

NOTICE

No. 1538

24 December 1999

SOUTH AFRICAN REVENUE SERVICE

INCOME TAX ACT, 1962

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF AUSTRALIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

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

It is further notified in terms of Article 27 of the Agreement, that the date of entry into force is 21 December, 1999.

The provisions of the Agreement shall apply as follows:

- (a) in the case of Australia:
 - (i) with regard to withholding tax on income derived by a non-resident, in respect of income derived on or after 1 January 2000; and
 - (ii) with regard to other Australian tax, in respect of income, profits or gains of any year of income beginning on or after 1 July 2000;
- (b) in the case of South Africa:
 - (i) with regard to taxes withheld at source, in respect of amounts paid or credited on or after 1 January 2000; and
 - (ii) with regard to other South African tax, in respect of years of assessment beginning on or after 1 January 2000.

The Agreement and the Protocol thereto was published in Government Gazette No 20761 dated 24 December 1999.

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF AUSTRALIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of South Africa and the Government of Australia,

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have agreed as follows:

Article 1

Personal Scope

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

Article 2

Taxes Covered

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

(a) in the case of Australia:

the income tax, and the resource rent tax in respect of offshore projects relating to exploration for or exploitation of petroleum resources, imposed under the federal law of Australia;

(b) in the case of South Africa:

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

2. The Agreement shall apply also to any identical or substantially similar taxes which are imposed under the federal law of Australia or by the Government of the Republic of South Africa under its domestic law after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in the law of their respective States relating to the taxes to which the Agreement applies within a reasonable period of time after those changes.

Article 3

General Definitions

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

- (a) the term "Australia", when used in a geographical sense, excludes all external territories other than:
 - (i) the Territory of Norfolk Island;
 - (ii) the Territory of Christmas Island;
 - (iii) the Territory of Cocos (Keeling) Islands;
 - (iv) the Territory of Ashmore and Cartier Islands;
 - (v) the Territory of Heard Island and McDonald Islands; and
 - (vi) the Coral Sea Islands Territory,

and includes any area adjacent to the territorial limits of Australia (including the Territories specified in this subparagraph) in respect of which there is for the time being in force, consistently with international law, a law of Australia dealing with the exploration for or exploitation of any of the natural resources of the seabed and subsoil of the continental shelf;

- (b) the term "South Africa" means the Republic of South Africa and, when used in a geographical sense, includes its territorial sea as well as any area outside the territorial sea, including the continental shelf, which has been or may hereafter be designated, under the laws of South Africa and in accordance with international law, as an area within which South Africa may exercise sovereign rights or jurisdiction;
- (c) the term "Australian tax" means tax imposed by Australia, being tax to which the Agreement applies by virtue of Article 2;
- (d) the term "South African tax" means tax imposed by South Africa, being tax to which the Agreement applies by virtue of Article 2;
- (e) the term "company" means any body corporate or any entity which is treated as a company or body corporate for tax purposes;
- (f) the term "competent authority" means, in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner and, in the case of South Africa, the Commissioner for the South African Revenue Service or an authorised representative of the Commissioner;
- (g) the terms "a Contracting State" and "other Contracting State" mean Australia or South Africa, as the context requires;
- (h) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean an enterprise carried on by a resident of Australia or an enterprise carried on by a resident of South Africa, as the context requires;
- (i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely from a place or between places in the other Contracting State;
- (j) the term "person" includes an individual, a company and any other body of persons;
- (k) the term "tax" means Australian tax or South African tax as the context requires, but does not include any penalty or interest imposed under the law of either Contracting State relating to its tax.

2. As regards the application of the Agreement at any time by a Contracting State, any term not defined in the Agreement shall, unless the context otherwise requires, have the meaning which it has at that time under the law of that State concerning the taxes to which the Agreement applies, any meaning under the applicable law of that State prevailing over a meaning given to the term under other law of that State.

Article 4

Residence

1. For the purposes of this Agreement, a person is a resident of a Contracting State:
 - (a) in the case of Australia, if the person is a resident of Australia for the purposes of Australian tax but does not include any person who is liable to tax in Australia in respect only of income from sources in Australia; and
 - (b) in the case of South Africa, any individual who is ordinarily resident in South Africa and any other person which has its place of effective management in South Africa.

The term "resident" also includes a Contracting State and any political subdivision or local authority of that State.

2. Where by reason of the preceding provisions of this Article a person, being an individual, is a resident of both Contracting States, then the person shall be deemed to be a resident only of the Contracting State in which a permanent home is available to the person, or if a permanent home is available to the person in both Contracting States, or in neither of them, the person shall be deemed to be a resident only of the Contracting State with which the person's personal and economic relations are closer.

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

Article 5

Permanent Establishment

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

2. The term "permanent establishment" includes:
 - (a) a place of management;
 - (b) a branch;
 - (c) an office;
 - (d) a factory;
 - (e) a workshop;
 - (f) a mine, an oil or gas well, a quarry or any other place relating to the exploration for or exploitation of natural resources;
 - (g) an agricultural, pastoral or forestry property; and
 - (h) a building site or construction, installation or assembly project which exists for more than 12 months.

3. An enterprise shall not be deemed to have a permanent establishment merely by reason of:
- (a) the use of facilities solely for the purpose of storage, display or irregular delivery of goods or merchandise belonging to the enterprise; or
 - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or irregular delivery; or
 - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise; or
 - (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; or
 - (e) the maintenance of a fixed place of business solely for the purpose of activities which have a preparatory or auxiliary character for the enterprise, such as advertising or scientific research.

4. An enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if:

- (a) it carries on supervisory activities in that State for more than 12 months in connection with a building site, or a construction, installation or assembly project, which is being undertaken in that State; or
- (b) substantial equipment is being used in that State by, for or under contract with the enterprise; or
- (c) a person acting in a Contracting State on behalf of an enterprise of the other Contracting State manufactures or processes in the firstmentioned State for the enterprise goods or merchandise belonging to the enterprise.

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 of that enterprise in the firstmentioned State if the person has, and habitually exercises in that State, an authority to conclude contracts on behalf of the enterprise, unless the person's 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 State through a person who is a broker, general commission agent or any other agent of an independent status and is acting in the ordinary course of the person's business as such a broker or agent.

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

8. The principles set forth in the preceding paragraphs of this Article shall be applied in determining for the purposes of paragraph 5 of Article 11 and paragraph 5 of Article 12 whether there is a permanent establishment outside both Contracting States, and whether an enterprise, not being an enterprise of a Contracting State, has a permanent establishment in a Contracting State.

Article 6

Income from Real (Immovable) Property

1. Income from real property may be taxed in the Contracting State in which the real property is situated.
2. In this Article, the term "real property":
 - (a) in the case of Australia, has the meaning which it has under the law of Australia and includes:
 - (i) a lease of land and any other interest in or over land, whether improved or not, including a right to explore for mineral, oil or gas deposits or other natural resources, and a right to mine those deposits or resources; and
 - (ii) a right to receive variable or fixed payments either as consideration for or in respect of the exploitation of, or the right to explore for or exploit, mineral, oil or gas deposits, quarries or other places of extraction or exploitation of natural resources; and
 - (b) in the case of South Africa, means such property which according to the law of South Africa is immovable property, and includes:
 - (i) property accessory to immovable property;
 - (ii) rights to which the provisions of general law respecting landed property apply;
 - (iii) usufruct of immovable property; and
 - (iv) a right to receive variable or fixed payments either as consideration for or in respect of the exploitation of, or the right to explore for or exploit, mineral, oil or gas deposits, quarries or other places of extraction or exploitation of natural resources.
3. Any interest or right referred to in paragraph 2 shall be regarded as situated where the land, immovable property, mineral, oil or gas deposits, quarries or natural resources, as the case may be, are situated or where the exploration may take place.
4. The provisions of paragraph 1 shall apply to income derived from the direct use, letting or use in any other form of real property.
5. The provisions of paragraphs 1, 3 and 4 shall also apply to income from real property of an enterprise and to income from real 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 in that other State. If the enterprise carries on business in that manner, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated in that other State, there shall in each Contracting State be attributed to that permanent establishment the profits which it might reasonably 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 or with other enterprises with which it deals.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses of the enterprise, being expenses which are incurred for the purposes of the permanent establishment (including executive and general administrative expenses so incurred) and which would be deductible if the permanent establishment were an independent entity which paid those expenses, whether incurred 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. Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person, including determinations in cases where the information available to the competent authority of that State is inadequate to determine the profits to be attributed to a permanent establishment, provided that that law shall be applied, so far as it is practicable to do so, consistently with the principles of this Article.

6. Where profits include items of income or gains 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. Nothing in this Article shall affect the operation of any law of a Contracting State relating to tax imposed on profits from insurance with nonresidents provided that if the relevant law in force in either Contracting State at the date of signature of the Agreement is varied (otherwise than in minor respects so as not to affect its general character) the Contracting States shall consult with each other with a view to agreeing to any amendment of this paragraph that may be appropriate.

8. Where:

- (a) a resident of a Contracting State is beneficially entitled, whether directly or through one or more interposed trust estates, to a share of the business profits of an enterprise carried on in the other Contracting State by the trustee of a trust estate other than a trust estate which is treated as a company for tax purposes; and
- (b) in relation to that enterprise, that trustee would, in accordance with the principles of Article 5, have a permanent establishment in that other State,

the enterprise carried on by the trustee shall be deemed to be a business carried on in the other State by that resident through a permanent establishment situated in that other State and that share of business profits shall be attributed to that permanent establishment.

For the purposes of this paragraph, in the case of South Africa "trust estate" means a trust.

Article 8

Ships and Aircraft

1. Profits of an enterprise of a Contracting State derived from the operation of ships or aircraft shall be taxable only in that State.
2. Notwithstanding the provisions of paragraph 1, those profits may be taxed in the other Contracting State to the extent that they are profits derived directly or indirectly from ship or aircraft operations confined solely to places in that other State.
3. The profits to which the provisions of paragraphs 1 and 2 apply shall include profits from:
 - (a) the lease of ships or aircraft on a bareboat basis, and of containers and related equipment, which is merely incidental to the international operation of ships or aircraft by the lessor, provided that the leased ships or aircraft, or the containers and related equipment, are used in international operations by the lessee; and
 - (b) the operation of ships or aircraft derived through participation in a pool service or other profit sharing arrangement.
4. For the purposes of this Article, profits derived from the carriage by ships or aircraft of passengers, livestock, mail, goods or merchandise which are shipped in a Contracting State and are discharged at a place in that State shall be treated as profits from ship or aircraft operations confined solely to places in that State.

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 operate between the two enterprises in their commercial or financial relations which differ from those which might reasonably be expected to operate between independent enterprises dealing wholly independently with one another, then any profits which, but for those conditions, might reasonably have been expected to accrue 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. Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person, including determinations in cases where the information available to the competent authority of that State is inadequate to determine the profits accruing to an enterprise, provided that that law shall be applied, so far as it is practicable to do so, consistently with the principles of this Article.

3. Where profits on which an enterprise of a Contracting State has been charged to tax in that State are also included, by virtue of the provisions of paragraph 1 or 2, in the profits of an enterprise of the other Contracting State and charged to tax in that other State, and the profits so included are profits which might reasonably have been expected to have accrued to that enterprise of the other State if the conditions operative between the enterprises had been those which might reasonably have been expected to have operated between independent enterprises dealing wholly independently with one another, then the firstmentioned State shall make an appropriate adjustment to the amount of the tax charged on those profits in the firstmentioned State if that State agrees with the primary adjustment. In determining the adjustment by the firstmentioned State, due regard shall be had to the other provisions of this Agreement and for this purpose 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 for the purposes of its tax, being dividends to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

2. However, those dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident for the purposes of its tax, and according to the law of that State, but:

- (a) no tax shall be charged on dividends where those dividends are paid out of profits that have borne the normal rate of company tax where those dividends are paid to a company which holds directly at least 10 per cent of the capital of the company paying the dividends; and
- (b) tax charged shall not exceed 15 per cent of the gross amount of the dividends in all other cases,

provided that if the relevant law in either Contracting State at the date of signature of this Agreement is varied otherwise than in minor respects so as not to affect its general character, the Contracting States shall consult each other with a view to agreeing to any amendment of this paragraph that may be appropriate.

3. For the purposes of paragraph 2, profits have borne the normal rate of company tax:

- (a) in Australia, to the extent to which the dividends have been fully "franked" in accordance with its law relating to tax; and
- (b) in South Africa, where they have been subject to South African tax.

4. The term "dividends" as used in this Article means income from shares, as well as other amounts which are subjected to the same taxation treatment as income from shares by the law of the State of which the company making the distribution is a resident for the purposes of its tax.

5. The provisions of paragraphs 1 and 2 shall not apply if the person beneficially entitled to the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated in that other State, or performs in that other State independent personal services from a fixed base situated in that other State, and the holding in respect of which the dividends are paid is effectively connected with that permanent establishment or fixed base. In that case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Where a company is a resident of a Contracting State, the other Contracting State may not impose any tax on dividends paid by the company, except insofar as:

- (a) a resident of that other State is beneficially entitled to the dividends; or
- (b) the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State; or
- (c)
 - (i) that other State does not subject profits attributable to a permanent establishment to tax in excess of the rate of income tax (in the case of Australia) or normal tax (in the case of South Africa) payable on the profits of a company which is a resident of that State; and
 - (ii) the dividends are paid out of profits attributable to one or more permanent establishments which the company has in that other State.

Where subparagraph (c) applies and subparagraphs (a) and (b) do not apply, the tax shall not exceed 5 per cent of the gross amount of the dividends. This paragraph shall not apply in relation to dividends paid by any company which is a resident of Australia for the purposes of Australian tax and which is also a resident of South Africa for the purposes of South African tax.

7. Notwithstanding any other provisions of the Agreement, where a company which is a resident of a Contracting State has a permanent establishment in the other Contracting State, that other State may tax the profits attributable to the permanent establishment at a rate not exceeding by more than 5 percentage points:

- (a) in the case of Australia, the rate of income tax payable on the profits of a company which is a resident of Australia; and
- (b) in the case of South Africa, the rate of normal tax payable on the profits of a company which is a resident of South Africa.

Article 11

Interest

1. Interest arising in a Contracting State, being interest to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

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

3. The term "interest" in this Article includes interest from government securities or from bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, interest from any other form of indebtedness, as well as income which is subjected to the same taxation treatment as income from money lent by the law of the Contracting State in which the income arises.

4. The provisions of paragraphs 1 and 2 shall not apply if the person beneficially entitled to 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 in that other State, or performs in that other State independent personal services from a fixed base situated in that other State, and the indebtedness in respect of which the interest is paid is effectively connected with that permanent establishment or fixed base. In that 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, or a political subdivision or local authority of that State or a person who is a resident of that State for the purposes of its tax. Where, however, the person paying the interest, whether the person is a resident of a Contracting State or not, has in a Contracting State or outside both Contracting States a permanent establishment or fixed base in connection with which the indebtedness on which the interest is paid was incurred, and that interest is borne by that permanent establishment or fixed base, then the interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the person beneficially entitled to the interest, or between both of them and some other person, the amount of the interest paid, having regard to the indebtedness for which it is paid, exceeds the amount which might reasonably have been expected to have been agreed upon by the payer and the person so entitled in the absence of that relationship, the provisions of this Article shall apply only to the lastmentioned amount. In that case, the excess part of the amount of the interest paid shall remain taxable according to the law 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, being royalties to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

2. However, those royalties may also be taxed in the Contracting State in which they arise, and according to the law of that State, but the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

3. The term "royalties" in this Article means payments or credits, whether periodical or not, and however described or computed, to the extent to which they are made as consideration for:

- (a) the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trademark or other like property or right; or
- (b) the use of, or the right to use, any industrial, commercial or scientific equipment; or
- (c) the supply of scientific, technical, industrial or commercial knowledge or information; or
- (d) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right as is mentioned in subparagraph (a), any such equipment as is mentioned in subparagraph (b) or any such knowledge or information as is mentioned in subparagraph (c); or
- (e) the use of, or the right to use:
 - (i) motion picture films; or
 - (ii) films or video tapes for use in connection with television; or
 - (iii) tapes for use in connection with radio broadcasting; or
- (f) the reception of, or the right to receive, visual images or sounds, or both, transmitted to the public by:
 - (i) satellite; or
 - (ii) cable, optic fibre or similar technology; or
- (g) the use in connection with television broadcasting or radio broadcasting, or the right to use in connection with television broadcasting or radio broadcasting, visual images or sounds, or both, transmitted by:
 - (i) satellite; or
 - (ii) cable, optic fibre or similar technology; or
- (h) total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph.

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

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself or a political subdivision or a local authority of that State or a person who is a resident of that State for the purposes of its tax. Where, however, the person paying the royalties, whether the person is a resident of a Contracting State or not, has in a Contracting State or outside both Contracting States a permanent establishment or fixed base in connection with which the liability to pay the royalties was incurred, and the royalties are borne by the permanent establishment or fixed base, then the royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, owing to a special relationship between the payer and the person beneficially entitled to the royalties, or between both of them and some other person, the amount of the royalties paid or credited, having regard to what they are paid or credited for, exceeds the amount which might reasonably have been expected to have been agreed upon by the payer and the person so entitled in the absence of that relationship, the provisions of this Article shall apply only to the lastmentioned amount. In that case, the excess part of the amount of the royalties paid or credited shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 13

Alienation of Property

1. Income, profits or gains derived by a resident of a Contracting State from the alienation of real property situated in the other Contracting State may be taxed in that other State.

2. Income, profits or gains from the alienation of property, other than real property, that forms part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or pertains to a fixed base available in that other State to a resident of the firstmentioned State for the purpose of performing independent personal services, including income, profits or gains from the alienation of that permanent establishment (alone or with the whole enterprise) or of that fixed base, may be taxed in that other State.

3. Income, profits or gains from the alienation of ships or aircraft operated in international traffic, or of property (other than real property) pertaining to the operation of those ships or aircraft, shall be taxable only in the Contracting State of which the enterprise alienating those ships, aircraft or other property is a resident.

4. Income, profits or gains derived by a resident of a Contracting State from the alienation of any shares or other interests in a company, or of an interest of any kind in a partnership or trust or other entity, where the value of the assets of such entity, whether they are held directly or indirectly (including through one or more interposed entities, such as, for example, through a chain of companies), is principally attributable to real property situated in the other Contracting State, may be taxed in that other State.

5. Nothing in this Agreement affects the application of a law of a Contracting State relating to the taxation of gains of a capital nature derived from the alienation of any property other than that to which any of the preceding paragraphs of this Article apply.

6. In this Article, the term "real property" has the same meaning as it has in Article 6.

7. The situation of real property shall be determined for the purposes of this Article in accordance with paragraph 3 of Article 6.

Article 14

Independent Personal Services

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless a fixed base is regularly available to the individual in the other Contracting State for the purpose of performing the individual's activities. If such a fixed base is available to the individual, the income may be taxed in the other State but only so much of it as is attributable to that fixed base. For the purposes of this Agreement, where an individual who is a resident of a Contracting State is present in the other Contracting State for a period or periods exceeding in the aggregate 183 days in any 12 month period commencing or ending in the year of income or year of assessment of that other State, the individual shall be deemed to have a fixed base regularly available in that other State and the income that is derived from the individual's activities performed in that other State shall be attributable to that fixed base.

2. The term "professional services" includes services performed in the exercise of independent scientific, literary, artistic, educational or teaching activities as well as in the exercise of 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 an individual who is 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 from that exercise may be taxed in that other State.

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

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any 12 month period commencing or ending in the year of income or year of assessment of that other State; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of that other State; and
- (c) the remuneration is not deductible in determining taxable profits of a permanent establishment or a fixed base which the employer has in that other State.

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

Article 16

Directors' Fees

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

Article 17

Entertainers and Sportspersons

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

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in that person's capacity as such accrues not to that person 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 sportsperson are exercised.

Article 18

Pensions and Annuities

1. Subject to the provisions of paragraph 2 of Article 19, pensions and annuities from sources in one Contracting State and paid to a resident of the other Contracting State shall be exempt from tax in the firstmentioned Contracting State to the extent that such pensions and annuities are included in taxable income in the other State.

2. Notwithstanding the provisions of paragraph 1, an annuity paid to an individual who is a former resident of a Contracting State which has been purchased by that individual by way of a lump sum cash consideration from an insurer in the course of that insurer's insurance business carried on in that State, may be taxed in that State.

3. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

Article 19

Government Service

1. Salaries, wages and other similar remuneration, other than a pension or annuity, paid by a Contracting State or a political subdivision or local authority of that State to an individual in respect of services rendered in the discharge of governmental functions shall be taxable only in that State. However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the recipient is a resident of that other State who:

- (a) is a citizen or national of that State; or
- (b) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of the funds created by, a Contracting State, or a political subdivision or a local authority of that State, to an individual in respect of services rendered in the discharge of governmental functions shall be taxable only in that State.
- (b) However, that pension shall be taxable only in the other Contracting State if the individual:
- (i) is a resident of, and a citizen or a national of that State; and
 - (ii) the services in respect of which that pension is paid were rendered in that State.

3. The provisions of paragraphs 1 and 2 shall not apply to salaries, wages and other similar remuneration or to pensions in respect of services rendered in connection with any business carried on by a Contracting State or a political subdivision or local authority of that State. In that case, the provisions of Articles 15 to 18, as the case may be, shall apply.

Article 20

Students

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

Article 21

Other Income

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

2. The provisions of paragraph 1 shall not apply to income, other than income from real property as defined in paragraph 2 of Article 6, derived by a resident of a Contracting State where that income is effectively connected with a permanent establishment or fixed base situated in the other Contracting State. In that case the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

Article 22

Source of Income

1. Income, profits or gains derived by a resident of a Contracting State which, under any one or more of Articles 6 to 8 and 10 to 19, may be taxed in the other Contracting State shall for the purposes of the law of that other Contracting State relating to its tax be deemed to be income from sources in that other Contracting State.

2. Income, profits or gains derived by a resident of a Contracting State which, under any one or more of Articles 6 to 8 and 10 to 19, may be taxed in the other Contracting State shall for the purposes of Article 23 and of the law of the firstmentioned Contracting State relating to its tax be deemed to be income from sources in the other Contracting State.

Article 23

Methods of Elimination of Double Taxation

1. Subject to the provisions of the law of Australia from time to time in force which relate to the allowance of a credit against Australian tax of tax paid in a country outside Australia (which shall not affect the general principle of this Article), South African tax paid under the law of South Africa and in accordance with this Agreement, whether directly or by deduction, in respect of income derived by a person who is a resident of Australia from sources in South Africa shall be allowed as a credit against Australian tax payable in respect of that income.

2. Where a company which is a resident of South Africa and is not a resident of Australia for the purposes of Australian tax pays a dividend to a company which is a resident of Australia and which controls directly or indirectly not less than 10 per cent of the voting power of the firstmentioned company, the credit referred to in paragraph 1 shall include the South African tax paid by that firstmentioned company in respect of that portion of its profits out of which the dividend is paid.

3. In the case of South Africa, Australian tax paid by a resident of South Africa in respect of income taxable in Australia in accordance with the Agreement, shall be deducted from the taxes due according to South African fiscal law. The deduction shall not, however, exceed an amount which bears to the total South African tax payable the same ratio as the income concerned bears to the total income.

Article 24

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for the person in taxation not in accordance with this Agreement, the person may, irrespective of the remedies provided by the domestic law of those States concerning taxes to which the Agreement applies, present a case to the competent authority of the Contracting State of which the person is a resident. The case must be presented within 3 years from the first notification of the action resulting in taxation not in accordance with the Agreement.

2. The competent authority shall endeavour, if the claim appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. The solution so 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 jointly endeavour to resolve any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of giving effect to the provisions of the Agreement.

5. For the purposes of paragraph 3 of Article XXII (Consultation) of the General Agreement on Trade in Services, the Contracting States agree that, notwithstanding that paragraph, any dispute between them as to whether a measure falls within the scope of that Agreement may be brought before the Council for Trade in Services, as provided by that paragraph, only with the consent of both Contracting States. Any doubt as to the interpretation of this paragraph shall be resolved under paragraph 3 of this Article 24 or, if the Contracting States fail to resolve that doubt, pursuant to any other procedure acceptable to both Contracting States.

Article 25

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 or of the domestic law of the Contracting States concerning taxes to which the Agreement applies insofar as the taxation under that law is not contrary to the Agreement. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic law of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes to which the Agreement applies. Those persons or authorities shall use the information only for those purposes. They may disclose the information in public court proceedings or in judicial decisions.

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

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

Article 26

Members of Diplomatic Missions and Consular Posts

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

Article 27

Entry into Force

The Government of Australia and the Government of the Republic of South Africa shall notify each other in writing through the diplomatic channel of the completion of their respective statutory and constitutional procedures required for the entry into force of this Agreement. The Agreement shall enter into force on the date of receipt of the last notification, and thereupon the Agreement shall have effect:

- (a) in the case of Australia:
 - (i) with regard to withholding tax on income that is derived by a nonresident, in respect of income derived on or after 1 January next following the date on which the Agreement enters into force;
 - (ii) with regard to other Australian tax, in respect of income, profits or gains of any year of income beginning on or after 1 July in the calendar year next following the date on which the Agreement enters into force;
- (b) in the case of South Africa:
 - (i) with regard to taxes withheld at source, in respect of amounts paid or credited on or after 1 January next following the date on which the Agreement enters into force;
 - (ii) with regard to other South African tax, in respect of years of assessment beginning on or after 1 January next following the date on which the Agreement enters into force.

Article 28

Termination

This Agreement shall continue in effect indefinitely, but either of the Government of Australia or the Government of the Republic of South Africa may, on or before 30 June in any calendar year beginning after the expiration of 5 years from the date of its entry into force, give to the other Government through the diplomatic channel written notice of termination and, in that event, the Agreement shall cease to be effective:

- (a) in the case of Australia:
 - (i) with regard to withholding tax on income that is derived by a nonresident, in respect of income derived on or after 1 January next following the date on which the notice of termination is given;
 - (ii) with regard to other Australian tax, in respect of income, profits or gains of any year of income beginning on or after 1 July in the calendar year next following the date on which the notice of termination is given;

- (b) in the case of South Africa:
 - (i) with regard to taxes withheld at source, in respect of amounts paid or credited after the end of the calendar year in which the notice of termination is given;
 - (ii) with regard to other South African tax, in respect of years of assessment beginning after the end of the calendar year in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, duly authorised by their respective Governments, have signed this Agreement.

DONE in duplicate at Canberra, Australia this 1st day of July, 1999.

Dr B G Ranchod
**FOR THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA**

Senator Rod Kemp
**FOR THE GOVERNMENT OF
AUSTRALIA**

PROTOCOL

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

AND

THE GOVERNMENT OF AUSTRALIA

HAVE AGREED AT THE SIGNING of the Agreement between the Governments of the two Contracting States for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income upon the following provisions which shall form an integral part of the Agreement:

1. If, in an agreement for the avoidance of double taxation that may subsequently be concluded between Australia and a third State, there is included a Non-discrimination Article, Australia shall immediately inform the Government of the Republic of South Africa in writing through the diplomatic channel and shall enter into negotiations with the Government of the Republic of South Africa with a view to providing comparable treatment for South Africa as may be provided for the third State.

2. If, in an agreement for the avoidance of double taxation that may subsequently be concluded between South Africa and a third State, the rate at which South Africa may impose the secondary tax on companies is limited, South Africa shall immediately inform the Government of Australia in writing through the diplomatic channel and shall enter into negotiations with the Government of Australia with a view to providing comparable treatment for Australia as may be provided for the third State.

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

DONE in duplicate at Canberra, Australia this 1st day of July, 1999.

Dr B G Ranchod
**FOR THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA**

Senator Rod Kemp
**FOR THE GOVERNMENT OF
AUSTRALIA**