

Agreement

between

the Federal Republic of Germany

and

the Republic of South Africa

for the Avoidance of Double Taxation

with respect to Taxes on Income and on Capital

Preamble

The Federal Republic of Germany

and

the Republic of South Africa -

desiring to promote their mutual economic relations by removing fiscal obstacles, -

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 and on capital imposed on behalf of a Contracting State, of a Land or a political subdivision or local authority thereof, irrespective of the manner in which they are levied.

(2) There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains

from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

(3) The existing taxes to which this Agreement shall apply are in particular:

- a) in the Federal Republic of Germany:
  - i. the income tax (Einkommensteuer);
  - ii. the corporation tax (Körperschaftsteuer);
  - iii. the capital tax (Vermögensteuer); and
  - iv. the trade tax (Gewerbesteuer);

including the supplements levied thereon;

(hereinafter referred to as "German tax");

- b) in South Africa:
  - i. the normal tax;
  - ii. the secondary tax on companies; and
  - iii. the withholding tax on royalties;

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

(4) This Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall - if necessary for the application of this Agreement - notify each other of 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 "the Federal Republic of Germany" means the Federal Republic of Germany, and the area of the sea-bed, its subsoil and the superjacent water column adjacent to the territorial sea, wherein the Federal Republic of Germany exercises sovereign rights and jurisdiction in conformity with international law and its national legislation for the purposes of exploring, exploiting, conserving and managing the living and non-living 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 the Federal Republic of Germany or South Africa, as the context requires;
- d) the term "person" includes an individual, a company and any other body of persons that is treated as an entity for tax purposes;

- e) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- f) the term "enterprise" applies to the carrying on of any business;
- g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- h) the term "business" includes the performance of professional services and of other activities of an independent character;
- i) 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;
- j) the term "national" means:
  - i. in respect of the Federal Republic of Germany,  
  
any German within the meaning of the Basic Law of the Federal Republic of Germany and any legal person, partnership and association deriving its status as such from the laws in force in the Federal Republic of Germany;
  - ii. in respect of South Africa,  
  
any individual possessing the nationality of South Africa and any legal person or association deriving its status as such from the laws in force in South Africa;

- k) the term "competent authority" means:
- i. in the case of the Federal Republic of Germany the Federal Ministry of Finance or the agency to which it has delegated its powers;
  - ii. in the case of South Africa the Commissioner for the South African Revenue Service or an authorised representative.

(2) As regards the application of the provisions of this 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 this Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

#### Article 4

#### Resident

(1) For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of that person's domicile, residence, place of management or any other criterion of a similar nature, and also includes that State itself, a Land and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated 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), 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) place of management;
- b) a branch;
- c) an office;
- d) a factory;
- e) a workshop; and
- f) a mine, an oil or gas well, a quarry or any other place of extraction or exploitation of natural resources.

(3) The term "permanent establishment" also encompasses:

- a) a building site, a construction, installation or assembly project or any supervisory activity in connection with such site or project, but only if such site, project or activity lasts more than twelve months;
- b) 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;
- 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 6 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

(6) An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

(7) The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

## 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.

(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 that State.

(2) For the purposes of this Article the term "profits from the operation of ships or aircraft in international traffic" shall include profits from:

- a) the occasional rental of ships or aircraft on a bare boat basis; and
- b) the use or rental of containers (including trailers and ancillary equipment used for transporting the containers),

if these activities pertain to the operation of ships or aircraft in international traffic.

(3) 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 directly at least 10 per cent of the capital of the company paying the dividends;
- b) 15 per cent of the gross amount of the dividends in all other cases.

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

(3) Notwithstanding the provisions of paragraphs 1 and 2, income derived from rights or debt-claims participating in profits (including in the Federal Republic of Germany income of a silent partner ("stiller Gesellschafter") from that partner's participation as such or from a "partiarisches Darlehen" or "Gewinnobligationen") that is deductible in determining the profits of the debtor may be taxed in the Contracting State in which it arises according to the laws of that State.

(4) The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other income 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. The term "dividends" includes also income derived by a silent partner ("stiller Gesellschafter") from that partner's participation as such or from a "partiarisches Darlehen", "Gewinnobligationen" or similar payments and distributions on certificates of an investment fund or investment trust.

(5) The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

(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 the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

## Article 11

### Interest

(1) Interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State, provided such resident is the beneficial owner of the interest.

(2) The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purposes of this Article. However, the term "interest" shall not include income dealt with in Article 10.

(3) The provisions of paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein 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.

(4) 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.

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



## Article 12

### Royalties

(1) Royalties arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State, provided such resident is the beneficial owner of the royalties.

(2) The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright 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.

(3) The provisions of paragraph 1 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein 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.

(4) 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 in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

(5) Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of

such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 13  
Capital Gains

(1) Gains derived by a resident of a Contracting State from the alienation of immovable property situated in the other Contracting State may be taxed in that other State.

(2) Gains from the alienation of shares and similar rights in a company, the assets of which consist directly or indirectly principally of immovable property situated in a Contracting State, may be taxed in that State.

(3) 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.

(4) 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.

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

(6) Where an individual was a resident of a Contracting State for a period of 5 years or more and has become a resident of the other Contracting State, paragraph 5 shall not prevent the first-mentioned State from taxing under its domestic law the capital appreciation of shares in a company resident in the first-mentioned State for the period of residency of that individual in the first-mentioned State. In such case, the appreciation of capital taxed in the first-mentioned State shall not be included in the determination of the subsequent appreciation of capital by the other State.

#### Article 14

##### Income from Employment

(1) Subject to the provisions of Articles 15, 17, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

- a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in 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) The provisions of paragraph 2 shall not apply to remuneration for employment within the framework of professional hiring out of labour.

(4) Notwithstanding the preceding provisions, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State, may be taxed in the State of which that enterprise is a resident.

#### Article 15

##### Directors' Fees

Directors' fees and other similar payments derived by a resident of a Contracting State in that person's capacity as a member of the board of directors 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) Notwithstanding the provisions of Article 12, income derived by the persons mentioned in paragraph 1 from their personal activities exercised in the other Contracting

State shall also include remuneration of any kind paid for the use of, or the right to use, the name, the picture or other personal rights of such persons as well as any consideration for the recording and transmission of the activities mentioned in paragraph 1 by radio or television.

(3) Where income mentioned in paragraphs 1 and 2 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.

(4) Paragraphs 1 and 3 shall not apply to income derived by a resident of a Contracting State from activities exercised in the other Contracting State if the visit to that other State is supported wholly or mainly by public funds of the first-mentioned State, a Land, a political subdivision or a local authority thereof, or takes place under a cultural agreement or arrangement between the Governments of the Contracting States. In such case, the income shall be taxable only in the Contracting State of which the entertainer or sportsperson is a resident.

#### Article 17

##### Pensions, Annuities and Similar Payments

(1) Pensions and other similar payments, 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) Notwithstanding the provisions of paragraph 1, payments received by an individual who is a resident of a Contracting State from the statutory social security system of the other Contracting State shall be taxable only in that other State.

(3) Notwithstanding the provisions of paragraph 1, recurrent or non-recurrent payments made by one of the Contracting States or a political subdivision thereof to a person resident in the other Contracting State for damages sustained as a result of war or political persecution or of military or civil service (including restitution payments) shall be taxable only in the first-mentioned State.

(4) The term "annuities" means amounts payable periodically at stated times, for life or for 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) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a Land or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State, Land or subdivision or authority shall be taxable only in that State. 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:

- a) is a national of that State; or
- b) did not become a resident of that State solely for the purpose of rendering the services.

(2) Notwithstanding the provisions of Article 17, any pension paid by, or out of funds created by, a Contracting State or a Land or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State, Land or subdivision or

authority shall be taxable only in that State. 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 or a Land or a political subdivision or a local authority thereof.

(4) The provisions of paragraph 1 shall likewise apply in respect of remuneration paid, under a development assistance programme of a Contracting State or a Land or a political subdivision or a local authority thereof, out of funds exclusively supplied by that State or Land or political subdivision or local authority, to a specialist or volunteer seconded to the other Contracting State with the consent of that other State.

(5) The provisions of paragraph 1 shall likewise apply in respect of remuneration paid by or for the Goethe Institute of the Federal Republic of Germany and any other comparable institutions of the Contracting States as may be mutually agreed by the competent authorities. However, if such remuneration is not taxed in the State where the institution is founded, the provisions of Article 14 shall apply.

## Article 19

### Visiting Professors, Teachers and Students

(1) An individual who visits a Contracting State at the invitation of that State or of a university, college, school, museum or other cultural institution of that State or under an official programme of cultural exchange for a period not exceeding in the aggregate two years from the date of first arrival in that State solely for the purpose of teaching, giving lectures or carrying out research at such institution 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 remuneration for such activity, provided that such remuneration is derived by the individual from outside that State.

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

#### 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, 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.

#### Article 21

##### Capital

(1) Capital represented by immovable property, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.



(2) Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State may be taxed in that other State.

(3) Capital represented by ships and aircraft operated by an enterprise of a Contracting State in international traffic, and by movable property pertaining to the operation of such ships and aircraft, shall be taxable only in that State.

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

## Article 22

### Elimination of Double Taxation

(1) In the case of a resident of the Federal Republic of Germany, tax shall be determined as follows:

- a) Unless foreign tax credit is to be allowed under subparagraph (b), there shall be exempted from the assessment basis of the German tax any item of income arising in South Africa and any item of capital situated within South Africa which, according to this Agreement, may be taxed in South Africa. The Federal Republic of Germany, however, retains the right to take into account in the determination of its rate of tax the items of income and capital so exempted. In the case of items of income from dividends the preceding provision shall apply only to such dividends as are paid to a company (not including partnerships) being a resident of the Federal Republic of Germany by a company being a resident of South Africa at least 10 per cent of the capital of which is owned directly by the German company and which were

not deducted when determining the profits of the company distributing these dividends.

There shall be exempted from the assessment basis of the taxes on capital any shareholding the dividends of which if paid, would be exempted, according to the preceding provisions of this subparagraph.

- b) Subject to the provisions of German tax law regarding credit for foreign tax, there shall be allowed as a credit against German tax on income payable in respect of the following items of income the South African tax paid under the laws of South Africa and in accordance with this Agreement:
  - i. dividends not dealt with in subparagraph (a);
  - ii. items of income that may be taxed in South Africa according to paragraph 2 of Article 13;
  - iii. items of income that may be taxed in South Africa according to paragraph 3 of Article 14;
  - iv. directors' fees;
  - v. items of income of entertainers and sportspersons;
  - vi. items of income that may be taxed in South Africa according to paragraph 1 of Article 17.
- c) The provisions of subparagraph (b) shall apply instead of the provisions of subparagraph (a) to items of income as defined in Articles 7 and 10 and to the assets from which such income is derived if the resident of the Federal

Republic of Germany does not prove that the gross income of the permanent establishment in the business year in which the profit has been realised or of the company resident in South Africa in the business year for which the dividends were paid was derived exclusively or almost exclusively from activities within the meaning of numbers 1 to 6 of paragraph 1 of section 8 of the German Law on External Tax Relations (Aussensteuergesetz). The same shall apply to immovable property used by a permanent establishment (paragraph 4 of Article 6) and to profits from the alienation of such immovable property (paragraph 1 of Article 13) and of the movable property forming part of the business property of the permanent establishment (paragraph 3 of Article 13).

- d) Notwithstanding the provisions of subparagraph (a) double taxation shall be eliminated by allowing a tax credit as laid down in subparagraph (b):
  - i. if in the Contracting States items of income or capital are placed under differing provisions of this Agreement or attributed to different persons (except pursuant to Article 9) and this conflict cannot be settled by a procedure in accordance with paragraph 3 of Article 24 and if as a result of this difference in placement or attribution the relevant income or capital would remain untaxed or the tax on that income or capital would be lower than the tax which would have applied but for this difference in placement or attribution; or
  - ii. if after proper consultation and subject to the limitations of its domestic law, a Contracting State notifies the other Contracting State, through the diplomatic channel, of other income to which it intends to apply the provisions of this paragraph. The notification shall not take effect until the first day of the calendar year following the year in which the notification

was made and all legal requirements under the domestic law of the notifying State for the notification to take effect have been fulfilled.

(2) In the case of a resident of South Africa, subject to the provisions of the law of South Africa regarding the deduction from tax payable in South Africa of tax payable in any country other than South Africa (which shall not affect the general principle hereof), German tax paid by residents of South Africa in respect of income taxable in the Federal Republic of Germany, 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.

(3) For the purposes of this Article, profits, income or gains of a resident of a Contracting State (with the exception of income mentioned in paragraph 2 of Article 10 and in paragraphs 2 and 3 of Article 17) shall be deemed to arise from sources in the other Contracting State if they are taxed in that other State in accordance with this Agreement.

## Article 23

### Non-discrimination

(1) Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, especially 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 which it grants only to its own residents.

(3) Except where the provisions of paragraph 1 of Article 9, paragraph 5 of Article 11, or paragraph 5 of Article 12, 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. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

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

(5) 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 the Federal Republic of Germany, a tax at a rate which does not exceed the rate of normal tax on profits of companies by more than five percentage points.

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

Article 24  
Mutual Agreement Procedure

(1) Where a person considers that the actions of one or both of the Contracting States result or will result for that person in taxation not in accordance with the provisions of this Agreement, that person may, irrespective of the remedies provided by the domestic law of those States, present a case to the competent authority of the Contracting State of which the person is a resident or, if the case comes under paragraph 1 of Article 23, to that of the Contracting State of which the person is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this 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 this 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 this Agreement. They may also consult together for the avoidance of double taxation in cases not provided for in this Agreement.

(4) If the taxation of income in a Contracting State is effected by way of a withholding tax at source, and if this taxation is limited by the provisions of this Agreement, the application of this tax reduction or exemption shall be governed by the national law of that State in conjunction with the procedures agreed upon for this purpose between the competent authorities of the two Contracting States.

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

## Article 25

### Exchange of Information

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States or of a Land or a political subdivision or a local authority insofar as the taxation thereunder is not contrary to this Agreement. The exchange of information is not restricted by Articles 1 and 2. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in the first sentence. 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. Any subsequent supply to other agencies may be effected only with the prior approval of the data-supplying State.

(2) In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

- a) to carry out administrative measures for the supply of information at variance with the laws or administrative practice of that or of the other Contracting State;

- b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

## Article 26

### Limitation of Benefits

(1) This Agreement shall not be interpreted to mean that:

- a) a Contracting State is prevented from applying its domestic legal provisions on the prevention of tax evasion or tax avoidance;
- b) the Federal Republic of Germany is prevented from levying taxes on amounts which are to be included in the items of income of a resident of the Federal Republic of Germany under the Fourth Part of the German Law on External Tax Relations (Aussensteuergesetz).

(2) If the above provisions result in double taxation, the competent authorities shall consult each other pursuant to paragraph 3 of Article 24 in order to eliminate double taxation.



Article 27

Members of Diplomatic Missions and Consular Posts

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

Article 28

Protocol

The attached Protocol shall form an integral part of this Agreement.

Article 29

Entry into Force

(1) This Agreement shall be ratified and the instruments of ratification shall be exchanged at Pretoria as soon as possible.

(2) The Agreement shall enter into force on the day of the exchange of the instruments of ratification and shall have effect in both Contracting States:

- a) in the case of taxes withheld at source, in respect of amounts paid or credited on or after the first day of January of the calendar year next following that in which this Agreement entered into force;
- b) in the case of other taxes, in respect of taxes levied for periods beginning on or after the first day of January of the calendar year next following that in which this Agreement entered into force.

(3) Upon the entry into force of this Agreement the Agreement between the Federal Republic of Germany and the Republic of South Africa for the Avoidance of Double Taxation with Respect to Taxes on Income signed on 25th January 1973 shall expire and shall cease to have effect for any period for which the provisions of this Agreement have effect.

### Article 30

#### Termination

This Agreement shall continue in effect indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give the other Contracting State, through the diplomatic channel, written notice of termination and, in such event, this Agreement shall cease to have effect:

- a) in the case of taxes withheld at source, in respect of amounts paid or credited on or after the first day of January of the calendar year next following that in which notice of termination is given;
- b) in the case of other taxes, in respect of taxes levied for periods beginning on or after the first day of January of the calendar year next following that in which notice of termination is given.

In witness whereof the undersigned, being duly authorised thereto, have signed this Agreement.

Done at Berlin this 9<sup>th</sup> day of September 2008 in two originals, each in the German and English languages, both texts being equally authentic.

For the  
Federal Republic of Germany

Gernot Erler

For the  
Republic of South Africa

Manuel

Protocol  
to the Agreement  
between  
the Federal Republic of Germany  
and  
the Republic of South Africa  
for the Avoidance of Double Taxation with  
respect to Taxes on Income and on Capital,  
signed on September 9<sup>th</sup> 2008

On signing the Agreement between the Federal Republic of Germany and the Republic of South Africa for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital the signatories being duly authorised thereto, have in addition agreed on the following provisions which shall form an integral part of the said Agreement:

1. With reference to Article 7:
  - a) Where an enterprise of a Contracting State sells goods or merchandise or carries on business in the other Contracting State through a permanent establishment situated therein, the profits of that permanent establishment shall not be determined on the basis of the total amount received therefor by the enterprise but only on the basis of the amount which is attributable to the actual activity of the permanent establishment for such sales or business.

- b) In the case of contracts, in particular for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, where the enterprise has a permanent establishment in the other Contracting State, the profits of such permanent establishment shall not be determined on the basis of the total amount of the contract, but only on the basis of that part of the contract which is effectively carried out by the permanent establishment in the Contracting State in which it is situated. Profits derived from the supply of goods to that permanent establishment or profits related to the part of the contract which is carried out in the Contracting State in which the head office of the enterprise is situated shall be taxable only in that State.

2. With reference to Articles 18 and 29:

- a) In the case of salaries, wages and other similar remuneration paid by a diplomatic mission or a consular post of a Contracting State to its local recruits, paragraph 1 of Article 18 shall first apply 2 years after the date or period described in paragraph 2 of Article 29. Until that time, paragraphs 1 and 2 of Article 15 of the Agreement between the Federal Republic of Germany and the Republic of South Africa for the Avoidance of Double Taxation with respect to Taxes on Income signed on 25 January 1973 shall apply in respect of these salaries, wages and other similar remuneration.
- b) The provisions of subparagraph (a) shall apply only in respect of those local recruits already in the employment of a diplomatic mission or a consular post of a Contracting State on 31 March 2000.

3. With reference to Article 23:

It is understood that the provisions of paragraph 5 will only apply while permanent establishments of companies which are not resident in South Africa are not liable to the Secondary Tax on Companies or while the Secondary Tax on Companies is levied on residents of South Africa at a rate of 5 per cent or more.

4. With reference to Article 25:

To the extent that personal data are exchanged under this Agreement, the following additional provisions shall apply subject to the legal provisions in effect for each Contracting State:

- a) The recipient shall on request inform the supplying agency regarding the use of the supplied data and the results achieved thereby.
- b) The supplying agency shall be obliged to ensure that the data to be supplied are accurate and that they are necessary for and commensurate with the purpose for which they are supplied. Any bans on data supply prescribed under applicable domestic law shall be observed. If it emerges that inaccurate data, or data which should not have been supplied, have been supplied, the recipient shall be informed of this without delay. That recipient shall be obliged to correct or delete such data.

- c) Upon application the person concerned shall be informed of the supplied data relating to that person and of the use to which such data are to be put. There shall be no obligation to furnish this information if on balance it becomes evident that the public interest in withholding it outweighs the interest of the person concerned in receiving it. In all other respects, the right of the person concerned to be informed of the existing data relating to that person shall be governed by the domestic law of the Contracting State in whose sovereign territory the application for the information is made.
- d) The receiving agency shall bear liability in accordance with its domestic laws in relation to any person suffering unlawful damage as a result of supply under the exchange of data pursuant to this Agreement. In relation to the damaged person, the data-receiving State may not plead as a ground for its discharge that the damage had been caused by the supplying agency.
- e) The personal data supplied shall be deleted as soon as they are no longer required for the purpose for which they were supplied.
- f) The Contracting States shall be obliged to keep official records of the supply and receipt of personal data.
- g) The supplying and the receiving agencies shall be obliged to take effective measures to protect the personal data supplied against unauthorised access, unauthorised alteration and unauthorised disclosure.