

# **SYNTHESISED TEXT OF THE MULTILATERAL CONVENTION TO IMPLEMENT TAX TREATY RELATED MEASURES TO PREVENT BASE EROSION AND PROFIT SHIFTING AND THE AGREEMENT BETWEEN THE REPUBLIC OF SOUTH AFRICA AND ROMANIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS**

## **General disclaimer on the Synthesised text document**

This document presents the synthesised text for the application of the Agreement between the Republic of South Africa and Romania for the avoidance of double taxation and the prevention of fiscal evasion with respect to Taxes on Income and Capital Gains signed on 12 November 1993 (the “Agreement”), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by the Republic of South Africa and by Romania on 7 June 2017 (the “MLI”).

The document was prepared on the basis of the MLI position of the Republic of South Africa submitted to the Depositary upon ratification on 30 September 2022 and of the MLI position of Romania submitted to the Depositary upon ratification on 28 February 2022. These MLI positions are subject to modifications as provided in the MLI. Modifications made to MLI positions could modify the effects of the MLI on the Agreement.

The sole purpose of this document is to facilitate the understanding of the application of the MLI to the Agreement and it does not constitute a source of law. The authentic legal texts of the Agreement and the MLI take precedence and remain the legal texts applicable.

The provisions of the MLI that are applicable with respect to the provisions of the Agreement are included in boxes throughout the text of this document in the context of the relevant provisions of the Agreement. The boxes containing the provisions of the MLI have generally been inserted in accordance with the ordering of the provisions of the OECD Model Tax Convention.

Changes to the text of the provisions of the MLI have been made to conform the terminology used in the MLI to the terminology used in the Agreement (such as “Covered Tax Agreement” and “Agreement”, “Contracting Jurisdictions” and “Contracting States”), to ease the comprehension of the provisions of the MLI. The changes in terminology are intended to increase the readability of the document and are not intended to change the substance of the provisions of the MLI. Similarly, changes have been made to parts of provisions of the MLI that describe existing provisions of the Agreement. Descriptive language has been replaced by legal references of the existing provisions to ease the readability.

In all cases, references made to the provisions of the Agreement or to the Agreement must be understood as referring to the Agreement as modified by the provisions of the MLI, provided such provisions of the MLI have taken effect.

## References

The authentic legal text of the MLI can be found on the following hyperlink: Multilateral Instrument. The South African DTAs and Protocols can be accessed through the following path [www.sars.gov.za](http://www.sars.gov.za) ⇒ Legal Counsel ⇒ International Treaties & Agreements ⇒ Double Taxation Agreements & Protocols.

The MLI position of the Republic of South Africa submitted to the Depository upon ratification on 30 September 2022 and of the MLI position of Romania submitted to the Depository upon ratification on 28 February 2022 can be found on the MLI Depository (OECD) webpage [Signatories and Parties to the MLI](#).

### Disclaimer on the entry into effect of the provisions of the MLI

#### Entry into Effect of the MLI Provisions

The provisions of the MLI applicable to the Agreement do not take effect on the same dates as the original provisions of the Agreement. Each of the provisions of the MLI could take effect on different dates, depending on the types of taxes involved (taxes withheld at source or other taxes levied) and on the choices made by the Republic of South Africa and Romania in their MLI positions.

Dates of the deposit of instruments of ratification: 30 September 2022 for the Republic of South Africa and 28 February 2022 for Romania.

Entry into force of the MLI: 1 January 2023 for the Republic of South Africa and 1 June 2022 for Romania.

Date of receipt by the Depository of Romania's notification of the completion of internal procedures for the entry into effect of the provisions of the MLI: 6 March 2023.

The provisions of the MLI shall have effect in each Contracting State with respect to the Agreement:

- i) in the Republic of South Africa:
  - A with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2024; and
  - B with respect to all other taxes levied by the Republic of South Africa, for taxes levied with respect to taxable periods beginning on or after 5 October 2023; and
- ii) in Romania:
  - A with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2024; and
  - B with respect to all other taxes levied by Romania, for taxes levied with respect to taxable periods beginning on or after 1 January 2024.

**AGREEMENT BETWEEN THE REPUBLIC OF SOUTH AFRICA AND ROMANIA FOR THE**

## **AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS**

The Government of the Republic of South Africa and the Government of Romania **[REPLACED by paragraphs 1 and 3 of Article 6 of the MLI]** [desiring to promote and strengthen the economic relations between the two countries]

**The following paragraph 1 of Article 6 of the MLI is included in the Preamble of this Agreement:**

### **ARTICLE 6 OF THE MLI - PURPOSE OF A COVERED TAX AGREEMENT**

Intending to eliminate double taxation with respect to the taxes covered by this Agreement without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Agreement for the indirect benefit of residents of third jurisdictions),

**The following paragraph 3 of Article 6 of the MLI is included in the Preamble of this Agreement:**

### **ARTICLE 6 OF THE MLI - PURPOSE OF A COVERED TAX AGREEMENT**

Desiring to further develop their economic relationship and to enhance their co-operation in tax matters,

Have agreed as follows:

## **I. SCOPE OF THE AGREEMENT**

### **Article 1**

#### ***Personal Scope***

**[MODIFIED by paragraphs 1, 2 and 3 of Article 3 of the MLI]** [This Agreement shall apply to persons who are residents of one or both of the Contracting States.]

**The following paragraphs 1 and 3 of Article 3 of the MLI apply and supersede the provisions of this Agreement:**

**ARTICLE 3 OF THE MLI - TRANSPARENT ENTITIES**

For the purposes of this Agreement, income derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either Contracting State shall be considered to be income of a resident of a Contracting State but only to the extent that the income is treated, for purposes of taxation by that Contracting State, as the income of a resident of that Contracting State. In no case shall the provisions of this paragraph be construed to affect a Contracting State's right to tax the residents of that Contracting State.

**The following paragraph 2 of Article 3 of the MLI applies and supersedes the provisions of this Agreement:**

**ARTICLE 3 OF THE MLI – TRANSPARENT ENTITIES**

Article 23 of the Agreement shall not apply to the extent that such provision allows taxation by that other Contracting State solely because the income is also income derived by a resident of that other Contracting State.

**Article 2**

***Taxes Covered***

1. This Agreement shall apply to taxes on income and on capital gains imposed on behalf of a Contracting State, its political subdivisions or its administrative-territorial units, irrespective of the manner in which they are levied.
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, as well as taxes on capital appreciation.
3. The existing taxes to which the Agreement shall apply are in particular:
  - (a) in Romania:
    - (i) the tax on income derived by individuals;
    - (ii) the tax on salaries, wages and other similar remuneration;
    - (iii) the tax on the profits of bodies and legal persons;
    - (iv) the tax on income realised from agricultural activities; (hereinafter referred to as "Romanian tax");

- (b) in the Republic of South Africa:
  - (i) the normal tax;
  - (ii) the non-resident shareholders' tax; (hereinafter referred to as "South African tax").

4. This Agreement shall also apply to any other taxes of a substantially similar character which are subsequently imposed in addition to, or in place of, the existing taxes.

5. At the end of each calendar year, the competent authorities of the Contracting States, shall notify each other of changes which have been made in their respective taxation laws, and if it seems desirable to amend any Article of this Agreement without affecting the general principles thereof, the necessary amendments may be made by mutual consent by means of an exchange of diplomatic notes.

## **II. DEFINITIONS**

### **Article 3**

#### ***General Definitions***

1. In this Agreement, unless the context otherwise requires:
  - (a) the term "Romania" means Romania and, when used in a geographical sense, indicates the territory of Romania including its territorial sea as well as the exclusive economic zone and the continental shelf over which Romania exercises sovereign rights, in accordance with its internal law and the international law, concerning the exploration and exploitation of the natural, biological and mineral resources existing in the sea waters, sea bed and subsoil of these waters;
  - (b) the term "South Africa" means the Republic of South Africa and, when used in a geographical sense, includes the territorial sea thereof as well as any area outside the territorial sea which has been or may hereafter be designated, under the laws of South Africa, as areas within which South Africa may exercise sovereign rights or jurisdiction;
  - (c) the terms "Contracting State" and "the other Contracting State" mean Romania or South Africa as the context requires;
  - (d) the term "person" comprises an individual, a company and any other body of persons which is treated as an entity for tax purposes;
  - (e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
  - (f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
  - (g) the term "nationals" means all individuals having the citizenship of a Contracting State and all legal persons, partnerships, associations and other entities created under the law in force in a Contracting State;
  - (h) the term "competent authority" means:
    - (i) in the case of Romania, the Minister of Economy and Finance or his authorised representative; and
    - (ii) in the case of South Africa, the Commissioner for Inland Revenue or his authorised representative;

- (i) the term "international traffic" means any transport by ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State.

2. As regards the application of this Agreement in either Contracting State, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws in that State relating to the taxes which are the subject of this Agreement.

#### **Article 4**

##### ***Fiscal Domicile***

1. For the purposes of this Agreement:

- (a) the term "resident of Romania" means any person who, under the law of that State, is liable to taxation therein by reason of his residence, place of management or any other criterion of a similar nature;
- (b) the term "resident of the Republic of South Africa" means any individual who is ordinarily resident in South Africa and any legal person which is incorporated, managed or controlled in South Africa.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his case shall be determined in accordance with the following rules:

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

3. [REPLACED by paragraph 1 of Article 4 of the MLI] [Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.]

**The following paragraph 1 of Article 4 of the MLI replaces paragraph 3 of Article 4 of this Agreement:**

#### **ARTICLE 4 OF THE MLI – DUAL RESIDENT ENTITIES**

Where by reason of the provisions of this Agreement a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of this Agreement, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Agreement except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting States.

### **Article 5**

#### ***Permanent Establishment***

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.
2. The term "permanent establishment" shall include especially:
  - (a) a place of management;
  - (b) a branch;
  - (c) an office;
  - (d) a factory;
  - (e) a workshop;
  - (f) a mine, oil well, quarry or other place of extraction of natural resources;
  - (g) a plantation, farm, orchard or vineyard; and
  - (h) a building site or construction, installation or assembly project which exists for a period of more than nine months.
3. The term "permanent establishment" shall be deemed not to include:
  - (a) the use of facilities solely for the purpose of storage, display or delivery pursuant to a contract of sale 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 sale of goods or merchandise belonging to the enterprise displayed at an occasional temporary fair or exhibition after the closing of the said fair or exhibition;
  - (e) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
  - (f) the maintenance of a fixed place of business solely for the purpose of

- advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise; and
- (g) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs
  - (h) to (f), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

4. An enterprise of a Contracting State, notwithstanding that it has no fixed place of business in the other Contracting State, shall be deemed to have a permanent establishment in that other Contracting State if it carries on supervisory activities therein in connection with a construction, installation or assembly project which is being undertaken in that other Contracting State for a period of more than nine months.

5. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State (other than an agent of an independent status to whom paragraph 6 applies) notwithstanding that he has no fixed place of business in the first-mentioned Contracting State shall be deemed to be a permanent establishment in that State if:

- (a) he has, and habitually exercises, a general authority in the first-mentioned Contracting State to conclude contracts in the name of the enterprise; or
- (b) he maintains in the first-mentioned Contracting State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf of the enterprise; or
- (c) he regularly secures orders in the first - mentioned Contracting State wholly or almost wholly for the enterprise.

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

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

### **III. TAXATION OF INCOME**

#### **Article 6**

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

1. Income derived from immovable property, including income from agriculture or forestry, is taxable in the Contracting State in which such property is situated.



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

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

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

## **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 Contracting State but only so much of them as is attributable to that permanent establishment.

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

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

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

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

6. 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.

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

## **Article 8**

### ***Shipping and Air Transport***

1. Profits from the operation or rental of ships or aircraft in international traffic and the rental of containers and related equipment which is incidental to 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.

2. If the place of effective management of a shipping 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.

3. Notwithstanding the provisions of paragraph 1 and of Article 7, the profits derived by an enterprise of a Contracting State from the operation of ships or aircraft used exclusively in transportation between places situated in a Contracting State, are taxable in that State.

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

## **Article 9**

### ***Associated Enterprises***

1. Where:

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

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

2. Where a Contracting State includes in the profits of an enterprise of that State and taxes accordingly profits on which an enterprise of the other Contracting State has been charged to tax in that other Contracting State and the profits so included are profits which would have accrued to the enterprise of the first -mentioned Contracting State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Contracting State shall make an appropriate adjustment to the amount of the tax charged therein on those 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 arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that Contracting State, but, if the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed 15 per cent of the gross amount of the dividends. The provisions of this paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares, mining shares, founders' shares or other rights not being debt claims, participating in profits, as well as income from other corporate rights which is subject to the same taxation treatment as income from shares according to the taxation law 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, has in the other Contracting State, of which the company paying the dividends is a resident, a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a 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, no tax may be imposed in that other Contracting State on the dividends paid by the company except in so far as such dividends are paid to a resident of that other Contracting State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment in that other Contracting State, or on the company's undistributed profits even if the dividends paid or undistributed profits consist wholly or partly of profits or income arising in such other Contracting State.

## **Article 11**

### ***Interest***

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

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 15 per cent of the gross amount of the interest. The provisions of this paragraph shall not apply to interest paid in respect of a loan made and guaranteed, directly or indirectly, by a Contracting State, a political subdivision, a local authority or an administrative - territorial unit thereof, the National Bank of Romania or the Reserve Bank of South Africa.

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

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

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the 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 Contracting State.

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the recipient who is a resident of the other Contracting State beneficially owns the royalties, the tax so charged shall not exceed 15 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the alienation of, the use of or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films and films, tapes or discs for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial 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, has in the other Contracting State in which the royalties arise, a permanent establishment with which the right or property in respect of which the royalties are paid is effectively connected. In such a case, the provisions of Article 7 shall apply.

5. Where, owing to a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties paid, 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 a case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

6. 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 he 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 royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

## **Article 13**

### ***Capital Gains***

1. Gains from the alienation of immovable property, as defined in paragraph 2 of Article 6, may be taxed in the Contracting State in which such property is situated.

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, or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other Contracting State.

3. Gains 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 the Contracting State in which the place of effective management of the enterprise is situated.

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

## **Article 14**

### ***Independent Personal Services***

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other Contracting State but only so much of it as is attributable to that fixed base.
2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

## **Article 15**

### ***Dependent Personal Services***

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State, unless the employment is exercised in the other Contracting State. If the employment is so exercised such remuneration as is derived therefrom may be taxed in that other Contracting State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first -mentioned Contracting State if:
  - (a) the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned; and
  - (b) the remuneration is paid by or on behalf of an employer who is not a resident of the other Contracting State; and
  - (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other Contracting State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

## **Article 16**

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

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

2. The remuneration which a person to whom paragraph 1 applies derives from the company in respect of the discharge of day-to-day functions as an employee, shall be taxed in accordance with the provisions of Article 15.

## **Article 17**

### ***Artistes and Athletes***

1. Notwithstanding the provisions of Articles 14 and 15, income derived by entertainers such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such, may be taxed in the Contracting State in which these activities are exercised.

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

3. Income derived from activities performed within the framework of cultural exchanges established under cultural agreements concluded between the two Contracting States shall be exempt from tax in the Contracting State in which the activities are performed.

## **Article 18**

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

1. Any pension (other than a pension of the kind referred to in paragraph 2 of Article 19) and any annuity, derived from sources within a Contracting State by an individual who is a resident of the other Contracting State and is subject to tax on the whole or portion thereof in the other Contracting State, shall be exempt from tax in the first - mentioned Contracting State to the extent that it is included in income for the purpose of the other Contracting 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 consideration of money paid.

## **Article 19**

### ***Government Service***

1. Remuneration (other than pensions) paid by, or out of funds created by, one of the Contracting States, a political subdivision, a local authority or an administrative -territorial unit thereof to any individual for services rendered to that State, a political subdivision, a local authority or an administrative-territorial unit thereof in the discharge of governmental functions shall be exempt from tax in the other Contracting State if the individual is not ordinarily resident in that other Contracting State or is ordinarily resident in that other Contracting State solely for the purpose of rendering those services.

2. Any pension paid by, or out of funds created by, one of the Contracting States, a political subdivision, a local authority or an administrative-territorial unit thereof to any individual for services rendered to that State, a political subdivision, a local authority or an administrative - territorial unit thereof in the discharge of governmental functions shall be exempt from tax in the other Contracting State in so far as the remuneration for those services was exempt from tax in that other Contracting State under paragraph 1 of this Article or would have been so exempt if this Agreement had been in force when the remuneration was paid.

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

## **Article 20**

### ***Teachers***

Notwithstanding the provisions of Article 15, a teacher who makes a temporary visit to one of the Contracting States for a period not exceeding two years for the purpose of teaching at a university, college, school or other 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, be exempt from tax in the first -mentioned Contracting State.

## **Article 21**

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

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

## **Article 22**

### ***Other Income***

Any income not dealt with in the foregoing provisions of this Agreement derived by a resident of a Contracting State who is subject to tax there in respect thereof, shall be subjected to tax only in that State.



## **IV. ELIMINATION OF DOUBLE TAXATION**

### **Article 23**

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

Double taxation shall be eliminated as follows:

1. In the case of Romania, taxes paid by Romanian residents in respect of income or capital taxable in South Africa, in accordance with the provisions of this Agreement, shall be deducted from the Romanian taxes due according to the Romanian fiscal law.

Such deduction shall not, however, exceed that part of the income tax or capital tax, as computed before the deduction is given, which is attributable to the income or the capital which may be taxed in South Africa.

2. In the case of South Africa, taxes paid by South African residents in respect of income or capital taxable in Romania, in accordance with the provisions of this Agreement, shall be deducted from the South African taxes due according to the South African fiscal law.

Such deduction shall not, however, exceed that part of the income tax or capital tax, as computed before the deduction is given, which is attributable to the income or the capital which may be taxed in Romania.

3. The terms "Romanian tax" and "South African tax" shall be deemed to include the amount of tax which would have been paid if the tax had not been reduced in accordance with laws designed to promote economic development or decentralization in either Contracting State, effective on the date of entry into force of this Agreement, or provisions which may be introduced in future in the taxation laws of either Contracting State in modification of, or in addition to, the existing laws.

4. The profits derived from a grant given by one of the Contracting States, a political subdivision, or any agency thereof to a resident of the other Contracting State under the laws of, and for the purpose of promoting economic development or decentralization in, the first-mentioned Contracting State, shall be taxable only in the first -mentioned Contracting State.

## **V. SPECIAL PROVISIONS**

### **Article 24**

#### ***Non-discrimination***

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

2. A Contracting State shall not adjust any assessment of a resident of the other Contracting State by including items of income already taxed in the other Contracting State after the expiry of the time limits provided for in its domestic law.

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

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

5. Nothing in this Article shall be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

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

## **Article 25**

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

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

2. **[MODIFIED by second sentence of paragraph 2 of Article 16 of the MLI]** [The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate 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 not in accordance with the Agreement.

**The following second sentence of paragraph 2 of Article 16 of the MLI applies to this Agreement:**

#### **ARTICLE 16 OF THE MLI - MUTUAL AGREEMENT PROCEDURE**

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 this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.

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

## **Article 26**

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

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement and of the domestic laws of the Contracting States concerning taxes covered by this Agreement in so far as the taxation thereunder is in accordance with this Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment or collection of the taxes which are the subject of this Agreement.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on one of the competent authorities the obligation:

- (a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;
- (b) to supply particulars which are 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.

## **Article 27**

### ***Diplomatic Agents and Consular Officers***

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

**The following paragraph 1 of Article 7 of the MLI applies and supersedes the provisions of this Agreement:**

#### **ARTICLE 7 OF THE MLI – PREVENTION OF TREATY ABUSE (PRINCIPAL PURPOSES TEST PROVISION)**

Notwithstanding any provisions of this Agreement, a benefit under this Agreement shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Agreement.

## **Article 28**

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

1. This Agreement shall be ratified in accordance with the constitutional provisions in force in each of the Contracting States and shall enter into force 30 days after the exchange of notes indicating that both Parties have complied with these provisions.
2. The provisions of this Agreement shall apply:
  - (a) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of January next following the date upon which this Agreement enters into force;
  - (b) in respect of other taxes, for taxable years of the persons entitled to the benefits of this Agreement beginning on or after the first day of January next following the date upon which this Agreement enters into force.

## **Article 29**

### ***Termination***

1. This Agreement shall remain in force indefinitely but either of the Contracting States may terminate the Agreement through diplomatic channels, 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) in respect of taxes withheld at source, for amounts paid or credited after the end of the calendar year in which such notice is given;
  - (b) in respect of other taxes, for taxable years of the persons entitled to the benefits of the Agreement beginning after the end of the calendar year in which such notice is given.

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

DONE at Bucharest this 12th day of November, 1993, in duplicate, in the Romanian and English and Afrikaans languages, all three texts being equally authentic except that in case of any divergence of interpretation the English text shall prevail.

(Signed) T.G. Alant

FOR THE GOVERNMENT OF THE  
REPUBLIC OF SOUTH AFRICA

(Signed) C. Gorcea

FOR THE GOVERNMENT  
OF ROMANIA