

SYNTHESISED TEXT OF THE MULTILATERAL CONVENTION TO IMPLEMENT TAX TREATY RELATED MEASURES TO PREVENT BASE EROSION AND PROFIT SHIFTING AND THE AGREEMENT BETWEEN THE REPUBLIC OF SOUTH AFRICA AND THE UNITED MEXICAN STATES 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 Republic of South Africa and United Mexican States for the avoidance of double taxation and the prevention of fiscal evasion with respect to Taxes on Income signed on 19 February 2009 (the “Agreement”), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by the Republic of South Africa on 7 June 2017 and by the United Mexican States 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 and of the MLI position of the United Mexican States submitted to the Depositary upon ratification on 15 March 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 wording of the synthesised text has not been agreed to by the Contracting States as the United Mexican States prefer not to issue synthesised texts and refer users interested in the position of the United Mexican States to the authentic texts of the Agreement and the MLI.

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

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 Descriptive language has been replaced by legal references of the existing provisions to ease the readability.

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

References

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

The MLI position of the Republic of South Africa submitted to the Depository upon ratification on 30 September 2022 and of the MLI position of the United Mexican States submitted to the Depository upon ratification on 15 March 2023 can be found on the MLI Depository (OECD) webpage [Signatories and Parties to the MLI](#).

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

Entry into Effect of the MLI Provisions

The provisions of the MLI applicable to the Agreement do not take effect on the same dates as the original provisions of the Agreement. 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 United Mexican States 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 15 March 2013 for the United Mexican States.

Entry into force of the MLI: 1 January 2023 for the Republic of South Africa and 1 July 2023 for the United Mexican States and has effect as follows:

The provisions of the MLI shall have effect in each Contracting State 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 levied by that Contracting State, for taxes levied with respect to taxable periods beginning on or after 1 January 2024; and
- ii) in the United Mexican States:
 - 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 levied by that Contracting State, for taxes levied with respect to taxable periods beginning on or after 1 January 2024.

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

Preamble

The Republic of South Africa and the United Mexican States

[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

[MODIFIED by paragraph 1 of Article 11 of the MLI] [This Agreement shall apply to persons who are residents of one or both of the Contracting States, except as otherwise provided in the Agreement.]

The following paragraph 1 of Article 11 of the MLI applies and supersedes the provisions of this Agreement:

ARTICLE 11 OF THE MLI - APPLICATION OF TAX AGREEMENTS TO RESTRICT A PARTY'S RIGHT TO TAX ITS OWN RESIDENTS

This Agreement shall not affect the taxation by a Contracting State of its residents, except with respect to the benefits granted under paragraph 3 of Article 7, paragraph 2 of Article 9, or Articles 18, 19, 22, 23, 24 or 27 of this Agreement.

Article 2

Taxes Covered

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

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property.

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

(a) in Mexico:

the federal income tax; and
the business flat rate tax;

(hereinafter referred to as "Mexican tax");

(b) in South Africa:

(i) the normal tax;
(ii) the secondary tax on companies;
(iii) the withholding tax on royalties; and
(iv) the tax on foreign entertainers and sportspersons;

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

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. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their taxation laws.

Article 3

General Definitions

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

(a) the term "Mexico" means the United Mexican States, when used in a geographical sense it includes the territory of the United Mexican States, as well as the integrated

parts of the Federation, the islands, including the reefs and cays in the adjacent waters, the islands of Guadalupe and Revillagigedo, the continental shelf and the seabed and sub-soil of the islands, cays and reefs, the waters of the territorial seas and the inland waters and beyond them the areas over which, in accordance with the international law, Mexico may exercise its sovereign rights of exploration and exploitation of the natural resources of the seabed, sub-soil and the supra-jacent waters, and the air space of the national territory to the extent and under conditions established by international law;

- (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 terms “a Contracting State” and “the other Contracting State” mean Mexico or South Africa, as the context requires;
- (d) the term “business” includes the performance of professional services and of other activities of an independent character;
- (e) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (f) the term “competent authority” means:
 - (i) in Mexico, the Ministry of Finance and Public Credit; and
 - (ii) in South Africa, the Commissioner for the South African Revenue Service or an authorised representative of the Commissioner;
- (g) the term “enterprise” applies to the carrying on of any business;
- (h) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (i) the term “international traffic” means any transport by a ship or aircraft operated by a resident of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (j) the term “national”, in relation to a Contracting State, means:
 - (i) any individual possessing the nationality or citizenship of that Contracting State; and
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State; and
- (k) the term “person” includes an individual, a company and any other body of persons that is treated as an entity for tax purposes.

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

Article 4

Resident

1. For the purposes of this Agreement, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of that person’s domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

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

- (a) the individual shall be deemed to be a resident only of the State in which a permanent home is available to the individual: if a permanent home is available to the individual in both States, the individual shall be deemed to be a resident only of the State with which the individual’s personal and economic relations are closer (centre of vital interests);
- (b) if the State in which the centre of vital interests is situated cannot be determined, or if the individual has not a permanent home available in either State, the individual shall be deemed to be a resident only of the State in which the individual has an habitual abode;
- (c) if the individual has an habitual abode in both States or in neither of them, the individual shall be deemed to be a resident only of the State of which the individual is a national;
- (d) if the individual 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, the competent authorities of the Contracting States shall by mutual agreement endeavour to settle the question and determine the mode of application of the Agreement to such person. In the absence of such agreement such person shall be considered to be outside the scope of the Agreement except for the provisions of Article 25.

4. A partnership or a trust is a resident of a Contracting State only to the extent that the income it derives is subject to tax in that State as the income of a resident, either in the hands of the partnership or trust, or in the hands of its partners, trustees or beneficiaries.

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 or exploitation of natural resources.

3. The term “permanent establishment” likewise encompasses:
 - (a) a building site, a construction, assembly or installation project or any supervisory activity in connection with such site or project, but only where such site, project or activity continues for a period of more than six months;
 - (b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by an enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the Contracting State for a period or periods exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned;
 - (c) the performance of professional services or other activities of an independent character by an individual, but only where those services or activities continue within a Contracting State for a period or periods exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned.

For the purposes of computing the time limits referred to in this paragraph, the activities carried on by an enterprise associated with another enterprise within the meaning of Article 9 shall be aggregated with the period during which the activities are carried on by the associated enterprise, if the activities of both enterprises are identical or substantially similar.

4. **[MODIFIED by paragraph 2 of Article 13 of the MLI]** [Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:
 - (a) the use of facilities solely for the purpose of storage, 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 advertising, supplying information, scientific research or similar activities which have a preparatory or auxiliary character, for the enterprise;
 - (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 2 of Article 13 of the MLI modifies paragraph 4 of Article 5 of this Agreement:

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

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

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

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

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

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

- a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of Article 5 of this Agreement; 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 7 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. Notwithstanding the foregoing provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. 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 and that in their commercial or financial relations with the enterprise conditions are not made or imposed that differ from those generally agreed to by independent agents.

8. 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.

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

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

For the purposes of Article 5 of this Agreement, 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.

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 State but only so much of them as is attributable to:

- (a) that permanent establishment;
- (b) sales in that other State of goods or merchandise of the same or similar kind as the goods or merchandise sold through that permanent establishment.

However, the profits derived from the sales described in subparagraph (b) shall not be taxable in the other Contracting State if the enterprise demonstrates that such sales have been carried out for reasons other than obtaining a benefit under this Agreement.

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 business 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. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

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

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

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

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

Article 8

Shipping and Air Transport

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

2. Profits referred to in paragraph 1 shall not include profits derived from the operation of hotels or a transport activity other than the operation of ships or aircraft in international traffic.

3. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall include profits derived from the rental on a bare boat basis of ships or aircraft used in international traffic, if such profits are incidental to the profits to which the provisions of paragraph 1 apply.

4. Profits of an enterprise of a Contracting State from the use or rental of containers (including trailers, barges and related equipment for the transport of containers) used for the transport in international traffic of goods or merchandise shall be taxable only in that State.

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

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

2. Where a Contracting State includes in 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 if it agrees with the adjustment made by the first-mentioned Contracting State. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall consult each other in accordance with the provisions of Article 24.

3. The provisions of paragraph 2 shall not apply in the case of fraud, gross negligence, or wilful default.

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 beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

[MODIFIED by paragraph 1 of Article 8 of the MLI]

[(a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds at least 10 per cent of the capital of the company paying the dividends;]

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

ARTICLE 8 OF THE MLI – DIVIDEND TRANSFER TRANSACTIONS

Subparagraph (a) paragraph 2 of Article 10 of this Agreement 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).

or

(b) 10 per cent of the gross amount of the dividends in all other cases.

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

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

3. 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 State 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 State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

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

Article 11

Interest

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

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

3. Notwithstanding the provisions of paragraph 2, interest referred to in paragraph 1 shall be exempt from tax in the Contracting State in which it arises, where:

- (a) the beneficial owner is a Contracting State, political subdivision, local authority or a Central Bank;
- (b) the interest is paid by any of the persons referred to in subparagraph (a);
- (c) the interest is paid in respect of a loan or credit for a period of no less than three years granted by, guaranteed or insured by a financial or a credit institution wholly owned by a Contracting State.

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, as well as all other income that is treated as income from money lent by the laws of the Contracting State in which the income arises. The term “interest” shall not include any item of income which is considered as a dividend under the provisions of paragraph 3 of Article 10. Penalty charges shall be treated in accordance with the domestic law of each Contracting State.

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 State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State 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 exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

8. If the law of a Contracting State calls for payment to be characterized in whole or in part as a dividend or limits the deductibility of such payment because of thin capitalization rules or because the relevant debt instrument includes an equity interest, the Contracting State may treat such payment in accordance with such law.

Article 12

Royalties

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

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

The competent authorities of the Contracting States 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:

- (a) the use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process;
- (b) the use of, or the right to use, any industrial, commercial or scientific equipment;
- (c) the supply of information concerning industrial, commercial or scientific experience;
- (d) 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 television or radio broadcasting;

- (e) the reception of, or the right to receive, visual images or sounds, or both, for the purpose of transmission by:
 - (i) satellite;
 - (ii) cable, optic fibre or similar technology; or
- (f) the use of, or the right to use, in connection with television or radio broadcasting, visual images or sounds, or both, for the purpose of transmission to the public by:
 - (i) satellite; or
 - (ii) cable, optic fibre or similar technology.

Notwithstanding the provisions of Article 13, the term “royalties” also includes payments derived from the alienation of any such right or property which are contingent on the productivity, use or disposition thereof.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein and the 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. For purposes of this Article:

- (a) royalties shall be treated as arising in a Contracting State when the payer is a resident of that State for purposes of its tax. Where, however, the person paying the royalties, whether that person is a resident of one of the Contracting States or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the royalties was incurred, and the royalties are borne by the permanent establishment, then the royalties shall be deemed to arise in the State in which the permanent establishment is situated;
- (b) where subparagraph (a) does not operate to deem royalties as arising in either Contracting State and the royalties relate to the use of, or the right to use, in one of the Contracting States, any property or right described in paragraph 3, they shall be deemed to arise in that State.

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 exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 13

Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

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

4. **[REPLACED by paragraph 4 of Article 9 of the MLI]** [Gains derived by a resident of a Contracting State 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 State may be taxed in that other State.]

The following paragraph 4 of Article 9 of the MLI replaces paragraph 4 of Article 13 of this Agreement:

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

For purposes of this Agreement, 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 situated in that other Contracting State.

5. In addition to gains taxable in accordance with the provisions of the preceding paragraphs, gains derived by a resident of a Contracting State from the alienation of shares, participation or other rights in the capital of a company or other legal person that is a resident of the other Contracting State may be taxed in that other State if the recipient of the gain, at any time during the twelve month period preceding such alienation, together with all persons who are related to the recipient, had a participation of at least 25 per cent in the capital of that company or other legal person. However the tax so charged shall not exceed 20 per cent of the taxable gains.

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

Article 14

Income from Employment

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

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

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

Article 15

Directors' Fees

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

Article 16

Entertainers and Sportspersons

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

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

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived by a resident of a Contracting State as an entertainer or sportsperson shall be exempt from tax by the other Contracting State if the visit to that other State is wholly or mainly supported by public funds of the first-mentioned State or a political subdivision or local authority thereof.

Article 17

Pensions and Annuities

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

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

Article 18

Government Service

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

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
 - (i) is a national of that State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

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

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

Article 19

Students

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

Article 20

Other Income

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

Article 21

Limitation on Benefits

1. A person (other than an individual) which is a resident of a Contracting State shall not be entitled under this Agreement to relief from taxation in the other Contracting State unless:

- (a) (i) more than 50 per cent of the beneficial interest in such person (or in the case of a company more than 50 per cent of the number of shares of each class of the company's shares) is owned, directly or indirectly, by any combination of one or more of:
 - (A) individuals who are residents of one of the Contracting States;
 - (B) companies as described in subparagraph 1(b); and
 - (C) one of the Contracting States, its political subdivisions or local authorities; and
- (ii) in the case of relief from taxation under Articles 10, 11 and 12, not more than 50 per cent of the gross income of such person is used to make payments of dividends, interest and royalties to persons who are other than persons described in clauses (A) through (C) of subparagraph (a)(i), whether directly or indirectly; or
- (b) it is a company which is a resident of a Contracting State and in whose principal class of shares there is substantial and regular trading on a recognized stock exchange.

2. Paragraph 1 shall not apply if the establishment, acquisition and maintenance of such a person and the conduct of its operations did not have as a principal objective the purpose of obtaining benefits under the Agreement.

3. For the purposes of paragraph 1(b), the term "a recognized stock exchange" means:

- (a) in Mexico, the Mexican Stock Exchange Market (Bolsa Mexicana de Valores);
- (b) in South Africa, the Johannesburg Stock Exchange;
- (c) any other stock exchange agreed upon by the competent authorities of the Contracting States.

4. Before a resident of a Contracting State is denied relief from taxation in the other Contracting State by reason of paragraphs 1, 2 or 3, the competent authorities of the Contracting States shall consult each other.

Article 22

Elimination of Double Taxation

1. Double taxation shall be eliminated as follows:
 - (a) in Mexico, in accordance with the provisions and subject to the limitations of the laws of Mexico, as may be amended from time to time without changing the general principle hereof, Mexico shall allow its residents as a credit against the Mexican tax:
 - (i) the South African tax paid on income arising in South Africa, in an amount not exceeding the tax payable in Mexico on such income; and
 - (ii) in the case of a company owning at least 10 per cent of the capital of a company which is a resident of South Africa and from which the first-mentioned company receives dividends, the South African tax paid by the distributing company with respect to the profits out of which the dividends are paid;
 - (b) in South Africa, subject to the provisions of the law of South Africa regarding the deduction from tax payable in South Africa of tax payable in any country other than South Africa (which shall not affect the general principle hereof), Mexican tax paid by residents of South Africa in respect of income taxable in Mexico, in accordance with the provisions of this Agreement, shall be deducted from the taxes due according to South African fiscal law. Such deduction shall not, however, exceed an amount which bears to the total South African tax payable the same ratio as the income concerned bears to the total income.
2. Where in accordance with any provision of the Agreement income derived by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

Article 23

Non-discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other 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 7 of Article 11 or paragraph 6 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned 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. Nothing contained in this Article shall prevent South Africa from imposing on the profits attributable to a permanent establishment in South Africa of a company, which is a resident of Mexico, a tax at a rate which does not exceed the rate of normal tax on companies by more than five percentage points.

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

Article 24

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for 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 States, present a case to the competent authority of the Contracting State of which the person is a resident or, if the case comes under paragraph 1 of Article 23, to that of the Contracting State of which the person is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

2. **[MODIFIED by the first and second sentences of paragraph 2 of Article 16 of the MLI]** [The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement provided that the competent authority of the other Contracting State is notified of the case within four and a half years from the first notification referred to in paragraph 1. In such case, any agreement reached shall be implemented within ten years from the first notification referred to in paragraph 1, or a longer period if permitted by the domestic law of that other State.]

The following first sentence of paragraph 2 of Article 16 of the MLI applies to this Agreement:

ARTICLE 16 OF THE MLI - MUTUAL AGREEMENT PROCEDURE

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 this Agreement.

The following second sentence of paragraph 2 of Article 16 of the MLI is inserted at the end of paragraph 2 of Article 24 applies to this Agreement:

ARTICLE 16 OF THE MLI - MUTUAL AGREEMENT PROCEDURE

Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

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

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 25

Exchange of Information

1. The competent authorities of the Contracting States 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 concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions in so far as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 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) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. 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 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*).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State 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 State 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 State 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 26

Assistance in the Collection of Taxes

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, in so far as the taxation thereunder is not contrary to this Agreement or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be

- (a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or
- (b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

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

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to carry out measures which would be contrary to public policy (*ordre public*);
- (c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
- (d) to provide assistance in those cases where the administrative burden of that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

Article 27

Members of Diplomatic Missions and Consular Posts

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

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

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

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

Article 28

Entry into Force

1. Each of the Contracting States shall notify to the other in writing, through the diplomatic channel, of the completion of the procedures required by its law for the bringing into force of this Agreement. The Agreement shall enter into force thirty (30) days after the date of receipt of the later of these notifications.

2. The provisions of the Agreement shall apply:

- (a) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the first day of January next following the date upon which the Agreement enters into force; and
- (b) with regard to other taxes, in respect of taxable years beginning on or after the first day of January next following the date upon which the Agreement enters into force.

Article 29

Termination

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

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

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

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have signed and sealed this Agreement in duplicate in the English and Spanish languages, both texts being equally authentic. In case of diversion of interpretation the English text shall prevail.

DONE at Cape Town, on this 19th day of February in the year 2009.

**FOR THE REPUBLIC OF
SOUTH AFRICA**

**FOR THE UNITED MEXICAN
STATES**

PROTOCOL

At the time of signing the Agreement between the United Mexican States and the Republic of South Africa for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, the undersigned have agreed that the following provisions shall form an integral part of the Agreement:

1. With reference to Article 2

It is understood that a tax on dividends will constitute an identical or substantially similar tax as envisaged in paragraph 4.

2. With reference to Article 5

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of subparagraph f) of paragraph 4 of Article 5 of the Convention.

3. With reference to Article 11

For the purposes of the provisions in the second part of paragraph 6 of Article 11, if the loan is incurred by the head office of the enterprise and the amount in question affects several permanent establishments situated in different countries, then the interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated, but only so much of the interest payment that is allowed as a deduction to that permanent establishment.

4. With reference to Article 12

For the purposes of the provisions in the second part of subparagraph (a) of paragraph 5 of Article 12, where the obligation to pay royalties is incurred by the head office of the enterprise and the right or property in respect of which they are paid is effectively connected with several permanent establishments situated in different countries, then the royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated, but only so much of the royalty payment that is allowed as a deduction to that permanent establishment.

5. With reference to Article 15

It is understood that in the case of Mexico the provisions of the Article shall apply also to an "administrador" or a "comisario".

6. With reference to Article 23

It is understood that the provisions of paragraph 5 take account of the fact that the South African branch of a non-resident enterprise is subject to normal tax in South Africa at a rate of 34 per cent. A domestic company is subject to tax at the rate of 29 per cent but will become liable to payment of the secondary tax on companies at a rate of 12.5 per cent should there be a distribution of profit. The non-resident company is not liable for the payment of the secondary tax on companies in respect of the profits of its South African branch. In case South Africa should abolish the secondary tax on companies without replacing it with a similar tax, the provisions of paragraph 5 will cease to have effect from the date on which the secondary tax on companies is abolished.

7. In general

- (a) It is understood that the Contracting States shall endeavour to apply the provisions of this Agreement in accordance with the Commentaries on the Articles of the Model Tax Convention on Income and on Capital drawn up from time to time by the OECD Committee of Fiscal Affairs to the extent that the provisions contained in the Agreement correspond to those set forth under that Model.
- (b) The provisions of the Agreement shall not prevent a Contracting State from applying its provisions regarding controlled foreign corporations (in the case of Mexico, preferential tax regimes).
- (c) Notwithstanding any other treaties to which the Contracting States are or may become parties, any dispute over a measure taken by a Contracting State involving a tax covered by Article 2 or, in the case of non-discrimination, any taxation measure taken by a Contracting State, including a dispute whether the Agreement applies, shall be settled only under the Agreement, unless the competent authorities of the Contracting States agree otherwise.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have signed and sealed this Protocol in duplicate in the English and Spanish languages, both texts being equally authentic. In case of diversion of interpretation the English text shall prevail.

DONE at Cape Town, on this 19th day of February in the year 2009

**FOR THE REPUBLIC OF
SOUTH AFRICA**

**FOR THE UNITED MEXICAN
STATES**