

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

General disclaimer on the Synthesised text document

This document presents the synthesised text for the application of the Agreement between the Government of the Republic of South Africa and the Government of the Sultanate of Oman for the avoidance of double taxation and the prevention of fiscal evasion with respect to Taxes on Income signed on 9 October 2002, amended by the Protocol signed on 15 November 2011 (the “Agreement”), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by the Republic of South Africa on 7 June 2017 and by the Sultanate of Oman on 26 November 2019 (the “MLI”).

The document was prepared on the basis of the MLI position of the Republic of South Africa submitted to the Depository upon ratification on 30 September 2022 and of the MLI position of the Sultanate of Oman submitted to the Depository upon ratification on 7 July 2020. These MLI positions are subject to modifications as provided in the MLI. Modifications made to MLI positions could modify the effects of the MLI on the Agreement.

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

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

Changes to the text of the provisions of the MLI have been made to conform with the terminology used in the MLI to the terminology used in the Agreement (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 Agreement. Descriptive language has been replaced by legal references of the existing provisions to ease the readability.

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

References

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

The MLI position of the Republic of South Africa submitted to the Depository upon ratification on 30 September 2022 and of the MLI position of the Sultanate of Oman submitted to the Depository upon ratification on 7 July 2020 can be found on the MLI Depository (OECD) webpage [Signatories and Parties to the MLI](#).

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

Entry into Effect of the MLI Provisions

The provisions of the MLI applicable to the Agreement do not take effect on the same dates as the original provisions of the Agreement and the Protocol amending the Agreement. Each of the provisions of the MLI could take effect on different dates, depending on the types of taxes involved (taxes withheld at source or other taxes levied) and on the choices made by the Republic of South Africa and the Sultanate of Oman 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 7 July 2020 for the Sultanate of Oman.

Entry into force of the MLI: 1 January 2023 for the Republic of South Africa and 1 November 2020 for the Sultanate of Oman.

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 with respect to this Agreement:

- 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 that Contracting State, for taxes levied with respect to taxable periods beginning on or after 1 July 2023.

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 Agreement 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 Agreement prior to its modification by the MLI, without regard to the taxable period to which the case relates.

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

Preamble

The Government of the Republic of South Africa and the Government of the Sultanate of Oman

[MODIFIED by paragraph 1 of Article 6 of the MLI] [desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income] and to promote and strengthen the economic relations between the two countries,

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 Agreement:

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

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

Have agreed as follows:

Article 1

Persons Covered

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

Article 2

Taxes Covered

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property.
3. The existing taxes to which the Agreement shall apply are in particular:

- (a) in South Africa:
 - (i) the normal tax;
 - (ii) the secondary tax on companies
 - (iii) the withholding tax on royalties;(hereinafter referred to as “South African tax”);
- (b) in the case of the Sultanate of Oman:
the income tax;

(hereinafter referred to as “Omani tax”)¹.

4. The Agreement shall apply also to any identical or substantially similar taxes that are imposed by either Contracting State after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their respective taxation laws within a reasonable period of time after such changes.

Article 3

General Definitions

- 1. For the purposes of this Agreement, unless the context otherwise requires:
 - (a) the term “South Africa” means the Republic of South Africa and, when used in a geographical sense, includes the territorial sea thereof as well as any area outside the territorial sea, including the continental shelf, which has been or may hereafter be designated, under the laws of South Africa and in accordance with international law, as an area within which South Africa may exercise sovereign rights or jurisdiction;
 - (b) the term “the Sultanate of Oman” means the territory of the Sultanate of Oman and the islands belonging thereto, including the territorial waters and any area outside the territorial waters over which the Sultanate of Oman may, in accordance with international law and the laws of the Sultanate of Oman, exercise sovereign rights with respect to the exploration and exploitation of the natural resources of the sea-bed and the sub-soil and the superjacent waters;
 - (c) the terms “a Contracting State” and “the other Contracting State” mean South Africa or the Sultanate of Oman, as the context requires;
 - (d) the term “business” includes the performance of professional services and of other activities of an independent character;
 - (e) the term “person” includes an individual, a company, a body of persons and any other entity that is treated as a taxable unit under the taxation laws in force in the respective Contracting States;

¹ Subparagraph (b) of paragraph (3) of Article 2 deleted and replaced by Article 1 of the Supplementary Protocol Amending the Agreement between the Government of the Republic of South Africa and the Government of the Sultanate of Oman for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (Amending Protocol).

- (f) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (g) the term “enterprise” applies to the carrying on of any business;
- (h) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (i) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (j) the term “national” means:
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person or association deriving its status as such from the laws in force in a Contracting State;
- (k) the term “competent authority” means:
 - (i) in South Africa, the Commissioner for the South African Revenue Service or an authorised representative;
 - (ii) in the Sultanate of Oman, the Minister of National Economy and Supervisor of the Ministry of Finance or an authorised representative;
- (l) the term “tax” means Omani tax or South African tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which the Agreement applies or which represents a penalty imposed relating to those taxes.

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

Article 4

Resident

1. For the purposes of this Agreement, the term “resident of a Contracting State” means any person who, under the laws of that Contracting State, is liable to tax therein by reason of that person’s domicile, residence, place of management, place of registration or any other criterion of a similar nature, and also includes that Contracting State and any political subdivision or local authority thereof.

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

- (a) the individual shall be deemed to be a resident only of the Contracting State in which a permanent home is available to the individual; if a permanent home is available to the individual in both Contracting States, the individual shall be deemed to be a resident only of the Contracting State with which the individual's personal and economic relations are closer (centre of vital interests);
- (b) if the individual's status cannot be determined under the provisions of subparagraph (a), the individual shall be deemed to be a resident only of the Contracting State in which the individual has an habitual abode;
- (c) if the individual has an habitual abode in both Contracting States or in neither of them, the individual shall be deemed to be a resident only of the Contracting State of which the individual is a national;
- (d) if the status of the resident cannot be determined by reason of subparagraphs (a) to (c) in that sequence, 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 of this Article 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 Contracting State in which its place of effective management is situated.]

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

ARTICLE 4 OF THE MLI – DUAL RESIDENT ENTITIES

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

Article 5

Permanent Establishment

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

2. The term "permanent establishment" includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;

- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. The term “permanent establishment” likewise encompasses:

- (a) a building site, a construction, assembly or installation project or any supervisory activity in connection with such site or project, but only where such site, project or activity continues for a period of more than six months;
- (b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by an enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the Contracting State for a period or periods exceeding in the aggregate ninety days in any twelve-month period commencing or ending in the fiscal year concerned;
- (c) the performance of professional services or other activities of an independent character by an individual, but only where those services or activities continue within a Contracting State for a period or periods exceeding in the aggregate ninety days in any twelve-month period commencing or ending in the fiscal year concerned.

4. Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:

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

5. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, where a person, other than an agent of an independent status to whom paragraph 6 of this Article applies, is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such person:

- (a) has and habitually exercises in that Contracting State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 of this Article which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or

- (b) has no such authority, but habitually maintains in the first-mentioned Contracting State a stock of goods or merchandise from which such person delivers goods or merchandise on behalf of 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, provided that such persons are acting in the ordinary course of their business.

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

Article 6

Income from Immovable Property

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

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture (including the breeding and cultivation of fish) and forestry, and 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 shall also be considered as "immovable property". Ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 of this Article 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 of this Article shall also apply to the income from immovable property of an enterprise.

Article 7

Business Profits

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

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

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

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

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

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

Article 8

Shipping and Air Transport

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

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

- (a) profits from the rental on a bareboat basis of ships or aircraft;
- (b) profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise,

if such profits are incidental to the operation of ships or aircraft in international traffic.

3. For the purposes of this Article, interest on funds directly connected with the operation of ships or aircraft in international traffic shall be regarded as income or profits derived from the operation of such ships or aircraft, and the provisions of Article 11 shall not apply in relation to such interest.

4. The provisions of paragraphs 1, 2 and 3 of this Article shall also apply to profits derived from the participation in a pool, a joint business or an international operating agency.

5. The term "operation of ships or aircraft" means the business of transportation by sea or by air of passengers, mail, livestock or goods carried on by the owners, lessees or charterers of ships or aircraft, including the sale of tickets for such transportation on behalf of other enterprises, the incidental lease of ships or aircraft and any other activity, which the competent authorities mutually agree, is directly connected with such transportation.

6. With respect to profits derived by Gulf Air, the provisions of paragraphs 1, 2 and 3 of this Article shall apply only to the part of those profits which is attributable under its constitutive contract to the Government of the Sultanate of Oman.²

Article 9

Associated Enterprises

1. Where

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

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

2. Where a Contracting State includes, in accordance with the provisions of paragraph 1 of this Article, 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 where the competent authorities of the Contracting States agree, upon consultation, that all or part of 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 agreed profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement.

² Paragraph 6 of Article 8 shall in accordance with Article 3 of the Amending Protocol cease to be effective in respect of the income derived by Gulf Air on or after 6 November 2007.

Article 10³

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

- (a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds at least 10 per cent of the capital of the company paying the dividends; or
- (b) 10 per cent of the gross amount of the dividends in all other cases.

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

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

3. Notwithstanding the provisions of paragraph 2, dividends paid by a company which is a resident of a Contracting State to the Government of the other Contracting State shall be exempt from tax in the first-mentioned State.

4. For the purposes of paragraph 3, the term "Government" shall include:

- (a) in the case of the Sultanate of Oman:
 - (i) the Central Bank of Oman;
 - (ii) the State General Reserve Fund;
 - (iii) the Omani Investment Fund; and
 - (iv) any other statutory body or institution wholly owned by the Government of the Sultanate of Oman, as may be agreed from time to time between the competent authorities of the Contracting States.
- (b) in the case of South Africa:
 - (i) the South African Reserve Bank; and
 - (ii) any other statutory body or institution wholly owned by the Government of the Republic of South Africa, as may be agreed from time to time between the competent authorities of the Contracting States.

5. The term "dividends" as used in this Article means income from shares or other rights participating in profits (not being debt claims), as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the company making the distribution is a resident.

6. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

³ Article 10 deleted and replaced by Article 3 of the Amending Protocol.

7. 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, except in so far as such dividends are paid to a resident of that other Contracting State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other Contracting State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other Contracting State.

8. **[REPLACED BY paragraph 1 of Article 7 of the MLI]** [The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.]

Article 11

Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other Contracting State, provided such resident is the beneficial owner of the interest.

2. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purposes of this Article.

3. The provisions of paragraph 1 of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

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

5. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount of interest. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

6. **[REPLACED BY paragraph 1 of Article 7 of the MLI]** [The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.]

Article 12

Royalties

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

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

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including computer software, cinematograph films and films, tapes or discs for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein and the rightor property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that Contracting State. Where, however, the person paying the royalties, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment with which the right or property in respect of which the royalties are paid is effectively connected, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

7. **[REPLACED BY paragraph 1 of Article 7 of the MLI]** [The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment.]

Article 13

Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other 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, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other Contracting State.

3. Gains of an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that Contracting State.

4. With respect to gains derived by Gulf Air, the provisions of paragraph 3 of this Article shall apply only to the part of those gains which is attributable under its constitutive contract to the Government of the Sultanate of Oman.

5. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

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

Article 14

Income from Employment

1. Subject to the provisions of Articles 15, 17 and 18, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that 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 of this Article, 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 all the following conditions are met:

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

3. Notwithstanding the preceding paragraphs of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft in international traffic, may be taxed in the Contracting State of which the enterprise operating the ship or aircraft is a resident.

Article 15

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 Contracting State.

Article 16

Entertainers and Sportspersons

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

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

3. Income derived by an entertainer or a sportsperson from activities exercised in a Contracting State shall be exempt from tax in that Contracting State, if the visit to that Contracting State is supported wholly or mainly by public funds of the other Contracting State or a political subdivision or a local authority or a statutory body thereof.

Article 17

Pensions and Annuities

1. Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration, and annuities, arising in a Contracting State and paid to a resident of the other Contracting State, may be taxed in the first-mentioned Contracting State.

2. The term "annuity" means a stated sum payable to an individual periodically at stated times during the life of that individual 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 18

Government Service

1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority or a statutory body thereof to an individual in respect of services rendered to that Contracting State or subdivision or authority or body shall be taxable only in that Contracting State.

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

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

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

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

3. The provisions of Articles 14, 15, 16 and 17 shall apply to salaries, wages and other similar remuneration, and to pensions, in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority or a statutory body thereof.

Article 19

Students

Students or business apprentices who are present in a Contracting State solely for the purpose of their education or training and who are, or immediately before being so present were, residents 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 their maintenance, education or training.

Article 20

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 Contracting State.

2. The provisions of paragraph 1 of this Article shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

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

Article 21

Elimination of Double Taxation

Double taxation shall be eliminated as follows:

- (a) in South Africa, subject to the provisions of the law of South Africa regarding the deduction from tax payable in South Africa of tax payable in any country other than South Africa, Omani tax paid by a resident of South Africa in respect of income taxable in the Sultanate of Oman, in accordance with the provisions of this Agreement, shall be deducted from the taxes due according to South African fiscal law. Such deduction shall not, however, exceed an amount which bears to the total South African tax payable the same ratio as the income concerned bears to the total income;

- (b) in the Sultanate of Oman, where a resident of the Sultanate of Oman derives income which, in accordance with the provisions of this Agreement, may be taxed in South Africa, the Sultanate of Oman shall allow as a deduction from the tax on the income of that resident an amount equal to the South African tax paid, whether directly or by deduction. Such deduction shall not, however, exceed that part of the Omani tax (as computed before the deduction is given) which is attributable to the income which may be taxed in South Africa.

Article 22

Non-discrimination

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

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

3. Except where the provisions of paragraph 1 of Article 9, paragraph 5 of Article 11 or paragraph 6 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned Contracting State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned 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.

Article 23

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for that person in taxation not in accordance with this Agreement, that person may, irrespective of the remedies provided by the domestic law of those Contracting States, present a case to the competent authority of the Contracting State of which the person is a resident or, if the case comes under paragraph 1 of Article 22, to that of the Contracting State of which the person is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

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

3. **[MODIFIED by second 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 interpretation or application of the Agreement.]

The following second sentence of paragraph 3 of Article 16 of the MLI applies to this Agreement:

ARTICLE 16 OF THE MLI - MUTUAL AGREEMENT PROCEDURE

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 reaching an agreement in the sense of the preceding paragraphs.

Article 24

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 laws of the Contracting States concerning taxes covered by the Agreement in so far as the taxation thereunder is not contrary to the Agreement, in particular to prevent fiscal evasion. 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 laws of that Contracting 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 covered by the Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

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

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

Article 25

Members of Diplomatic Missions and Consular Posts

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

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

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

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

Article 26

Entry into Force

1. Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Agreement. The Agreement shall enter into force on the date of receipt of the later of these notifications.
2. The provisions of the Agreement shall apply:
 - (a) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the first day of January next following the date upon which the Agreement enters into force;
 - (b) with regard to other taxes, in respect of taxable years beginning on or after the first day of January next following the date upon which the Agreement enters into force.

Article 27

Termination

1. This Agreement shall remain in force indefinitely but either of the Contracting States may terminate the Agreement through the diplomatic channel, by giving to the other Contracting State written notice of termination at least six months before the end of any calendar year starting five years after the year in which the Agreement entered into force.

2. In such event the Agreement shall cease to apply:

- (a) with regard to taxes withheld at source, in respect of amounts paid or credited after the end of the calendar year in which such notice is given;
- (b) with regard to other taxes, in respect of taxable years beginning after the end of the calendar year in which such notice is given.

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

Done at Muscat on this day of14.... H, corresponding to the 9th day of October 2002 in two identical originals each in the English and Arabic languages, both texts being equally authoritative. In case of divergence between the texts, the English text shall prevail.

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

**FOR THE GOVERNMENT OF THE
SULTANATE OF OMAN**

PROTOCOL

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

1. With reference to Article 4:

The State General Reserve Fund of the Sultanate of Oman, which is beneficially owned and controlled by the Sultanate of Oman, is a resident of the Sultanate of Oman for the purposes of the Agreement.

2. With reference to Article 10:

It is understood that dividends arising in one of the Contracting States which are beneficially owned by a resident of the other Contracting State are not subjected to tax in the Contracting State in which they arise. Should there be any change in these systems, the Contracting States will reconsider the provisions of this Article at the request of either Contracting State and make any amendments which are considered necessary.

3. With reference to Article 22⁴:

- (i) It is understood that the provisions of this Article will not be fully implemented by the Sultanate of Oman until the Sultanate of Oman harmonises the tax rates applicable to enterprises which are carrying on activities in the Sultanate of Oman.

In WITNESS WHEREOF, the undersigned, duly authorised thereto, have signed this Protocol.

Done at Muscat on this day of14.... H, corresponding to the 9th day of October 2002 in two identical originals each in the English and Arabic languages, both texts being equally authoritative. In case of divergence between the texts, the English text shall prevail.

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

**FOR THE GOVERNMENT OF THE
SULTANATE OF OMAN**

⁴ Subparagraph (ii) of paragraph 3 of the Protocol shall be deleted in accordance with Article 4 of the Amending Protocol.