

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

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

This document presents the synthesised text for the application of the Convention between the Government of the Republic of South Africa and the Government of the Kingdom of Saudi Arabia for the avoidance of double taxation and the prevention of tax evasion with respect to Taxes on Income and on Capital signed on 13 March 2007 (the “Convention”), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by the Republic of South Africa on 7 June 2017 and by the Kingdom of Saudi Arabia on 18 September 2018 (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 Kingdom of Saudi Arabia submitted to the Depository upon ratification on 23 January 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 Convention.

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

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

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

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

## References

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

The MLI position of the Republic of South Africa submitted to the Depository upon ratification on 30 September 2022 and of the MLI position of the Kingdom of Saudi Arabia submitted to the Depository upon ratification on 23 January 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 Convention do not take effect on the same dates as the original provisions of the Convention. Each of the provisions of the MLI could take effect on different dates, depending on the types of taxes involved (taxes withheld at source or other taxes levied) and on the choices made by the Republic of South Africa and the Kingdom of Saudi Arabia 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 23 January 2020 for the Kingdom of Saudi Arabia.

Entry into force of the MLI: 1 January 2023 for the Republic of South Africa and 1 May 2020 for the Kingdom of Saudi Arabia.

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 Convention:

- a) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2023; and
- b) with respect to all other taxes levied by that Contracting State, for taxes levied with respect to taxable periods beginning on or after 1 July 2023.

**CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF THE KINGDOM OF SAUDI ARABIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF TAX EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL**

**Preamble**

The Government of the Republic of South Africa and the Government of the Kingdom of Saudi Arabia,

**[REPLACED by paragraph 1 and paragraph 3 of Article 6 of the MLI] [DESIRING** to conclude a Convention for the avoidance of double taxation and the prevention of tax evasion with respect to taxes on income and on capital,]

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

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

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

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

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

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

**HAVE AGREED** as follows:

**Article 1**

***Persons Covered***

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

## **Article 2**

### ***Taxes Covered***

1. This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its political or administrative subdivisions, irrespective of the manner in which they are levied.

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

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

(a) in the case of the Kingdom of Saudi Arabia:

- (i) the Zakat;
- (ii) the income tax including the natural gas investment tax;

(hereinafter referred to as the "Saudi tax"); and

(b) in the case of the Republic of South Africa:

- (i) the normal tax;
- (ii) the secondary tax on companies;
- (iii) the withholding tax on royalties;

(hereinafter referred to as the "South African tax").

4. The Convention shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their taxation laws.

## **Article 3**

### ***General Definitions***

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

(a) the term "Kingdom of Saudi Arabia" means the territory of the Kingdom of Saudi Arabia which also includes the area outside the territorial waters, where the Kingdom of Saudi Arabia exercises its sovereign and jurisdictional rights in their waters, sea bed, sub-soil and natural resources by virtue of its law and international law;

(b) the term "the Republic of South Africa" means 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, in which South Africa exercises sovereign rights or jurisdiction in accordance with international law;

(c) the terms "a Contracting State" and "the other Contracting State" mean the Kingdom of Saudi Arabia or South Africa, as the context requires;

- (d) the term “person” includes any individual, any company or any other body of persons, including the State, its political or administrative subdivisions or local authorities, estates, trusts and foundations;
- (e) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (f) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (g) the term “national” means:
  - (i) any individual possessing the nationality of a Contracting State;
  - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
- (h) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise that has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (i) the term “competent authority” means:
  - (i) in the case of the Kingdom of Saudi Arabia, the Ministry of Finance represented by the Minister of Finance or an authorised representative of the Minister; and
  - (ii) in the case of South Africa, the Commissioner for the South African Revenue Service or an authorised representative of the Commissioner.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Contracting State for the purposes of the taxes to which the Convention 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 Convention, the term “resident of a Contracting State” means:
  - (a) 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 or any other criterion of a similar nature, and also includes that Contracting State and any political or administrative subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that Contracting State in respect only of income from sources in that Contracting State or capital situated therein;
  - (b) a legal person organised under the laws of a Contracting State and that is generally exempt from tax in that Contracting State and is established and maintained in that Contracting State either:
    - (i) exclusively for religious, charitable, educational, scientific, or other similar purposes; or
    - (ii) to provide pensions or other similar benefits to employees pursuant to a plan.
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 solely 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 solely of the Contracting State with which the individual’s personal and economic relations are closer (centre of vital interests);
  - (b) if sole residence cannot be determined under the provisions of subparagraph (a), the individual shall be deemed to be a resident solely 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 solely of the Contracting State of which the individual is a national;
  - (d) if the individual is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. 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 solely of the Contracting State in which its place of effective management is situated.

## Article 5

### *Permanent Establishment*

1. For the purposes of this Convention, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term “permanent establishment” includes but is not limited to:
  - (a) a place of management;
  - (b) a branch;
  - (c) an office;
  - (d) a factory;
  - (e) a workshop;
  - (f) a mine, a quarry or any other place of extraction of natural resources.
3. The term “permanent establishment” also includes:
  - (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 the 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 six months in any twelve-month period commencing or ending in the fiscal year concerned.
4. **[MODIFIED by paragraph 2 of Article 13 of the MLI]** [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 of collecting information, for the enterprise;
  - (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
  - (f) the sale of goods or merchandise belonging to the enterprise displayed at an occasional temporary fair or exhibition after the closing of the said fair or exhibition;
  - (g) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (f), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.]

**The following paragraph 2 of Article 13 of the MLI modifies paragraph 4 of Article 5 of this Convention:**

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

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

- a) the activities specifically listed in paragraph 4 of Article 5 of this Convention as activities deemed not to constitute a permanent establishment, whether or not that exception from permanent establishment status is contingent on the activity being of a preparatory or auxiliary character;
  - b) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any activity not described in subparagraph a);
  - c) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) and b),
- provided that such activity or, in the case of subparagraph c), the overall activity of the fixed place of business, is of a preparatory or auxiliary character.

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

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

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

- a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of Article 5 of this Convention; or
  - b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,
- provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.



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 a 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 regularly delivers goods or merchandise on behalf of the enterprise.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that 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.

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

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

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

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

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 and to income from immovable property used for the performance of independent personal services.

## **Article 7**

### ***Business Profits***

1. The profits of an enterprise of a Contracting State shall be taxable only in that 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 income from debt-claims with regard to 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 income from debt-claims with regard to moneys lent to the head office of the enterprise or any of its other offices.

4. Notwithstanding any other provisions of this Convention, the business profits derived by an enterprise of a Contracting State from the export of merchandise to the other Contracting State shall not be taxed in that other Contracting State. Where contracts for the export of merchandise include other activities carried on through a permanent establishment of the enterprise in the other Contracting State the profits derived from those activities may be taxed in that other Contracting State.

5. Nothing in this Article shall affect the operation of any law of a Contracting State relating to tax imposed on profits from insurance with non-residents provided that if the relevant law in force in either Contracting State at the date of signature of the Convention 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 as may be appropriate.

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

7. For the purposes of the preceding paragraphs of this Article, 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.

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

9. The term "business profits" includes, but is not limited to income derived from manufacturing, trade, banking, insurance, from the operation of inland transportation, the furnishing of services and the rental of tangible personal movable property.

## **Article 8**

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

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

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

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

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

where such rental or such use or rental, as the case may be, is incidental to the operation of such ships or aircraft in international traffic.

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

## **Article 9**

### ***Associated Enterprises***

1. Where:

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

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

2. **[REPLACED by paragraph 1 of Article 17 of the MLI]** [Where a Contracting State includes in the profits of an enterprise of that Contracting State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other Contracting State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Contracting State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Contracting State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.]

**The following paragraph 1 of Article 17 of the MLI replaces paragraph 2 of Article 9 of this Convention:**

#### **ARTICLE 17 OF THE MLI – CORRESPONDING ADJUSTMENTS**

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

#### **Article 10**

##### ***Dividends***

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

2. However, such dividends may 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 (other than a partnership) which holds directly 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.

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

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

4. The provisions of paragraphs 1 and 2 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, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. 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 or a fixed base situated in that other Contracting State, nor subject the company's undistributed profits to a tax on the company's 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.

## **Article 11**

### ***Income from Debt-claims***

1. Income from debt-claims 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 income from debt-claims may also be taxed in the Contracting State in which it arises and according to the laws of that Contracting State, but if the beneficial owner of the income from debt-claims is a resident of the other Contracting State, the tax so charged shall not exceed 5 per cent of the gross amount of the income from debt-claims.

3. The term "income from debt-claims" 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 income from debt-claims for the purposes of this Article.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the income from debt-claims, being a resident of a Contracting State, carries on business in the other Contracting State in which the income from debt-claims arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Income from debt-claims shall be deemed to arise in a Contracting State when the payer is a resident of that Contracting State. Where, however, the person paying such income, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the income is paid was incurred, and such income is borne by such permanent establishment or fixed base, then such income shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

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

## **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 10 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 cinematograph films, or films, tapes or discs used 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, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. 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 or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

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

## **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 or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other Contracting State.
3. Gains from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. Gains from the alienation of 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 Contracting State.
5. Gains from the alienation of shares other than those mentioned in paragraph 4 of this Article representing a participation of 25 per cent in a company which is a resident of a Contracting State may be taxed in that Contracting State.
6. Gains derived 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**

### ***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 Contracting State except in the following circumstances, when such income may also be taxed in the other Contracting State:

- (a) if such a fixed base is regularly available to the individual in the other Contracting State for the purpose of performing the individual's activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or
- (b) if the individual's stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from the individual's activities performed in that other Contracting State may be taxed in that other Contracting State; or
- (c) if the remuneration for the individual's activities in the other Contracting State is paid by a resident of that Contracting State or is borne by a permanent establishment situated in that Contracting State and exceeds the equivalent of 100 000 US dollars in the fiscal year concerned.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

## **Article 15**

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

1. Subject to the provisions of Articles 16, 18, 19 and 21, 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:

- (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, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting State, and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other Contracting State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

4. An individual who is both a national of a Contracting State and an employee of an enterprise of that Contracting State the principal business of which consists of the operation of aircraft in international traffic and who derives remuneration in respect of duties performed in the other Contracting State shall be exempt from tax in that other Contracting State on remuneration derived from the employee's employment with that enterprise for a period of five years beginning on the date on which the employee first performs duties in that other Contracting 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 Contracting State.

## **Article 17**

### ***Artists 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 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, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. Income derived by a resident of a Contracting State from activities exercised in the other Contracting State as envisaged in paragraphs 1 and 2 of this Article, shall be exempt from tax in that other Contracting State if the visit to that other Contracting State is supported wholly or mainly by public funds of the first-mentioned Contracting State, a political or administrative subdivision or a local authority thereof, or takes place under a cultural agreement or arrangement between the Governments of the Contracting States.

## **Article 18**

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

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration, and annuities, arising in a Contracting State and paid to a resident of the other Contracting State, may be taxed in the first-mentioned Contracting State.

2. Notwithstanding the provisions of paragraph 1 of this Article, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State or a political or administrative subdivision or a local authority thereof shall be taxable only in that Contracting 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. (a) Salaries, wages and other similar remuneration paid by a Contracting State or a political or administrative subdivision or a local authority thereof to an individual in respect of services rendered to that Contracting State or subdivision or authority 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 other 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) Notwithstanding the provisions of paragraph 1 of this Article, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a political or administrative subdivision or a local authority thereof to an individual in respect of services rendered to that Contracting State or subdivision or authority shall be taxable only in that Contracting State.

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

3. The provisions of Articles 15, 16, 17, 18 and 21 shall apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political or administrative subdivision or a local authority thereof.

## **Article 20**

### ***Students***

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

2. In respect of grants, scholarships and remuneration from employment not covered by paragraph 1 of this Article, a student envisaged in paragraph 1 of this Article shall, in addition, be entitled during such education or training to the same exemptions, reliefs or reductions in respect of taxes available to residents of the Contracting State which such student is visiting.

## **Article 21**

### ***Teachers and Researchers***

1. Notwithstanding the provisions of Article 15, a professor or teacher who is invited to visit one of the Contracting States for a period not exceeding in the aggregate two years from the date of first arrival in that Contracting State, solely for the purpose of teaching or carrying out research at a university, college, school or other educational institution in that Contracting State and who is, or immediately before such visit was, a resident of the other Contracting State shall, in respect of remuneration for such teaching or research, be exempt from tax in the first-mentioned Contracting State, provided that such remuneration is derived by that professor or teacher from outside that Contracting State.

2. The provisions of this Article shall not apply to income from research if such research is undertaken not in the public interest but wholly or mainly for the private benefit of a specific person or persons.

## **Article 22**

### ***Other Income***

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention 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, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

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 Convention and arising in the other Contracting State may also be taxed in that other Contracting State.

## **Article 23**

### ***Capital***

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State may be taxed in that other Contracting State.
2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other Contracting State.
3. Capital represented by ships and aircraft operated in international traffic and by movable property pertaining to the operation of such ships and aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. All other elements of capital of a resident of a Contracting State shall be taxable only in that Contracting State.

## **Article 24**

### ***Methods for Elimination of Double Taxation***

1. Double taxation shall be eliminated as follows:
  - (a) in the case of the Kingdom of Saudi Arabia, where a resident of the Kingdom of Saudi Arabia derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in South Africa, the Kingdom of Saudi Arabia shall deduct the amount paid in South Africa, as a tax specified in Article 2 of this Convention, against the tax levied in the Kingdom of Saudi Arabia. The amount of such deduction shall not, however, exceed the amount of tax on that income or capital computed in accordance with the taxation laws and regulations of the Kingdom of Saudi Arabia;
  - (b) in the case of South Africa, subject to the provisions of the law of South Africa regarding the deduction from tax payable in South Africa of tax payable in any country other than South Africa (which shall not affect the general principle hereof), Saudi tax paid by residents of South Africa in respect of income taxable in the Kingdom of Saudi Arabia, in accordance with the provisions of this Convention, 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.
2. In the case of the Kingdom of Saudi Arabia, the methods for elimination of double taxation will not prejudice the provisions of the Zakat collection regime as regards Saudi nationals.

## **Article 25**

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

1. Where a person considers that the actions of one or both of the Contracting States result or will result for that person in taxation not in accordance with the provisions of this Convention, 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. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

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

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

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

5. The competent authorities of the Contracting States may by mutual agreement settle the appropriate mode of application of the Convention and, especially, the requirements to which the residents of a Contracting State shall be subjected in order to obtain, in the other Contracting State, the tax reliefs or exemptions provided for by the Convention.

## **Article 26**

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

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention in so far as the taxation thereunder is not contrary to the Convention in particular for the prevention of fraud or evasion of such taxes. 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 Convention. 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 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.

## **Article 27**

### ***Miscellaneous Provisions***

1. Income envisaged in Articles 10, 11 and 12 which is derived by the Government (including the Saudi Arabian Monetary Agency in the case of Saudi Arabia and the South African Reserve Bank in the case of South Africa, and wholly owned State entities), of a Contracting State in the other Contracting State, together with any gains derived from the alienation of shares, debt-claims or rights from which such income is derived, shall be exempt from taxation in that other Contracting State.

2. Nothing in this Convention shall be interpreted to mean that a Contracting State is prevented from applying its domestic law with regard to the prevention of tax evasion or tax avoidance.

## **Article 28**

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

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

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

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

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

## **Article 29**

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

1. Each of the Contracting States shall notify to the other in writing, through the diplomatic channel the completion of the procedures required by its law for the entry into force of this Convention. The Convention shall enter into force on the first day of the second month following the month in which the later of these notifications was received.

2. The provisions of the Convention 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 Convention enters into force; and
- (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 Convention enters into force.

## **Article 30**

### ***Termination***

1. This Convention shall remain in force indefinitely but either of the Contracting States may terminate the Convention through the diplomatic channel, by giving to the other Contracting State written notice of termination not later than 30 June of any calendar year starting five years after the year in which the Convention entered into force.

2. In such event the Convention 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; and
- (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.

I  
IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Convention.

DONE at Riyadh in duplicate, this 13<sup>th</sup> day of March 2007 in the English and Arabic languages, both texts being equally authentic.

Dr Nkosazana Dlamini Zuma  
**FOR THE GOVERNMENT OF THE  
REPUBLIC OF SOUTH AFRICA**

(Signed)  
**FOR THE GOVERNMENT OF THE  
KINGDOM OF SAUDI ARABIA**