13061 Performance

EXPLANATORY MEMORANDUM

ON THE DOUBLE TAXATION CONVENTION

BETWEEN

THE REPUBLIC OF SOUTH AFRICA

AND

THE REPUBLIC OF CAMEROON

It is the practice in most countries for income tax to be imposed both on the world-wide income derived by residents of the country and on income derived by non-residents which arises in the country. The effect of such a system is that income derived by a resident of one country from a source in another country is subjected to tax in both countries. As this position clearly discourages foreign investment, it is normal for countries which have trade relations to conclude double taxation conventions, also known as double taxation agreements. Such conventions commonly provide that income of a particular nature will either be taxable in only one of the countries, or may be taxed in both countries with one of them allowing a credit for the tax imposed by the other.

The Convention concluded with Cameroon closely follows the OECD Model. In the explanation which follows, the general principles of each Article of the Convention are set out.

The entire text has been made gender neutral.

PREAMBLE

The Preamble records that the object of the Convention is to avoid double taxation and prevent fiscal evasion with respect to taxes on income.

ARTICLE 1

PERSONS COVERED

The Convention is made applicable to persons who are residents of one or both of the Contracting States. This means, inter alia, that a citizen of one of the States who is resident in a third State will not enjoy the benefits of the Convention, apart from the non-discrimination provisions.

ARTICLE 2

TAXES COVERED

Paragraphs 1 and 2 of this Article provide that the Convention will apply to all taxes on income imposed by the two States irrespective of the manner in which they are levied.

Paragraph 3 lists the existing taxes imposed by each State and paragraph 4 provides that the Convention will also apply to identical or substantially similar taxes which are subsequently imposed by either State.

ARTICLE 3

GENERAL DEFINITIONS

This Article defines various expressions which are used in the body of the Convention. Several of these definitions are self-evident and are not further explained.

The definition of "South Africa" includes not only the sovereign territory but also those areas outside its territorial sea over which it may exercise jurisdiction in accordance with international law, for example, in relation to the exploitation of natural resources.

"International traffic" is defined as any transport by ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft or rail or road transport vehicle is operated solely between places in the other State. Special provisions are contained in Article 8 for the taxation of international traffic. The effect of the exclusion mentioned above is that should a Cameroonian company operate a purely domestic airline operation within South Africa, that operation will not fall to be dealt with under Article 8, but rather under Article 7 which deals with business profits in general. This provision is intended to place that operation on the same footing as South African domestic airlines.

"Person" is defined to include individuals, estates, trusts, companies and other bodies of persons which are treated as entities for tax purposes. The underlined words are of particular relevance to partnerships. Partnerships are not regarded as taxable entities in South Africa or Cameroon, rather, the income of a partnership is taxed in the hands of the partners. Accordingly, should a partnership in South Africa consisting of a Cameroon resident and a resident of a third State derive income in South Africa, only the Cameroon resident will be entitled to the benefits of the Convention on his/her share of the partnership income.

Paragraph 2 follows the OECD Model in providing that expressions not defined in the Convention bear the meaning that they have under the domestic taxation laws of the States at the time of application of the provisions of the Convention. Any meaning under the taxation laws will take precedence over a meaning under other laws of the State.

ARTICLE 4

RESIDENT

The concept of "resident of a Contracting State" is used throughout the Convention and is of importance in three cases:

(a) in determining the Convention's personal scope of application as set out in Article 1;

(b) in solving cases where double taxation arises because of dual residence;

(c) in solving cases where double taxation arises as a consequence of taxation in the State of residence and in the State in which the income arose, the State of source.

This Article defines the meaning of the term and further solves cases of dual residence.

In subparagraph 1, the term "resident of a Contracting State" is defined to include domicile, residence and place of management as well as any other criterion of a similar nature. It also includes that State or any political subdivision or local authority thereof. Persons who are taxed only on income from sources within the State are excluded.

Paragraph 2 provides solutions to the cases where individuals are residents of both Contracting States and sets out a step by step method of finally deciding which State has the sole right to claim the individual as its resident.

Paragraph 3 deals with companies and other bodies of persons who are not individuals but who are residents of both States and specifies that in these cases the competent authorities will by mutual agreement decide which State will have the sole right to claim the company or body of persons as its resident. The paragraph further provides that in the absence of such an agreement, the person is denied benefits under the Convention except for the provisions of Article 27 which relate to exchange of information.

ARTICLE 5

PERMANENT ESTABLISHMENT

One of the main goals of the Convention is to determine the right of a Contracting State to tax the business profits of an enterprise of the other Contracting State which arise through a permanent establishment situated in the first-mentioned State. The Article defines what is to be regarded as a permanent establishment.

Paragraph 1 gives a general definition of a "permanent establishment" as being a fixed place of business through which the business of an enterprise is carried on.

Paragraph 2 contains a list, which is not exhaustive, of what is regarded to be a permanent establishment.

Paragraph 3(a) provides expressly that a building site or construction, assembly or installation project will constitute a permanent establishment only if it continues for more than twelve months. Supervisory activities carried on in a Contracting State in connection with such site or project will also constitute a permanent establishment if the activities last more than six months and irrespective of the fact that the enterprise carrying on such activities has no fixed place of business in that State.

Paragraph 3(b) introduces provisions dealing with the furnishing of services through employees of an enterprise or other personnel engaged by that enterprise for such purpose and specifies that a permanent establishment will be deemed to exist, despite there being no fixed place of business, if such services are rendered in a State for a period or periods aggregating more than 183 days in any twelve-month period commencing or ending in the fiscal year concerned.

Paragraph 3(c) introduces provisions dealing with the income from professional services and other activities of an independent character and specifies that a permanent establishment will exist if the services or activities continue within that State for more than an aggregate of 183 days in a twelve-month period commencing or ending in the fiscal year concerned.

A number of preparatory or auxiliary activities which are treated as exceptions to the general definition laid down in paragraph 1 are set out in paragraph 4. The paragraph specifies that the term "permanent establishment" will not include the various activities set out therein. The Contracting State in which these activities take place will in any event not have any, or negligible profits, to tax if these are the only activities which occur.

Paragraph 5 sets out the principle that an enterprise will be treated as having a permanent establishment in a Contracting State if it carries on business in that State through an agent situated in that State, provided that the agent is not of an independent status or has:

(a) the power to conclude contracts in the name of the enterprise unless the activities are limited to those mentioned in paragraph 4;

(b) no authority but provides a warehousing and delivery function.

Paragraph 6 stipulates that, other than for purposes of re-insurance and providing that the agent is not of an independent status, an insurance enterprise, resident in a Contracting State, shall be deemed to have a permanent establishment in the other Contracting State.

Paragraph 7 deals with the situation where an enterprise of a Contracting State carries on business through an independent agent in the other Contracting State and provides that no permanent establishment will be deemed to exist if the activities are carried on through such an agent who is acting in the normal course of that agent's business. A further proviso is included in that if the activities of the agent are devoted wholly or mainly on behalf of that enterprise, then such agent will not be considered to be an independent agent. Furthermore, no benefits must be afforded to a related party, that is the arm's-length principle must be applied.

Paragraph 8 sets out the principle that the existence of a subsidiary company does not, of itself, constitute that subsidiary company a permanent establishment of its parent company. This follows from the principle that for tax purposes a subsidiary company constitutes an independent legal entity and will be taxed in its State of residence on its own profits.

ARTICLE 6

INCOME FROM IMMOVABLE PROPERTY

Paragraph 1 provides that income derived from immovable property may be taxed in the State in which the property is situated. Income from agriculture and forestry is specifically included in this rule.

Paragraph 2 establishes the general rule that what constitutes fixed property will be decided under the law of the State in which the property is situated. Nevertheless, property accessory to fixed property and livestock and equipment used in agriculture and forestry are specifically included. So too are usufructs and payments for the right to extract minerals and other natural resources. It is specifically stated that ships, boats and aircraft are not to be regarded as immovable property.

Paragraph 3 makes it clear that the rule established in paragraph 1 applies irrespective of the manner in which the property is exploited.

Paragraph 4 provides that the provisions of paragraphs 1 and 3 also apply to income derived from fixed property owned by an enterprise and to income from immovable property used for performance of independent personal services. In the absence of this provision, it might be argued that this income should be dealt with in terms of the provisions of Article 7 which establishes somewhat different rules for the treatment of businesses.

ARTICLE 7

BUSINESS PROFITS

This Article deals with the taxation of business profits and is to be read together with Article 5 as it uses the test of "permanent establishment" in determining where such profits are to be taxed.

Paragraph 1 specifies that the profits of an enterprise which is a resident of a Contracting State are taxable only in that State unless it carries on business in the other Contracting State through a permanent establishment situated in that other State in which case that other State may tax the profits which are attributable to:

(a) that permanent establishment;
(b) sales through that permanent establishment;
(c) effectively connected to that permanent establishment

However (b) and (c) will not be applicable if carried out for a bone fide business reason and not just for obtaining a benefit under the Convention.

Paragraph 2 deals with the allocation of profits to a permanent establishment and specifies that the profits which are to be attributed to the permanent establishment are those which it would have made if it had been dealing with entirely separate enterprises under arms-length conditions and not with its head office.

Paragraph 3 recognises the fact that in calculating the profits of a permanent establishment, allowance must be made for certain expenses, wherever incurred, which were incurred for the purposes of the permanent establishment. For example, if the head office incurs general administrative expenses it is most likely that a portion of those expenses was in fact incurred on behalf of the permanent establishment and it will therefore be necessary to allocate that portion of the expenses to the permanent establishment in determining its profits. The emphasis here is on the fact that the expenses must have been actually incurred. Payments by the permanent establishment to the head office of the enterprise or any of its other offices, which are notional in nature such as royalties, fees or other similar payments in return for use of patents or rights, or by way of commission for specific services performed, management fees or, except in the case of a banking enterprise, interest on loans to the permanent establishment are prohibited. Likewise these notional amounts, if charged by the permanent establishment to the head office of the enterprise or any of its other offices, will not be taken into account in determining the profits of the permanent establishment except for interest on a loan if the business of the enterprise is banking.

Paragraph 4 provides for profits attributable to a permanent establishment to be determined on the basis of apportionment if this method is customary in a Contracting State. However, the proviso specifies that the result of this method should still be in accordance with the principles of this Article.

Paragraph 5 deals with the situation where a permanent establishment which, although carrying on other business, also carries on purchasing for its head office. The paragraph provides that the profits which are attributed to the permanent establishment cannot be increased by the addition of a notional profit from such purchase transaction.

Paragraph 6 stipulates that the method of allocation of profits to the permanent establishment should not be changed merely for the reason that a different method may result in more profit becoming taxable in the State of residence of the permanent establishment. This also establishes a degree of certainty regarding the tax treatment to be expected in the State in which the permanent establishment is situated.

It is possible that the term "profits" could include other items of income which are dealt with in other Articles of the Convention. Paragraph 7 stipulates that the preceding provisions of Article 7 shall not affect the provisions of such other Articles. An example of this is where profits include interest which is dealt with separately under Article 11.

ARTICLE 8

INTERNATIONAL TRANSPORT

Paragraph 1 provides that profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic are taxable only in that State. Thus, for example, profits derived by South African Airways from its flights into and out of airports in Cameroon are taxable only in South Africa.

Paragraph 2 makes the above rules also applicable where the business is conducted through a pool, joint business venture or an international operating agency.

ARTICLE 9

ASSOCIATED ENTERPRISES

This Article deals with associated enterprises and in paragraph 1 provides that a Contracting State may recalculate the profits of the enterprises if they have created conditions between themselves which would not be created by enterprises dealing at arms-length with each other. This paragraph is effective in dealing with the effects of transfer pricing between associated enterprises. The concept of what is regarded as being an associated enterprise is also set out in this paragraph.

The recalculation of profits envisaged in paragraph 1 may of course result in double taxation if, for example, one of the Contracting States increases the profits of its enterprise, and subjects the increased amount to tax, although such increased amount may already have been subjected to tax in the hands of its associated enterprise in the other Contracting State.

The provisions of paragraph 2 oblige that other State to make a corresponding adjustment to the profits of the associated enterprise and, in so doing, avoid double taxation. It should be noted that the paragraph provides for consultation between the States in deciding on such adjustment.

ARTICLE 10

DIVIDENDS

Paragraphs 1 and 2 of this Article provide for the common international tax treatment of cross-border dividends, in terms of which the State in which the dividends are declared may impose a limited withholding tax on the non-resident shareholder and the State of residence in which the dividends are received has an unlimited taxing right.

The limitation on withholding tax rates in the source State imposed by paragraph 2 is as follows:

(a) where the shareholder is a company which holds directly at least 25 per cent of the capital of the company declaring the dividend, the tax is limited to 10 per cent of the gross dividend. This limitation is intended to encourage substantial (i.e. at least 25 per cent) investment by companies in one State in companies in the other State;

(b) in all other cases the rate of tax is limited to 15 per cent of the gross amount of the dividends.

Both the above limitations apply only if the registered shareholder is also the beneficial holder, i.e. the limitation does not apply to nominee shareholders.

The mode of application of these limitations shall be settled by the competent authorities of the two States.

Tax on the profits of the company will not be affected by this paragraph.

Paragraph 3 contains the standard definition of what constitutes a dividend.

Paragraph 4 provides that this Article will not apply in cases where a resident of one State carries on business in the other State through a permanent establishment and derives dividends from shares the holding of which is effectively connected with the permanent establishment or from services performed from a fixed base in the other State. In other words, the holding is then regarded to be part of the business assets of the permanent establishment or fixed base. The source State is therefore not limited in its taxing rights which are then exercised under the provisions of Article 7 or Article 15 of the Convention.

Paragraph 5 deals with the limitation of the right of one of the States to impose tax on dividends declared by, or the undistributed profits of, a company which is a resident of the other State. One situation in which tax may be imposed is where the shareholding is effectively connected with a permanent establishment or fixed base in that other State, as mentioned in relation to paragraph 4 above.

The second situation can best be explained through an example of a Cameroonian company which carries on business through a branch in South Africa. The paragraph provides that South Africa may not impose tax on the dividends declared by the Cameroonian company, even though its profits are partly derived in South Africa, except in so far as the dividends are received by South African resident shareholders.

Paragraph 6 allows for the taxation of the profits of a permanent establishment to be subject to additional tax, not exceeding 10 per cent, in the country in which the permanent establishment is situated after deducting the corporate tax imposed on such profits by that State.

ARTICLE 11

INTEREST

This Article deals with the taxation of income in the form of interest.

Paragraph 1 specifies that interest which arises in a Contracting State and is paid to a resident of the other Contracting State may be taxed in the State of residence.

Paragraph 2 gives a right of taxation to the source State as well but limits the amount of tax to 10 per cent of the gross amount of the interest provided that the beneficial owner of the interest is a resident of the other Contracting State. The mode of application of this limitation will be settled by the competent authorities.

Paragraph 3 lists the instances in which interest will be exempt from tax in the source State.

Paragraph 4 contains the standard definition of what is to be regarded as interest which excludes interest for late payment or any item treated as dividend.

Paragraph 5 specifies that if the beneficial owner of the interest carries on business in the Contracting State in which the interest arises through a permanent establishment situated in that State, or performs independent personal services from a fixed base situated therein and the debt claim is effectively connected with:

(a) such permanent establishment or fixed base;
(b) business activities referred to in (c) of paragraph 1 of Article 7.

The provisions of Article 11 will not apply to such interest but rather the provisions in Article 7 or 15.This paragraph is similar to paragraph 4 of Article 10 dealing with dividends.

Paragraph 6 lays down the principle that the State of source of the interest is the State of which the payer of the interest is a resident. It also provides for an exception to this rule in the case of interest-bearing loans which have an economic link with a permanent establishment operated in the other Contracting State by the payer of the interest. If the loan was contracted for the requirements of the permanent establishment and the interest is borne by such establishment, the paragraph specifies that the source of the interest is the Contracting State in which the permanent establishment is situated.

The purpose of paragraph 7 is to restrict the operation of the provisions of this Article with regard to the taxation of interest in cases where there is a special relationship between the beneficial owner of the interest and the payer or between both of them and a third party. If, in the presence of this relationship, the interest paid exceeds the interest which would have been paid in the absence of such a relationship, the provisions of this Article will not apply to the amount of the interest which is considered to be excessive and such excessive amount will remain taxable in accordance with the laws of both Contracting States. The limitation of sole right to tax which might have applied under paragraph 1 will in such circumstances be negated. This is an anti-avoidance provision.

ARTICLE 12

ROYALTIES

This Article deals with royalties and paragraph 1 provides that royalties which arise in a Contracting State and are paid to a resident of the other Contracting State may be taxed in the State of residence.

Paragraph 2 gives a right of taxation to the source State but limits the amount of tax to 10 per cent of the gross amount of the royalties, provided that the beneficial owner of the royalties is a resident of the other State. The competent authorities are authorised to settle the mode of application by a mutual agreement procedure.

Paragraph 3 defines which payments will constitute royalties for purposes of the Article. It includes amounts normally understood as royalties, such as patents, copyrights, trade marks, etc, and also includes payments for the use of, or right to use, industrial, commercial or scientific experience (know-how).

Paragraph 4 provides that the provisions of paragraph 1 and 2 will not apply if the recipient of the royalties carries on business in the State in which the royalties arise through a permanent establishment, or performs independent personal services from a fixed base situated therein and the royalties are effectively connected with that permanent establishment or fixed base. In this case, the royalties are in effect regarded as part of the business profits of the permanent establishment or fixed base and may be taxed by the source State. This paragraph is similar to paragraph 4 of Article 10 dealing with dividends and paragraph 5 of Article 11 dealing with interest.

An example of where this paragraph would apply would be a Cameroonian company with a permanent office in South Africa through which it sold franchise rights for the use of its product brand. South Africa would in this case be entitled to tax the franchise payments received by the Cameroonian company.

Paragraph 5 is a deeming provision which establishes the source of royalties by laying down the principle that the State of source of the royalties is the State of which the payer of the royalties is a resident. It also provides for an exception to this rule in the case of royalties which have an economic link with a permanent establishment operated in the other Contracting State by the payer of the royalties. If the liability to pay the royalties was incurred by the permanent establishment and the royalties are borne by such establishment, the paragraph specifies that the source of the royalties is the Contracting State in which the permanent establishment is situated.

Paragraph 6 contains an anti-avoidance transfer pricing provision. Where the payer and recipient of a royalty are connected persons and the royalty is excessive, the source State may tax the portion which is excessive according to its laws.

ARTICLE 13

CAPITAL GAINS

The Article deals with the taxation of capital gains and covers all kinds of taxes which are imposed on such gains.

Paragraph 1 specifies that the right to tax gains derived from the alienation of immovable property is also given to the Contracting State in which the property is situated although the alienator may be a resident of the other Contracting State.

Paragraph 2 deals with the alienation of movable property which forms part of a permanent establishment or of movable property pertaining to a fixed base available for the purpose of performing independent personal services, which a resident of a Contracting State has in the other Contracting State. It provides that gains from the alienation of such property may also be taxed in the State in which such permanent establishment or fixed base is situated and includes gains from the alienation of the permanent establishment or fixed base as such.

Paragraph 3 provides that gains from the alienation of ships or aircraft operated in international traffic or movable property related to the operation of such ships or aircraft are taxable only in the State in which the enterprise is resident. This follows the principle laid down in Article 8 with regard to the taxation of the business profits of such an enterprise.

Paragraph 4 specifies that gains arising from the alienation of shares in a company deriving more than 50 per cent of their value directly or indirectly from immovable property located in the other Contracting State, may be taxed in that other State.

Paragraph 5 specifies that gains from the alienation of any property not covered by the preceding paragraphs of this Article may only be taxed in the State of residence of the alienator.

ARTICLE 14

FEES FOR TECHNICAL SERVICES

This Article gives a taxing right to the State of source by making provision for the State of source to withhold tax in a similar manner to Articles 10, 11 and 12. This Article confers primary taxation rights to the State of residence, with a limited taxing right being extended to the State of source. This limitation is subject to certain conditions being fulfilled.

Paragraph 1 provides for a Contracting State, being the State of residence, the right to tax technical fees arising in the other Contracting State, the State of source, and paid to a resident of the first mentioned State.

Paragraph 2 gives the State of source a right to also tax such technical fees in terms of its domestic law but stipulates that if the beneficial owner of the technical fees is a resident of the other Contracting State, the tax will be limited 10 per cent of the gross amount of the fees for technical services.

Paragraph 3 defines "*technical fees*" as used in this Article to mean payments of any kind to any person (other than to employees of the person making the payments), in consideration for services of a technical, managerial or consultancy nature, including the provision of services by technical or other personnel, but does not include know-how, which is defined as information in connection with industrial, commercial or scientific experience and falls under the provisions dealing with royalties in Article 12. Technical assistance is typified by an undertaking by one of the parties to use the customary skills of that person's calling to execute work by that person for the other party. Know-how constitutes royalties while technical assistance fees are covered by the business profits Article.

Paragraph 4 deals with the scenario where the beneficial owner of the technical fees, being a resident of a Contracting State, carries on business through a permanent establishment or performs independent personnel services through a fixed base in the other Contracting State and the technical fees are effectively connected to such a permanent establishment or fixed base. The consequence will be that the net income will be taxed in the State of source rather than a withholding tax levied on the gross amount.

An example of where this paragraph would apply, would be a Cameroonian company/independent personnel service provider with a permanent office in South Africa through which consultancy services were provided to South African clients. South Africa would in this case be entitled to tax the technical fees received by the Cameroonian company as part of the business profits of the permanent establishment or fixed base.

Paragraph 5 lays down the principle that the State of source of the technical fees is the State of which the payer of the fees is a resident. It provides, however, for an exception to this stipulation in the case where the obligation to pay the technical fees is in connection with a permanent establishment or a fixed base where the obligation to pay the fees was incurred and such fees are borne by that permanent establishment or fixed base. In that case the fees would be deemed to arise in the State in which the permanent establishment or fixed base is situated. This would be the case regardless of whether or not the person paying the fees is a resident of a Contracting State or not.

Paragraph 6 deals with a situation where, because of a special relationship between the payer and beneficial owner or between both of them and some other person, the technical fees paid exceed the amount that would have been paid between parties operating at arm's- length. It provides that in such a case, the excess payment will be taxable according to the laws of both the Contracting States, and the applicability of the provisions of the Article will be confined only to the arm's-length consideration. In each case, the exact nature of the excess payment has to be ascertained and taxed accordingly.

ARTICLE 15

INDEPENDENT PERSONAL SERVICES

Paragraph 1 provides the general rule that income from professional or other activities of an independent nature, derived by a resident of a State may be taxed only in that State. The source State is entitled to impose tax only if;

(a) the individual performing the services has a fixed base regularly available to the individual in that other State, and then it may tax only the income attributable to that fixed base; or

(b) the individual is present in that other State for more than an aggregate of 183 days in any twelve-month period commencing or ending in the fiscal year concerned, in which case the income attributable to those services only, in that State, may be taxed in that State.

Paragraph 2 defines professional services but the definition is not exhaustive.

ARTICLE 16

INCOME FROM EMPLOYMENT

Paragraph 1 lays down the principle that remuneration in respect of an employment is taxable in the State of residence of the employee unless the services in respect thereof are rendered in the other Contracting State, in which case the remuneration arising from the services rendered in the other State may also be taxed in that other State.

Paragraph 2 limits the right of taxation of the State in which the services are rendered (the source State) in that remuneration for services rendered in that State is taxable only in the State of residence if all the following conditions are met:

(a) the employee is present in the source State for a period or periods not exceeding 183 days in any twelve-month period; and

(b) the employer who pays the remuneration, or on whose behalf the remuneration is paid, is not a resident of the source State; and

(c) the relevant remuneration is not borne by a permanent establishment which the employer has in the source State.

It is important to note that all three requirements must be met before the provisions of the paragraph operate.

Paragraph 3 deals with remuneration derived by employees in respect of employment aboard a ship or aircraft operated in international traffic and specifies that such remuneration may be taxed in the State of residence of the operator of such ship or aircraft.

ARTICLE 17

DIRECTORS' FEES

Paragraph 1 provides that directors' fees may be taxed by the State in which the company paying the fees is resident. It does not, however, prevent the director from also being taxed on those fees in the director's State of residence.

Paragraph 2 provides that the income received by an official, in a top managerial position in a company which is resident in the other State may be taxed by the State.

ARTICLE 18

ENTERTAINERS AND SPORTSPERSONS

In terms of paragraph 1 the income derived by entertainers and sportspersons may be taxed in the Contracting State in which their activities are exercised.

Paragraph 2 expands the principle laid down in paragraph 1 in that it specifies that in cases where income in respect of the activities of entertainers and sportspersons accrues to some other person rather than the entertainer or sportsperson, such income may still be taxed in the Contracting State in which such activities are exercised. This paragraph covers the frequent situation in which a professional sportsperson forms a company and competes in a sporting event in another country not in a personal capacity, but rather as an employee of that company. Because the sportsperson's activities in the country continue for a very short period and do not constitute a permanent establishment, neither the sportsperson nor the company would under the normal provisions of the Agreement be taxable in that country.

In cases where the activities of entertainers or sportspersons in a Contracting State are supported wholly or mainly out of public funds of the other Contracting State, paragraph 3 specifies that any income derived from those activities in that State shall be exempt from tax in that State. This also applies if the activities take place in terms of a cultural agreement or arrangement between the Governments of the Contracting States.

ARTICLE 19

PENSIONS AND ANNUITIES

This Article provides that pensions and annuities may be taxed in the State in which they arise. The State of residence may also tax but must then give a credit for the source State tax.

Paragraph 2 gives the standard definition of an annuity.

Paragraph 3 gives the State of source of pension payments and other payments made under its social security system, the sole taxing right, notwithstanding the provisions of paragraph 1.

ARTICLE 20

GOVERNMENT SERVICE

Subparagraph 1(a) provides that remuneration for services rendered, paid by a Contracting State, a political subdivision or a local authority thereof to an individual, is taxable only in that State.

However, subparagraph 1(b) provides that such remuneration is taxable only in the other Contracting State if the services are rendered in that other State by a resident who is also a national of that other State and did not become resident of the other State with the express purpose of rendering the services. An example of this is a South African national, normally resident in South Africa, who is employed by the Cameroonian High Commission. Such person would be taxable in South Africa even though the person's salary is paid by Cameroon.

Paragraph 2 provides that the same principle which applies to remuneration, as set out in paragraph 1, also applies to pensions and other similar remuneration paid by a Contracting State, a political subdivision or a local authority thereof. The pension and/or other similar remuneration would only be taxable in the other State if the recipient is both a resident and a national of that other State.

Paragraph 3 provides that the provisions of paragraphs 1 and 2 will not apply in respect of salaries, wages and other similar remuneration or pensions paid by a Contracting State, a political subdivision or a local authority thereof in respect of services rendered in relation to any business carried on by them. In such circumstances, the provisions of Articles 16, 17, 18 and 19 dealing with remuneration and pensions other than of a public nature will apply.

ARTICLE 21

STUDENTS AND BUSINESS APPRENTICES

In terms of this Article, students and business apprentices who are residents of one State but who are undergoing education or training in the other State, will not be taxed in the last-mentioned State on payments received for the purpose of their maintenance, education or training, if those payments are received from outside that State.

ARTICLE 22

PROFESSORS, TEACHERS AND RESEARCHERS

Paragraph 1 specifies that a professor, a teacher or a researcher who engages in teaching or research activities at educational institutions in a Contracting State during a visit of less than two years, who is, or immediately before such a visit was, a resident of a Contracting State will be exempt from tax in that State in respect of remuneration for such activities.

Paragraph 2 specifies that the provisions of the Article will not apply in respect of research which is undertaken for the private benefit of a person or persons.

ARTICLE 23

OTHER INCOME

This Article deals with the treatment of income which is not dealt with in other Articles of the Agreement and specifies in paragraph 1 that such items of income will be taxable only in the State of residence of the recipient thereof.

Paragraph 2 reintroduces the principle established in paragraph 4 of Article 10 dealing with dividends, paragraph 6 of Article 11 dealing with interest, and paragraph 4 of Article 12 dealing with royalties, that if such income is connected to a permanent establishment or a fixed base which a resident of a Contracting State has in the other Contracting State, then such income may be included in the profits which are attributable to the permanent establishment or fixed base as envisaged in Article 7 or Article 15 and taxed in that other Contracting State.

Paragraph 3 states that notwithstanding paragraphs 1 and 2, the source State also retains a taxing right in respect of other income.

ARTICLE 24

ELIMINATION OF DOUBLE TAXATION

The provisions of this Article are designed to allow for the actual mechanisms required for the elimination of double taxation. In subparagraph 1(a) the position with regard to the manner in which Cameroon will provide relief in cases of double taxation of its residents is set out while the South African position with regard to its residents is set out in subparagraph 1(b).

Cameroon applies the exemption method adhering to the United Nations Double Taxation Convention between Developed and Developing Countries while South Africa applies the credit method.

According to paragraph 2 of Article 24, the State of residence retains the right to take the amount of exempted income into consideration when determining the tax to be imposed on the rest of the income.

ARTICLE 25

NON-DISCRIMINATION

Paragraph 1 provides that a State may not impose upon nationals of the other State any tax or requirement connected therewith which is other or more burdensome than that which it imposes on its own nationals in the same circumstances. The underlined words above are crucial to understanding the effect of this paragraph. By way of example, if Cameroon imposed a withholding tax (NRST) on dividends paid to non-residents, but did not impose a similar tax on residents, NRST would be paid by South African shareholders but not by Cameroonian shareholders. Nevertheless, this tax does not contravene the provisions of this paragraph, because the shareholders are not in the same circumstances, as they are resident in different States. A Cameroonian national taking up residence in South Africa would also become liable for NRST and the discrimination is thus on the basis of residence and not nationality. This is permitted.

The paragraph extends the application of the non-discrimination provisions to nationals of either of the States who are resident in a third State.

Paragraph 2 provides that where an enterprise of one State has a permanent establishment in the other State, that permanent establishment shall not be less favourably taxed than enterprises of the home State which carry on similar activities. An exception is made, however, in the case of personal allowances, reliefs and reductions on account of civil status or family responsibilities. An example of such an allowance or relief would be the child rebates previously granted by South Africa. These reliefs may be withheld from non-residents.

Paragraph 3 provides that interest, royalties, fees for technical services and other disbursements paid by non-residents deriving income in a State are to be allowed as a deduction by that State in the same manner as that State grants those deductions to residents. It is provided, however, that this paragraph does not override Articles 9(1), 11(7) 12(6) and 14(6) which allow a State to make adjustments in cases where excessive payments are made because of a special relationship between payer and recipient.

Paragraph 4 prevents a State from giving less favourable taxation treatment to foreign-held enterprises than it gives to locally-held enterprises. The paragraph deals only with the taxation of the enterprise - it is still permissible, as discussed in relation to paragraph 1 above, to impose a different tax regime on the owners of the enterprise.

Paragraph 5 states that nothing in this Article shall prevent South Africa from imposing a tax on the profits attributable to a permanent establishment in South Africa, of a company resident in Cameroon, at a rate which does not exceed the rate of normal tax by more than five percentage points.
Paragraph 6 reinforces that this Article does not prevent:

(a) State from levying tax on interest arising in a permanent establishment, from a fixed base or through force of attraction, in this scenario either Article 7 or Article 15 will be applicable;
(b) Apply domestic law with regard to thin capitalization and transfer pricing

The Agreement generally applies only to the taxes listed in Article 2 but paragraph 7 provides that the non-discrimination provisions of this Article will apply to all taxes of every kind and description.

ARTICLE 26

MUTUAL AGREEMENT PROCEDURE

This Article institutes a mutual agreement procedure for difficulties arising out of the application of the Agreement.

If, due to the actions of one or both of the Contracting States, a resident of one of the Contracting States considers that taxation which is not in accordance with the provisions of the Convention has been imposed, paragraph 1 enables such resident of a Contracting State to present a case to the competent authority of that State. This may be done irrespective of remedies provided by domestic legislation. The taxpayer must notify the competent authority within 3 years of the notification of the action which results in such incorrect taxation.

Paragraph 2 stipulates that the competent authority, considering the objection to be justified and unable to arrive at a satisfactory solution shall, in an endeavour to avoid incorrect taxation, consult with the competent authority of the other Contracting State. The implementation of any agreement reached is not subject to any time constraints in the domestic law of the Contracting States.

In paragraph 3, the competent authorities of the two States are authorised to resolve by mutual agreement any problems relating to the interpretation or application of the Convention, and, furthermore, to consult together for the elimination of double taxation in cases not provided for in the Convention.

For practical purposes, paragraph 4 authorises the competent authorities to communicate directly with each other for the purpose of reaching mutual agreement in respect of any of these matters. Communication is also permitted through a commission consisting of the competent authorities themselves or their representatives.

ARTICLE 27

EXCHANGE OF INFORMATION

Paragraph 1 provides that the States shall exchange such information as may be required both for carrying out the provisions of the Convention and for applying the domestic taxation laws concerning any tax imposed on behalf of the Contracting States or of their political subdivisions, in particular for the prevention of fraud or evasion of such taxes. The exchange is not restricted by Articles 1 and 2. Thus, should South Africa obtain tax information relating to a resident of a third State who is liable for Cameroonian tax, it may make that information available to Cameroon. The exchange extends to taxes of every kind and description.

Paragraph 2 stipulates that information obtained by a State under paragraph 1 must be treated with the same degree of secrecy as applies to information obtained under the domestic laws of that State. In addition to this general stipulation on secrecy, it is specifically provided that information obtained under this Article may be disclosed only to persons or authorities involved in the administration of the taxes imposed on behalf of a Contracting State or of its political subdivisions, and that those persons and authorities shall use the information only for the purposes of such administration.

In terms of paragraph 3, the preceding provisions will not impose on a State the obligation:

(a) to do anything which is contrary to the laws or the administrative practice of either State;
(b) to supply information which is not obtainable under the laws of either State or in the normal course of the administration of either State;
(c) to supply information which discloses any business secret, or information the disclosure of which is contrary to public policy.

In terms of paragraph 4 a Contracting State is obliged to exchange information even in cases where the requested information is not needed by that State for domestic tax purposes. Paragraph 4 further makes it clear that the obligation to exchange information is subject to the limitations of paragraph 3 provided that the said limitations cannot be construed to form the basis for declining to supply the requested information where the requested State's laws or practices include a domestic interest requirement.

Paragraph 5 provides that the requested Contracting State shall not decline to supply

information to the requesting Contracting State solely because the requested information is held by a bank or other financial institution. Paragraph 5 therefore overrides the provisions of paragraph 3 to the extent that paragraph 3 would otherwise permit the requested State to decline to supply the requested information on grounds of bank secrecy. Paragraph 5 further provides that the requested State shall not refuse to supply the requested information on grounds that the information is held by persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest in a person, including companies and partnerships, foundations or similar organisational structures.

ARTICLE 28

MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

The Article ensures that members of diplomatic missions and consular posts are not deprived of any right which is accorded to them under international law or special agreements between Contracting States. In effect this normally means that the remuneration which they receive from their State of residence while they are stationed in the other Contracting State is not subjected to tax in that other State.

ARTICLE 29

ENTRY INTO FORCE

Paragraph 1 stipulates that the Contracting States will notify each other in writing, through the diplomatic channel, once the legal procedures required in each country for completion of their domestic requirements for entry into force of the Agreement have been fulfilled. The Agreement will then enter into force on the date of receipt of the later of these notifications.

Paragraph 2 specifies the date on which the provisions will begin to operate, in both States as the first day of January next following the date of entry into force of the Convention with regard to taxes withheld at source, and, with regard to other taxes, for taxable years beginning on or after 1 January next following the date of entry into force of the Convention.

ARTICLE 30

TERMINATION

Paragraph 1 provides that the Agreement shall operate for a minimum period of five years after which it may be terminated by either Contracting State by giving written notice prior to 30 June of any calendar year following such notice of termination, while paragraph 2 stipulates the time frames for the effective dates of such cession.

PROTOCOL

A Protocol to be signed at the same time, at which the Convention is signed, follows on the Convention.

At paragraph 1 it is stipulated that if a Convention for the Avoidance of Double Taxation is entered into by Cameroon and a third State and the rates for interest, royalties and technical fees in the source State are lower than those specified in Articles 11, 12 and 14 of the Convention, Cameroon must immediately notify South Africa, in writing through the diplomatic channel, with a view to renegotiating the existing rates. This is known as the "most favoured nation" clause ("MFN" clause).

At paragraph 2 the MFN clause is extended to include a provision that South Africa will inform Cameroon if a Convention for the Avoidance of Double Taxation is entered into by South Africa and a third State and the rates for interest, royalties and technical fees in the source State are higher than those specified in Articles 11, 12 and 14 of the Convention, South Africa must immediately notify South Africa, in writing through the diplomatic channel, with a view to renegotiating the existing rates.

Paragraph 3 provides for the tax sparing provisions in Article 24 to be addressed should the current South African tax system, which provides for an exemption in respect of dividends declared by non-resident companies where the participation by the South African shareholder is more than ten per cent, be amended.

CONVENTION

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF

SOUTH AFRICA

AND

THE GOVERNMENT OF THE REPUBLIC OF CAMEROON

FOR THE AVOIDANCE OF DOUBLE TAXATION

AND THE

PREVENTION OF FISCAL EVASION WITH RESPECT TO

TAXES ON INCOME

PREAMBLE

The Government of the Republic of South Africa and the Government of the Republic of Cameroon;

DESIRING to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;

HAVE AGREED AS FOLLOWS:

ARTICLE 1

PERSONS COVERED

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

ARTICLE 2

TAXES COVERED

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

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

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

   (a) in Cameroon:

   (i) the personal income tax;
   (ii) the company tax;
   (iii) the minimum tax on companies and individuals;
   (iv) the special tax on income; and
   (v) the housing loans fund tax and the employment fund tax;

   as well as prepayments, other withholding taxes and surcharges to the said taxes; (hereinafter referred to as "Cameroonian tax"); and

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

ARTICLE 3

GENERAL DEFINITIONS

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

(a) the term "Cameroon" means the territory of the Republic of Cameroon, and when used in a geographical sense, includes the territorial sea and any area adjacent to the coast beyond the territorial waters, over which Cameroon exercises sovereign rights, in accordance with Cameroonian legislation and international law, and which has been or may hereafter be designated as an area within which Cameroon may exercise rights with respect to the sea bed and subsoil and their natural resources;

(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 Cameroon or South Africa, as the context requires;

(d) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;

(e) the term "competent authority" means:

(i) in Cameroon, the Minister in charge of Finance or an authorised representative of the Minister; and
(ii) in South Africa, the Commissioner for the South African Revenue Service or an authorised representative of the Commissioner;

(f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

(h) 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;

(i) the term "person" includes an individual, a company and any other body of persons that is treated as an entity for tax purposes; and

(j) the term "tax" means Cameroonian tax or South African tax, as the context requires.

2. As regards the application of the provisions of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention 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 Convention, 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 therein.

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 Convention to such person. In the absence of such agreement such person shall be considered to be outside the scope of the Convention except for the provisions of Article 27.

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;
(f) a mine, an oil or gas well, a quarry or any other place of extraction or exploitation of natural resources;
(g) a drilling rig or ship used for the exploration or development of natural resources;
(h) a sales outlet; and
(i) a warehouse, in relation to a person providing storage facilities for others.

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; and

(c) An enterprise shall be deemed to have a permanent establishment in a Contracting State to carry on business if it provides services, or supplies equipment and machinery on hire used or to be used, in exploration for, extraction of, or exploitation of mineral resources in that State, 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.

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

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

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 7 applies – is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:

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

(b) has no such authority, but habitually maintains in the first-mentioned Contracting State a stock of goods or merchandise, belonging to the enterprise, from which he regularly delivers goods on behalf of the enterprise.

6. Notwithstanding the provisions of this Article, an insurance enterprise of a Contracting State shall except in regard to re-insurance 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 of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other 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. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, and conditions are made and imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent enterprises, he will not be considered an agent of an independent status within the meaning of this paragraph.

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.

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.

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 or has carried 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:

   (a) to that permanent establishment;
   (b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or
   (c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.

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

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 the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment including executive and general administrative expenses, whether incurred 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 that 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 service performed or for management, or, except in the case of a banking enterprise, by way on interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, 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 service 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 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 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 of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

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

ARTICLE 9

ASSOCIATED ENTERPRISES

1. Where

   (a) an enterprise of a Contracting 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. 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 beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

(a) 10 per cent of the gross amount of the dividends if the beneficial owner is a company which holds at least 25 per cent of the capital of the company paying the dividends; or

(b) 15 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, "jouissance" shares or "jouissance rights", mining shares, founders' shares or other rights, not being debt-claims, participating in profits, 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, 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 15, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other 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 undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

6. Notwithstanding any other provision of this Convention, where a company which is a resident of a Contracting State has a permanent establishment in the other Contracting State, the profits taxable under Article 7, paragraph 1, may be subject to an additional tax in that other State, in accordance with its laws, but the additional charge shall not exceed 10% of the amount of those profits, after deducting therefrom the corporate tax imposed on such profits by that 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.

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

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to the Government or the Central Bank of the other Contracting State, shall be exempt from tax in the first-mentioned 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. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1 and 2 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 (a) such permanent establishment or fixed base, or with (b) business activities referred to in (c) of paragraph 1 of Article 7. In such cases the provisions of Article 7 or Article 15, as the case may be, 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 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.

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

ARTICLE 12

ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films and films, tapes or discs for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting 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 (a) such permanent establishment or fixed base, or with (b) business activities referred to in (c) of paragraph 1 of Article 7. In such cases the provisions of Article 7 or Article 15, as the case may be, shall apply.

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

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

ARTICLE 13

CAPITAL GAINS

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

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

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

4. 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.

5. 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

FEES FOR TECHNICAL SERVICES

1. Fees for technical services 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 fees for technical services 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 fees for technical services is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the fees for technical services.

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

3. The term "fees for technical services" as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a technical, managerial or consultancy nature.

4. The provision of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the fees for technical services arise through a permanent establishment situated therein, or performs in that other State independent personnel services from a fixed base situated therein, and the fees for technical services are effectively connected with such permanent establishment or fixed base. In such a case the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. Fees for technical services shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the fees for technical services, 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 obligation to pay the fees for technical services was incurred, and such fees for technical services are borne by such permanent establishment or fixed base, then such fees for technical services shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the fees for technical services paid 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 to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.]

ARTICLE 15

INDEPENDENT PERSONAL SERVICES

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State:

   (a) if such a fixed base is regularly available to the individual in the other Contracting State for the purpose of performing the individual's activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or

   (b) if the individual's stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from the individual's activities performed in that other State may be taxed in that State.

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 16

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 17, 19 and 20, 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 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 or a fixed base 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 17

DIRECTORS' FEES

1. 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 a similar organ of a company which is a resident of the other Contracting State may be taxed in that other State.

2. Salaries, wages and other similar remuneration derived by a resident of a Contracting State in his capacity as an official occupying a top-level managerial position in a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 18

ENTERTAINERS AND SPORTSPERSONS

1. Notwithstanding the provisions of Articles 7, 15 and 16, 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, 15 and 16, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. Paragraphs 1 and 2 shall not apply to income derived by a resident of a Contracting State from activities exercised in the other Contracting State as envisaged in paragraphs 1 and 2, if the visit to that other State is supported wholly or mainly by public funds of the first-mentioned State, a political subdivision or a local authority thereof. In such case, the income shall be taxable only in the Contracting State of which the entertainer or sportsperson is a resident.

ARTICLE 19

PENSIONS AND ANNUITIES

1. Subject to the provisions of paragraph 2 of Article 20, 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.

3. Notwithstanding the provisions of paragraphs 1, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State, or a political subdivision or a local authority thereof shall be taxable only in that State.

ARTICLE 20

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 16, 17, 18 and 19 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 21

STUDENTS AND BUSINESS APPRENTICES

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 the individual's education or training receives for the purpose of the individual's maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

ARTICLE 22

PROFESSORS, TEACHERS AND RESEARCHERS

1. An individual who visits a Contracting State for a period not exceeding two years for the sole purpose of teaching or carrying out research at a university, college, school or other recognised educational institution in that State and who is or was immediately before that visit a resident of the other Contracting State, shall be exempt from tax in the first-mentioned State on any remuneration for such teaching or research, provided that such remuneration is derived by the individual from outside that State.

2. The provisions of paragraph 1 shall not apply to income from research if such activities are undertaken by the individual not in the public interest but primarily for the private benefit of some person or persons.

ARTICLE 23

OTHER INCOME

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that 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 15, as the case may be, 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 Convention and arising in the other Contracting State may also be taxed in that other State.

ARTICLE 24

ELIMINATION OF DOUBLE TAXATION

1. Double taxation shall be eliminated as follows:

(a) in Cameroon:

(i) where a resident of Cameroon derives income which, in accordance with the provisions of this Convention may be taxed in South Africa, Cameroon shall, subject to the provision of paragraph 2, exempt such income from tax;

(ii) where a resident of Cameroon derives items of income which, in accordance with the provisions of Articles 10, 11 and 12, may be taxed in South Africa, Cameroon shall allow as a deduction from the tax on the income of that resident an amount equal to the South African tax paid. Such deduction shall not, however, exceed that part of the tax, as computed before deduction is given, which is attributable to such items of income derived from South Africa; and

(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), Cameroonian tax paid by residents of South Africa in respect of income taxable in Cameroon, in accordance with the provisions of this Convention, shall be deducted from the taxes due according to South African fiscal law. Such deduction shall not, however, exceed an amount which bears to the total South African tax payable the same ratio as the income concerned bears to the total income.

2. Where in accordance with any provision of the Convention 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 25

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, paragraph 6 of Article 12 or paragraph 6 of Article 14 apply, interest, royalties, fees for technical services 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 Cameroon, a tax at a rate which does not exceed the rate of normal tax on companies by more than five percentage points.

6. In no case shall the provisions of this Article be construed as preventing either Contracting State from:

   (a) imposing the taxes described in paragraph 6 of Article 10;

   (b) applying the provisions of its domestic law as regards thin capitalisation and transfer pricing.

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

ARTICLE 26

MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for that person in taxation not in accordance with the provisions of this Convention, that person may, irrespective of the remedies provided by the domestic law of those 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 25, 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 Convention.

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

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

4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

ARTICLE 27

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 Convention 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 Convention. 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 28

MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

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

ARTICLE 29

ENTRY INTO FORCE

1. Each of the Contracting States shall notify 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 Convention. The Convention shall enter into force on the date of receipt of the later of these notifications.

2. The provisions of the Convention shall apply:

   (a) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the first day of January next following the date upon which the Convention enters into force; and

   (b) with regard to other taxes, in respect of taxable years beginning on or after the first day of January next following the date upon which the Convention enters into force.

ARTICLE 30

TERMINATION

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

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

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

   (b) with regard to other taxes, in respect of taxable years beginning after the end of the calendar year in which such notice is given.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have signed and sealed this Convention in two originals in the English and French languages, both texts being equally authentic.

DONE at ..... on.....day of .....
in the year 20.....

FOR THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

FOR THE GOVERNMENT OF THE REPUBLIC OF CAMEROON

PROTOCOL

At the time of signing the Convention between the Government of the Republic of Cameroon and the Government of 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. Where in any Convention entered into between Cameroon and any other State for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income subsequent to the entry into force of this Convention, a lower rate than that specified in Articles 11, 12 or 14 of this Convention is provided for, Cameroon agrees to inform South Africa in writing through the diplomatic channel and shall enter into negotiations with a view to providing comparable treatment as may be provided for the third State.

2. Where in any Convention entered into between South Africa and any other State for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income subsequent to the entry into force of this Convention, a higher rate than that specified in Articles 11, 12 or 14 of this Convention is provided for, South Africa agrees to inform Cameroon in writing through the diplomatic channel and shall enter into negotiations with a view to providing comparable treatment as may be provided for the third State.

3. With regard to Article 24, the current South African tax system provides for an exemption in respect of dividends declared by non-resident companies where the participation by the South African shareholder is more than ten per cent. Should this exemption be amended, South Africa will inform Cameroon in writing through the diplomatic channel and shall enter into negotiations with a view to the renegotiation of the provisions of this Article to address tax sparing provisions.

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

DONE at ..... on this ..... day of ..... in the year 20....

FOR THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

FOR THE GOVERNMENT OF THE REPUBLIC OF CAMEROON

EXPLANATORY MEMORANDUM

ON THE DOUBLE TAXATION AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

AND

THE GOVERNMENT OF THE STATE OF QATAR

It is the practice in most countries for income tax to be imposed both on the world-wide income derived by residents of the country and on income derived by non-residents which arises in the country. The effect of such a system is that income derived by a resident of one country from a source in another country is subjected to tax in both countries. As this position clearly discourages foreign investment, it is normal for countries which have trade relations to conclude double taxation agreements. Such agreements commonly provide that income of a particular nature will either be taxable in only one of the countries, or may be taxed in both countries with one of them allowing a credit for the tax imposed by the other.

The Agreement concluded with Qatar closely follows the OECD Model. In the explanation which follows, the general principles of each Article of the Agreement are set out.

The entire text has been made gender neutral.

Preamble

The Preamble records that the object of the Agreement is to avoid double taxation and fiscal evasion with respect to taxes on income. The Agreement is also intended to promote and strengthen the economic relations between the two countries.

Article 1

Persons Covered

The Agreement is made applicable to persons who are residents of one or both of the Contracting States except as otherwise provided. This means, *inter alia*, that a citizen of one of the States who is resident in a third State will not enjoy the benefits of the Agreement, apart from the non-discrimination provisions.

Article 2

Taxes Covered

Paragraphs 1 and 2 of this Article provide that the Agreement will apply to all taxes on income imposed by the two States irrespective of the manner in which they are levied.

Paragraph 3 lists the existing taxes imposed by each State and paragraph 4 provides that the Agreement will also apply to identical or substantially similar taxes which are subsequently imposed by either State.

Article 3

General Definitions

This Article defines various expressions which are used in the body of the Agreement. Several of these definitions are self-evident and are not further explained.

The definition of "South Africa" includes not only the sovereign territory but also those areas outside its territorial sea over which it may exercise jurisdiction in accordance with international law, for example, in relation to the exploitation of natural resources.

"Person" is defined to include an individual, a company and any other body of persons that is treated as an entity for tax purposes. The underlined words are of particular relevance to partnerships. Partnerships are not regarded as taxable entities in South Africa, rather, the income of a partnership is taxed in the hands of the partners. Accordingly, should a partnership consisting of a Qatar resident and a resident of a third State derive income in South Africa, only the Qatar resident will be entitled to the benefits of the Agreement on his/her share of the partnership income.

"International traffic" is defined as any transport by ship or aircraft operated by an enterprise that has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State. Special provisions are contained in Article 8 for the taxation of international traffic. The effect of the exclusion mentioned above is that should a Qatar company operate a purely domestic airline operation within South Africa, that operation will not fall to be dealt with under Article 8, but rather under Article 7 which deals with business profits in general. This provision is intended to place that operation on the same footing as South African domestic airlines.

Paragraph 2 follows the OECD Model in providing that expressions not defined in the Agreement bear the meaning that they have under the domestic taxation laws of the States at the time of application of the provisions of the Agreement. Any meaning under the taxation laws will take precedence over a meaning under other laws of the State.

Article 4

Resident

The concept of "resident of a Contracting State" is used throughout the Agreement and is of importance in three cases:

(a) in determining the Agreement's personal scope of application as set out in Article 1;

(b) in solving cases where double taxation arises because of dual residence;

(c) in solving cases where double taxation arises as a consequence of taxation in the State of residence and in the State in which the income arose, the State of source.

This Article defines the meaning of the term and further solves cases of dual residence.

In paragraph 1, the term "resident of a Contracting State" is defined. The definition refers to the concept of residence adopted in the domestic law of each of the Contracting States. As criteria for taxation as a resident, domicile, residence, place of management or any other criterion of a similar nature are used in the definition.

The term "resident" also includes specific reference to the State itself.

Paragraph 2 provides solutions to the cases where individuals are residents of both Contracting States and sets out a step by step method of finally deciding which State has the sole right to claim the individual as its resident.

Paragraph 3 deals with companies and other bodies of persons who are not individuals but who are residents of both States and specifies that a company will be deemed to be a resident of the State in which it has its place of effective management.

Article 5

Permanent Establishment

One of the goals of the Agreement is to determine the right of a Contracting State to tax the business profits of an enterprise of the other Contracting State which arise through a permanent establishment situated in the first-mentioned State. The Article defines what is to be regarded as a permanent establishment.

Paragraph 1 gives a general definition of a "permanent establishment" as being a fixed place of business through which the business of an enterprise is carried on.

Paragraph 2 contains a list, which is not exhaustive, of what is regarded to be a permanent establishment, subject to the provisions of paragraph 1.

Paragraph 3(a) provides expressly that a building site or construction, assembly or installation project will not constitute a permanent establishment unless it continues for more than six months. Supervisory activities carried on in a Contracting State in connection with such site or project will also constitute a permanent establishment if they continue for more than six months and irrespective of the fact that the enterprise carrying on such activities has no fixed place of business in that State.

Paragraph 3(b) introduces provisions dealing with the furnishing of services through employees or other personnel engaged by that enterprise for such purpose and specifies that a permanent establishment will be deemed to exist, despite there being no fixed place of business, if such services are rendered in a State for a period or periods exceeding in the aggregate 183 days within any twelve-month period commencing or ending in the fiscal year period concerned; and

Paragraph 3(c) introduces provisions dealing with the income from performance of professional services or activities of an independent character by an individual and specifies that a permanent establishment will exist if those services or activities within that State continue for more than an aggregate of 183 days within any twelve-month period commencing or ending in the fiscal year concerned.

A number of preparatory or auxiliary activities which are treated as exceptions to the general definition laid down in paragraph 1 are set out in paragraph 4. The paragraph specifies that a "permanent establishment" will be deemed not to exist if the enterprise only carries on the various activities set out therein. The Contracting State in which these activities take place will in any event not have any, or negligible profits, to tax if these are the only activities which occur.

Paragraph 5 sets out the generally accepted principle that an enterprise will be treated as having a permanent establishment in a Contracting State if it carries on business in that State through an agent situated in that State, provided that the agent is not of an independent status and provided such agent has the power to conclude contracts in the name of the enterprise in respect of any activities which that person undertakes for the enterprise.

Paragraph 6 deems an insurance enterprise, except in regard to reinsurance, to have a permanent establishment in the other Contracting State if it collects premiums in that territory or insures risks situated therein, through a person other than an independent agent.

Paragraph 7 deals with the situation where an enterprise carries on business through an independent agent in the other Contracting State and provides that no permanent establishment will be deemed to exist if the activities are carried on through such an agent who is acting in the normal course of business.

Paragraph 8 sets out the principle that the existence of a subsidiary company does not, of itself, constitute that subsidiary company a permanent establishment of its parent company. This follows from the principle that for tax purposes a subsidiary company constitutes an independent legal entity and will be taxed in its State of residence on its own profits.

Article 6

Income from Immovable Property

Paragraph 1 provides that income from immovable property may be taxed in the State in which the property is situated. Income from agriculture and forestry is specifically included in this rule.

Paragraph 2 establishes the general rule that what constitutes fixed property will be decided under the law of the State in which the property is situated. Nevertheless, property accessory to fixed property and livestock and equipment used in agriculture and forestry are specifically included. So too are usufructs and payments for the right to extract minerals and other natural resources.

Paragraph 3 makes it clear that the rule established in paragraph 1 applies irrespective of the manner in which the property is exploited.

Paragraph 4 provides that the provisions of paragraphs 1 and 3 also apply to income derived from fixed property owned by an enterprise. In the absence of this provision, it might be argued that this income should be dealt with in terms of the provisions of Article 7 which establishes somewhat different rules for the treatment of business profits.

Article 7

Business Profits

This Article deals with the taxation of business profits and is to be read together with Article 5 as it uses the test of "permanent establishment" in determining where such profits are to be taxed.

Paragraph 1 specifies that the profits of an enterprise which is a resident of a Contracting State are taxable only in that State unless it carries on business in the other Contracting State through a permanent establishment situated in that other State in which case that other State may tax the profits which are attributable to that permanent establishment.

Paragraph 2 deals with the allocation of profits to a permanent establishment and specifies that the profits which are to be attributed to the permanent establishment are those which it would have made if it had been dealing with entirely separate enterprises under arms-length conditions and not with its head office.

Paragraph 3 recognises the fact that in calculating the profits of a permanent establishment, allowance must be made for certain expenses, wherever incurred, which were incurred for the purposes of the permanent establishment. For example, if the head office incurs general administrative expenses it is most likely that a portion of those expenses was in fact incurred on behalf of the permanent establishment and it will therefore be necessary to allocate that portion of the expenses to the permanent establishment in determining its profits. The emphasis here is on the fact that the expenses must have been actually incurred. Notional charges such as management fees are excluded.

Paragraph 4 provides for profits attributable to a permanent establishment to be determined on the basis of apportionment if this method is customary in a Contracting State. However, the proviso specifies that the result of this method should still be in accordance with the principles of this Article.

Paragraph 5 deals with the situation where a permanent establishment which, although carrying on other business, also carries on purchasing for its head office. The paragraph provides that the profits which are attributed to the permanent establishment cannot be increased by the addition of a notional profit from such purchase transaction.

Paragraph 6 stipulates that the method of allocation of profits to the permanent establishment should not be changed merely for the reason that a different method may result in more profit becoming taxable in the State of residence of the permanent establishment. This also establishes a degree of certainty regarding the tax treatment to be expected in the State in which the permanent establishment is situated.

It is possible that the term "profits" could include other items of income which are dealt with in other Articles of the Agreement. Paragraph 7 stipulates that the preceding provisions of Article 7 shall not affect the provisions of such other Articles. An example of this is where profits include interest which is dealt with separately under Article 11.

Article 8

Shipping and Air Transport

Paragraph 1 provides that profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic are taxable only in the State in which the place of effective management of the enterprise is situated.

Paragraph 2 specifies that profits which are incidental to international traffic operations, in particular, the occasional rental on a bare boat basis of ships or aircraft used in international traffic, are also taxable in accordance with Article 8. It should be noted that where such income is not incidental to international traffic operations, but rather constitutes an independent business in its own right, it will fall to be dealt with under Article 7 as business income.

Paragraph 3 specifies that profits of an enterprise of a Contracting State from the use or rental of containers, trailers, barges and related equipment for the transport of containers, which are used in international traffic for the transport of goods or merchandise are taxable only in the State in which the place of effective management of the enterprise is situated.

Paragraph 4 makes the above rules also applicable where the business is conducted through a pool, a joint venture or an international operating agency.

Article 9

Associated Enterprises

This Article deals with associated enterprises and in paragraph 1 provides that a Contracting State may recalculate the profits of the enterprises if they have created conditions between themselves which would not be created by enterprises dealing at arms-length with each other. This paragraph is effective in dealing with the effects of transfer pricing between associated enterprises. The concept of what is regarded to be an associated enterprise is also set out in this paragraph.

The recalculation of profits envisaged in paragraph 1 may of course result in double taxation if, for example, one of the Contracting States increases the profits of its enterprise, and subjects the increased amount to tax, although such increased amount may already have been subjected to tax in the hands of its associated enterprise in the other Contracting State.

The provisions of paragraph 2 provides that the other State may make a corresponding adjustment to the profits of the associated enterprise and, in so doing, avoid double taxation. It should be noted that the paragraph provides for consultation between the States in deciding on such adjustment in accordance with the provisions of Article 24.

Article 10

Dividends

Paragraphs 1 and 2 of this Article provide for the common international tax treatment of cross-border dividends, in terms of which the source State in which the dividends are declared may impose a limited withholding tax on the non-resident shareholder and the State of residence of the shareholder in which the dividends are received has an unlimited taxing right.

The limitation on withholding tax rates in the source State imposed by paragraph 2 is as follows:

(a) where the shareholder is a company which holds directly at least 10 per cent of the capital of the company declaring the dividend, the tax is limited to 5 per cent of the gross dividend. This limitation is intended to encourage substantial (i.e.at least 10 per cent) investment by companies in one State in companies in the other State;

(b) in all other cases the rate of tax is limited to 10 per cent of the gross amount of the dividends.

The mode of application of these limitations shall be settled by the competent authorities of the two States.

Tax on the profits of the company will not be affected by this paragraph.

Paragraph 3 provides that dividends payable to government entities of either State are not taxable.

Paragraph 4 contains the standard definition of what constitutes a dividend.

Paragraph 5 provides that the provisions of this Article will not apply in cases where a resident of one State carries on business in the other State through a permanent establishment situated therein and derives dividends from shares the holding of which is effectively connected with the permanent establishment. In other words, the holding must be part of the business assets of the permanent establishment. The source State is therefore not limited in its taxing rights which are then exercised under the provisions of Article 7 of the Agreement.

Paragraph 5 deals with the limitation of the right of one of the States to impose tax on dividends declared by, or the undistributed profits of, a company which is a resident of the other State. One situation in which tax may be imposed, is where the shareholding

is effectively connected with a permanent establishment situated in that other State, as mentioned in relation to paragraph 4 above.

The second situation can best be explained through an example of a Qatari company which carries on business through a branch in South Africa. The paragraph provides that South Africa may not impose tax on the dividends declared by a Qatari company, even though its profits are partly derived in South Africa, except in so far as the dividends are received by South African resident shareholders.

Paragraph 6 provides that the provisions of Article 10 will not apply if the right giving rise to the dividend was created or assigned mainly for the purpose of taking advantage of the Article by means of that creation or assignment. This is an anti-avoidance provision.

Article 11

Interest

This Article deals with the taxation of income in the form of interest.

Paragraph 1 specifies that interest which arises in a Contracting State and is paid to a resident of the other Contracting State may be taxed in the State of residence.

Paragraph 2 gives a right of taxation to the source State as well but limits the amount of tax to 10 per cent of the gross amount of the interest provided that the beneficial owner of the interest is a resident of the other Contracting State.

Paragraph 3 provides an exemption from tax in respect of interest if it is paid to the Governments of both States, Central Banks of either State, any institution wholly owned directly or indirectly by either State or its political division or local authority or if the interest arises in respect of any debt instrument listed in a recognized stock exchange.

Paragraph 4 contains a definition of the term "a recognized stock exchange".

Paragraph 5 contains the standard definition of what is to be regarded as interest.

Paragraph 6 specifies that if the beneficial owner of interest carries on business in the Contracting State in which the interest arises through a permanent establishment in that State, the interest may be taxed in that State if the debt-claim in respect of which the interest is paid is effectively connected to that permanent establishment. The provisions of Article 11 will not apply to such interest but rather the provisions in Article 7 in the case of a permanent establishment. This paragraph is similar to paragraph 4 of Article 10 dealing with dividends.

Paragraph 7 lays down the principle that the State of source of the interest is the State of which the payer of the interest is a resident. It also provides for an exception to this rule in the case of interest-bearing loans which have an economic link with a permanent establishment operated in the other Contracting State by the payer of the interest. If the loan was contracted for the requirements of the permanent establishment and the interest is borne by such permanent establishment, the paragraph specifies that the source of the interest is the Contracting State in which the permanent establishment is situated.

The purpose of paragraph 8 is to restrict the operation of the provisions of this Article with regard to the taxation of interest in cases where there is a special relationship between the beneficial owner of the interest and the payer or between both of them and a third party. If, in the presence of this relationship, the interest paid exceeds the interest which would have been paid in the absence of such a relationship, the provisions of this Article will not apply to the amount of the interest which is considered to be excessive and such excessive amount will remain taxable in accordance with the laws of both Contracting States. The limitation placed on the source State under paragraph 2 will in such circumstances be negated in respect of the excessive amount. This is an anti-avoidance provision.

Paragraph 9 provides that the provisions of Article 11 will not apply if the right giving rise to the interest was created or assigned mainly for the purpose of taking advantage of the Article by means of that creation or assignment. This is an anti-avoidance provision.

Article 12

Royalties

This Article deals with royalties and paragraph 1 provides that royalties which arise in a Contracting State and are paid to a resident of the other Contracting State may be taxed in the State of residence.

Paragraph 2 gives a right of taxation to the source State but limits the amount of tax to 5 per cent of the gross amount of the royalties, provided that the beneficial owner of the royalties is a resident of the other State.

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

Paragraph 3 defines which payments will constitute royalties for purposes of the Article. It includes amounts normally understood as royalties, such as patents, copyrights, trade-marks etc, and also includes payments for the use of, or right to use, industrial, commercial or scientific experience (know-how).

Paragraph 4 provides that the provisions of paragraphs 1 and 2 will not apply if the beneficial owner of the royalties carries on business in the State in which the royalties arise through a permanent establishment and the royalties are effectively connected with that permanent establishment. In this case, the royalties are in effect regarded as part of the business profits of the permanent establishment, and may be taxed by the source State. This paragraph is similar to paragraph 5 of Article 10 dealing with dividends and paragraph 6 of Article 11 dealing with interest.

An example of where this paragraph would apply would be a Qatari company with a permanent office in South Africa through which it sold franchise rights for the use of its product brand. South Africa would in this case be entitled to tax the franchise payments received by a Qatari company.

Paragraph 5 is a deeming provision which establishes the source of royalties by laying down the principle that the State of source of the royalties is the State of which the payer of the royalties is a resident. It also provides for an exception to this rule in the case of royalties which have an economic link with a permanent establishment operated in the other Contracting State by the payer of the royalties. If the liability to pay the royalties was incurred by the permanent establishment and the royalties are borne by such permanent establishment, the paragraph specifies that the source of the royalties is the Contracting State in which the permanent establishment is situated.

Paragraph 6 contains an anti-abuse provision in respect of transfer pricing. Where the payer and recipient of a royalty are connected persons and the royalty is excessive, the source State may tax the portion which is excessive according to its laws. In other words, the limitation set out in paragraph 2 would only apply to the portion of the royalty which meets the arms-length test.

Paragraph 7 provides that the provisions of Article 12 will not apply if the rights giving rise to the royalties were created or assigned mainly for the purpose of taking

advantage of the Article by means of that creation or assignment. This is an anti-avoidance provision.

Article 13

Capital Gains

The Article deals with the taxation of capital gains and covers all kinds of taxes which are imposed on such gains.

Paragraph 1 specifies that the right to tax gains derived from the alienation of immovable property is also given to the Contracting State in which the property is situated although the alienator may be a resident of the other Contracting State.

Paragraph 2 deals with the alienation of movable property which forms part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State. It provides that gains from the alienation of such property may also be taxed in the State in which such permanent establishment is situated and also includes such gains arising from the alienation of the permanent establishment as such and the enterprise as a whole.

Paragraph 3 provides that gains from the alienation of ships or aircraft operated in international traffic or movable property related to the operation of such ships or aircraft are taxable only in the State in which the place of effective management of the enterprise is situated. This follows the principle laid down in Article 8 with regard to the taxation of the business profits of such an enterprise.

Paragraph 4 specifies that gains arising from the alienation of shares of the stock of a company the property of which consists directly or indirectly wholly or mainly of immovable property located in a Contracting State, may be taxed in that State. However, the provision of this paragraph does not apply if the immovable property is used for the purposes of carrying on an industrial or manufacturing activity.

Paragraph 5 specifies that gains from the alienation of any property not covered by the preceding paragraphs of this Article shall only be taxed in the State of residence of the alienator of the property.

Article 14

Income from Employment

Paragraph 1 lays down the principle that salaries, wages and other similar remuneration in respect of an employment is taxable only in the State of residence of the employee unless the services in respect thereof are rendered in the other Contracting State, in which case the remuneration arising from the services rendered in the other State may also be taxed in that other State.

Paragraph 2 limits the right of taxation of the State in which the services are rendered (the source State) in that remuneration for services rendered in that State is taxable only in the State of residence if the following conditions are all met:

(a) the employee is present in the source State for a period or periods not exceeding 183 days in any twelve-month period commencing or ending in the fiscal year concerned, and

(b) the employer who pays the remuneration, or on whose behalf the remuneration

is paid, is not a resident of the source State, and

(c) the relevant remuneration is not borne by a permanent establishment which the employer has in the source State.

It is important to note that all three requirements must be met before the provisions of the paragraph operate.

Paragraph 3 deals with remuneration derived by employees in respect of employment aboard a ship or aircraft operated in international traffic and it specifies that such remuneration may be taxed in the State of residence of the operator of such ship or aircraft.

Paragraph 4 stipulates that salaries, wages and other similar remuneration of an employee of an air transport enterprise of a State who is stationed in the other State and who is not a national or a resident of that other State are taxable only in the State where such an enterprise is resident for a period of four years with effect from the date of performance of duties in that other State, provided all the conditions set out in this paragraph are met.

Article 15

Directors' Fees

Paragraph 1 provides that directors' fees may be taxed by the State in which the company paying the fees is resident. It does not, however, prevent the director from also being taxed on those fees in the director's State of residence.

Paragraph 2 provides that the income received by an official, in a top managerial position in a company which is resident in the other State may be taxed by that State.

Article 16

Entertainers and Sportspersons

In terms of paragraph 1 the income derived by entertainers and sportspersons may be taxed in the Contracting State in which their activities are exercised.

Paragraph 2 expands the principle laid down in paragraph 1 in that it specifies that in cases where income in respect of the activities of entertainers and sportspersons accrues to some other person rather than the entertainer or sportsperson, such income may still be taxed in the Contracting State in which such activities are exercised. This paragraph covers the frequent situation in which a professional sportsperson forms a company and competes in a sporting event in another country not in a personal capacity, but rather as an employee of that company. As the sportsperson's activities in the country continue for a very short period and do not constitute a permanent establishment, neither the sportsperson nor the company would under the normal provisions of the Agreement be taxable in that country.

In cases where the activities of entertainers or sportspersons in a Contracting State are supported wholly or mainly out of public funds of the Contracting State where such a person is resident, paragraph 3 specifies that any income derived from activities exercised in that other State shall be exempt from tax in that other State. This also applies if the activities take place in terms of a cultural agreement or arrangement between the Governments of the Contracting States.

Article 17

Pensions and Annuities

This Article provides that pensions and annuities may be taxed in the State in which they arise. The State of residence may also tax but must then give a credit for the source State tax.

Paragraph 2 gives the standard definition of an annuity.

Article 18

Government Service

Subparagraph 1(a) provides that remuneration for services rendered, paid by a Contracting State, a political subdivision or a local authority or a statutory body thereof to an individual, is taxable only in that State.

However, subparagraph 1(b) provides that such remuneration is taxable only in the other Contracting State if the services are rendered in that other State by a resident who is also a national of that other State and did not become resident of the other State with the express purpose of rendering the services. An example of this is a South African national, normally resident in South Africa, who is employed by the Qatari Embassy. Such person would be taxable in South Africa even though the person's salary is paid by Qatar.

Paragraph 2 provides that the same principle which applies to remuneration, as set out in paragraph 1, also applies to pensions and other similar remuneration paid by a Contracting State, a political subdivision or a local authority thereof. The pension and/or other similar remuneration would only be taxable in the other State if the recipient is both a resident and a national of that other State.

Paragraph 3 provides that the provisions of paragraphs 1 and 2 will not apply in respect of salaries, wages and other similar remuneration or pensions paid by a Contracting State, a political subdivision or a local authority thereof in respect of services rendered in relation to any business carried on by them. In such circumstances, the provisions of Articles 14, 15, 16 and 17 dealing with remuneration and pensions other than of a public nature will apply.

Article 19

Students, Apprentices and Business Trainees

In terms of this Article, students, apprentices or business trainees who are residents of one State but who are undergoing education or training in the other State will not be taxed in the last-mentioned State on payments received for the purposes of their maintenance, education or training, if those payments are received from outside that State.

Article 20

Other Income

This Article deals with the treatment of income which is not dealt with in other Articles of the Agreement and specifies in paragraph 1 that such items of income will be taxable only in the State of residence of the recipient thereof.

Paragraph 2 reintroduces the principle established in paragraph 5 of Article 10 dealing with dividends and paragraph 6 of Article 11 dealing with interest that if such income is connected to a permanent establishment which a resident of a Contracting State has in the other Contracting State, then such income may be included in the profits which are attributable to the permanent establishment as envisaged in Article 7and taxed in that other Contracting State.

Paragraph 3 states that notwithstanding paragraphs 1 and 2, the source State also retains a taxing right in respect of other income.

Article 21

Elimination of Double Taxation

The provisions of this Article are designed to allow for the actual mechanisms required for the elimination of double taxation. In paragraph (a) the position with regard to the manner in which Qatar will provide relief in cases of double taxation of its residents is set out while the South African position with regard to its residents is set out in paragraph (b).

Both States apply the credit method.

Article 22

Non-discrimination

Paragraph 1 provides that a State may not impose upon nationals of the other State any tax or requirement connected therewith which is other or more burdensome than that which it imposes on its own nationals in the same circumstances. The underlined words above are crucial to understanding the effect of this paragraph. By way of example, if Qatar imposed a withholding tax (NRST) on dividends paid to non-residents, but did not impose a similar tax on residents, NRST would be paid by South African shareholders but not by Qatar shareholders. Nevertheless, this tax does not contravene the provisions of this paragraph, because the shareholders are not in the same circumstances, as they are resident in different States. A Qatari national taking up residence in South Africa would also become liable for NRST and the discrimination is thus on the basis of residence and not nationality. This is permitted.

The paragraph extends the application of the non-discrimination provisions to nationals of either of the States who are resident in a third State.

Paragraph 2 provides that where an enterprise of one State has a permanent establishment in the other State, that permanent establishment shall not be less favourably taxed than enterprises of the home State which carry on similar activities. An exception is made, however, in the case of personal allowances, reliefs and reductions on account of civil status or family responsibilities. An example of such an allowance or relief would be the child rebates previously granted by South Africa. These reliefs may be withheld from non-residents.

Paragraph 3 provides that interest, royalties, fees for technical services and other disbursements paid by non-residents deriving income in a State are to be allowed as a deduction by that State in the same manner as that State grants those deductions to residents. It is provided, however, that this paragraph does not override Articles 9(1), 11(5) and 12(6) which allow a State to make adjustments in cases where excessive payments are made because of a special relationship between payer and recipient.

Paragraph 4 prevents a State from giving less favourable taxation treatment to foreign-held enterprises than it gives to locally-held enterprises. The paragraph deals only with the taxation of the enterprise. It is still permissible, as discussed in relation to paragraph 1 above, to impose a different tax regime on the owners of the enterprise.

Paragraph 5 provides that non taxation of Qatari nationals under Qatari law shall not be viewed as discriminatory under this Article.

The Agreement generally applies only to the taxes listed in Article 2 but paragraph 6 provides that the non-discrimination provisions of this Article will apply to all taxes of every kind and description.

Article 23

Mutual Agreement Procedure

This Article institutes a mutual agreement procedure for difficulties arising out of the application of the Agreement.

If, due to the actions of one or both of the Contracting States, a resident of one of the Contracting States considers that taxation which is not in accordance with the provisions of the Agreement has been imposed, paragraph 1 enables such resident of a Contracting State to present a case to the competent authority of that State. This may be done irrespective of remedies provided by domestic legislation. The taxpayer must notify the competent authority within 3 years of the notification of the action which results in such incorrect taxation.

Paragraph 2 stipulates that the competent authority, considering the objection to be justified and unable to arrive at a satisfactory solution shall, in an endeavour to avoid incorrect taxation, consult with the competent authority of the other Contracting State. The implementation of any agreement reached is not subject to any time constraints in the domestic law of the Contracting State.

In paragraph 3, the competent authorities of the two States are authorised to resolve by mutual agreement any problems relating to the interpretation and application of the Agreement, and, furthermore, to consult together for the elimination of double taxation in cases not provided for in the Agreement.

Finally, for practical purposes, paragraph 4 authorises the competent authorities to communicate directly with each other for the purpose of reaching mutual agreement in respect of any of these matters. This paragraph also makes clear that the competent authorities may develop bilateral procedures for implementing mutual agreement reached under this Article. It further provides that the competent authorities may devise unilateral procedures, conditions, methods and techniques to facilitate bilateral action and implementation of the mutual agreement procedure.

Article 24

Exchange of Information

Paragraph 1 provides that the States shall exchange such information as may be required both for carrying out the provisions of the Agreement and for applying the domestic taxation laws concerning any tax imposed on behalf of the Contracting States or of their political subdivisions, in particular for the prevention of fraud or evasion of such taxes. The exchange is not restricted by Articles 1 and 2. Thus, should South Africa obtain tax information relating to a resident of a third State who is liable for Qatari tax, it may make that information available to Qatar. The exchange extends to taxes of every kind and description.

Paragraph 2 stipulates that information obtained by a State under paragraph 1 must be

treated with the same degree of secrecy as applies to information obtained under the domestic laws of that State. In addition to this general stipulation on secrecy, it is specifically provided that information obtained under this Article may be disclosed only to persons or authorities involved in the administration of the taxes imposed on behalf of a Contracting State or of its political subdivisions, and that those persons and authorities shall use the information only for the purposes of such administration.

In terms of paragraph 3, the preceding provisions will not impose on a State the obligation:

(a) to do anything which is contrary to the laws or the administrative practice of either State;
(b) to supply information which is not obtainable under the laws of either State or in the normal course of the administration of either State;
(c) to supply information which discloses any business secret, or information the disclosure of which is contrary to public policy.

In terms of paragraph 4 a Contracting State is obliged to exchange information even in cases where the requested information is not needed by that State for domestic tax purposes. Paragraph 4 further makes it clear that the obligation to exchange information is subject to the limitations of paragraph 3 provided that the said limitations cannot be construed to form the basis for declining to supply the requested information where the requested State's laws or practices include a domestic interest requirement.

Paragraph 5 provides that the requested Contracting State shall not decline to supply information to the requesting Contracting State solely because the requested information is held by a bank or other financial institution. Paragraph 5 therefore overrides the provisions of paragraph 3 to the extent that paragraph 3 would otherwise permit the requested State to decline to supply the requested information on grounds of bank secrecy. Paragraph 5 further provides that the requested State shall not refuse to supply the requested information on grounds that the information is held by persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest in a person, including companies and partnerships, foundations or similar organisational structures.

Article 25

Members of Diplomatic Missions and Consular Posts

The Article ensures that members of diplomatic missions and consular posts are not deprived of any right which is accorded to them under international law or special agreements between Contracting States. In effect this normally means that the remuneration which they receive from their State of residence while they are stationed in the other Contracting State is not subjected to tax in that other State.

Article 26

Entry into Force

Paragraph 1 stipulates that the Contracting States will notify each other, through the diplomatic channel, once the legal procedures required in each country for completion of their domestic requirements for entry into force of the Agreement have been fulfilled. The Agreement will then enter into force on the date of receipt of the later of these

notifications.

Paragraph 2 specifies the date on which the provisions will begin to operate, in both States as the first day of January next following the date of entry into force of the Agreement with regard to taxes withheld at source, and, with regard to other taxes, for taxable years beginning on or after 1 January next following the date of entry into force of the Agreement.

Article 27

Termination

Paragraph 1 provides that the Agreement shall operate for a minimum period of five years after which it may be terminated by either Contracting State by giving written notice prior to 30 June of any calendar year following such notice of termination, while paragraph 2 stipulates the time frames for the effective dates of such cession.

Protocol

The Protocol specifies that, with reference to Articles 10 and 11 of the Agreement, the exemptions provided for in paragraph 3 of Article 10 and paragraph 3(d) of Article 11 are applicable to Qatar Investment Authority, Qatar Holding and their subsidiaries as long as they are wholly owned, directly or indirectly, by the State of Qatar

AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

AND

THE GOVERNMENT OF THE STATE OF QATAR

FOR THE AVOIDANCE OF DOUBLE TAXATION

AND

THE PREVENTION OF FISCAL EVASION

WITH RESPECT TO TAXES ON INCOME

PREAMBLE

The Government of the Republic of South Africa and the Government of the State of Qatar desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and to promote and strengthen the economic relations between the two countries,

HAVE AGREED AS FOLLOWS:

ARTICLE 1

PERSONS COVERED

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

ARTICLE 2

TAXES COVERED

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

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

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

   (a) in the State of Qatar, the taxes on income;

   (hereinafter referred to as "Qatari tax"); and

(b) in South Africa:

(i) the normal tax;

(ii) the withholding tax on royalties;

(iii) the dividends tax ;

(iv) the withholding tax on interest and

(v) 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 by either Contracting State after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes that have been made in their respective taxation laws.

ARTICLE 3

GENERAL DEFINITIONS

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

(a) the term "Qatar" means the State of Qatar and when used in the geographical sense it means the State of Qatar's lands, internal waters, territorial sea including its bed and subsoil, the air space over them, the exclusive economic zone and the continental shelf, over which the State of Qatar exercises sovereign rights and jurisdiction in accordance with the provisions of International law and Qatar's national laws and regulations;

(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 Qatar 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 legal entity that is treated as a company or body corporate for tax purposes;

(f) the term "competent authority" means:

(i) in Qatar, the Minister of Economy and Finance or an authorised representative; and

(ii) in South Africa, the Commissioner for the South African Revenue Service or an authorised representative;

(g) the term "enterprise" applies to the carrying on of any business;

(h) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise that has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

(j) the term "national" means:

(i) any individual possessing the nationality of a Contracting State;

(ii) any legal person or association deriving its status as such from the laws in force in a Contracting State;

(k) the term "person" includes an individual, a company and any other body of persons that is treated as an entity for tax purposes; and

(l) the term "tax" means Qatari tax or South African tax, as the context requires.

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:

   (a) in the case of Qatar, any individual who has a permanent home, his centre of vital interest, or habitual abode in Qatar, and a company having its place of effective management in Qatar. The term also includes the State of Qatar and any local authority, political subdivision or statutory body thereof;

   (b) in South Africa, any person who, under the laws of South Africa, is liable to tax therein by reason of that person's domicile, residence, place of management or any other criterion of a similar nature, and also includes South Africa and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in South Africa in respect only of income from sources therein.

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 solely 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 solely of the State with which the individual's personal and economic relations are closer (centre of vital interests);

(b) if sole residence cannot be determined under the provisions of subparagraph (a), or if the individual has not a permanent home available in either State, the individual shall be deemed to be a resident solely 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 solely 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, then it shall be deemed to be a resident solely of the State in which its place of effective management is situated.

ARTICLE 5

PERMANENT ESTABLISHMENT

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

2. The term "permanent establishment" includes especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a mine, an oil or gas well, a quarry or any other place of exploration, extraction or exploitation of natural resources;

(g) a warehouse, where storage facilities are provided to parties other than the enterprise;

(h) a sales outlet;

(i) a farm, plantation or orchard.

3. The term "permanent establishment" also encompasses:

(a) a building site, a construction, assembly or installation project or any supervisory activity in connection with such site or project, but only 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; and

(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.

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

(a) the use of facilities solely for the purpose of storage, 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; and

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, 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 preceding 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 Contracting 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.

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.

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 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 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 Contracting State in which the permanent establishment is situated or elsewhere, which are allowed under the provisions of the domestic law of the Contracting State in which the permanent establishment is situated.

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

2. 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.

3. 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 the State in which the place of effective management of the enterprise is situated.

4. 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 may make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting 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 beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

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

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

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

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

3. Notwithstanding the provisions of paragraph 2, dividends shall not be subject to tax in the Contracting State of which the company paying the dividends is a resident if the dividends are paid to the other Contracting State or a local authority, political subdivision or statutory body thereof.

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

5. The provisions of paragraph 1 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.

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 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.

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

ARTICLE 11

INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State 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.

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

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State if:

   (a) the payer of the interest is the Government of that Contracting State or a political subdivision or a local authority thereof; or

   (b) the interest is paid to the Government of the other Contracting State or a political subdivision or a local authority thereof; or

   (c) the interest is paid by the Central Bank of that Contracting State or the Central Bank of the other Contracting State; or

(d) the interest is paid to any institution or body which is wholly owned, directly or indirectly, by the other Contracting State or a political subdivision or local authority thereof; or

(e) the interest arises in respect of any debt instrument listed on a recognised stock exchange.

4. For the purpose of paragraph 3(e), the term "a recognised stock exchange" means:

(a) in South Africa, the Johannesburg Stock Exchange;

(b) in Qatar, the Qatar Exchange;

(c) any other stock exchange agreed upon by the competent authorities of the Contracting States.

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

6. 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 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.

7. 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.

8. 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 Agreement.

9. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.

ARTICLE 12

ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 5 per cent of the gross amount of the royalties.

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

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting 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. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment with which the right or property in respect of which the royalties are paid is effectively connected, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated.

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

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

ARTICLE 13

CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other 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 from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly wholly or mainly of immovable property situated in a Contracting State may be taxed in that State. The provisions of this paragraph shall not apply, however, if the immovable property is used for the purposes of carrying on an industrial or manufacturing activity.

5. 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:

   (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 an enterprise of a Contracting State shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Salaries, wages and other similar remuneration received by an employee of an air transport enterprise of a Contracting State who is stationed in the other Contracting State and who is not a national or a resident of that other State shall be taxable only in the first-mentioned State for a period of four years commencing on the date on which that employee first performs duties in that other State, provided that:

(a) the employee is not a national of that other State, and

(b) was not a resident of that other State immediately prior to commencing employment in that other State.

ARTICLE 15

DIRECTORS' FEES

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

2. Salaries, wages and other similar remuneration derived by a resident of a Contracting State in that person's capacity as an official in a top-level managerial position 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. Income derived by a resident of a Contracting State from activities exercised in the other Contracting State as envisaged in paragraphs 1 and 2 of this Article, shall be exempt from tax in that other State if the visit to that other State is supported wholly or mainly by public funds of the first-mentioned Contracting State, a political subdivision, a local authority or a statutory body thereof, or takes place under a cultural agreement or arrangement between the Governments of the Contracting States.

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, other than a pension, paid by a Contracting State, a political subdivision, a local authority or a statutory body 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) Any pension paid by, or out of funds created by, a Contracting State, a political subdivision, a local authority or a statutory body 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 pension 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 and other similar remuneration, and to pensions, in respect of services rendered in connection with a business carried on by a Contracting State, a political subdivision, a local authority or a statutory body thereof.

ARTICLE 19

STUDENTS, APPRENTICES AND BUSINESS TRAINEES

Students, apprentices or business trainees who are present in a Contracting State solely for the purpose of their education or training and who are, or immediately before being so present were residents of the other Contracting State, shall be exempt from tax in the first-mentioned State on payments received from outside that first-mentioned State for the purpose of their maintenance, education or training.

ARTICLE 20

OTHER INCOME

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

ELIMINATION OF DOUBLE TAXATION

Without prejudice to the general principle hereof, double taxation shall be eliminated as follows:

(a) in Qatar, where a resident of Qatar derives income which in accordance with the provisions of this Agreement, is taxable in South Africa, then Qatar shall allow as a deduction from the tax on the income of that resident an amount equal to the South African tax paid provided that such deduction shall not exceed that part of the tax, as computed before the deduction is given, which is attributable to the income derived in South Africa; and

(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, Qatari tax paid by residents of South Africa in respect of income taxable in Qatar, 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.

ARTICLE 22

NON-DISCRIMINATION

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other 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 5 of Article 11 or paragraph 6 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned 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 that first-mentioned State are or may be subjected.

5. The non taxation of Qatari nationals under Qatari tax law shall not be regarded as discrimination under the provisions of this Article.

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

ARTICLE 23

MUTUAL AGREEMENT PROCEDURE

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

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

3. 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, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

ARTICLE 24

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting 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 of this Article be construed so as to impose on a Contracting State the obligation:

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

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*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 of this Article 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 25

MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

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

ARTICLE 26

ENTRY INTO FORCE

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

2. The provisions of the Agreement shall apply:

   (a) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the first day of January immediately 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 immediately following the date upon which the Agreement enters into force.

ARTICLE 27

TERMINATION

1. This Agreement shall remain in force indefinitely but either of the Contracting States may terminate the Agreement through the diplomatic channel, by giving to the other Contracting State written notice of termination 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 thereto by their respective Governments, have signed and sealed this Agreement.

DONE in duplicate at ....., this ..... day of .....20....., in the English and Arabic languages, both texts being equally authentic.

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

PROTOCOL

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

With reference to Articles 10 and 11:

It is understood that the exemptions provided for in paragraph 3 of Article 10 and paragraph 3(d) of Article 11 apply to Qatar Investment Authority, Qatar Holding and their subsidiaries as long as they are wholly owned, directly or indirectly, by the State of Qatar.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed and sealed this Protocol.

DONE in duplicate at ....., this ..... day of .....20....., in the English and Arabic languages, both texts being equally authentic.

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