SYNTHESISED TEXT OF THE MULTILATERAL CONVENTION TO IMPLEMENT TAX TREATY RELATED MEASURES TO PREVENT BASE EROSION AND PROFIT SHIFTING AND THE CONVENTION BETWEEN THE REPUBLIC OF SOUTH AFRICA AND THE STATE OF ISRAEL 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 Convention between the Republic of South Africa and the State of Israel for the avoidance of double taxation and the prevention of fiscal evasion with respect to Taxes on Income and on Capital signed on 10 February 1978 (the "Convention"), 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 the State of Israel 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 the State of Israel submitted to the Depositary upon ratification on 13 September 2018.[1] 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 Convention.

The authentic legal texts of the Convention 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 Convention are included in boxes throughout the text of this document in the context of the relevant provisions of the Convention. 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 with the terminology used in the MLI to the terminology used in the Convention (such as "Covered Tax Agreement" and "Convention", "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 Convention. Descriptive language has been replaced by legal references of the existing provisions to ease the readability.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 Convention or to the Convention must be understood as referring to the Convention as modified by the provisions of the MLI, provided such provisions of the MLI have taken effect.

[1] The synthesised text was prepared solely by South Africa.

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 ⇨ Legal Counsel ⇨ International Treaties & Agreements ⇨ Double Taxation Agreements & Protocols.

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 the State of Israel submitted to the Depositary upon ratification on 13 September 2018 can be found on the MLI Depositary (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 Convention do not take effect on the same dates as the original provisions of the Convention. 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 the State of Israel in their MLI positions.

Dates of the deposit of instruments of ratification, acceptance or approval: 30 September 2022 for the Republic of South Africa and 13 September 2018 for the State of Israel.

Entry into force of the MLI: 1 January 2023 for the Republic of South Africa and 1 January 2019 for the State of Israel.

In accordance with paragraph 1 of Article 35 of the MLI, the provisions of the MLI (other than Article 16 Mutual Agreement Procedure) have effect in the Republic of South Africa with respect to this Convention:

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 2023; 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 1 July 2023.

In accordance with paragraph 1 of Article 35 of the MLI, the provisions of the MLI (other than Article 16 Mutual Agreement Procedure) have effect in the State of Israel with respect to this Convention:

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 2023; and
b) with respect to all other taxes levied by the State of Israel, for taxes levied with respect to taxable periods beginning on or after 1 January 2024.

In accordance with paragraph 4 of Article 35 of the MLI, Article 16 (Mutual Agreement Procedure) of the MLI has effect with respect to this Convention for a case presented to the competent authority of a Contracting State on or after 1 January 2023, except for cases that were not eligible to be presented as of that date under this Convention prior to its modification by the MLI, without regard to the taxable period to which the case relates.

CONVENTION BETWEEN THE REPUBLIC OF SOUTH AFRICA AND THE STATE OF ISRAEL 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 Israel;

[REPLACED by paragraph 1 of Article 6 of the MLI] [Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains;]

The following paragraph 1 of Article 6 of the MLI replaces the text referring to an intent to eliminate double taxation in the preamble language of this Convention:

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

Intending to eliminate double taxation with respect to the taxes covered by this Convention 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 Convention for the indirect benefit of residents of third jurisdictions),

Have agreed as follows:

I. SCOPE OF THE CONVENTION

Article 1

Personal Scope

[MODIFIED by paragraph 1 and paragraph 3 of Article 3 of the MLI] [This Convention shall apply to persons who are residents of one or both of the Contracting States.]

The following paragraph 1 and paragraph 3 of Article 3 of the MLI applies and supersedes the provisions of this Convention:

ARTICLE 3 OF THE MLI - TRANSPARENT ENTITIES

For the purposes of this Convention, 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.

Article 2

Taxes Covered

1. This Convention shall apply to taxes on income and on capital gains imposed on behalf of each Contracting State, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital gains, all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property and taxes on the total amounts of wages or salaries paid by enterprises.

3. The existing taxes to which the Convention shall apply are, in particular -

(a) in Israel-

(i) the income tax (including company tax and tax on capital gains);
(ii) the Land Appreciation Tax;
(iii) the tax on profits levied on banking institutions and insurance companies under the Value Added Tax Law;
hereinafter referred to as "Israeli tax";

(b) in the case of South Africa-

(i) the normal tax;
(ii) the non - resident shareholders tax;
(ii) the non - residents tax on interest;
(iii) the undistributed profits tax;
hereinafter referred to as "South African tax".

4. The Convention shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify regularly to each other any major changes which have been made in their respective taxation laws.

I. DEFINITIONS

Article 3

General Definitions

1. In this Convention, unless the context otherwise requires-
(a) the term "Israel" means the State of Israel and, when used in the geographical sense, includes the territorial sea thereof as well as that area of the high seas in respect of which Israel is entitled, in accordance with international law, to exercise sovereign rights over the seabed and sub-soil and their natural resources;
(b) the term "South Africa" means the Republic of South Africa and, when used in geographical sense, includes the territorial sea thereof as well as that area of the high seas in respect of which South Africa is entitled, in accordance with international law, to exercise sovereign rights over the seabed and sub-soil and their natural resources;
(c) the terms "a Contracting State" and "the other Contracting State" mean Israel or South Africa, as the context requires;
(d) the term "person" includes an individual, a company and any other body of persons;

(e) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
(f) the term “tax” means tax imposed by Israel or South Africa, whichever is applicable, to which this Convention applies by virtue of Article 2 (Taxes Covered);
(g) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
(h) the term “competent authority” means-
  (i) in the case of Israel, the Minister of Finance or his authorised representative; and
  (ii) in the case of South Africa, the Secretary for Inland Revenue or his authorised representative;
(g) the term “international traffic” includes traffic between places in one Contracting State in the course of a voyage which extends over more than one country.

2. Any other term used in this Convention and not defined in this Convention shall, unless the context otherwise requires, have the meaning which it has under the laws of the Contracting State whose tax is being determined.

Article 4

Fiscal Domicile

1. For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then this 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 permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closest (centre of vital interests). In the case of a person who is an “Oleh” (as defined in section 35 of the Israeli Income Tax Ordinance), his centre of vital interests shall be deemed to be in Israel;
(b) if the Contracting 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 Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
(c) if he has an habitual abode in both Contracting States, or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
(d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. [**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 Convention:

ARTICLE 4 OF THE MLI – DUAL RESIDENT ENTITIES

Where by reason of the provisions of this Convention 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 Convention, 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 Convention 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 Convention, 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, quarry or other place of extraction of natural resources;
(g) a farm or a plantation;
(h) a building site or construction or assembly project, or supervision activity connected there with and conducted within the State where such site or project is located, where such site, project or activity continues for a period of more than six months; and
(i) the maintenance of substantial equipment or machinery within a State for a period of more than six months.

3. [**REPLACED by paragraph 2 and paragraph 4 of Article 13 of the MLI]** [The term "permanent establishment" shall not be deemed to include-

(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.]

The following paragraph 2 of Article 13 of the MLI replaces paragraph 3 of Article 5 of this Convention:

ARTICLE 13 OF THE MLI – ARTIFICIAL AVOIDANCE OF PERMANENT ESTABLISHMENT STATUS THROUGH THE SPECIFIC ACTIVITY EXEMPTIONS (Option A)

Notwithstanding Article 5 of the Convention, the term "permanent establishment" shall be deemed not to include:

a) the activities specifically listed in paragraph 3 of Article 5 of this Convention as activities deemed not to constitute a permanent establishment, whether or not that exception from permanent establishment status is contingent on the activity being of a preparatory or auxiliary character;

b) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any activity not described in subparagraph a);

c) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) and b),

provided that such activity or, in the case of subparagraph c), the overall activity of the fixed place of business, is of a preparatory or auxiliary character.

The following paragraph 4 of Article 13 of the MLI is inserted immediately after paragraph 3 of Article 5 of the Convention applies to paragraph 2 of Article 13 of the MLI and provisions of this Convention as modified by the MLI:

ARTICLE 13 OF THE MLI – ARTIFICIAL AVOIDANCE OF PERMANENT ESTABLISHMENT STATUS THROUGH THE SPECIFIC ACTIVITY EXEMPTIONS

Article 5 of this Convention, as modified by paragraph 2 of Article 13 of the MLI shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same Contracting State and:

a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of Article 5 of this Convention; or

b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,

provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.

4. Even if an enterprise of one of the Contracting States does not have a permanent establishment in the other Contracting State under paragraphs 1, 2 and 3, such an enterprise shall nevertheless be deemed to have a permanent establishment in the other Contracting State if such an enterprise sells in that Contracting State goods or merchandise which either-

(a) were subjected to substantial processing in that Contracting State (whether or not purchased in that Contracting State); or

(b) were purchased in that Contracting State and not subjected to substantial processing outside that Contracting State.

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 - shall be deemed to be a permanent establishment in the first-mentioned Contracting State if he has, and habitually exercises in that first-mentioned Contracting State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise 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.

The following paragraph 1 of Article 15 of the MLI applies to this Convention:

ARTICLE 15 OF THE MLI – DEFINITION OF A PERSON CLOSELY RELATED TO AN ENTERPRISE

For the purposes of Article 5 of this Convention, a person is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise.

II. TAXATION OF INCOME

Article 6

Income from Immovable Property

1. Income from immovable property may be taxed in the Contracting State in which such property is situated.

2. The term “immovable property” shall be defined in accordance with 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 of agricultural and forestry enterprises, 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 professional services.

Article 7

Business Profits

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

2. Without prejudice to the application 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. However, if any problem arises in determining the profits attributable to the permanent establishment, the competent authority of one Contracting State may consult with the competent authority of the other Contracting State for assistance in determining such profits with a view to avoiding double taxation.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses of the enterprise (other than expenses which would not be deductible if the permanent establishment were a separate enterprise) 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. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

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

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

Article 8

Shipping and Air Transport

1. Notwithstanding the provisions of Article 7, paragraphs 1 to 5, 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.

2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

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.

The following paragraph 1 of Article 17 of the MLI applies and supersedes the provisions of this Convention:

ARTICLE 17 OF THE MLI – CORRESPONDING ADJUSTMENTS

Where a Contracting State includes in the profits of an enterprise of that Contracting State — and taxes accordingly — profits on which an enterprise of the other Contracting State has been charged to tax in that other Contracting State and 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 Convention and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10

Dividends

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

2. However, such dividends may 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 the tax so charged shall not exceed 25 per cent of the gross amount of the dividends.

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, “jouissance” shares or “jouissance” rights, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights treated in the same way as income from shares by the taxation 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 recipient 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; they shall not prevent the imposition of tax which is due at source on such dividends according to the laws of that other Contracting State.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other Contracting State may not impose any tax on the dividends paid by the company to persons who are not residents of that other Contracting State, or 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 that 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 be taxed in the Contracting State in which it arises, and according to the laws of that Contracting State, but the tax so charged shall not exceed 25 per cent of the gross amount of the interest.

3. The term “interest” as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and, subject to the following paragraph, debt-claims and deposits of every kind as well as all other income assimilated to income from money lent or deposited by the taxation laws of the Contracting State in which the income arises.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the interest, being a resident of a Contracting State, has in the other Contracting State in which the interest arises a permanent establishment with which the debt-claim or deposit from which the interest arises is effectively connected. In such a case, the provisions of Article 7 shall apply; they shall not prevent the imposition of tax which is due at source on such interest according to the laws of that other Contracting State.

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

6. Where, owing to a special relationship between the payer and the recipient or depositor or between both of them and some other person, the amount of the interest paid, having regard to the debt-claim or deposit for which it is paid, exceeds the amount which would have been agreed upon by the payer and the recipient or depositor in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that 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 Convention.

Article 12

Royalties

1. Any royalty derived from sources within one of the Contracting States by a resident of the other Contracting State who is subject to tax in that other State in respect thereof shall be exempt from tax in that first-mentioned State: Provided that where any such royalty is in respect of cinematograph or television films, tax may be imposed thereon in the State from which the royalty is derived, but the tax so imposed shall not exceed tax at the rate applicable to companies on 15 per cent of the gross amount of the royalty.

2. The term “royalties” as used in this Article means payment 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 or tapes for radio or television broadcasting), any patent, trade-mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience, but does not include any amount paid in respect of the operation of a mine, oil well or quarry or of any other extraction of natural resources.

3. The provisions of paragraph 1 shall not apply if the recipient 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 giving rise to the royalties is effectively connected. In such a case, the provisions of Article 7 shall apply.

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

5. Where, owing to a special relationship between the payer and the recipient 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 recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that 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 Convention.

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 State in which such property is situated.

[REPLACED by paragraph 4 of Article 9 of the MLI] [In this paragraph "immovable property" shall include rights - other than shares dealt in on a stock exchange - in a real estate association (being an association the greater part of whose assets are immovable property or rights in immovable property). The said rights shall be deemed to be situated in the State in which the immovable property giving rise to such capital gain is situated.]

The following paragraph 4 of Article 9 of the MLI replaces the second and third sentences of paragraph 1 of Article 13 of this Convention:

ARTICLE 9 OF THE MLI – CAPITAL GAINS FROM ALIENATION OF SHARES OR INTERESTS OF ENTITIES DERIVING THEIR VALUE PRINCIPALLY FROM IMMOVABLE PROPERTY

For purposes of this Convention, gains derived by a resident of a Contracting State from the alienation of shares or comparable interests, such as interests in a partnership or trust, may be taxed in the other Contracting State if, at any time during the 365 days preceding the alienation, these shares or comparable interests derived more than 50 per cent of their value directly or indirectly from immovable property situated in that other Contracting 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 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 professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in that other Contracting State. However, gains from the alienation of ships and aircraft operated in international traffic and of movable property pertaining to the operation of such ships and aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

3. Gains from the alienation of any other property shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14

Grants

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 encouraging investment in the first-mentioned Contracting State, shall be taxable only in the first-mentioned Contracting State.

Article 15

Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless such income is not subject to tax in that State or such resident 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, such part of that income as is attributable to that base may be taxed in that other State. If he has no such fixed base and the income is not subject to tax in the Contracting State of which he is a resident he may be taxed in the other Contracting State on the income derived from his activities performed therein.

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 16

Dependent Personal Services

1. Subject to the provisions of Articles 17, 19 and 20, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that Contracting State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Contracting State.

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

(a) it relates to an activity exercised in that other Contracting State during a period or periods - including the duration of normal work interruptions - not exceeding in the aggregate 183 days in the calendar year concerned; and
(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of that other Contracting State; and
(c) the remuneration is not borne as such by a permanent establishment or a fixed base which the employer has in that other Contracting State.

3. Notwithstanding the provisions of paragraphs 1 and 2, remuneration 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 17

Directors' Fees

1. Fees and other remuneration 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 of a managerial or technical nature may be taxed in accordance with the provisions of Article 16 as if the remuneration were remuneration of an employee in respect of an employment and as if references to the employer were references to the company.

Article 18

Artistes and Athletes

Notwithstanding the provisions of Articles 15 and 16, income derived by public entertainers, such as theatre, motion picture, radio or television artistes and musicians, and by athletes, from their dependent or independent personal activities as such (including such income derived by corporate bodies controlled by them, or derived by any other person) may be taxed in the Contracting State in which these activities are exercised. The fact that the corporate body or other person has no permanent establishment in the Contracting State in which these activities are exercised shall not preclude that State from taxing the income so derived.

Article 19

Pensions

Subject to the provisions of paragraph 2 of Article 20, so much of any pension or other similar remuneration paid to a resident of a Contracting State and received by him in that State in consideration of past employment in the other Contracting State shall be taxable only in the first-mentioned State.

Article 20

Governmental Functions

1. Remuneration (other than pensions) paid by, or out of funds created by, one of the Contracting States or a political subdivision or local authority thereof to any individual for services rendered to that State or a political subdivision or local authority thereof in the discharge of functions of a governmental nature shall be exempt from tax in the other Contracting State if the individual is not ordinarily resident in that other State or is ordinarily resident in that other 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 or a political subdivision or local authority thereof to any individual for services rendered to that State or a political subdivision or local authority thereof in the discharge of functions of a governmental nature 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 State under paragraph 1 of this Article or would have been so exempt if this Convention 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 or a political subdivision or local authority thereof for purposes of profit.

Article 21

Teachers and Students

1. Notwithstanding the provisions of Article 16, a professor or 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 Contracting 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 State if he is subject to tax in the other Contracting State in respect of such remuneration.

2. 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

Income not Expressly Mentioned

Any income not dealt with in the foregoing provisions of this Convention 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.PROVISIONS FOR ELIMINATION OF DOUBLE TAXATION

Article 23

1. a) Where Israeli tax is payable under the law of Israel and in accordance with this Convention, whether directly or by deduction, on income derived from sources within Israel by a resident of South Africa, South Africa shall either impose no tax on that income or shall, subject to such provisions (which shall not affect the general principle hereof) as may be enacted in South Africa, allow as a credit against any South African tax payable in respect of that income so much of the Israeli tax as does not exceed the South African tax.

(b) If Israeli tax on dividends or interest has been wholly or partly relieved for a period of time under provisions of Israeli tax law which are certified by the competent authority of Israel to be for the encouragement of the Israeli economy, the amount to be allowed as a credit against the South African tax on such income shall be an amount of tax which would have been imposed by Israel if no such relief or reduction had been granted, and, where the taxpayer is a company, the said amount shall, for the purposes of the undistributed profits tax levied by South Africa, be deemed to be a tax on income payable by the company.

2. (a) Where a resident of Israel derives profits, income or capital gains which, in accordance with the provisions of this Convention, may be taxed in South Africa, Israel shall, subject to the provisions of the law of Israel, allow as a credit against the Israeli tax of that person, an amount equal to the tax paid in South Africa. The credit shall not, however, exceed that part of the tax as computed before the credit is given, which is appropriate to the profits, income or capital gains which may be taxed in South Africa.

(b) Where an enterprise of Israel carries on business in South Africa through a permanent establishment situated in an economic development area and South African tax on the profits attributable to such permanent establishment has been wholly or partly relieved under provisions of South African tax law relating to enterprises in such areas, the amount to be allowed as a credit against the Israeli tax on such profits shall be an amount of tax which would have been imposed by South Africa if no such relief had been granted. For the purposes of this subparagraph "economic development area" means an area contemplated in section 11 *ter* (1) of the Income Tax Act, No. 58 of 1962, of South Africa.

3. Paragraphs 1 and 2 of this Article shall have no application in relation to any tax which is repayable.

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

ARTICLE 3 OF THE MLI - TRANSPARENT ENTITIES

Article 23 Elimination of Double Taxation of the Convention 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.

IV. 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 Contracting State in the same circumstances are or may be subjected.

2. The term "nationals" means-
   (a) all individuals possessing the nationality of a Contracting State;
   (b) all legal persons, partnerships and associations deriving their status as such from the law in force in a Contracting State.

3. Taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other Contracting State than the taxation levied on enterprises of that other Contracting State carrying on the same activities. This provision shall not be construed-

(a) As preventing a Contracting State from taxing the total amount of the profits attributable to a permanent establishment available in that Contracting State to a company which is a resident of the other Contracting State, or to an association having its place of management in that other Contracting State, at the rate fixed by its national law, provided such rate does not exceed in principle the highest rate applicable to the total or a fraction of the profits of companies which are residents of the first-mentioned Contracting State;

(b) 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 o w n residents.

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. In this Article the term “taxation” means the taxes which are the subject of this Convention.

Article 25

Mutual Agreement Procedure

1. [**MODIFIED by the second sentence of paragraph 1 of Article 16 of the MLI]** [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 Convention, he may, without prejudice to the remedies provided by the national laws of these States, address to the competent authority of the Contracting State of which he is a resident an application in writing stating the grounds for claiming a revision of that taxation.]

The following second sentence of paragraph 1 of Article 16 of the MLI applies and supersedes the provisions of this Convention:

ARTICLE 16 OF THE MLI - MUTUAL AGREEMENT PROCEDURE

The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Convention.

2. [**MODIFIED by the second sentence of paragraph 2 of Article 16 of the MLI]** [The competent authority referred to in paragraph 1 shall endeavour, if the objection appears to it to be justified and if it is not 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 this Convention.]

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

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. [**REPLACED by the first sentence of paragraph 3 of Article 16 of the MLI]** [The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the application of this Convention.] They may also consult together for the elimination of double taxation in cases not provided for in this Convention.

The following first sentence of paragraph 3 of Article 16 of the MLI replaces the first sentence of paragraph 3 of Article 25 of this Convention:

ARTICLE 16 OF THE MLI - MUTUAL AGREEMENT PROCEDURE

The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Convention.

4. The competent authorities of the Contracting States may agree on the subject of the necessary administrative measures to carry out the provisions of this Convention and particularly in the matter of the proofs to be furnished by the residents of either Contracting State in order to benefit in the other Contracting State from the exemptions from or reductions in tax provided in this Convention.

Article 26

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information (being information which such authorities have in proper order at their disposal) as is necessary for the carrying out of this Convention, in particular for the prevention of fraud, and for the administration of the statutory provisions against legal avoidance concerning taxes covered by this Convention. 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 Convention.

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

(a) to carry out administrative measures at variance with the laws or the administration 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 information, the disclosure of which would be contrary to public policy.

Article 27

Miscellaneous

1. Without prejudice to the application of Article 23, the provisions of this Convention shall not limit the rights and benefits which the laws of a Contracting State grant in respect of the taxes which are the subject of Article 2.

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

3. For the purposes of this Convention, persons who are members of a diplomatic or consular mission of a Contracting State in the other Contracting State or in a third State and who are nationals of the sending State, shall be deemed to be residents of the sending State if they are submitted therein to the same obligations in respect of taxes on income and capital gains as are residents of that State.

4. This Convention shall not apply to international organisations, to organs or officials thereof and to persons who are members of a diplomatic or consular mission of a third State, being present in a Contracting State and not treated in either Contracting State as residents in respect of taxes on income or capital gains.

5. The competent authorities of the Contracting States may communicate with each other directly for the purpose of giving effect to the provisions of this Convention and for resolving any difficulty or doubt as to the application or interpretation of this Convention.

Article 28

Suspension of Shipping and Aircraft Agreement of 1952

The agreement between the Union of South Africa and the Government of Israel constituted by the exchange of notes, dated 24 December 1952, for the avoidance of double taxation on income and profits from sea and air transport shall not have effect for any year or period for which this Convention has effect.

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

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

Notwithstanding any provisions of this Convention, a benefit under this Convention 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 Convention.

Article 29

Entry into Force

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Jerusalem as soon as possible.

2. This Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect-

(a) in Israel, as respects taxes which are levied for tax years commencing on or after 1 April 1978;
(b) in South Africa, as respects taxes which are levied for years of assessment commencing on or after 1 March 1978;
(c) in both Contracting States, as respects taxes withheld at source on dividends, interest and royalties paid or accrued, thirty (30) days after the date on which this Convention enters into force.

Article 30

Termination

This Convention shall remain in force indefinitely but either of the Contracting States may terminate the Convention, through the diplomatic channel, by giving to the other Contracting State written notice of termination not later than 30 June of any calendar year from the fifth year following that in which the instruments of ratification were exchanged. In such event the Convention shall have effect for the last time-

(a) in Israel, as respects taxes which are levied for tax years commencing on or after 1 April in the calendar year next following that in which the notice is given;
(b) in South Africa, as respects taxes which are levied for any years of assessment commencing on or after 1 March in the calendar year next following that in which the notice is given;
(c) in both Contracting States, as respects taxes withheld at source, on dividends, interest and royalties paid or accrued after the end of the calendar year in which such notice is given.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done in duplicate at Cape Town this 10th day of February 1978, in the English, Afrikaans and Hebrew languages, all three texts being equally authentic except that in the case of doubt the English text shall prevail.

For the Government of South Africa: 0.
P. F. HORWOOD

For the Government of Israel:
S. EHRLICH