IMPORTANT NOTICE

An Agreement and a Protocol thereto between the Government of the Republic of South Africa and the Government of New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income was signed in Pretoria on 6 February 2002.

The Agreement and the Protocol thereto is published on the understanding that until such time that both countries have ratified the Agreement, neither the Commissioner for the South African Revenue Service nor the Commissioner of Inland Revenue of New Zealand have the authority to support any interpretation given by a taxpayer to the provisions in the Agreement and the Protocol thereto.

The Agreement and the Protocol thereto shall enter into force on the last date on which the Contracting States exchange notes notifying each other of the completion of the procedures required by its law for the bringing into force of the Agreement and the Protocol thereto.

The Agreement and the Protocol thereto shall, in terms of section 108(2) of the Income Tax Act, 1962 (Act No 58 of 1962), be published in the Government Gazette after ratification, together with the date of entry into force of the Agreement and the Protocol thereto.

AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

AND

THE GOVERNMENT OF NEW ZEALAND

FOR THE AVOIDANCE OF DOUBLE TAXATION

AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO

TAXES ON INCOME

Preamble

The Government of the Republic of South Africa and the Government of New Zealand

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have agreed as follows:

Article 1

Persons Covered

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

Article 2

Taxes Covered

1. The existing taxes to which this Agreement shall apply are:

   (a) in New Zealand: the income tax;

   (hereinafter referred to as "New Zealand 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").

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

3. Notwithstanding the provisions of paragraphs 1 and 2, the taxes covered by the Agreement do not include any amount which represents a penalty or interest imposed under the laws of either Contracting State.

Article 3

General Definitions

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

   (a) (i) the term "New Zealand" means the territory of New Zealand but does not include Tokelau or the Associated Self Governing States of the Cook Islands and Niue; it also includes any area beyond the territorial sea which by New Zealand legislation and in accordance with international law has been, or may hereafter be, designated as an area in which the rights of New Zealand with respect to natural resources may be exercised;
   (ii) 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;

   (b) the term "business" includes the performance of professional services and of other activities of an independent character;

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

(d) the term "competent authority" means:

(i) in the case of New Zealand, the Commissioner of Inland Revenue or an authorised representative;
(ii) in the case of South Africa, the Commissioner for the South African Revenue Service or an authorised representative;

(e) the terms "a Contracting State" and "the other Contracting State" mean New Zealand or South Africa, as the context requires;

(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 "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 from a place or between places in the other Contracting State;

(i) the term "national" means:

(a) in the case of New Zealand, any individual who is a citizen of New Zealand;
(b) in the case of South Africa:

(i) any individual who is a national of South Africa;
(ii) any legal person or association deriving its status as such from the laws in force in South Africa;

(j) the term "natural resources" includes standing timber and fish;

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

2. For the purposes of Articles 10, 11 and 12, a trustee subject to tax in a Contracting State in respect of dividends, interest or royalties shall be deemed to be the beneficial owner of those dividends, interest or royalties.

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

Article 4

Resident

1. For the purposes of this Agreement, the term "resident" means any person who is a resident of a Contracting State for the purposes of that State's tax. The term also includes a Contracting State and any political subdivision or local authority of that State. The term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

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

(a) the individual shall be deemed to be a resident 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 or a permanent home is not available in either State, 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) 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. A building site, a construction, assembly or installation project or any supervisory activity in connection with such site or project, constitutes a permanent establishment only if such site, project or activity continues for a period of more than six months.

4. An enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if for more than six months:

(a) it carries on activities that consist of, or that are connected with, the exploration for or exploitation of natural resources situated in that State; or

(b) substantial equipment is being used in that State by, for or under contract with the enterprise.

5. The term "permanent establishment" likewise encompasses:

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

(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 year of income or year of assessment concerned.

6. For the purposes of determining the duration of activities under paragraphs 3, 4 and 5, the period during which activities are carried on in a Contracting State by an enterprise associated with another enterprise shall be aggregated with the period during which activities are carried on by the enterprise with which it is associated if the first-mentioned activities are connected with the activities carried on in that State by the last-mentioned enterprise, provided that any period during which two or more associated enterprises are carrying on concurrent activities is counted only once. An enterprise shall be deemed to be associated with another enterprise if one is controlled directly or indirectly by the other, or if both are controlled directly or indirectly by a third person or persons.

7. 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.

8. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 9 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 7 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.

9. 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.

10. 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, forestry or fishing) 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 laws of the Contracting State in which the property in question is situated. The term shall in any case include any natural resources, property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting immovable property apply, usufruct of immovable property, rights to explore for or exploit natural resources, and rights to variable or fixed payments either as consideration for or in respect of the exploitation of, or the right to explore for or exploit, 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. Any right referred to in paragraph 2 shall be regarded as situated where the immovable property, mineral, oil or gas deposits, quarries or natural resources, as the case may be, are situated or where the exploration may take place.

5. The provisions of paragraphs 1, 3 and 4 shall also apply to 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 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 profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

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

6. Where:

   (a) a resident of a Contracting State beneficially owns, whether directly or through one or more interposed trusts, a share of the business profits of an enterprise carried on in the other Contracting State by the trustee of a trust other than a trust which is treated as a company for tax purposes; and

   (b) in relation to that enterprise, that trustee would, in accordance with the principles of Article 5, have a permanent establishment in that other State,

   the enterprise carried on by the trustee shall be deemed to be a business carried on in the other State by that resident through a permanent establishment situated in that other State and that share of the business profits shall be attributed to that permanent establishment.

7. Where profits include items of income or gains 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.

8. Nothing in this Article shall affect the operation of any law of a Contracting State relating to tax imposed on profits from insurance with non-residents provided that if the relevant law in force in either Contracting State at the date of signature of the Agreement is varied (otherwise than in minor respects so as not to affect its general character) the Contracting States shall consult with each other with a view to agreeing to any amendment of this paragraph that may be appropriate.

Article 8

Operation of Ships and Aircraft

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1, such profits may also be taxed in the other Contracting State where they are profits from the operation of ships or aircraft confined solely to places in that other State.

3. For the purposes of this Article, profits from the operation of ships or aircraft shall include:

(a) profits derived from the rental on a bare boat basis of ships or aircraft;
(b) profits derived from the use or rental of containers;

if such profits are incidental to the operation of ships or aircraft.

4. The provisions of paragraphs 1 and 2 shall also apply to the share of the profits from the operation of ships or aircraft derived by an enterprise of a Contracting State through participation in a pool service, in a joint business or operating organisation or in an international operating agency.

5. For the purposes of this Article, profits derived from the carriage by ships or aircraft of passengers, livestock, mail, goods or merchandise which are shipped in a Contracting State for discharge at a place in that State shall be treated as profits from the operation of ships or aircraft confined solely to places in that State.

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 might reasonably have been expected to have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which might reasonably have been expected to have been made between independent enterprises dealing wholly independently with one another, 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 for the purposes of its tax, being dividends which are beneficially owned by 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 for the purposes of its tax, and according to the laws of that State, but the tax so charged shall not exceed:

(a) in the case of New Zealand, 15 per cent of the gross amount of the dividends;
(b) in the case of South Africa:

(i) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds at least 25 per cent of the capital of the company paying the dividends; or
(ii) 15 per cent of the gross amount of the dividends in all other cases.

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

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 and other income treated as income from shares by the laws, relating to tax, of the Contracting State of which the company making the payment is a resident for the purposes of its tax.

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 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. This paragraph shall not apply in relation to dividends paid by any company which is a resident of both States for the purposes of each State's tax.

Article 11

Interest

1. Interest arising in a Contracting State, being interest which is beneficially owned by 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 the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest derived by the Government of a Contracting State, or by a bank performing central banking functions in a Contracting State, shall be exempt from tax in the other Contracting State.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as all other income treated as income from money lent by the laws, relating to tax, of the Contracting State in which the income arises, but does not include any income which is treated as a dividend under Article 10. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein 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 the person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the debt-claim on which the interest is paid was incurred, and such interest is deductible in determining the income, profits or gains attributable to that 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 Agreement.

Article 12

Royalties

1. Royalties arising in a Contracting State and beneficially owned by 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 the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind, whether periodical or not, and however described or computed, to the extent to which they are made as consideration for:

   (a) the use of, or the right to use, any copyright (including the use of or the right to use any literary, dramatic, musical, or artistic works, sound recordings, films, broadcasts, cable programmes, or typographical arrangements of published editions), patent, design or model, plan, secret formula or process, trade mark, or other like property or right; or

   (b) the use of, or the right to use, any industrial, commercial or scientific equipment; or

   (c) information concerning industrial, commercial or scientific experience; or

(d) any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right as is mentioned in subparagraph (a), any such equipment as is mentioned in subparagraph (b) or any such knowledge or information as is mentioned in subparagraph (c); or

(e) total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph.

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 deductible in determining the income, profits or gains attributable to that permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated.

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

Article 13

Alienation of Property

1. Income, profits or gains derived by a resident of a Contracting State from the alienation of immovable property as defined in paragraph 2 of Article 6 situated in the other Contracting State may be taxed in that other State.

2. Income, profits or 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 income, profits or gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

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

4. Income, profits or gains derived by a resident of a Contracting State from the alienation of any shares or other interests in a company, or of an interest of any kind in a partnership or trust or other entity, where the value of the assets of such entity, whether they are held directly or indirectly (including through one or more interposed entities, such as, for example, through a chain of companies), is principally attributable to immovable property situated in the other Contracting State, may be taxed in that other State.

5. Nothing in this Agreement affects the application of the laws of a Contracting State relating to the taxation of gains of a capital nature derived from the alienation of any property other than that to which any of the preceding paragraphs of this Article apply.

Article 14

Income from Employment

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

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

   (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the year of income or year of assessment of that other State; 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 deductible in determining the taxable profits of a permanent establishment which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State 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 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 paragraph 2 of Article 18, pensions and annuities paid to a resident of a Contracting State shall be taxable only in that State.

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

Article 18

Government Service

1. Salaries, wages and other similar remuneration (other than pensions) paid by the Government of a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Government or a political subdivision or a local authority thereof shall be exempt from tax in the other Contracting State if the individual is not resident in that other State for the purposes of that other State's tax or is resident in that other State for the purposes of that other State's tax solely for the purpose of rendering those 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 also be taxable in the other Contracting State if the individual is a resident of that State.

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

Article 19

Students

A student who is temporarily present in a Contracting State solely for the purpose of the student's education 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 sources outside that first-mentioned State for the purposes of the student's maintenance or education.

Article 20

Other Income

Items of income of a resident of a Contracting State, wherever arising, not dealt with in the preceding Articles of this Agreement shall be taxable only in that State unless that income is derived from sources within the other Contracting State, in which case that income may also be taxed in that other State.

Article 21

Elimination of Double Taxation

1. Subject to the provisions of the laws of New Zealand from time to time in force which relate to the allowance of a credit against New Zealand income tax of tax paid in a country outside New Zealand (which shall not affect the general principle of this Article), South African tax paid under the laws of South Africa and consistently with this Agreement, whether directly or by deduction, in respect of income derived by a resident of New Zealand from sources in South Africa (excluding, in the case of a dividend, tax paid in respect of the profits out of which the dividend is paid) shall be allowed as a credit against New Zealand tax payable in respect of that income.

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

Article 22

Non-discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected.

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 a permanent establishment which an enterprise of a third State has in that other State.

3. Enterprises of one of the Contracting States, 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, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of a third State, are or may be subjected.

4. The provisions of this Article shall not be construed as obliging a Contracting State to grant to a resident 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.

5. This Article shall not apply to any provisions of the taxation laws of a Contracting State which:

   (a) are reasonably designed to prevent or defeat the avoidance or evasion of taxes; or

   (b) are in force on the date of signature of this Agreement, or are substantially similar in general purpose or intent to any such provision but are enacted after the date of signature of this Agreement, provided that any such provision (except where that provision is in an international agreement) does not allow for different treatment of residents of the other Contracting State as compared with the treatment of residents of any third State.

6. 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 New Zealand, a tax at a rate which does not exceed the rate of normal tax on companies by more than five percentage points.

7. If a Contracting State considers that taxation measures of the other Contracting State infringe the principles set forth in this Article, the competent authorities shall consult each other in an endeavour to resolve the matter.

Article 23

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for that person in taxation not in accordance with 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. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

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

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement.

Article 24

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 insofar as the taxation thereunder is not contrary to the 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) 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.

Article 25

Members of Diplomatic Missions and Consular Posts

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

Article 26

Entry into Force

This Agreement shall enter into force on the last date on which the Contracting States exchange notes through the diplomatic channel notifying each other that the last of such things has been done as is necessary to give the Agreement the force of law in New Zealand and in South Africa, as the case may be, and, in that event, the Agreement shall have effect:

(a) in New Zealand:

   (i) in respect of withholding tax on income, profits or gains derived by a non-resident, for amounts paid or credited on or after the first day of the second month next following the date on which the Agreement enters into force;

(ii) in respect of other New Zealand tax, for any income year beginning on or after 1 April next following the date on which the Agreement enters into force;

(b) in South Africa:

(i) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the first day of the second month next following the date on which the Agreement enters into force; and

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

Article 27

Termination

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through the diplomatic channel, by giving notice of termination on or before 30 June in any calendar year beginning after the expiration of 5 years from the date of its entry into force. In such event the Agreement shall cease to have effect:

(a) in New Zealand:

(i) in respect of withholding tax on income, profits or gains derived by a non-resident, for amounts paid or credited on or after the first day of the second month next following that in which the notice of termination is given;

(ii) in respect of other New Zealand tax, for any income year beginning on or after 1 April in the calendar year next following that in which the notice of termination is given;

(b) in South Africa:

(i) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the first day of the second month next following that in which the notice of termination is given; and

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

IN WITNESS WHEREOF the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at Pretoria this 6th day, of February 2002 in the English language.

A G H PAHAD
FOR THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

P GOFF
FOR THE GOVERNMENT OF NEW ZEALAND

Protocol

The Government of the Republic of South Africa and the Government of New Zealand

Have agreed at the signing of the Agreement between the Governments of the two Contracting States for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income upon the following provision which shall form an integral part of the Agreement:

If, in an agreement for the avoidance of double taxation that may subsequently be concluded between South Africa and a third State, the rate at which South Africa may impose the secondary tax on companies is limited, South Africa shall immediately inform the Government of New Zealand in writing through the diplomatic channel and shall enter into negotiations with the Government of New Zealand with a view to providing comparable treatment for New Zealand as may be provided for the third State.

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

DONE in duplicate at Pretoria this 6th day of February 2002 in the English language.

A G H PAHAD
FOR THE GOVERNMENT OF
THE REPUBLIC OF SOUTH AFRICA

P GOFF
FOR THE GOVERNMENT OF
NEW ZEALAND