

No. 11859

**NETHERLANDS
and
SOUTH AFRICA**

**Convention for the avoidance of double taxation and the prevention
of fiscal evasion with respect to taxes on income (with protocol).
Signed at Cape Town on 15 March 1971**

Authentic texts : Dutch, Afrikaans and English.

Registered by the Netherlands on 6 July 1972.

**PAYS-BAS
et
AFRIQUE DU SUD**

**Convention tendant à éviter la double imposition et à prévenir
l'évasion fiscale en matière d'impôts sur le revenu (avec
protocole). Signée au Cap le 15 mars 1971**

Textes authentiques : néerlandais, afrikaans et anglais.

Enregistrée par les Pays-Bas le 6 juillet 1972.

CONVENTION¹ BETWEEN THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Kingdom of the Netherlands and the Government of the Republic of South Africa;

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

Have agreed as follows :

CHAPTER I

SCOPE OF THE CONVENTION

Article 1

PERSONAL SCOPE

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

Article 2

TAXES COVERED

1. This Convention shall apply to taxes on income imposed on behalf of each of the States 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, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

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

¹ Came into force on 3 February 1972 by the exchange of the instruments of ratification, which took place at The Hague, in accordance with article 31 (1) and (2).

a) in the case of the Netherlands :

- (1) *de inkomstenbelasting* (income tax),
- (2) *de loonbelasting* (wages tax),
- (3) *de vennootschapsbelasting* (company tax),
- (4) *de dividendbelasting* (dividend tax),
- (5) *de commissarissenbelasting* (tax on fees of directors of companies),

(hereinafter referred to as the Netherlands tax);

b) in the case of South Africa :

- (1) the normal tax,
 - (2) the non-resident shareholders' tax,
 - (3) the non-residents' tax on interest,
 - (4) the undistributed profits tax,
 - (5) the provincial personal and income taxes,
- (hereinafter referred to as the South African tax).

4. The Convention shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes. The competent authorities of the States shall notify to each other any substantial changes which have been made in their respective taxation laws.

CHAPTER II

DEFINITIONS

Article 3

GENERAL DEFINITIONS

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

a) the term " State " means the Netherlands or South Africa, as the context requires; the term " States " means the Netherlands and South Africa;

b) the term " the Netherlands " comprises the part of the Kingdom of the Netherlands that is situated in Europe and the part of the sea bed and its sub-soil under the North Sea, over which the Kingdom of the Netherlands has sovereign rights in accordance with international law;

c) the term " South Africa " means the Republic of South Africa including the territorial waters and fishing zone as defined in the laws of the Republic of South Africa and also that part of the continental shelf over which the Republic of South Africa exercises sovereign rights for the purposes of the exploitation of natural resources;

d) the term " person " comprises an individual, a company and any other body of persons;

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 one of the States ” and “ enterprise of the other State ” mean respectively an enterprise carried on by a resident of one of the States and an enterprise carried on by a resident of the other State;

g) the term “ competent authority ” means :

- (1) in the Netherlands the Minister of Finance or his authorized representative;
- (2) in South Africa the Secretary for Inland Revenue or his authorized representative.

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

Article 4

FISCAL DOMICILE

1. For the purposes of this Convention, the term “ resident of one of the States ” means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.

2. For the purposes of this Convention an individual, who is a member of a diplomatic or consular mission of one of the States in the other State or in a third State and who is a national of the sending State, shall be deemed to be a resident of the sending State if he is submitted therein to the same obligations in respect of taxes on income as are residents of that State.

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

- a) he shall be deemed to be a resident of the State in which he has a permanent home available to him. If he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closest (centre of vital interests);
- b) if the State in which he has his centre of vital interests cannot be determined or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;

d) if he is a national of both States or of neither of them, the competent authorities of the States shall settle the question by mutual agreement.

4. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

Article 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, 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, quarry or other place of extraction of natural resources;
- g) a building site or construction or assembly project which exists for more than twelve months.

3. The term “ permanent establishment ” shall not be deemed 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.

4. A person acting in one of the States on behalf of an enterprise of the other State — other than an agent of an independent status to whom paragraph 5 applies — shall be deemed to be a permanent establishment in the first-

mentioned State if he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

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

6. The fact that a company which is a resident of one of the States controls or is controlled by a company which is a resident of the other 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 from immovable property may be taxed in the State in which such property is situated.

2. The term “immovable property” shall be defined in accordance with the law of the 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 and debt-claims of every kind, secured by mortgage, excluding bonds or debentures; 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 professional services.

Article 7

BUSINESS PROFITS

1. The profits of an enterprise of one of the States shall be taxable only in that State unless the enterprise carries on business in the other 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. Where an enterprise of one of the States carries on business in the other State through a permanent establishment situated therein, there shall in each 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 of the enterprise (other than expenses which would not be deductible if the permanent establishment were a separate enterprise) 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.

4. Insofar as it has been customary in one of the States to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles laid down in this Article.

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

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

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

Article 8

SHIPPING AND AIR TRANSPORT

Profits from the operation of ships or aircraft in international traffic shall be taxable only in the State in which the place of effective management of the enterprise is situated.

Article 9

ASSOCIATED ENTERPRISES

Where :

- a) an enterprise of one of the States participates directly or indirectly in the management, control or capital of an enterprise of the other State, or
- b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the States and an enterprise of the other 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.

Article 10

DIVIDENDS

1. Dividends paid by a company which is a resident of one of the States to a resident of the other State may be taxed in that other State.

2. However, such dividends may be taxed in the State of which the company paying the dividends is a resident, and according to the law of that State, but the tax so charged shall not exceed :

- (a) 5 per cent of the gross amount of the dividends if the recipient is a company which controls, directly or indirectly, at least 25 per cent of the entire voting power in the company paying the dividends;
- (b) in all other cases, 15 per cent of the gross amount of the dividends.

3. The competent authorities of the States shall by mutual agreement settle the mode of application of paragraph 2.

4. The provisions of paragraph 2 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

5. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights participating in profits, as well as income from bonds or debentures participating in profits and income from other corporate rights assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident.

6. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the dividends, being a resident of one of the States, has in the other State, of

which the company paying the dividends is a resident, a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a case, the provision of Article 7 shall apply.

7. Where a company which is a resident of one of the States derives profits or income from the other State, that other State may not impose any tax on the dividends paid by the company to persons who are not residents of that other State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11

INTEREST

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

2. However, such interest may be taxed in the State in which it arises, and according to the law of that State, but the tax so charged shall not exceed 10 per cent of the amount of the interest. The competent authorities of the 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 Government securities, from bonds or debentures, whether or not secured by mortgage but not carrying a right to participate in profits, and debt-claims of every kind not secured by mortgage as well as all other income assimilated to income from money lent by the taxation law of the State in which the income arises.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the interest, being a resident of one of the States, has in the other State in which the interest arises a permanent establishment with which the debt-claim from which the interest arises is effectively connected. In such a case, the provisions of Article 7 shall apply.

5. Interest shall be deemed to arise in one of the States 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 one of the States or not, has in one of the States 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.

6. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the

interest paid, 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 recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each State, due regard being had to the other provisions of this Convention.

Article 12

ROYALTIES

1. Royalties arising in one of the States and paid to a resident of the other State shall be taxable only in that other State.

2. The competent authorities of the States shall by mutual agreement settle the mode in which the State in which the royalties arise abandons its taxation.

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, 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, commercial or scientific experience.

4. The provisions of paragraph 1 shall not apply if the recipient of the royalties, being a resident of one of the States, has in the other State in which the royalties arise a permanent establishment with which the right or property giving rise to the royalties is effectively connected. In such a case, the provisions of Article 7 shall apply.

5. Where, owing to a special relationship between the payer and the recipient 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 recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each State, due regard being had to the other provisions of this Convention.

Article 13

LIMITATION OF ARTICLES 10, 11 AND 12

International organisations, organs and officials thereof and members of a diplomatic or consular mission of a third State, being present in one of the States,

are not entitled, in the other State, to the reductions of or exemptions from tax provided for in Articles 10, 11 and 12 in respect of dividends, interest and royalties arising in that other State, if the said items of income are not liable to a tax on income in the first-mentioned State.

Article 14

CAPITAL GAINS

1. Gains from the alienation of immovable property, as defined in paragraph 2 of Article 6, may be taxed in the State in which such property is situated.

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

3. Notwithstanding the provisions of paragraph 2, gains from the alienation of ships and aircraft operated in international traffic, and movable property pertaining to the operation of such ships and aircraft shall be taxable only in the State in which the place of effective management of the enterprise is situated.

4. Gains from the alienation of any property other than those mentioned in paragraphs 1, 2 and 3, shall be taxable only in the State of which the alienator is a resident.

5. The provisions of paragraph 4 shall not affect the right of each of the States to levy according to its own law a tax on gains from the alienation of shares of “*jouissance*” rights in a company the capital of which is wholly or partly divided into shares and which is a resident of that State, derived by an individual who is a resident of the other State and has been a resident of the first-mentioned State in the course of the last five years preceding the alienation of the shares or “*jouissance*” rights.

Article 15

INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of one of the States in respect of professional services or other independent activities of a similar character shall be

taxable only in that State unless he has a fixed base regularly available to him in the other State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.

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

Article 16

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 17, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of one of the States in respect of an employment shall be taxable only in that State unless the employment is exercised in the other 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 one of the States in respect of an employment exercised in the other 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 the fiscal year concerned, and
- b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of one of the States in respect of an employment exercised aboard a ship or aircraft in international traffic shall be taxable only in that State.

Article 17

DIRECTORS' FEES

1. Directors' fees and similar payments derived by a resident of the Netherlands in his capacity as a member of the board of directors of a company which is a resident of South Africa may be taxed in South Africa.

2. Remuneration and other payments derived by a resident of South Africa in his capacity as a “bestuurder” or “commissaris” of a company which is a resident of the Netherlands may be taxed in the Netherlands.

Article 18

ARTISTES AND ATHLETES

Notwithstanding the provisions of Articles 15 and 16, income derived by public entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the State in which these activities are exercised.

Article 19

PENSIONS

Subject to the provisions of paragraph 1 of Article 20, pensions and other similar remuneration paid to a resident of one of the States in consideration of past employment shall be taxable only in that State.

Article 20

GOVERNMENTAL FUNCTIONS

1. Remuneration, including pensions, paid by, or out of funds created by, one of the States or a political subdivision or a local authority thereof to any individual in respect of services rendered to that State or subdivision or local authority thereof in the discharge of functions of a governmental nature may be taxed in that State.

2. However, the provisions of Articles 16, 17 and 19 shall apply to remuneration or pensions in respect of services rendered in connection with any trade or business carried on by one of the States or a political subdivision or a local authority thereof.

Article 21

PROFESSORS AND TEACHERS

Payments which a professor or teacher who is a resident of one of the States and who is present in the other State for the purpose of teaching for a

maximum period of two years in a university, college or other teaching establishment in that other State, receives for such teaching, shall be taxable only in the first-mentioned State.

Article 22

STUDENTS

Payments which a student or business apprentice who is or was formerly a resident of one of the States and who is present in the other State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that other State, provided that such payments are made to him from sources outside that other State.

Article 23

INCOME NOT EXPRESSLY MENTIONED

Items of income of a resident of one of the States which are not expressly mentioned in the foregoing Articles of this Convention shall be taxable only in that State.

CHAPTER IV

METHODS FOR ELIMINATION OF DOUBLE TAXATION

Article 24

1. Each of the States, when imposing tax on its residents, may include in the basis upon which such taxes are imposed the items of income, which according to the provisions of this Convention may be taxed in the other State.

2. Without prejudice to the application of the provisions concerning the compensation of losses in the unilateral regulations for the avoidance of double taxation the Netherlands shall allow a deduction from the amount of tax computed in conformity with the first paragraph of this Article equal to such part of that tax which bears the same proportion to the aforesaid tax, as the part of the income which is included in the basis mentioned in the first paragraph of this Article and may be taxed in South Africa according to Articles 6, 7, 10 (paragraph 6), 11 (paragraph 4), 12 (paragraph 4), 14 (paragraphs 1 and 2), 15, 16 (paragraph 1), 17 (paragraph 1), 18 and 20 of this Convention bears to the total income which forms the basis meant in the first paragraph of this Article.

Further the Netherlands shall allow a deduction from the Netherlands tax so computed for such items of income, as may be taxed in South Africa

according to Articles 10 (paragraph 2) and 11 (paragraph 2), and are included in the basis meant in the first paragraph of this Article. The amount of this deduction shall be the lesser of the following amounts :

- a) the amount equal to the South African tax;
- b) the amount of the Netherlands tax which bears the same proportion to the amount of tax computed in conformity with the first paragraph of this Article, as the amount of the said items of income bears to the amount of income which forms the basis meant in the first paragraph of this Article.

3. Where Netherlands tax is payable under the laws of the Netherlands and in accordance with this Convention, whether directly or by deduction, on profits, income or chargeable gains derived from sources within the Netherlands by a resident of South Africa, and that tax is borne by him, South Africa shall either impose no tax on that income or shall, subject to such provisions (which shall not affect the general principle hereof) as may be enacted in South Africa, allow as a credit against any South African tax payable in respect of that income so much of the Netherlands tax as does not exceed the South African tax.

CHAPTER V

SPECIAL PROVISIONS

Article 25

NON-DISCRIMINATION

1. The nationals of one of the States, whether they are residents of that State or not, shall not be subjected in the other 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 term " nationals " means :

- a) all individuals possessing the nationality of one of the States;
- b) all legal persons, partnerships and associations deriving their status as such from the law in force in one of the States.

3. The taxation on a permanent establishment which an enterprise of one of the States has in the other State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

This provision shall not be construed as obliging one of the States to grant to residents of the other 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.

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

Article 26

MUTUAL AGREEMENT PROCEDURE

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

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 State, with a view to the avoidance of taxation not in accordance with this Convention.

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

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

Article 27

EXCHANGE OF INFORMATION

1. The competent authorities of the States shall exchange such information (being information which such authorities have in proper order at their disposal) as is necessary for the carrying out of this Convention, in particular for the prevention of fraud, and for the administration of statutory provisions against legal avoidance concerning taxes covered by this Convention. 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 Convention.

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

- a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other 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 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 28

DIPLOMATIC AND CONSULAR OFFICIALS

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

Article 29

REGULATIONS

The competent authorities of each of the States, in accordance with the practices of that State, may prescribe regulations necessary to carry out the provisions of this Convention.

Article 30

SUSPENSION OF SHIPPING AGREEMENT OF 1954

The Agreement between the Kingdom of the Netherlands and the Union of South Africa constituted by the exchange of notes, dated 22nd April, 1954,¹ for the avoidance of double taxation on income and profits from sea and air transport shall not have effect for any year or period for which this Convention has effect.

CHAPTER VI

FINAL PROVISIONS

Article 31

ENTRY INTO FORCE

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at The Hague as soon as possible.

¹ United Nations, *Treaty Series*, vol. 211, p. 215.

2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect :

a) in the Netherlands :

- (i) as respects dividend tax, on dividends payable on or after 1st January, 1968; and
- (ii) as respects any other taxes, for taxable years and periods beginning on or after 1st January, 1968;

b) in South Africa :

- (i) as respects taxes on income, for any year of assessment beginning on or after 1st March, 1968;
- (ii) as respects non-resident shareholders' tax, on dividends payable on or after 1st January, 1968; and
- (iii) as respects non-residents' tax on interest, on interest payable on or after 1st January, 1968.

Article 32

TERMINATION

This Convention shall remain in force until denounced by one of the States. Either State may denounce the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the year 1972. In such event the Convention shall cease to be effective :

a) in the Netherlands :

- (i) as respects dividend tax, on dividends payable on or after 1st January in the calendar year next following that in which the notice is given; and
- (ii) as respects any other taxes, for any taxable year or period beginning after the end of the calendar year in which the notice is given;

b) in South Africa :

- (i) as respects taxes on income, for any year of assessment beginning on or after 1st March in the calendar year next following that in which the notice is given;
- (ii) as respects non-resident shareholders' tax, on dividends payable on or after 1st January in the calendar year next following that in which the notice is given; and
- (iii) as respects non-residents' tax on interest, on interest payable on or

after 1st January in the calendar year next following that in which the notice is given.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed this Convention.

DONE in duplicate, this 15th day of March 1971 at Cape Town in the Netherlands, English and Afrikaans languages, these texts being equally authentic.

For the Government of the Kingdom of the Netherlands :
HOOGENDOORN

For the Government of the Republic of South Africa :
H. MULLER

PROTOCOL

At the moment of signing the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, this day concluded between the Government of the Kingdom of the Netherlands and the Government of the Republic of South Africa, the undersigned, duly authorized thereto, have agreed that the following provisions shall form an integral part of the Convention.

I. *Ad Article 4*

An individual living aboard a ship without any real domicile in either of the States shall be deemed to be a resident of the State in which the ship has its home harbour.

II. *Ad Articles 10, 11 and 12*

Applications for the restitution of tax levied contrary to the provisions of Articles 10, 11 and 12 have to be lodged with the competent authority of the State having levied the tax within a period of three years after the expiration of the calendar year in which the tax has been levied.

III. *Ad Article 20*

The services of employees of the South African Tourist Corporation shall be considered to be rendered in discharge of functions of a governmental nature and not in connection with any trade or business carried on.

IV. *Ad Article 24*

It is understood that, in so far as the Netherlands income tax or company tax is concerned, the basis meant in the first paragraph of Article 24 is the

onzuivere inkomen or *winst* in terms of the Netherlands income tax law or company tax law, respectively.

V. *Ad Article 27*

The obligation to exchange information does not include information obtained from banks or from institutions assimilated therewith. The term “institutions assimilated therewith” includes insurance companies.

DONE in duplicate, this 15th day of March 1971 at Cape Town in the Netherlands, English and Afrikaans languages, these texts being equally authentic.

For the Government of the Kingdom of the Netherlands :
HOOGENDOORN

For the Government of the Republic of South Africa :
H. MULLER
