

1994 Income Tax Agreement

Signed date: February 14, 1994

In force date: September 12, 1996

Effective date: November 1, 1996. See Article 28.

Status: In Force

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

Preamble

Whereas the Government of the Republic of South Africa and the Government of the Republic of China recognise the friendly relations existing between the two Governments and their peoples; and Whereas the Government of the Republic of South Africa and the Government of the Republic of China are desirous of concluding an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;

Now, therefore, the Government of the Republic of South Africa and the Government of the Republic of China have agreed as follows:

I. Scope of the Agreement

Article 1 Personal Scope

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

Article 2 Taxes Covered

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

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

(a) in the Republic of China --

(i) the profit seeking enterprise income tax;

(ii) the individual consolidated income tax;

(hereinafter referred to as "Chinese tax");

(b) in the Republic of South Africa --

(i) the normal tax;

(ii) the non-resident shareholders' tax;

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

3. This Agreement shall also apply to any other taxes of a substantially similar character which are subsequently imposed in addition to, or in place of, the existing taxes.

4. At the end of each calendar year, the competent authorities of the Contracting States shall notify each other of changes which have been made in their respective taxation laws, and if it seems desirable to amend any Article of this Agreement without affecting the general principles thereof, the necessary amendments may be made by mutual consent by means of an Exchange of Diplomatic Notes.

II. Definitions

Article 3 General Definitions

1. In this Agreement, unless the context otherwise requires:

(a) the term "China" means the Republic of China and, when used in a geographical sense, includes the territorial sea thereof as well as any area outside the territorial sea in respect of which China is entitled, in accordance with international law, to exercise sovereign rights or jurisdiction;

(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 in respect of which South Africa is entitled, in accordance with international law, to exercise sovereign rights or jurisdiction;

(c) the terms "Contracting State" and "the other Contracting State" mean China or South Africa as the context requires;

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

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

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

(g) the term "competent authority" means:

(i) in the case of China, the Director General, Department of Taxation, Ministry of Finance or his authorised representative; and

(ii) in the case of South Africa, the Commissioner for Inland Revenue or his authorised representative;

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

(i) and the term "nationals" means:

(a) all individuals possessing the nationality of either Contracting State; and

(b) all legal persons, partnerships and associations and other entities deriving their status as such from the laws in force in that State.

2. As regards the application of this Agreement in either Contracting State, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws in that State relating to the taxes which are the subject of this Agreement.

Article 4 Fiscal Domicile

1. For the purposes of this Agreement:

(a) the term "resident of the Republic of China" means any person who is a resident in accordance with the tax laws of China; and

(b) the term "resident of the Republic of South Africa" means any individual who is ordinarily resident in South Africa and any legal person which has its place of management in South Africa.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his case shall be determined in accordance with the following rules:

(a) he shall be deemed to be a resident of the Contracting State in which he has a domicile available to him. If he has a domicile available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic interests are closer (centre of vital interests);

(b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a domicile available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;

(c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;

(d) if he is a national of both Contracting States or 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 of the Contracting 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 in which the business of the enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a mine, oil well, quarry or other place of extraction of natural resources; and

(g) a building site, construction, installation or assembly project which exists for a period of more than 12 months.

3. 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 for collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
4. An enterprise of a Contracting State, notwithstanding that it has no fixed place of business in the other Contracting State, shall be deemed to have a permanent establishment in that other Contracting State if it carries on supervisory activities therein in connection with a construction, installation or assembly project which is being undertaken in that other Contracting State for a period of more than 12 months.
5. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State (other than an agent of an independent status to whom paragraph 6 applies) notwithstanding that he has no fixed place of business in the first-mentioned Contracting State shall be deemed to be a permanent establishment in that State if --
- (a) he has, and habitually exercises, a general authority in the first-mentioned Contracting State to conclude contracts in the name of the enterprise; or
- (b) he maintains in the first-mentioned Contracting State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf of the enterprise; or
- (c) he regularly secures orders in the first-mentioned Contracting State wholly or almost wholly for the enterprise.
6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other Contracting State through a broker, general commission agent or any other agent of an independent status, where 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 Contracting State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

III. Taxation of Income

Article 6 Income from Immovable Property

1. Income from immovable property (including income from agriculture and forestry) may be taxed in the Contracting State in which such property is situated.
2. The term "immovable property" shall be defined in accordance with the law in the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7 Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other Contracting 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 the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in, the Contracting State in which the permanent establishment is situated or elsewhere.

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

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

Article 8 Shipping and Air Transport

1. Profits from the operation or rental of ships or aircraft in international traffic and the rental of containers and related equipment which is incidental to the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. If the place of effective management of a shipping enterprise is aboard a ship or boat, then it shall be deemed to be situated in the Contracting State of which the operator of the ship or boat is a resident.

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

Article 9 Associated Enterprises

1. Where:

(a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State -- and taxes accordingly -- profits on which an enterprise of the other Contracting State has been charged to tax in that other Contracting State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Contracting State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Contracting State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10 Dividends

1. Dividends arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting 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 Contracting State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

(a) 5 per cent of the gross amount of the dividends if the beneficial owner directly holds at least 10 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.

3. The term "dividends" as used in this Article means income from shares, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subject to the same taxation treatment as income from shares according to the taxation law in 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, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, no tax may be imposed in that other Contracting State on the dividends paid by the company except in so far as such dividends are paid to a resident of that other Contracting State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other Contracting State, or on the company's undistributed profits even if the dividends paid or undistributed profits consist wholly or partly of profits or income arising in such other Contracting State.

6. Dividends shall be deemed to arise in a Contracting State if they are paid by a company resident in that State.

Article 11 Interest

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

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

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

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the 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 a case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 12 Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting 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 recipient who is a resident of the other Contracting State beneficially owns the royalties, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. The provisions of paragraph 2 of this Article shall likewise apply to proceeds arising from the alienation of any copyright of scientific work, any patent, trade mark, design or model, plan, or secret formula or process.

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

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Where, owing to a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties paid, 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 a case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

7. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

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 Contracting State.

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

3. Gains from the alienation of ships or aircraft operated in international traffic, boats engaged in inland waterways transport or movable property pertaining to the operation of such ships, aircraft or boats, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Subject to the provisions of Article 12(3), gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3, shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14 Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other Contracting State but only so much of it as is attributable to that fixed base.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15 Dependent Personal Services

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State, unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Contracting 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 Contracting State if:

(a) the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned; and the

(b) remuneration is paid by or on behalf of an employer who is not a resident of the other Contracting State; and

(c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other Contracting State.

3. Notwithstanding the previous provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 16 Directors' Fees

Directors' fees and similar payments derived by a resident of a Contracting State in his 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 Contracting State.

Article 17 Artistes and Athletes

1. Notwithstanding the provisions of Articles 14 and 15, income derived by entertainers such as theatre, motion picture, radio or television artistes, and musicians, or by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

Article 18 Pensions and Annuities

1. Any pension (other than a pension of the kind referred to in paragraph 2 of Article 19) and any annuity, derived from sources within a Contracting State by an individual who is a resident of the other Contracting State and is subject to tax on the whole or portion thereof in the other Contracting State, shall be exempt from tax in the first-mentioned Contracting State to the extent that it is included in income for the purpose of the other Contracting State.

2. The term "annuity" as used in this Article 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 consideration of money paid.

Article 19 Government Service

1. Remuneration (other than pensions) paid by, or out of funds created by, one of the Contracting States or a political subdivision or local authority thereof to any individual for services rendered to that State or a political subdivision or local authority thereof in the discharge of functions of a government nature shall be exempt from tax in the other Contracting State if the individual is not ordinarily resident in that other Contracting State or is ordinarily resident in that other Contracting State solely for the purpose of rendering those services.

2. Any pension paid by, or out of funds created by, one of the Contracting States or a political subdivision or local authority thereof to any individual for services rendered to that State or a political subdivision or local authority thereof in the discharge of functions of a government nature shall be exempt from tax in the other Contracting State in so far as the remuneration for those services was exempt from tax in that other Contracting State under paragraph 1 of this Article or would have been so exempt if this Agreement had been in force when the remuneration was paid.

3. The provisions of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the Contracting States or a political subdivision or local authority thereof for purpose of profits.

Article 20 Teachers and Students

1. Notwithstanding the provisions of Article 15, a teacher who makes a temporary visit to one of the Contracting States for a period not exceeding two years for the purpose of teaching at a university, college, school or other educational institution in that State and who is, or immediately before such visit was, a resident of the other Contracting State shall, in respect of remuneration for such teaching, be exempt from tax in the first-mentioned Contracting State if he is subject to tax in the other Contracting State in respect of such remuneration.

2. A student or business apprentice who is present in a Contracting State solely for the purpose of his education or training and who is, or immediately before being so present was, a resident of the other

Contracting State shall be exempt from tax in the first-mentioned Contracting State on payments received from outside that first-mentioned Contracting State for the purposes of his maintenance, education or training.

Article 21 Other Income

Any income not dealt with in the foregoing provisions of this Agreement derived by a resident of a Contracting State who is subject to tax there in respect thereof shall be subjected to tax only in that State.

IV. Elimination of Double Taxation

Article 22 Elimination of Double Taxation

1. In the case of South Africa, taxes paid by South African residents in respect of income taxable in China, in accordance with the provisions of this Agreement, shall be deducted from the South African taxes due according to South African fiscal law. Such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in China.

2. In the case of China, taxes paid by Chinese residents in respect of income taxable in South Africa, in accordance with the provisions of this Agreement, shall be deducted from the Chinese taxes due according to Chinese tax law. The deduction shall not exceed the amount of tax which, computed at the applicable Chinese tax rate, is increased in consequence of the inclusion of the income which may be taxed in South Africa.

3. A grant given by one of the Contracting States, a political subdivision, or any agency thereof to a resident of the other Contracting State under the laws of, and for the purpose of promoting economic development or decentralization in, the first-mentioned Contracting State, shall not be taxable in the other Contracting State.

4. Paragraphs 1 and 2 of this Article shall have no application in relation to any tax which is repayable.

V. Special Provisions

Article 23 Non-Discrimination

1. The 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 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 Contracting State than the taxation levied on enterprises of that other Contracting State carrying on the same activities.

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

4. In this Article the term "taxation" means taxes which are the subject of this Agreement.

Article 24 Mutual Agreement Procedure

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Agreement, he may, notwithstanding the remedies provided by the domestic laws of those Contracting States, present his case to the competent authority of the Contracting State of which he 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 this Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate 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 not in accordance with the Agreement.

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

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

Article 25 Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement and of the domestic laws of the Contracting States concerning taxes covered by this Agreement in so far as the taxation thereunder is in accordance with this Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment or collection of the taxes which are the subject of this Agreement.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on one of the competent authorities the obligation:

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

(b) to supply particulars which are 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 26 Diplomatic Agents and Consular Officers

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

Article 27 Termination of the Sea and Air Transport Agreement of 1980

The Agreement between the Government of the Republic of China and the Government of the Republic of South Africa for the reciprocal exemption from taxes on income derived from the operation of sea and air transport, signed on the 11th day of the 3rd month of the 69th year of the Republic of China, corresponding to 11 March 1980, shall be terminated as from the commencement of any year or period for which this Agreement has effect.

Article 28 Entry Into Force

This Agreement shall enter into force on the date on which both Contracting States shall have notified each other of compliance with their respective constitutional requirements for entry into force of this Agreement and thereupon shall have effect-

(a) in respect of taxes withheld at source, 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; and

(b) in respect of other taxes, for taxable years of the persons entitled to the benefits of this Agreement beginning on or after the first day of the second month next following the date on which the Agreement enters into force.

Article 29 Termination

This Agreement shall remain in force until terminated by either of the Contracting States. Either of the Contracting States may terminate the Agreement at any time after a period of five years from the date on which the Agreement enters into force, provided that written notice of termination has been given not later than 30 June of any calendar year. In such event, the Agreement shall cease to have effect-

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

(b) in respect of other taxes, for taxable years of persons entitled to the benefits of the Agreement beginning on or after the first day of January next following the calendar year in which the notice is given.

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

Done in duplicate at Pretoria, this fourteenth day of the second month of the Eighty Third year of the Republic of China, corresponding to the fourteenth day of February of the year One Thousand Nine Hundred and Ninety Four, in the Chinese and English languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

D.L. Keys

FOR THE GOVERNMENT OF THE REPUBLIC OF CHINA

C.K. Lin