

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 HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA 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 Hong Kong Special Administrative Region of the People's Republic of China for the avoidance of double taxation and the prevention of fiscal evasion with respect to Taxes on Income signed by the Republic of South Africa on 30 September 2014 and the Hong Kong Special Administrative Region of the People's Republic of China (the Hong Kong Special Administrative Region) on 16 October 2014 (the "Agreement"), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by the Republic of South Africa and the People's Republic of China on 7 June 2017 (the "MLI").

The document was prepared on the basis of the MLI position of the Republic of South Africa submitted to the Depositary upon ratification on 30 September 2022, of the MLI position submitted by the People's Republic of China on behalf of the Hong Kong Special Administrative Region to the Depositary upon approval on 25 May 2022 and of the notification made by the People's Republic of China on behalf of the Hong Kong Special Administrative Region to the Depositary pursuant to Article 35(7)(b) of the MLI on 21 February 2023. 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 2017 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", "Contracting States" and "Contracting Parties"), 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 Depositary upon ratification on 30 September 2022, the MLI position submitted by the People's Republic of China on behalf of the Hong Kong Special Administrative Region to the Depositary upon approval on 25 May 2022 and the notification made by the People's Republic of China on behalf of the Hong Kong Special Administrative Region to the Depositary pursuant to Article 35(7)(b) of the MLI on 21 February 2023 can be found on the MLI Depositary (OECD) webpage [Signatories and Parties to the MLI](#).

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

Entry into Effect of the MLI Provisions

The provisions of the MLI applicable to the Agreement do not take effect on the same dates as the original provisions of the Agreement. Each of the provisions of the MLI could take effect on different dates, depending on the types of taxes involved (taxes withheld at source or other taxes levied) and on the choices made by the Republic of South Africa and the People's Republic of China on behalf of the Hong Kong Special Administrative Region 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 25 May 2022 for the People's Republic of China (including the Hong Kong Special Administrative Region).

Entry into force of the MLI: 1 January 2023 for the Republic of South Africa and 1 September 2022 for the People's Republic of China (including the Hong Kong Special Administrative Region).

Date of receipt by the Depositary of the notification made by the People's Republic of China on behalf of the Hong Kong Special Administrative Region confirming the completion of the Hong Kong Special Administrative Region's internal procedures for the entry into effect of the provisions of the MLI with respect to the Agreement: 21 February 2023.

- a) The provisions of the MLI shall have effect in each Contracting Party with respect to the Agreement:
 - i) in the Republic of South Africa:
 - A) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2024; and
 - B) with respect to all other taxes, for taxes levied with respect to taxable periods beginning on or after 23 September 2023; and
 - ii) in the Hong Kong Special Administrative Region:
 - 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 the first day of the taxable period that begins on or after 23 March 2023; and

- B) with respect to all other taxes, for taxes levied with respect to taxable periods beginning on or after 23 September 2023.

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA 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 Hong Kong Special Administrative Region of the People's Republic of China;

[REPLACED by paragraph 1 and paragraph 3 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;]

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),

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

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

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

HAVE AGREED AS FOLLOWS:

ARTICLE 1

PERSONS COVERED

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

ARTICLE 2

TAXES COVERED

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting Party or of its political subdivisions, 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:

- (a) in the case of the Hong Kong Special Administrative Region,
 - (i) profits tax;
 - (ii) salaries tax; and
 - (iii) property tax;whether or not charged under personal assessment;

- (b) in the case of South Africa,
 - (i) the normal tax;
 - (ii) the withholding tax on royalties;
 - (iii) the dividend tax;
 - (iv) the withholding tax on interest; and
 - (v) the tax on foreign entertainers and sportspersons.

4. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes, as well as any other taxes falling within paragraphs 1 and 2 of this Article which a Contracting Party may impose in future. The competent authorities of the Contracting Parties shall notify each other of any significant changes that have been made in their taxation laws.

5. The existing taxes, together with the taxes imposed after the signature of the Agreement, are hereinafter referred to as "Hong Kong Special Administrative Region tax" or "South African tax", as the context requires.

ARTICLE 3

GENERAL DEFINITIONS

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

- (a) the term "Hong Kong Special Administrative Region" means any territory where the tax laws of the Hong Kong Special Administrative Region of the People's Republic of China apply;

- (b) the term “South Africa” means the Republic of South Africa and, when used in a geographical sense, includes the territorial sea thereof as well as any area outside the territorial sea, including the continental shelf, which has been or may hereafter be designated, under the laws of South Africa and in accordance with international law, as an area within which South Africa may exercise sovereign rights or jurisdiction;
- (c) the term “business” includes the performance of professional services and of other activities of an independent character;
- (d) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (e) the term “competent authority” means:
 - (i) in the case of the Hong Kong Special Administrative Region, the Commissioner of Inland Revenue or an authorised representative of the Commissioner; and
 - (ii) in the case of South Africa, the Commissioner for the South African Revenue Service or an authorised representative of the Commissioner;
- (f) the term “Contracting Party” or “the other Contracting Party” means the Hong Kong Special Administrative Region or South Africa, as the context requires;
- (g) the term “enterprise” applies to the carrying on of any business;
- (h) the terms “enterprise of a Contracting Party” and “enterprise of the other Contracting Party” mean respectively an enterprise carried on by a resident of a Contracting Party and an enterprise carried on by a resident of the other Contracting Party;
- (i) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting Party, except when the ship or aircraft is operated solely between places in the other Contracting Party;
- (j) the term “national”, in relation to South Africa means:
 - (i) any individual possessing the nationality or citizenship of South Africa; and
 - (ii) any legal person or association deriving its status as such from the laws in force in South Africa;
- (k) the term “person” includes an individual, a company and any other body of persons that is treated as an entity for tax purposes;
- (l) the term “tax” means the Hong Kong Special Administrative Region tax or South African tax, as the context requires.

2. In the Agreement, the terms “Hong Kong Special Administrative Region tax” and “South African tax” do not include any penalty or interest (however described) imposed under the laws of either Contracting Party relating to the taxes covered by the Agreement.

3. As regards the application of the provisions of the Agreement at any time by a Contracting Party, 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 Party for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

ARTICLE 4

RESIDENT

1. For the purposes of this Agreement, the term “resident of a Contracting Party” means:
 - (a) in the case of the Hong Kong Special Administrative Region,
 - (i) any individual who ordinarily resides in the Hong Kong Special Administrative Region;
 - (ii) any individual who stays in the Hong Kong Special Administrative Region for more than 180 days during a year of assessment or for more than 300 days in two consecutive years of assessment one of which is the relevant year of assessment;
 - (iii) a company incorporated in the Hong Kong Special Administrative Region or, if incorporated outside the Hong Kong Special Administrative Region, being normally managed or controlled in the Hong Kong Special Administrative Region;
 - (iv) any other person constituted under the laws of the Hong Kong Special Administrative Region or, if constituted outside the Hong Kong Special Administrative Region, being normally managed or controlled in the Hong Kong Special Administrative Region;
 - (b) in the case of South Africa, any person who, under the laws of South Africa, is liable to tax therein by reason of that person’s domicile, residence, place of management or any other criterion of a similar nature. This term, however, does not include any person who is liable to tax in South Africa in respect only of income from sources in South Africa;
 - (c) in the case of either Contracting Party, the Government of that Party and any political subdivision or local authority thereof.

2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting Parties, then that individual’s status shall be determined as follows:
 - (a) the individual shall be deemed to be a resident only of the Party in which a permanent home is available to the individual; if a permanent home is available to the individual in both Parties, the individual shall be deemed to be a resident only of the Party with which the individual’s personal and economic relations are closer (centre of vital interests);
 - (b) if the Party in which the centre of vital interests is situated cannot be determined, or if the individual has not a permanent home available in either Party, the individual shall be deemed to be a resident only of the Party in which the individual has an habitual abode;

- (c) if the individual has an habitual abode in both Parties or in neither of them, the individual shall be deemed to be a resident only of the Party in which the individual has the right of abode (in the case of the Hong Kong Special Administrative Region) or of which the individual is a national (in the case of South Africa);
- (d) if the individual has the right of abode in the Hong Kong Special Administrative Region and is also a national of South Africa, or if the individual does not have the right of abode in the Hong Kong Special Administrative Region nor is the individual a national of South Africa, the competent authorities of the Contracting Parties shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Contracting Parties, then it shall be deemed to be a resident of the Party in which its place of effective management is situated. In cases of doubt, the competent authorities of the Contracting Parties shall endeavour to determine by mutual agreement the Party in which that person's place of effective management is exercised, and in doing so, shall take into account all relevant factors. In the absence of such agreement, that person shall not be entitled to claim any benefits provided by the Agreement, except those provided by Articles 21, 22 and 23.

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; and
 - (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
3. The term "permanent establishment" also encompasses:
 - (a) a building site, a construction, assembly or installation project or any supervisory activity in connection with such site or project, but only if such site, project or activity continues for a period of more than six months;
 - (b) the furnishing of services by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue (for the same or a connected project) within a Contracting Party for a period or periods aggregating more than 183 days within any twelve-month period commencing or ending in the taxable period concerned; and
 - (c) for an individual, the performing of services in a Contracting Party by that individual, but only if the individual's stay in that Party is for a period or periods aggregating more than 183 days within any twelve-month period commencing or ending in the taxable period 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 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 maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (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, where a person – other than an agent of an independent status to whom paragraph 6 applies – is acting in a Contracting Party on behalf of an enterprise of the other Contracting Party, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting Party in respect of any activities which that person undertakes for the enterprise, if such a person:

- (a) has and habitually exercises in that Contracting Party 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 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 Party a stock of goods or merchandise from which the 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 Party merely because it carries on business in that Party 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 Party controls or is controlled by a company which is a resident of the other Contracting Party, or which carries on business in that other Party (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 Party from immovable property (including income from agriculture or forestry) situated in the other Contracting Party may be taxed in that other Party.
2. The term "immovable property" shall have the meaning which it has under the law of the Contracting Party 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, quarries, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise.

ARTICLE 7

BUSINESS PROFITS

1. The profits of an enterprise of a Contracting Party shall be taxable only in that Party unless the enterprise carries on business in the other Contracting Party 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 Party, but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting Party carries on business in the other Contracting Party through a permanent establishment situated therein, there shall in each Contracting Party 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 determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Party in which the permanent establishment is situated or elsewhere.
4. In so far as it has been customary in a Contracting Party to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting Party 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 Party from the operation of ships or aircraft in international traffic shall be taxable only in that Party.

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

ARTICLE 9

ASSOCIATED ENTERPRISES

1. Where

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

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

ARTICLE 10

DIVIDENDS

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

2. However, such dividends may also be taxed in the Contracting Party of which the company paying the dividends is a resident and according to the laws of that Party, but if the beneficial owner of the dividends is a resident of the other Contracting Party, 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 directly at least 10 per cent of the capital of the company paying the dividends;
- (b) 10 per cent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting Parties 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. 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 Party of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting Party, carries on business in the other Contracting Party 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.

5. Where a company which is a resident of a Contracting Party derives profits or income from the other Contracting Party, that other Party 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 Party 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 Party, 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 Party.

6. **[REPLACED by paragraph 1 of Article 7 of the MLI]** [No relief shall be available under this Article 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 Party and paid to a resident of the other Contracting Party may be taxed in that other Party.

2. However, such interest may also be taxed in the Contracting Party in which it arises and according to the laws of that Party, but if the beneficial owner of the interest is a resident of the other Contracting Party, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

The competent authorities of the Contracting Parties shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2 of this Article, interest arising in a Contracting Party is exempt from tax in that Party, if it is paid:

- (a) in the case of the Hong Kong Special Administrative Region,
 - (i) to the Government of the Hong Kong Special Administrative Region;
 - (ii) to the Hong Kong Monetary Authority;
 - (iii) to any institution wholly or mainly owned by the Government of the Hong Kong Special Administrative Region as may be agreed from time to time between the competent authorities of the Contracting Parties;
- (b) in the case of South Africa,
 - (i) to the Government of South Africa and any political subdivision or local authority thereof;
 - (ii) to the Reserve Bank of South Africa;
 - (iii) to any institution wholly or mainly owned by the Government of South Africa as may be agreed from time to time between the competent authorities of the Contracting Parties.

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

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting Party, carries on business in the other Contracting Party 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.

6. Interest shall be deemed to arise in a Contracting Party when the payer is a resident of that Party. Where, however, the person paying the interest, whether that person is a resident of a Contracting Party or not, has in a Contracting Party 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 Party in which the permanent establishment is situated.

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

8. **[REPLACED by paragraph 1 of Article 7 of the MLI]** [No relief shall be available under this Article 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 Party and paid to a resident of the other Contracting Party may be taxed in that other Party.

2. However, such royalties may also be taxed in the Contracting Party in which they arise and according to the laws of that Party, but if the beneficial owner of the royalties is a resident of the other Contracting Party, the tax so charged shall not exceed 5 per cent of the gross amount of the royalties.

The competent authorities of the Contracting Parties shall by mutual agreement settle the mode of application of this limitation.

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 and films, tapes or discs for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting Party, carries on business in the other Contracting Party in which the royalties arise through a permanent establishment situated therein and the right or 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 Party when the payer is a resident of that Party. Where, however, the person paying the royalties, whether that person is a resident of a Contracting Party or not, has in a Contracting Party a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Party 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 Party, due regard being had to the other provisions of this Agreement.

7. **[REPLACED by paragraph 1 of Article 7 of the MLI]** [No relief shall be available under this Article 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 Party from the alienation of immovable property referred to in Article 6 and situated in the other Contracting Party may be taxed in that other Party.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting Party has in the other Contracting Party, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other Party.
3. Gains derived by an enterprise of a Contracting Party 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 Party.
4. Gains derived by a resident of a Contracting Party from the alienation of shares deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting Party may be taxed in that other Party. However, this paragraph does not apply to gains derived from the alienation of shares:
 - (a) quoted on the Stock Exchange of Hong Kong Limited or the Johannesburg Stock Exchange or such other stock exchange as may be agreed between the competent authorities of the Contracting Parties; or
 - (b) in a company deriving more than 50 per cent of its asset value from immovable property in which it carries on its business.
5. Gains from the alienation of any property, other than that referred to in paragraphs 1, 2, 3 and 4, shall be taxable only in the Contracting Party 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 Party in respect of an employment shall be taxable only in that Party unless the employment is exercised in the other Contracting Party. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Party.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting Party in respect of an employment exercised in the other Contracting Party shall be taxable only in the first-mentioned Party if:
 - (a) the recipient is present in the other Party for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the taxable period concerned, and
 - (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Party, and

- (c) the remuneration is not borne by a permanent establishment which the employer has in the other Party.

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

ARTICLE 15

DIRECTORS' FEES

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

ARTICLE 16

ENTERTAINERS AND SPORTSPERSONS

1. Notwithstanding the provisions of Articles 7 and 14, income derived by a resident of a Contracting Party 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 Party, may be taxed in that other Party.

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 Party in which the activities of the entertainer or sportsperson are exercised.

ARTICLE 17

PENSIONS

Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration (including a lump sum payment) arising in a Contracting Party and paid to a resident of the other Contracting Party in consideration of past employment and social security pensions shall be taxable only in the first-mentioned Party.

ARTICLE 18

GOVERNMENT SERVICE

- 1. (a) Salaries, wages and other similar remuneration paid by the Government of a Contracting Party or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Party or subdivision or authority shall be taxable only in that Party.

- (b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting Party if the services are rendered in that Party and the individual is a resident of that Party who:
 - (i) in the case of the Hong Kong Special Administrative Region, has the right of abode therein and in the case of South Africa, is a national thereof; or
 - (ii) did not become a resident of that Party solely for the purpose of rendering the services.
- 2. (a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration (including a lump sum payment) paid by or out of funds created or contributed by, the Government of a Contracting Party or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Party or subdivision or authority shall be taxable only in that Party.
- (b) However, if the individual who rendered the services is a resident of the other Contracting Party and the case falls within subparagraph (b) of paragraph 1 of this Article, any corresponding pension and other similar remuneration (including a lump sum payment) shall be taxable only in that other Contracting Party.
- 3. The provisions of Articles 14, 15, 16 and 17 shall apply to salaries, wages, pensions and other similar remuneration (including a lump sum payment) in respect of services rendered in connection with a business carried on by the Government of a Contracting Party or a political subdivision or a local authority thereof.

ARTICLE 19

STUDENTS

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

ARTICLE 20

OTHER INCOME

- 1. Items of income of a resident of a Contracting Party, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that Party.
- 2. The provisions of paragraph 1 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 Party, carries on business in the other Contracting Party 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, items of income of a resident of a Contracting Party not dealt with in the foregoing Articles of the Agreement and arising in the other Contracting Party may also be taxed in that other Party.

ARTICLE 21

METHODS FOR ELIMINATION OF DOUBLE TAXATION

1. Subject to the provisions of the law of the Hong Kong Special Administrative Region relating to the allowance of a credit against Hong Kong Special Administrative Region tax of tax paid in a jurisdiction outside the Hong Kong Special Administrative Region (which shall not affect the general principle of this Article), South African tax paid under the laws of South Africa and in accordance with this Agreement, whether directly or by deduction, in respect of income derived by a person who is a resident of the Hong Kong Special Administrative Region from sources in South Africa, shall be allowed as a credit against Hong Kong Special Administrative Region tax payable in respect of that income, provided that the credit so allowed does not exceed the amount of Hong Kong Special Administrative Region tax computed in respect of that income in accordance with the tax laws of the Hong Kong Special Administrative Region.

2. 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), Hong Kong Special Administrative Region tax paid by residents of South Africa in respect of income taxable in the Hong Kong Special Administrative Region, in accordance with the provisions of the 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.

ARTICLE 22

NON-DISCRIMINATION

1. Persons who, in the case of the Hong Kong Special Administrative Region, have the right of abode or are incorporated or otherwise constituted therein, and, in the case of South Africa, are South African nationals, shall not be subjected in the other Contracting Party to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which persons who have the right of abode or are incorporated or otherwise constituted in that other Party (where that other Party is the Hong Kong Special Administrative Region) or nationals of that other Party (where that other Party is South Africa) 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 Parties.

2. The taxation on a permanent establishment which an enterprise of a Contracting Party has in the other Contracting Party shall not be less favourably levied in that other Party than the taxation levied on enterprises of that other Party carrying on the same activities. This provision shall not be construed as obliging a Contracting Party to grant to residents of the other Contracting Party 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 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting Party to a resident of the other Contracting Party 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 Party.

4. Enterprises of a Contracting Party, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting Party, shall not

be subjected in the first-mentioned Party 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 the first-mentioned Party 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 Parties result or will result for that person in taxation not in accordance with the provisions of this Agreement, that person may, irrespective of the remedies provided by the domestic law of those Parties, present a case to the competent authority of the Contracting Party of which the person is a resident or, if the case comes under paragraph 1 of Article 22, to that of the Contracting Party in which the person has the right of abode or is incorporated or otherwise constituted (in the case of the Hong Kong Special Administrative Region) or of which the person is a national (in the case of South Africa). 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 Party, 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 Parties.

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

4. The competent authorities of the Contracting Parties may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, 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 Parties shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws of the Contracting Parties concerning taxes covered by the Agreement, in so far as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1.

2. Any information received under paragraph 1 by a Contracting Party shall be treated as secret in the same manner as information obtained under the domestic laws of that Party 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 referred to in paragraph 1. 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.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting Party the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting Party;
- (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 Party;
- (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*).

4. If information is requested by a Contracting Party in accordance with this Article, the other Contracting Party shall use its information gathering measures to obtain the requested information, even though that other Party may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting Party to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting Party to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

ARTICLE 25

MEMBERS OF GOVERNMENT MISSIONS

Nothing in this Agreement shall affect the fiscal privileges of members of government missions, including 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

MISCELLANEOUS RULES

Nothing in this Agreement shall prejudice the right of each Contracting Party to apply its domestic laws and measures concerning tax avoidance, whether or not described as such.

ARTICLE 27

ENTRY INTO FORCE

1. Each of the Contracting Parties shall notify the other in writing of 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 the later of these notifications.

2. The provisions of the Agreement shall apply:

- (a) in the case of the Hong Kong Special Administrative Region, in respect of Hong Kong Special Administrative Region tax, for any year of assessment beginning on or after the first day of April next following the date upon which the Agreement enters into force;
- (b) in the case of South Africa,
 - (i) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the first day of January next following the date upon which the Agreement enters into force; and
 - (ii) with regard to other taxes, in respect of years of assessment beginning on or after the first day of January next following the date upon which the Agreement enters into force.

ARTICLE 28

TERMINATION

1. This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may terminate the Agreement by giving the other Contracting Party written notice of termination at least six months before the end of any calendar year.

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

- (a) in the case of the Hong Kong Special Administrative Region, in respect of Hong Kong Special Administrative Region tax, for any year of assessment beginning after the end of the calendar year in which such notice is given;

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

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Agreement in two originals in the English language, both texts being equally authentic.

DONE at Pretoria in the Republic of South Africa on this 30th day of September in the year 2014 and in the Hong Kong Special Administrative Region of the People's Republic of China on this 16th day of October in the year 2014.

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

**FOR THE GOVERNMENT OF THE
HONG KONG SPECIAL
ADMINISTRATIVE REGION OF THE
PEOPLE'S REPUBLIC OF CHINA**

PROTOCOL

At the time of signing of the Agreement between the Government of the Republic of South Africa and the Government of the Hong Kong Special Administrative Region of the People's Republic of China for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income ("the Agreement"), the two Governments have agreed on the following provisions which shall form an integral part of the Agreement.

1. With reference to Article 17 (Pensions)

It is understood that in the case of the Hong Kong Special Administrative Region, the term "pensions and other similar remuneration (including a lump sum payment)" includes payments arising from schemes for self-employed individuals.

2. With reference to Article 24 (Exchange of Information)

It is understood that:

- (a) the Article does not require the Contracting Parties to exchange information on an automatic or a spontaneous basis; and
- (b) information exchanged shall not be disclosed to any third jurisdiction.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Protocol in two originals in the English language, both texts being equally authentic.

DONE at Pretoria in the Republic of South Africa on this 30th day of September in the year 2014 and in the Hong Kong Special Administrative Region of the People's Republic of China on this 16th day of October in the year 2014.

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