

# **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 FRENCH REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL 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 Government of the Republic of South Africa and the Government of the French Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to Taxes on Income and on Capital signed on 8 November 1993 (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 French Republic 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 Depository upon ratification on 30 September 2022 and of the MLI position of the French Republic submitted to the Depository upon ratification on 26 September 2018. These MLI positions are subject to modifications as provided in the MLI. Modifications made to MLI positions could modify the effects of the MLI on the Convention.

The authentic legal texts of the Convention and the MLI take precedence and remain the legal texts applicable.

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

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 Descriptive language has been replaced by legal references of the existing provisions to ease the readability.

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

## 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 French Republic submitted to the Depository upon ratification on 26 September 2018 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 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 French Republic 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 26 September 2018 for French Republic.

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 FRENCH REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL**

**Preamble**

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

**[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 fiscal 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**

***Personal Scope***

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 local authorities, 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 France:

- (i) the income tax ("l'impôt sur le revenu");
- (ii) the corporation tax ("l'impôt sur les sociétés");
- (iii) the tax on salaries ("la taxe sur les salaires");
- (iv) the wealth tax ("l'impôt de solidarité sur la fortune");

and any withholding tax, prepayment (précompte) or advance payment with respect to the aforesaid taxes;

(hereinafter referred to as "French tax");

(b) in the case of South Africa:

- (i) the normal tax;
- (ii) the non-resident shareholders' tax; (hereinafter referred to as "South African tax").

4. The Convention shall apply also to any identical or substantially similar taxes which 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 substantial changes which have been made in their respective taxation laws.

### **Article 3**

#### ***General Definitions***

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

- (a) the terms "a Contracting State" and "the other Contracting State" mean France or South Africa, as the context requires;
- (b) the term "France" means the European and overseas departments of the French Republic including the territorial sea, and any area outside the territorial sea within which, in accordance with international law, the French Republic has sovereign rights for the purpose of exploring and exploiting the natural resources of the seabed and its subsoil and the superjacent waters;
- (c) 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 which, in accordance with international law, has been or may hereafter be designated, under the laws of South Africa, as an area within which South Africa may exercise sovereign rights or jurisdiction;

- (e) the term "person" includes an individual, a company and any other body of persons which is treated as an entity for tax purposes;
- (f) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which 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 France, the Minister in charge of the Budget or his authorised representative;
  - (ii) in the case of South Africa, the Commissioner for Inland Revenue or his authorised representative.

2. As regards the application of the Convention by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that State concerning the taxes to which the Convention applies. The meaning of a term under the taxation law of that State shall have priority over the meaning provided for such term in other branches of law of that State.

#### **Article 4**

##### ***Resident***

1. For the purposes of this Convention, the term "resident of a Contracting State" means:
  - (a) in the case of France, any person who, under the French laws, is liable to tax in France by reason of his domicile, residence, place of management or any other criterion of a similar nature;
  - (b) in the case of South Africa, any individual who is ordinarily resident in South Africa, and any person, other than an individual, which has its place of effective management in South Africa.
  
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:
  - (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
  - (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
  - (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
  - (d) if he is a national of both 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 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

4. The term "resident of a Contracting State" shall include:

- (a) that State, its local authorities and statutory bodies of either;
- (b) in the case of France, a partnership or other group of persons subject to a substantially similar tax regime under French taxation law, whose place of effective management is situated in France and is not liable to corporation tax in France.

## **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 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. A building site or construction or assembly project constitutes a permanent establishment only if it lasts more than twelve months.

4. **[Modified by paragraph 4 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, display or delivery of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or 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 subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.]

**The following paragraph 4 of Article 13 of the MLI is inserted immediately after paragraph 4 of Article 5 of the Convention 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**

Paragraph 4 of Article 5 of this Convention, 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, where a person other than an agent of an independent status to whom paragraph 6 applies is acting on behalf of an enterprise and has, and habitually exercises in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for 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.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that 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 State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

**[INSERTED by paragraph 1 of Article 15 of the MLI immediately after paragraph 7 of Article 5 of this Convention]**

**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 State.
2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture 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 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.
5. Where the ownership of shares or other rights in a company or legal person entitles the owner to the enjoyment of immovable property situated in a Contracting State and held by that company or legal person, income derived by the owner from the direct use, letting or use in any other form of his right of enjoyment may be taxed in that State.



## **Article 7**

### ***Business Profits***

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated 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, 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 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 State in which the permanent establishment is situated or elsewhere.
4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
5. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
6. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

## **Article 8**

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

1. 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. Those profits shall include profits derived by the enterprise from activities which are incidental to such operation, and in particular profit derived from the use, maintenance or rental of containers used for the transport of goods or merchandise in international traffic.
2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.
3. The provisions of paragraph 1 shall also apply to profits derived 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 State and taxes accordingly profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits where that other State considers the adjustment justified. 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 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 State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

- (a) **[MODIFIED by paragraph 1 of Article 8 of the MLI]** [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];

**The following paragraph 1 of Article 8 of the MLI applies to subparagraph (a) of paragraph 2 of Article 10 of this Convention:**

#### **ARTICLE 8 OF THE MLI – DIVIDEND TRANSFER TRANSACTIONS**

Subparagraph (a) paragraph 2 of Article 10 of this Convention shall apply only if the ownership conditions described in those provisions are met throughout a 365 day period that includes the day of the payment of the dividends (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that holds the shares or that pays the dividends).

- (b) 15 per cent of the gross amount of the dividends in all other cases.

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

3. A resident of South Africa who receives dividends paid by a company which is a resident of France may obtain the refund of the prepayment (précompte) effectively paid, if any, by the company in respect of such dividends. The gross amount of the prepayment (précompte) refunded shall be deemed to be dividends for the purposes of this Convention. It shall be taxable in France according to the provisions of paragraph 2 of this Article.

4. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income treated as a distribution by the taxation laws of the Contracting State of which the company making the distribution is a resident. The term "dividends" shall not include income mentioned in Article 16.

5. The provisions of paragraphs 1, 2 and 3 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 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.

6. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar 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 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 State.

## **Article 11**

### ***Interest***

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

2. The term "interest" as used in this Article means income from debt -claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article. The term "interest" shall not include any item of income which is treated as a dividend under the provisions of Article 10.

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest 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.

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

5. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. 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 shall be taxable only in that other State, if such resident is the beneficial owner of the royalties and if such royalties are subject to tax in that other State.

2. 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 or similar right, 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.

3. The provisions of paragraph 1 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.

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

5. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the 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. (a) 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 State.

(b) **[REPLACED by paragraph 4 of Article 9 of the MLI]** [Gains from the alienation of shares or rights in a company or legal person the assets of which consist principally, directly or through the interposition of one or more other companies or legal persons, of immovable property situated in a Contracting State or of rights connected with such immovable property may be taxed in that State.] For the purposes of this provision, immovable property pertaining to the industrial, commercial or agricultural operation of such company or legal person or to the performance of its independent personal services shall not be taken into account.

**The following paragraph 4 of Article 9 of the MLI replaces the first sentence of subparagraph (b) of paragraph 1 of Article 13 of this Convention:**

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

Gains derived by a resident of a Contracting State from the alienation of shares or comparable interests, such as interests in a partnership or trust, may be taxed in the other Contracting State if, at any time during the 365 days preceding the alienation, these shares or comparable interests derived more than 50 per cent of their value directly or indirectly from immovable property (real property) situated in that other Contracting State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including 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 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 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 a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purposes of performing his activities. If he has such a fixed base, the income may be taxed in the other Contracting State but only so much of it as is attributable to that fixed base.

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, and 19, 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 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 State.

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

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

4. 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.

## **Article 16**

### ***Director's Fees***

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

2. Other remuneration, which a person to whom the provisions of paragraph 1 apply derives from the company in respect of the discharge of functions as an employee, shall be taxable in accordance with the provisions of Article 15.

## **Article 17**

### ***Artistes and Athletes***

1. Notwithstanding the provisions of Articles 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 an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself 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 athlete are exercised.

3. Notwithstanding the provisions of paragraph 1, income derived by a resident of a Contracting State as an entertainer or an athlete from his personal activities as such exercised in the other Contracting State shall be taxable only in the first-mentioned State if those activities in the other State are supported mainly by public funds of the first-mentioned State, its local authorities or statutory bodies of either.

4. Notwithstanding the provisions of paragraph 2, where income in respect of personal activities exercised by an entertainer or an athlete, resident of a Contracting State, in his capacity as such in the other Contracting State accrues not to the entertainer or athlete himself but to another person, that income, notwithstanding the provisions of Articles 7, 14 and 15, shall be taxable only in the first-mentioned State, if that other person is supported mainly by public funds of that State, its local authorities or statutory bodies of either.

## **Article 18**

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

Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid in consideration of past employment to a resident of a Contracting State and any annuity paid to such resident may be taxed in that State and shall be exempt from tax in the other Contracting State to the extent that they are subject to tax in the first-mentioned State.

## **Article 19**

### ***Public Remuneration***

1. (a) Remuneration, other than a pension, paid by a Contracting State or a local authority thereof, or by a statutory body of either to an individual in respect of services rendered shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of, and a national of, that State without being also a national of the first-mentioned State.



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

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State without being also a national of the first-mentioned State.

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a local authority thereof or by a statutory body of either.

## **Article 20**

### ***Students***

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

## **Article 21**

### ***Other Income***

1. Any item 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 State if such item of income is subject to tax in that State.

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 State, carries on business in the other Contracting State 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 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.

## **Article 22**

### ***Capital***

1. (a) 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 State.

(b) Shares or rights in a company or legal person the assets of which consist principally, directly or through the interposition of one or more other companies or legal persons, of immovable property situated in a Contracting State or of rights connected with such immovable property may be taxed in that State. For the purposes of this provision, immovable property pertaining to the industrial, commercial or agricultural operation of such company or legal person or to the performance of its independent personal services shall not be taken into account.

2. Capital represented by shares or rights (other than shares or rights referred to in subparagraph (b) of paragraph 1) forming part of a substantial interest in a company which is a resident of a Contracting State may be taxed in that State. A substantial interest shall be deemed to exist when a person, alone or together with related persons, holds directly or indirectly shares or rights the total of which gives right to at least 25 per cent of the profits of the company.

3. 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 State.

4. 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.

5. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

## **Article 23**

### ***Elimination of Double Taxation***

1. In the case of France, double taxation shall be avoided in the following manner:
  - (a) Income arising in South Africa, which may be taxed or shall be taxable only in that State in accordance with the provisions of this Convention, shall be taken into account for the computation of the French tax where the beneficiary of such income is a resident of France and where such income is not exempted from corporation tax according to French law. In that case, the South African tax shall not be deductible from such income, but the beneficiary shall be entitled to a tax credit against French tax. Such tax credit shall be equal:
    - (i) in the case of income other than that mentioned in sub-paragraph (ii), to the amount of French tax attributable to such income;
    - (ii) in the case of income referred to in paragraph 2 of Article 10, paragraph 1 of Article 13, paragraph 3 of Article 15, paragraph 1 of Article 16 and paragraphs 1 and 2 of Article 17, to the amount of tax paid in South Africa in accordance with the provisions of those Articles; however, such tax credit shall not exceed the amount of French tax attributable to such income. It is understood that the term "amount of tax paid in South Africa" means the amount of South African tax effectively and definitively borne in respect of the income in question, in accordance with the provisions of the Convention, by the beneficiary who is a resident of France.

- (b)
  - (i) Where French domestic law allows companies which are residents of France to determine their taxable profits on a consolidation basis including the profits or losses of subsidiaries which are residents of South Africa or of permanent establishments situated in South Africa, the provisions of the Convention shall not prevent the application of that law.
  - (ii) Where, in accordance with its domestic law, France in determining the taxable profits of residents of France deducts the losses of subsidiaries which are residents of South Africa or of permanent establishments situated in South Africa and includes the profits of those subsidiaries or of those permanent establishments up to the amount of the losses so deducted, the provisions of the Convention shall not prevent the application of that law.
  - (iii) Nothing in the Convention shall prevent France from applying the provisions of Article 209 B of its tax code (code général des impôts) or any substantially similar provisions which may amend or replace the provisions of that Article.
- (c) A resident of France who owns capital which may be taxed in South Africa according to paragraphs 1 and 2 of Article 22 shall also be taxable in France in respect of such capital. The French tax shall be computed by allowing a tax credit equal to the amount of the tax paid in South Africa on such capital. That tax credit shall not exceed the amount of the French tax attributable to such capital.

2. In the case of South Africa, double taxation shall be avoided in the following manner: taxes paid by residents of South Africa in respect of income or capital taxable in France, in accordance with the provisions of the Convention, shall be deducted from the South African taxes due. Such deduction shall not, however, exceed that part of the income tax or capital tax, as computed before the deduction is given, which is attributable to the income or capital which may be taxed in France.

3. (a) As regards the provisions of subparagraphs (a) and (c) of paragraph 1:
- (i) it is understood that the term "amount of French tax attributable to such income" means: (aa) where the tax on such income is computed by applying a proportional rate, the amount of the net income concerned multiplied by the rate which actually applies to that income; (bb) where the tax on such income is computed by applying a progressive scale, the amount of the net income concerned multiplied by the rate resulting from the ratio of the tax actually payable on the total net income taxable in accordance with French law to the amount of that total net income;
  - (ii) the same interpretation shall apply by analogy to the term "amount of French tax attributable to such capital".
- (b) regards the application of the provisions of paragraph 2, it is understood that the amount of tax which is attributable to such income or capital which has been subjected to tax in France shall be:
- (i) where the tax on such income or capital is computed by applying a proportional rate, the amount of the net income or capital concerned multiplied by the rate which actually applies to that income or capital; and

- (ii) where the tax on such income or capital is computed by applying a progressive scale, an amount which bears to the net income or capital concerned the same ratio as the total tax actually payable bears to the total net income or capital which is subject to tax in accordance with South African law.

## **Article 24**

### ***Non-discrimination***

1. Individuals possessing the nationality of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which individuals possessing the nationality of that other State in the same circumstances, in particular as regards their residence, are or may be subjected.

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

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

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. Payments made by an individual who is a resident of a Contracting State, to a pension scheme established in the other Contracting State may be relieved from tax in the first-mentioned State provided that the pension scheme is accepted by the competent authority of that State as corresponding to a pension scheme recognised as such for tax purposes by that State; in such case relief from tax shall be given in the same way as if the pension scheme was recognised as such by that State.

6. Subject to mutual agreement between the competent authorities, the exemptions and other advantages provided by the tax laws of a Contracting State for the benefit of that Contracting State or its local authorities or of statutory bodies of either which carry on a non-business activity shall apply under the same conditions respectively to the other Contracting State or its local authorities or to statutory bodies of either, which carry on the same or similar activity. Notwithstanding the provisions of paragraph 7, the provisions of this paragraph shall not apply to taxes or duties payable in consideration for services rendered.

7. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

8. If any treaty, agreement or convention between the Contracting States, other than this Convention, includes a non-discrimination clause or a most-favoured nation clause, it is understood that only the provisions of this Convention, to the exclusion of such clauses, shall apply in tax matters.

## **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 him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he 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 the application of the Convention. In particular, they may consult together to endeavour to agree to the same allocation of income between associated enterprises mentioned in Article 9. 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 directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. 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.

## **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 insofar as the taxation thereunder is not contrary to the Convention. 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 State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in 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 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 (*ordre public*).

## **Article 27**

### ***Diplomatic Agents and Consular Officers***

1. Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions and their personal domestics, of members of consular posts, or of members of permanent missions to international organisations under the general rules of international law or under the provisions of special agreements.

2. Notwithstanding the provisions of Article 4, an individual who is a member of a diplomatic mission, consular post or permanent mission of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed for the purposes of the Convention to be a resident of the sending State if he is liable in the sending State to the same obligations in relation to tax on his total income or on capital as are residents of that State.

3. The Convention shall not apply to international organisations, to organs or officials thereof and to persons who are members of a diplomatic mission, consular post or permanent mission of a third State, being present in a Contracting State and not liable in either Contracting State to the same obligations in relation to tax on their total income or on capital as are residents of those States.

## **Article 28**

### ***Miscellaneous rules***

1. Nothing in this Convention shall prevent France from applying the provisions of Article 212 of its tax code (code général des impôts), or any substantially similar provisions enacted in France which may amend or replace the provisions of that Article.

2. In respect of Articles 10 and 11, an investment company or fund, which is situated in a Contracting State where it is not subject to a tax mentioned in sub-paragraphs (a)(i) or (ii) or in sub-paragraph (b) of paragraph 3 of Article 2, and receives dividends or interest arising in the other Contracting State can ask for the aggregate amount of the tax reductions or exemptions or other advantages provided by the Convention in the proportion of such income which corresponds to the rights in the company or fund held by residents of the first-mentioned State and which is taxable in the hands of those residents.

## **Article 29**

### ***Mode of application***

1. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Convention.

2. In order to obtain, in a Contracting State, the benefits provided for by the Convention, the residents of the other Contracting State shall, if the competent authorities so agree, present a form of certification of residence providing in particular the nature and the amount or value of the income or capital concerned, and including the certification of the tax administration of that other State.

## **Article 30**

### ***Territorial extension***

1. This Convention may be extended, either in its entirety or with any necessary modifications, to the overseas territories and other local authorities of the French Republic which impose taxes substantially similar in character to those to which the Convention applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed between the Contracting States in notes to be exchanged through diplomatic channels or in any other manner, in accordance with their constitutional procedures.

2. Unless otherwise agreed by both Contracting States, the termination of the Convention by one of them under Article 32 shall also terminate, in the manner provided for in that Article, the application of the Convention to any territory and local authority to which it has been extended under this Article.

**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 31**

***Entry into force***

1. Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Convention. The Convention shall enter into force on the first day of the second month following the day when the later of these notifications has been received.
2. The provisions of the Convention shall have affect:
  - (a) in respect of taxes withheld at source, for amounts taxable after the calendar year in which the Convention enters into force;
  - (b) in respect of other taxes on income, for income relating to any calendar year or accounting period beginning after the calendar year in which the Convention enters into force;
  - (c) in respect of the capital tax, for capital owned on 1st January of any year following the calendar year in which the Convention enters into force.

2. The Agreement between the Government of the French Republic and the Government of the Republic of South Africa for the exemption from certain taxes in respect of companies carrying on business of sea and air transport, which came into force on 1 April 1955, shall not have any effect for any year or period for which this Convention has effect.

**Article 32**

***Termination***

1. This Convention shall remain in force indefinitely. However, after a period of five calendar years from the date on which the Convention enters into force, either Contracting State may terminate it through diplomatic channels by giving notice of termination at least six months before the end of any calendar year.



2. In such event the Convention shall cease to have effect:
- (a) in respect of taxes withheld at source, for amounts taxable after the calendar year in which the notice of termination is given;
  - (b) in respect of other taxes on income, for income relating to any calendar year or accounting period beginning after the calendar year in which the notice of termination is given;
  - (c) in respect of the capital tax, for capital owned on 1st January of any calendar year beginning after the calendar year in which the notice of termination is given.

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

DONE at Paris, this eighth day of November, 1993, in duplicate, in the French and English languages, both texts being equally authentic.

(Signed) T.G.Alant  
FOR THE GOVERNMENT OF THE  
REPUBLIC OF SOUTH AFRICA

(Signed) N.Sarkozy  
FOR THE GOVERNMENT OF  
THE FRENCH REPUBLIC