

**GOVERNMENT NOTICE**

**SOUTH AFRICAN REVENUE SERVICE**

No. 478

22 April 2005

**INCOME TAX ACT, 1962**

**CONVENTION BETWEEN THE REPUBLIC OF SOUTH AFRICA AND THE REPUBLIC OF BULGARIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME**

In terms of section 108(2) of the Income Tax Act, 1962 (Act No 58 of 1962), read in conjunction with section 231(4) of the Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996), it is hereby notified that the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income set out in the Schedule to this Notice has been entered into with the Republic of Bulgaria and has been approved by Parliament in terms of section 231(2) of the Constitution.

It is further notified in terms of paragraph 1 of Article 27 of the Convention, that the date of entry into force is 27 October 2004.

In terms of the provisions of paragraph 2 of Article 27 of the said Convention, the provisions of the Convention shall apply as follows:

- (a) with regard to taxes withheld at source, in respect of amounts paid or credited on or after 1 January 2005; and
- (b) with regard to other taxes, in respect of taxable years beginning on or after 1 January 2005.

The Convention was published in Government Gazette No. 27517 dated 22 April 2005

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**Preamble**

The Republic of South Africa and the Republic of Bulgaria desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income in order to promote and strengthen the economic relations between the two countries,

Have agreed as follows:

**CHAPTER 1**

**SCOPE OF THE CONVENTION**

**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.

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

a) in Bulgaria:

- i) the personal income tax;
- ii) the corporate income tax;

(hereinafter referred to as "Bulgarian tax");

- b) in South Africa:
    - i) the normal tax;
    - ii) the secondary tax on companies;
    - iii) the withholding tax on royalties;
- (hereinafter referred to as “South African tax”).

4. The Convention shall apply also to any substantially similar taxes that are imposed by either Contracting State 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 respective taxation laws.

## **CHAPTER II**

### **DEFINITIONS**

#### **Article 3**

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

1. For the purposes of this Convention, unless the context otherwise requires:
  - a) the term “Bulgaria” means the Republic of Bulgaria and when used in a geographical sense means the territory and the territorial sea over which it exercises its State sovereignty, as well as the continental shelf and the exclusive economic zone over which it exercises sovereign rights and jurisdiction in conformity with international law;
  - b) the term “South Africa” means the Republic of South Africa and, when used in a geographical sense, includes the territorial sea thereof as well as any area outside the territorial sea, including the continental shelf, which has been or may hereafter be designated, under the laws of South Africa and in accordance with international law, as an area within which South Africa may exercise sovereign rights or jurisdiction;
  - c) the terms “a Contracting State” and “the other Contracting State” mean Bulgaria 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 “international traffic” means any transport by a ship or aircraft operated by a resident of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

- g) the term “competent authority” means:
  - i) in Bulgaria, the Minister of Finance or an authorised representative;
  - ii) in South Africa, the Commissioner for the South African Revenue Service or an authorised representative;
- h) the term “national” means:
  - i) any individual possessing the nationality of a Contracting State;
  - ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
- i) the term “business” includes the performance of professional services and of other activities of an independent character;
- j) the term “business profits” also includes income from the performance of professional services and of other activities of an independent character.

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 will prevail 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 incorporation, 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 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 company is a resident of both Contracting States, then it shall be deemed to be a resident solely of the State in which it is incorporated.

4. Where by reason of the provisions of paragraph 1 a person other than an individual or a company is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavour to settle the question and to determine the mode of application of the Convention to such person.

## **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 a resident 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) an installation, a drilling rig or ship used for exploration for natural resources, but only if the activity in respect of such exploration continues for a period or periods exceeding three months in any twelve-month period.

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 a resident through employees or other personnel engaged by a resident for such purpose, but only where activities of that nature continue (for the same or a connected project) within the Contracting State for a period or periods exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned;

- c) the performance of professional services or other activities of an independent character by an individual, but only where those services or activities continue within a Contracting State for a period or periods exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned.

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 resident;
- b) the maintenance of a stock of goods or merchandise belonging to the resident solely for the purpose of storage, display or delivery;
- c) the maintenance of a stock of goods or merchandise belonging to the resident solely for the purpose of processing by another resident;
- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the resident;
- e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the resident, 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 a resident and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the resident, that resident shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the resident, 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. A resident of a Contracting State 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.

## CHAPTER III

### TAXATION OF INCOME

#### 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 or 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 used in carrying on a business.

#### Article 7

##### *Business Profits*

1. The business profits of a resident of a Contracting State shall be taxable only in that State unless the resident carries on business in the other Contracting State through a permanent establishment situated therein. If the resident carries on business as aforesaid, the business profits of the resident 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 a resident 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 business profits which it might be expected to make if it were a distinct and separate person engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the resident and with all other persons.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no deduction is allowable in respect of expenses which are not deductible under the laws of the Contracting State in which the permanent establishment is situated.

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

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

6. Where business 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 derived by a resident 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, profits from the operation of ships or aircraft in international traffic shall include:

- a) profits derived from the rental on a bare boat basis of ships or aircraft used in international traffic,
- b) profits derived from the use or rental of containers,

if such profits are incidental to the profits to which the provisions of paragraph 1 apply.

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 Persons***

1. Where:

- a) a resident of a Contracting State participates directly or indirectly in the management, control or capital of a resident of the other Contracting State, or
- b) the same persons participate directly or indirectly in the management, control or capital of a resident of a Contracting State and a resident of the other Contracting State,

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



2. Where a Contracting State includes in the profits of a resident of that State – and taxes accordingly – profits on which a resident 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 first-mentioned person if the conditions made between the two persons had been those which would have been made between independent persons, 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 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) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly 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.

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

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

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

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except in so far as such dividends are paid to a resident of that other State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company’s undistributed profits to a tax on 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.

6. 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 5 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State if it is derived and beneficially owned by the Government of the other Contracting State or a political subdivision or a local authority thereof, the Central Bank of Bulgaria, the South African Reserve Bank or any wholly owned institution of that Government or subdivision or authority.

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 purposes of this Article.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

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

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, 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.

8. 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:

- a) 5 per cent of the gross amount of:
  - i) copyright royalties and other similar payments in respect of the production or reproduction of any cultural, dramatic, musical or other artistic work (but not including royalties in respect of motion picture films and works on film or videotape or other means of reproduction for use in connection with television);
  - ii) royalties paid for the use of industrial, commercial or scientific equipment;
- b) 10 per cent of the gross amount of the royalties in all other cases.

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 or tapes and other means of image or sound reproduction for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for transmission by satellite cable, optic fibre or similar technology, or for the use of, or the right to use, industrial, commercial or scientific equipment, 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 Convention.

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 a resident 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 carried on by that resident), may be taxed in that other State.

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

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that 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**

#### ***Income from Employment***

1. Subject to the provisions of Articles 15, 17, 18, 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 which the employer has in the other State.

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

## **Article 15**

### ***Directors' Fees***

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

## **Article 16**

### ***Entertainers and Sportspersons***

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

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

## **Article 17**

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

1. Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration in consideration of past employment, and annuities, paid to a resident of a Contracting State shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1, pensions paid and other similar payments made under a public scheme which is part of the social security system of a Contracting State shall be taxable only in that State.

3. 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 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) Any pension 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 pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that other 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 political subdivision or a local authority thereof.

## **Article 19**

### ***Students and Apprentices***

Students or apprentices 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**

### ***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 21**

### ***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 beneficial owner 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.

## **CHAPTER IV**

### **METHODS FOR ELIMINATION OF DOUBLE TAXATION**

## **Article 22**

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

Double taxation shall be eliminated as follows:

- a) in Bulgaria:
  - i) where a resident of Bulgaria derives income which in accordance with the provisions of this Convention may be taxed in South Africa, Bulgaria shall, subject to the provisions of subparagraphs ii) and iii) of this paragraph, exempt such income from tax;

- ii) where a resident of Bulgaria derives dividends, interest or royalties which in accordance with the provisions of Articles 10, 11 or 12 of this Convention may be taxed in South Africa, Bulgaria shall allow as a deduction from the tax on the dividends, interest or royalties 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 the deduction is given, which is attributable to such dividends, interest or royalties derived from South Africa;
  - iii) where in accordance with any provision of this Convention income derived by a resident of Bulgaria is exempt from tax in Bulgaria, Bulgaria may nevertheless, in calculating the amount of the tax on the remaining income of such resident, take into account the exempted income;
- 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, Bulgarian tax paid by residents of South Africa in respect of income taxable in Bulgaria, 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.

## **CHAPTER V**

### **SPECIAL PROVISIONS**

#### **Article 23**

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

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

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

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11 or paragraph 6 of Article 12 apply, interest, royalties and other disbursements paid by a resident of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of the first-mentioned resident, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.



4. Companies which are residents 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 companies which are residents 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 Bulgaria, a tax at a rate which does not exceed the rate of normal tax on companies by more than five percentage points.

## **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 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 23, to that of the Contracting State of which the person is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the 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 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 Convention or of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States in so far as the taxation thereunder is not contrary to the Convention, in particular to prevent fraud and evasion in respect of such taxes. 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) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes referred to in 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.

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

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

## **Article 26**

### ***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.

**CHAPTER VI**  
**FINAL PROVISIONS**

**Article 27**

***Entry into Force***

1. Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Convention. The Convention shall enter into force on the date 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;
  - 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 28**

***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;
  - 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, have signed this Convention.

**DONE** at Sofia in duplicate, this 29<sup>th</sup> day of April 2004, in the English and Bulgarian languages, both texts being equally authentic.

J MOMBERG  
**FOR THE REPUBLIC OF SOUTH AFRICA**

(SIGNED)  
**FOR THE REPUBLIC OF BULGARIA**