentage points.</p> <p>6. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.</p> <p style="text-align: center;"><b>Article 25</b></p>
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<p>directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.</p> <p>6. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.</p> <p style="text-align: center;"><b>Article 25</b></p> <p>Mutual Agreement Procedure</p> <p>1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting</p>	<p>with the provisions of the Agreement.</p> <p>2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.</p> <p>3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.</p> <p>4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.</p> <p style="text-align: center;"><b>Article 24</b></p> <p style="text-align: center;"><b>Exchange of Information</b></p> <p>1. The competent authorities of the Contracting</p>	<p style="text-align: center;"><b>Mutual Agreement Procedure</b></p> <p>1. Where a person considers that the actions of one or both of the Contracting States result or will result for that person in taxation not in accordance with the provisions of this Agreement, that person may, irrespective of the remedies provided by the domestic law of those States, present a case to the competent authority of the Contracting State of which the person is a resident or, if the case comes under paragraph 1 of Article 24, to that of the Contracting State of which the person is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.</p> <p>2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.</p> <p>3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for</p>
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<p>State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.</p> <p>2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.</p> <p>3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.</p> <p>4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.</p>	<p>States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions in so far as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.</p> <p>2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.</p> <p>3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:</p> <p>(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;</p>	<p>the elimination of double taxation in cases not provided for in the Agreement.</p> <p>4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.</p> <p style="text-align: center;"><b>Article 26</b></p> <p style="text-align: center;"><b><i>Exchange of Information</i></b></p> <p>1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions in so far as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.</p> <p>2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities</p>
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**Article 26**

Exchange of Information

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

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

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.
5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

(including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:
  - (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
  - (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
  - (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).
4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information

<p>3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:</p> <p>a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;</p> <p>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;</p> <p>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).</p>	<p style="text-align: center;"><b>Article 25</b></p> <p style="text-align: center;"><b>Assistance in the Collection of Taxes</b></p> <p>1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.</p> <p>2. The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Agreement or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.</p>	<p>gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.</p> <p>5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.</p>
<p>4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraphs of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.</p>	<p>3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as</p>	<p style="text-align: center;"><b>Article 27</b></p> <p style="text-align: center;"><b>Assistance in the Collection of Taxes</b></p> <p>1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.</p> <p>2. The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, in so</p>

<p>5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.</p>	<p>if the revenue claim were a revenue claim of that other State.</p>	<p>far as the taxation thereunder is not contrary to this Agreement or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.</p>
<p><b>Article 27</b></p> <p><b>Assistance in the Collection of Taxes</b></p>		
<p>1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.</p>	<p>4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.</p>	<p>3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.</p>
<p>2. The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Convention or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.</p>	<p>5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.</p>	<p>4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are</p>
<p>3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot,</p>	<p>6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a</p>	

<p>under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.</p> <p>4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.</p> <p>5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State</p>	<p>Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.</p> <p>7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be</p> <p>(a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or</p> <p>(b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection</p> <p>the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.</p> <p>8. In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:</p>	<p>applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.</p> <p>5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.</p> <p>6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.</p> <p>7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be,</p> <p>(a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of</p>
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<p>by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.</p> <p>6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.</p> <p>7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be</p> <p>a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or</p> <p>b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection</p> <p>the competent authority of the first-mentioned</p>	<p>(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;</p> <p>(b) to carry out measures which would be contrary to public policy (<i>ordre public</i>);</p> <p>(c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;</p> <p>(d) to provide assistance in those cases where the administrative burden of that State is clearly disproportionate to the benefit to be derived by the other Contracting State.</p> <p style="text-align: center;"><b>Article 26</b></p> <p style="text-align: center;"><b>Members of Diplomatic Missions and Consular Posts</b></p> <p>Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.</p>	<p>that State, prevent its collection, or</p> <p>(b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection,</p> <p>the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.</p> <p>8. In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:</p> <p>(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;</p> <p>(b) to carry out measures which would be contrary to public policy (<i>ordre public</i>);</p> <p>(c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;</p> <p>(d) to provide assistance in those cases</p>
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<p>State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.</p> <p>8. In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:</p> <p>a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;</p> <p>b) to carry out measures which would be contrary to public policy (ordre public);</p> <p>c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;</p> <p>d) to provide assistance in those cases where the administrative burden of that State is clearly disproportionate to the benefit to be derived by the other Contracting State.</p> <p style="text-align: center;"><b>Article 28</b></p> <p style="text-align: center;"><b>Members of Diplomatic Missions and Consular Posts</b></p>	<p style="text-align: center;"><b>Article 27</b></p> <p style="text-align: center;"><b>Entry into Force</b></p> <p>1. Each of the Contracting States shall notify to the other in writing, through the diplomatic channel, of the completion of the procedures required by its law for the bringing into force of this Agreement. The Agreement shall enter into force on the date of receipt of the later of these notifications.</p> <p>2. The provisions of the Agreement shall apply:</p> <p>(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 Agreement enters into force; and</p> <p>(b) with regard to other taxes, in respect of taxable years beginning on or after</p>	<p>where the administrative burden of that State is clearly disproportionate to the benefit to be derived by the other Contracting State.</p> <p style="text-align: center;"><b>Article 28</b></p> <p style="text-align: center;"><b>Members of Diplomatic Missions and Consular Posts</b></p> <p>Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.</p> <p style="text-align: center;"><b>Article 29</b></p>
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<p>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.</p> <p style="text-align: center;"><b>Article 29</b></p> <p style="text-align: center;"><b>Territorial Extension<sup>1</sup></b></p> <p><i>An Article on Territorial Extension which is found in the OECD Model Convention is omitted from the South African Model Agreement as well as from the Agreement with Lesotho.</i></p> <p style="text-align: center;"><b>CHAPTER VII</b></p> <p style="text-align: center;"><b>FINAL PROVISIONS</b></p> <p style="text-align: center;"><b>Article 30</b></p> <p>Entry into Force</p> <p>1. This Convention shall be ratified and the instruments of ratification shall be exchanged at ..... as soon as possible.</p>	<p>the first day of January next following the date upon which the Agreement enters into force.</p> <p style="text-align: center;"><b>Article 28</b></p> <p style="text-align: center;"><b>Termination</b></p> <p>1. This Agreement shall remain in force indefinitely but either of the Contracting States may terminate the Agreement, through the diplomatic channel, by giving to the other Contracting State written notice of termination not later than 30 June of any calendar year starting five years after the year in which the Agreement entered into force.</p> <p>2. In such event the Agreement shall cease to apply:</p> <p>(a) with regard to taxes withheld at source, in respect of amounts paid or credited after the end of the calendar year in which such notice is given;</p>	<p><b>Entry into Force</b></p> <p>1. Each of the Contracting States shall notify to the other in writing, through the diplomatic channel, of the completion of the procedures required by its law for the bringing into force of this Agreement. The Agreement shall enter into force on the date of receipt of the later of these notifications.</p> <p>2. The provisions of the Agreement shall apply:</p> <p>(a) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the thirtieth day following the date upon which the Agreement enters into force; and</p> <p>(b) with regard to other taxes, in respect of years of assessment beginning on or after the thirtieth day following the date upon which the Agreement enters into force.</p> <p>3. The Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income between the Government of the Kingdom of Lesotho and the Government of the Republic of South Africa which entered into force on 9 January 1997 shall be terminated with effect from the date of entry into force of this Agreement and shall cease to have effect for any period thereafter for which</p>
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<p>2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:</p> <p>a) (in State A): .....</p> <p>b) (in State B): .....</p> <p style="text-align: center;"><b>Article 31</b></p> <p style="text-align: center;"><b>Termination</b></p> <p>This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the year</p>	<p>and</p> <p>(b) with regard to other taxes, in respect of taxable years beginning after the end of the calendar year in which such notice is given.</p>	<p>the provisions of this Agreement shall apply.</p> <p style="text-align: center;"><b>Article 30</b></p> <p><b>Termination</b></p> <p>1. This Agreement shall remain in force indefinitely but either of the Contracting States may terminate the Agreement, through the diplomatic channel, by giving to the other Contracting State written notice of termination not later than 30 June of any calendar year starting five years after the year in which the Agreement entered into force.</p> <p>2. In such event the Agreement shall cease to have effect:</p> <p>(a) with regard to taxes withheld at source, in respect of amounts paid or credited after the end of the calendar year in which such notice is given; and</p> <p>(b) with regard to other taxes, in respect of years of assessment beginning after the end of the calendar year in which such notice is given.</p> <p style="text-align: center;"><b>PROTOCOL</b></p>
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<p>..... In such event, the Convention shall cease to have effect:</p> <p>a) (in State A): .....</p> <p>b) (in State B): .....</p>		<p>At the time of signing the Agreement between the Government of the Kingdom of Lesotho and the Government of the Republic of South Africa for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, the undersigned have agreed that the following provisions shall form an integral part of the Agreement:</p> <ol style="list-style-type: none"> <li>1. Where in any Agreement entered into between Lesotho and any other State for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income subsequent to this Agreement, a lower rate than that specified in Article 11, 12 or 13 of this Agreement is provided for, Lesotho agrees that such lower rate shall apply to this Agreement.</li> <li>2. With regard to paragraph 3 of Article 23, it is understood that the benefits thereof will not apply in respect of: <ol style="list-style-type: none"> <li>(a) financial intermediation activities such as banking and insurance;</li> <li>(b) the licencing of intellectual property;</li> <li>(c) shell businesses which are not engaged in substantive business operations; or</li> <li>(d) passive income.</li> </ol> </li> </ol>
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