

No. 45153*

**South Africa
and
China**

Agreement between the Government of the Republic of South Africa and the Government of the People's Republic of China for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (with protocol). Pretoria, 25 April 2000

Entry into force: *7 January 2001 by notification, in accordance with article 28*

Authentic texts: *Chinese and English*

Registration with the Secretariat of the United Nations: *South Africa, 1 August 2008*

**Afrique du Sud
et
Chine**

Accord entre le Gouvernement de la République sud-africaine et le Gouvernement de la République populaire de Chine tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu (avec protocole). Pretoria, 25 avril 2000

Entrée en vigueur : *7 janvier 2001 par notification, conformément à l'article 28*

Textes authentiques : *chinois et anglais*

Enregistrement auprès du Secrétariat des Nations Unies : *Afrique du Sud, 1er août 2008*

* *The texts reproduced below are the original texts of the agreement as submitted. For ease of reference, they were sequentially paginated. The relevant Treaty Series volume will be published in due course.*

Les textes reproduit ci-dessous sont les textes authentiques de l'accord tel que soumises pour l'enregistrement. Pour référence, ils ont été présentés sous forme de la pagination consécutive. Le volume correspondant du Recueil des Traités sera disponible en temps utile.

[CHINESE TEXT – TEXTE CHINOIS]



南非共和国政府和中华人民共和国政府
关于对所得避免双重征税
和防止偷漏税的协定

南非共和国政府和中华人民共和国政府,愿意缔结关于对所得避免双重征税和防止偷漏税的协定,达成协议如下:

第一条 适用对象

本协定适用于缔约国一方或者同时为双方居民的人。

第二条 税种范围

一、本协定适用于由缔约国一方、其行政区或地方当局对所得征收的所有税收,不论其征收方式如何。

二、本协定特别适用的现行税种是:

(一)在中国:

1. 个人所得税;
2. 外商投资企业和外国企业所得税。

(以下简称“中国税收”)

(二)在南非:

1. 标准税;

2. 附加公司所得税；

(以下简称“南非税收”)。

三、本协定也适用于本协定签订之日后由缔约国任何一方征收的属于增加或者代替现行税种的相同或者实质相似的税收。缔约国双方主管当局应将各自税法所作出的实质变动,在其变动后的适当时间内通知对方。

第三条 一般定义

一、在本协定中,除上下文另有解释的以外:

(一)“中国”一语是指中华人民共和国;用于地理概念时,是指实施有关中国税收法律的所有中华人民共和国领土,包括领海,以及根据国际法,中华人民共和国拥有勘探和开发海底和底土资源以及海底以上水域资源的主权权利的领海以外的区域;

(二)“南非”一语是指南非共和国,用于地理概念时,包括其领海,以及根据南非法律和国际法已经或以后将要确定的南非可以行使主权或管辖权的领海以外的任何区域,包括大陆架;

(三)“缔约国一方”和“缔约国另一方”的用语,按照上下文,是指中国或者南非;

(四)“税收”一语按照上下文,是指中国税收或者南非税收;

(五)“人”一语包括个人、公司和其他团体;

(六)“公司”一语是指法人团体或者在税收上视同法人团体的实体;

(七)“缔约国一方企业”和“缔约国另一方企业”的用语,分别指缔约国一方居民经营的企业和缔约国另一方居民经营的企业;

(八)“国民”一语是指:

- 1.任何具有缔约国一方国籍的个人;
- 2.任何按照缔约国一方现行法律建立的法人、合伙企业或团体;

(九)“国际运输”一语是指缔约国一方企业以船舶或飞机经营的运输,不包括仅在缔约国另一方各地之间以船舶或飞机经营的运输;

(十)“主管当局”一语,在中国方面是指国家税务总局或其授权的代表;在南非方面是指南非税收局局长或其授权的代表。

二、缔约国一方在任何时候实施本协定时,对于未经本协定明确定义的用语,除上下文另有解释的以外,应当具有该缔约国适用于本协定的税种的法律所规定的含义。并且,该缔约国适用的税收法律所规定的含义应优先于缔约国其他法律所规定的含义。

第四条 居民

一、在本协定中,“缔约国一方居民”一语是指:

(一)在中国,按照中国法律,由于住所、居所、总机构所在地或者其他类似的标准,在中国负有纳税义务的人;

(二)在南非,是指构成南非普通居民的个人和实际管理机构设在南非的任何其他人;

(三)缔约国一方、其行政区或地方当局。

二、由于第一款的规定,同时为缔约国双方居民的个人,其身份

应按以下规则确定：

(一)应认为仅是其有永久性住所所在缔约国的居民；如果在缔约国双方同时有永久性住所，应认为仅是与其个人和经济关系更密切(重要利益中心)所在缔约国的居民；

(二)如果其重要利益中心所在国无法确定，或者在缔约国任何一方都没有永久性住所，应认为仅是其有习惯性居处所在国的居民；

(三)如果其在缔约国双方都有，或者都没有习惯性居处，应认为仅是其国民所属缔约国的居民；

(四)如果其同时是缔约国双方的国民，或者不是缔约国任何一方的国民，缔约国双方主管当局应通过协商解决。

三、由于第一款的规定，除个人以外，同时为缔约国双方居民的人，应认为仅是其实际管理机构或总机构所在缔约国的居民。然而，如果这个人在缔约国一方设有其实际管理机构，在缔约国另一方设有其总机构，缔约国双方主管当局应协商确定此人为哪一方缔约国居民。

第五条 常设机构

一、在本协定中，“常设机构”一语是指企业进行全部或部分营业的固定营业场所。

二、“常设机构”一语特别包括：

(一)管理场所；

(二)分支机构；

(三)办事处;

(四)车间;

(五)作业场所;

(六)矿场、油井或气井、采石场或者其它开采自然资源的场所。

三、“常设机构”一语还包括:

(一)建筑工地,建筑、装配或安装工程,或者与其有关的监督管理活动,但仅以该工地、工程或活动连续十二个月以上的为限;

(二)企业通过雇员或者雇用的其他人员(为同一个项目或相关的项目)提供服务,包括咨询劳务,但仅以在该国从事的上述活动在任何二十四个月中连续或累计超过十二个月的为限。

四、虽有本条上述规定,“常设机构”一语应认为不包括:

(一)专为储存、陈列或者交付本企业货物或者商品的目的而使用的设施;

(二)专为储存、陈列或者交付的目的而保存本企业货物或者商品的库存;

(三)专为另一企业加工的目的而保存本企业货物或者商品的库存;

(四)专为本企业采购货物或者商品,或者搜集情报的目的所设的固定营业场所;

(五)专为本企业进行其它准备性或辅助性活动的目的所设的固定营业场所;

(六)专为本款第(一)项至第(五)项所提及的活动的结合所设的固定营业场所,如果由于这种结合使该固定营业场所的全部活动属

于准备性质或辅助性质。

五、虽有第一款和第二款的规定,当一个人(除适用第六款规定的独立代理人以外)在缔约国一方代表缔约国另一方的企业进行活动,有权并经常行使这种权力以该企业的名义签订合同,这个人为该企业进行的任何活动,应认为该企业在该缔约国一方设有常设机构。除非这个人通过固定营业场所进行的活动限于第四款的规定,按照该款规定,不应认为该固定营业场所是常设机构。

六、缔约国一方企业仅通过按常规经营本身业务的经纪人、一般佣金代理人或者任何其他独立代理人在缔约国另一方进行营业,不应认为在该缔约国另一方设有常设机构。

七、缔约国一方居民公司,控制或被控制于缔约国另一方居民公司或者在该缔约国另一方进行营业的公司(不论是否通过常设机构),此项事实不能据以使任何一方公司构成另一方公司的常设机构。

第六条 不动产所得

一、缔约国一方居民从位于缔约国另一方的不动产取得的所得(包括农业或林业所得),可以在该缔约国另一方征税。

二、“不动产”一语应当具有财产所在地的缔约国的法律所规定的含义。该用语在任何情况下应包括附属于不动产的财产,农业和林业所使用的牲畜和设备,有关地产的一般法律规定所适用的权利,不动产的用益权以及由于开采或有权开采矿藏、水源和其它自然资

源取得的不固定或固定收入的权利。船舶和飞机不应视为不动产。

三、第一款的规定应适用于从直接使用、出租或者任何其它形式使用不动产取得的所得。

四、第一款和第三款的规定也适用于企业的不动产所得和用于进行独立个人劳务的不动产所得。

第七条 营业利润

一、缔约国一方企业的利润应仅在该缔约国征税,但该企业通过设在缔约国另一方的常设机构在该缔约国另一方进行营业的除外。如果该企业通过设在该缔约国另一方的常设机构在该缔约国另一方进行营业,其利润可以在该缔约国另一方征税,但应仅以属于该常设机构的利润为限。

二、除适用第三款的规定以外,缔约国一方企业通过设在缔约国另一方的常设机构在该缔约国另一方进行营业,应将该常设机构视同在相同或类似情况下从事相同或类似活动的独立分设企业,并同该常设机构所隶属的企业完全独立处理,该常设机构可能得到的利润在缔约国各方应归属于该常设机构。

三、在确定常设机构的利润时,应当允许扣除其进行营业发生的各项费用,包括行政和一般管理费用,不论其发生于该常设机构所在国或者其它任何地方。

四、如果缔约国一方习惯于以企业总利润按一定比例分配给所属各单位的方法来确定常设机构的利润,则第二款规定并不妨碍该

缔约国按这种习惯分配方法确定其应纳税的利润。但是,采用的分配方法所得到的结果,应与本条所规定的原则一致。

五、不应仅由于常设机构为企业采购货物或商品,将利润归属于该常设机构。

六、在上述各款中,除有适当的和充分的理由需要变动外,每年应采用相同的方法确定属于常设机构的利润。

七、利润中如果包括本协定其它各条单独规定的所得项目时,本条规定不应影响其它各条的规定。

第八条 海运和空运

一、缔约国一方企业以船舶或飞机经营国际运输业务所取得的利润,应仅在该缔约国征税。

二、第一款规定也适用于参加合伙经营、联合经营或者参加国际经营机构取得的利润。

第九条 联属企业

一、当:

(一)缔约国一方企业直接或者间接参与缔约国另一方企业的管理、控制或资本,或者

(二)同一人直接或者间接既参与缔约国一方企业又参与缔约国另一方企业的管理、控制或资本,

在上述任何一种情况下,两个企业之间的商业或财务关系不同于独立企业之间的关系,因此,本应由其中一个企业取得,但由于这些情况而没有取得的利润,可以计入该企业的利润,并据以征税。

二、缔约国一方将缔约国另一方已征税的企业利润,而这部分利润本应由该缔约国一方企业取得的,包括在该缔约国一方企业的利润内,并且加以征税时,如果这两个企业之间的关系是独立企业之间的关系,该缔约国另一方应对这部分利润所征收的税额加以调整,在确定上述调整时,应对本协定其它规定予以注意,如有必要,缔约国双方主管当局应相互协商。

第十条 股息

一、缔约国一方居民公司支付给缔约国另一方居民的股息,可以在该缔约国另一方征税。

二、然而,这些股息也可以在支付股息的公司是其居民的缔约国,按照该缔约国法律征税。但是,如果股息受益所有人是缔约国另一方居民,则所征税款不应超过股息总额的百分之五。缔约国双方主管当局应协商确定实施该限制税率的方式。

本款不应影响对该公司支付股息前的利润所征收的公司利润税。

三、本条“股息”一语是指从股份或者非债权关系分享利润的权利取得的所得,以及按照分配利润的公司是其居民的缔约国法律,视同股份所得同样征税的其它公司权利取得的所得。

四、如果股息受益所有人是缔约国一方居民,在支付股息的公司是其居民的缔约国另一方,通过设在该缔约国另一方的常设机构进行营业或者通过设在该缔约国另一方的固定基地从事独立个人劳务,据以支付股息的股份与该常设机构或固定基地有实际联系的,不适用第一款和第二款的规定。在这种情况下,应视具体情况适用第七条或第十四条的规定。

五、缔约国一方居民公司从缔约国另一方取得利润或所得,该缔约国另一方不得对该公司支付的股息征收任何税收。但支付给该缔约国另一方居民的股息或者据以支付股息的股份与设在缔约国另一方的常设机构或固定基地有实际联系的除外。对于该公司的未分配的利润,即使支付的股息或未分配的利润全部或部分发生于该缔约国另一方的利润或所得,该缔约国另一方也不得征收任何税收。

第十一条 利息

一、发生于缔约国一方而支付给缔约国另一方居民的利息,可以在该缔约国另一方征税。

二、然而,这些利息也可以在该利息发生的缔约国,按照该缔约国的法律征税。但是,如果利息受益所有人是缔约国另一方居民,则所征税款不应超过利息总额的百分之十。缔约国双方主管当局应协商确定实施限制税率的方式。

三、虽有第二款的规定,发生于缔约国一方而为缔约国另一方政府、其行政区或地方当局及其中央银行或者完全为其政府所有的金

融机构取得的利息;或者为该缔约国另一方居民取得的利息,其债权是由该缔约国另一方政府、其行政区或地方当局及其中央银行或者完全为其政府所有的金融机构间接提供资金的,应在该缔约国一方免税。

四、本条“利息”一语是指从各种债权取得的所得,不论其有无抵押担保或者是否有权分享债务人的利润;特别是从公债、债券或者信用债券取得的所得,包括其溢价和奖金。由于延期支付的罚款,不应视为本条所规定的利息。

五、如果利息受益所有人是缔约国一方居民,在利息发生的缔约国另一方,通过设在该缔约国另一方的常设机构进行营业或者通过设在该缔约国另一方的固定基地从事独立个人劳务,据以支付该利息的债权与该常设机构或者固定基地有实际联系的,不适用第一款、第二款和第三款的规定。在这种情况下,应视具体情况适用第七条或第十四条的规定。

六、如果支付利息的人为缔约国一方居民,应认为该利息发生在该缔约国。然而,当支付利息的人不论是否为缔约国一方居民,在缔约国一方设有常设机构或者固定基地,支付该利息的债务与该常设机构或者固定基地有联系,并由其负担该利息,上述利息应认为发生于该常设机构或固定基地所在缔约国。

七、由于支付利息的人与受益所有人之间或者他们与其他人之间的特殊关系,就有关债权所支付的利息数额超出支付人与受益所有人没有上述关系所能同意的数额时,本条规定应仅适用于后来提及的数额。在这种情况下,对该支付款项的超出部分,仍应按各缔约

国的法律征税,但应对本协定其它规定予以适当注意。

第十二条 特许权使用费

一、发生于缔约国一方而支付给缔约国另一方居民的特许权使用费,可以在该缔约国另一方征税。

二、然而,这些特许权使用费也可以在其发生的缔约国,按照该缔约国的法律征税。但是,如果该项特许权使用费的受益所有人是缔约国另一方居民,则所征税款不应超过:

(一)在本条第三款第(一)项所述的特许权使用费的情况下,该项特许权使用费的总额的百分之十;

(二)在本条第三款第(二)项所述的特许权使用费的情况下,该项特许权使用费调整数额的百分之十。在该项中,“调整数额”是指特许权使用费的百分之七十。

三、本条“特许权使用费”一语包括:

(一)使用或有权使用文学、艺术或科学著作,包括电影影片、无线电或电视广播使用的胶片、磁带或软盘的版权,专利、专有技术、商标、设计或模型、图纸、秘密配方或秘密程序所支付的作为报酬的各种款项;

(二)使用或有权使用工业、商业、科学设备所支付的作为报酬的各种款项。

四、如果特许权使用费受益所有人是缔约国一方居民,在特许权使用费发生的缔约国另一方,通过设在该缔约国另一方的常设机构

进行营业或者通过设在该缔约国另一方的固定基地从事独立个人劳务,据以支付该特许权使用费的权利或财产与该常设机构或固定基地有实际联系的,不适用第一款和第二款的规定。在这种情况下,应视具体情况适用第七条或第十四条的规定。

五、如果支付特许权使用费的人是缔约国一方居民,应认为该特许权使用费发生在该缔约国。然而,当支付特许权使用费的人不论是否为缔约国一方居民,在缔约国一方设有常设机构或者固定基地,支付该特许权使用费的义务与该常设机构或者固定基地有联系,并由其负担这种特许权使用费,上述特许权使用费应认为发生于该常设机构或者固定基地所在缔约国。

六、由于支付特许权使用费的人与受益所有人之间或他们与其他人之间的特殊关系,就有关使用、权利或情报支付的特许权使用费数额超出支付人与受益所有人没有上述关系所能同意的数额时,本条规定应仅适用于后来提及的数额。在这种情况下,对该支付款项的超出部分,仍应按各缔约国的法律征税,但应对本协定其它规定予以适当注意。

第十三条 财产收益

一、缔约国一方居民转让第六条所述位于缔约国另一方的不动产取得的收益,可以在该缔约国另一方征税。

二、转让缔约国一方企业在缔约国另一方的常设机构营业财产部分的动产,或者缔约国一方居民在缔约国另一方从事独立个人劳

务的固定基地的动产取得的收益,包括转让常设机构(单独或者随同整个企业)或者固定基地取得的收益,可以在该缔约国另一方征税。

三、缔约国一方企业转让从事国际运输的船舶或飞机,或者转让属于经营上述船舶、飞机的动产取得的收益,应仅在该缔约国征税。

四、转让一个公司财产股份的股票取得的收益,该公司的财产又主要直接或者间接由位于缔约国一方的不动产所组成,可以在该缔约国一方征税。

五、转让第四款所述以外的其它股票取得的收益,该项股票又相当于缔约国一方居民公司至少百分之二十五的股权,可以在该缔约国一方征税。

六、转让本条以上各款所述财产以外的其它财产取得的收益,应仅在转让者为其居民的缔约国征税。

第十四条 独立个人劳务

一、缔约国一方居民由于专业性劳务或者其它独立性活动取得的所得,应仅在该缔约国征税。但具有以下情况之一的,可以在缔约国另一方征税:

(一)在缔约国另一方为从事上述活动设有经常使用的固定基地。在这种情况下,该缔约国另一方可以仅对属于该固定基地的所得征税;

(二)在有关财政年度开始或结束的任何十二个月中在缔约国另一方停留连续或累计达到或超过一百八十三天。在这种情况下,该

缔约国另一方可以仅对在该缔约国进行活动取得的所得征税。

二、“专业性劳务”一语特别包括独立的科学、文学、艺术、教育或教学活动,以及医师、律师、工程师、建筑师、牙医师和会计师的独立活动。

第十五条 非独立个人劳务

一、除适用第十六条、第十八条、第十九条、第二十条和第二十一条的规定以外,缔约国一方居民因受雇取得的薪金、工资和其它类似报酬,除在缔约国另一方从事受雇的活动以外,应仅在该缔约国一方征税。在该缔约国另一方从事受雇的活动取得的报酬,可以在该缔约国另一方征税。

二、虽有第一款的规定,缔约国一方居民因在缔约国另一方从事受雇的活动取得的报酬,同时具有以下三个条件的,应仅在该缔约国一方征税:

(一)收款人在有关财政年度开始或结束的任何十二个月中在该缔约国另一方停留连续或累计不超过一百八十三天;

(二)该项报酬由并非该缔约国另一方居民的雇主支付或代表该雇主支付;

(三)该项报酬不是由雇主设在该缔约国另一方的常设机构或固定基地所负担。

三、虽有本条上述规定,在缔约国一方企业经营国际运输的船舶或飞机上从事受雇的活动取得的报酬,可以在该缔约国征税。

第十六条 董事费

缔约国一方居民作为缔约国另一方居民公司的董事会成员取得的董事费和其它类似款项,可以在该缔约国另一方征税。

第十七条 艺术家和运动员

一、虽有第十四条和第十五条的规定,缔约国一方居民,作为表演家,如戏剧、电影、广播或电视艺术家、音乐家或作为运动员,在缔约国另一方从事其个人活动取得的所得,可以在该缔约国另一方征税。

二、虽有第七条、第十四条和第十五条的规定,表演家或运动员从事其个人活动取得的所得,并非归属表演家或运动员本人,而是归属于其他人,可以在该表演家或运动员从事其活动的缔约国征税。

三、虽有本条上述规定,作为缔约国一方居民的表演家或运动员在缔约国另一方进行活动取得的所得,如果该项活动是全部或主要由缔约国一方政府、其行政区或地方当局的公共基金资助的,或者是按照缔约国双方政府的文化交流计划进行的,该缔约国另一方应予免税。

第十八条 退休金

一、除适用第十九条第二款的规定以外,因以前的雇佣关系支付给缔约国一方居民的退休金和其它类似报酬,应仅在该缔约国一方征税。

二、虽有第一款的规定,缔约国一方政府、其行政区或地方当局按社会保险制度的公共福利计划支付的退休金和其它类似款项,应仅在该缔约国一方征税。

第十九条 政府服务

一、(一)缔约国一方、其行政区或地方当局对向其提供服务的个人支付退休金以外的工资、薪金和其他类似报酬,应仅在该缔约国一方征税。

(二)但是,如果该项服务是在缔约国另一方提供,而且提供服务的个人是该缔约国另一方居民,并且该居民:

1. 是该缔约国另一方国民;或者

2. 不是仅由于提供该项服务,而成为该缔约国另一方的居民,该项工资、薪金和其他类似报酬,应仅在该缔约国另一方征税。

二、(一)缔约国一方、其行政区或地方当局支付或者从其建立的基金中支付给向其提供服务的个人的退休金,应仅在该缔约国一方征税。

(二)但是,如果提供服务的个人是缔约国另一方居民,并且是其

国民的,该项退休金应仅在该缔约国另一方征税。

三、第十五条、第十六条、第十七条和第十八条的规定,应适用于向缔约国一方政府、其行政区或地方当局举办的事业提供服务取得的工资、薪金和其他类似报酬以及退休金。

第二十条 教师和研究人員

一、任何个人是、或者在紧接前往缔约国一方之前曾是缔约国另一方居民,主要是为了在该缔约国一方的大学、学院、学校或为该缔约国一方政府承认的教育机构和科研机构从事教学、讲学或研究的目的,停留在该缔约国一方。对其由于教学、讲学或研究取得的报酬,该缔约国一方应自其第一次到达之日起,两年内免于征税。

二、本条第一款的规定不适用于不是为了公共利益而主要是为某个人或某些人的私利从事研究取得的所得。

第二十一条 学生和实习人員

一、学生、企业学徒或实习生是、或者在紧接前往缔约国一方之前曾是缔约国另一方居民,仅由于接受教育或培训的目的,停留在该缔约国一方,对其为了维持生活、接受教育或培训的目的收到的来源于该缔约国以外的款项,该缔约国一方应免于征税。

二、第一款所述学生、企业学徒或实习生取得的不包括在第一款的赠款、奖学金和劳务报酬,在接受教育或培训期间,应与其所停留

居民享受同样的免税、优惠或减税。

第二十二條 其它所得

一、締約國一方居民取得的各項所得，不論在什麼地方發生的，凡本協定上述各條未作規定的，應僅在該締約國一方徵稅。

二、第六條第二款規定的不動產所得以外的其它所得，如果所得收款人為締約國一方居民，通過設在締約國另一方的常設機構在該締約國另一方進行營業，或者通過設在該締約國另一方的固定基地在該締約國另一方從事獨立個人勞務，據以支付所得的權利或財產與該常設機構或固定基地有實際聯系的，不適用第一款的規定。在這種情況下，應視具體情況分別適用第七條或第十四條的規定。

三、雖有第一款和第二款的规定，凡本協定上述各條未作規定的締約國一方居民的所得，發生在締約國另一方，也可以在該締約國另一方徵稅。

第二十三條 消除双重征税方法

消除双重征税如下：

(一)在中國，中國居民從南非取得的所得，按照本協定規定在南非繳納的稅額，可以在對該居民徵收的中國稅收中抵免。但是，抵免額不應超過對該項所得按照中國稅法和規章計算的中國稅收數額。

(二)在南非，南非居民按照本協定規定在中國取得所得所繳納

的税额,可以从根据南非税法计算的应纳税额中扣除。但是,该项扣除额不应超过与该项所得占全部所得比例相同的所占应付南非税收比例的数额。

第二十四条 无差别待遇

一、缔约国一方国民在缔约国另一方负担的税收或者有关条件,不应与该缔约国另一方国民在相同情况下,负担或可能负担的税收或者有关条件不同或比其更重。虽有第一条的规定,本规定也应适用于不是缔约国一方或者双方居民的人。

二、缔约国一方企业在缔约国另一方常设机构的税收负担,不应高于该缔约国另一方对其本国进行同样活动的企业。本规定不应理解为缔约国一方由于民事地位、家庭负担给予该缔约国居民的任何扣除、优惠和减免也必须给予该缔约国另一方居民。

三、除适用第九条第一款、第十一条第七款或第十二条第六款规定外,缔约国一方企业支付给缔约国另一方居民的利息、特许权使用费和其它款项,在确定该企业应纳税利润时,应与在同样情况下支付给该缔约国一方居民同样予以扣除。

四、缔约国一方企业的资本全部或部分,直接或间接为缔约国另一方一个或一个以上的居民拥有或控制,该企业在该缔约国一方负担的税收或者有关条件,不应与该缔约国一方其它同类企业的负担或可能负担的税收或者有关条件不同或比其更重。

五、虽有第二条的规定,本条规定应适用于各种税收。

第二十五条 协商程序

一、当一个人认为,缔约国一方或者双方所采取的措施,导致或将导致对其不符合本协定规定的征税时,可以不考虑各缔约国国内法律的补救办法,将案情提交本人为其居民的缔约国主管当局;或者如果其案情属于第二十四条第一款,可以提交本人为其国民的缔约国主管当局。该项案情必须在不符合本协定规定的征税措施第一次通知之日起,三年内提出。

二、上述主管当局如果认为所提意见合理,又不能单方面圆满解决时,应设法同缔约国另一方主管当局相互协商解决,以避免不符合本协定的征税。达成的协议应予执行,而不受各缔约国国内法律的时间限制。

三、缔约国双方主管当局应通过协议设法解决在解释或实施本协定时所发生的困难或疑义,也可以对本协定未作规定的消除双重征税问题进行协商。

四、缔约国双方主管当局为达成第二款和第三款的协议,可以相互直接联系。为有助于达成协议,双方主管当局的代表可以进行会谈,口头交换意见。

第二十六条 情报交换

一、缔约国双方主管当局应交换为实施本协定的规定所需要的情报,或缔约国双方关于本协定所涉及的税种的国内法律的规定所

需要的情报(以根据这些法律征税与本协定不相抵触为限)。情报交换不受第一条的限制。缔约国一方收到的任何情报应与按该国国内法取得的情报同样作密件处理。仅应告知与本协定所含税种有关的查定、征收、执行、起诉或裁决上诉有关的人员或当局(包括法院和行政管理部门)。上述人员或当局应仅为上述目的使用该情报,但可以在公开法庭的诉讼程序或法庭判决中公开有关情报。

二、第一款的规定在任何情况下,不应被理解为缔约国一方有以下义务:

(一)采取与该缔约国或缔约国另一方法律和行政惯例相违背的行政措施;

(二)提供按照该缔约国或缔约国另一方法律或正常行政渠道不能得到的情报;

(三)提供泄露任何贸易、经营、工业、商业、专业秘密、贸易过程的情报或者泄露会违反公共政策(公共秩序)的情报。

第二十七条 使馆人员和领馆人员

本协定应不影响按国际法一般规则或特别协定规定的使馆人员或领馆人员的税收特权。

第二十八条 生效


缔约国各方将照会另一方已完成其法律规定的完整程序以使此协定开始生效,此协定将在最后照会日后第三十天开始生效并将适用于此协定生效年度的次年一月一日或以后开始的纳税年度取得的所得。

第二十九条 终止

本协定应长期有效。但缔约国任何一方可以在本协定生效之日起满五年后任何历年六月三十日或以前,通过外交途径书面通知对方终止本协定。在这种情况下,本协定对终止通知发出年度的次年一月一日或以后开始的纳税年度中取得的所得停止有效。

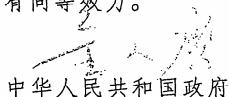
下列代表,经正式授权,已在本协定上签字为证。

本协定于二〇〇〇年四月二十五日在比勒陀利亚签订,一式两份,每份都用英文和中文写成,两种文本具有同等效力。



南非共和国政府

代表



中华人民共和国政府

代表

议定书

在签订南非共和国政府和中华人民共和国政府关于对所得避免双重征税和防止偷漏税的协定(以下简称“协定”)时,双方同意下列规定作为本协定的组成部分。

一、关于第三条

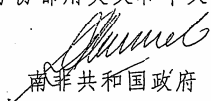
在南非方面,第一款第(五)项“人”一语不包括合伙企业。

二、关于第二十四条

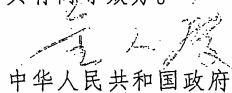
本条规定并不影响南非对中国居民企业设在南非的常设机构征税的税率高于对南非居民企业征收的标准税税率五个百分点。

下列代表,经正式授权,已在本议定书上签字为证。

本议定书于二〇〇〇年四月二十五日在比勒陀利亚签订,一式两份,每份都用英文和中文写成,两种文本具有同等效力。


南非共和国政府

代 表


中华人民共和国政府

代 表

[ENGLISH TEXT – TEXTE ANGLAIS]

AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

AND

THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA

FOR THE AVOIDANCE OF DOUBLE TAXATION AND

THE PREVENTION OF FISCAL EVASION

WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of South Africa and the Government of the People's Republic of China,

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. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or a political subdivision or a local authority thereof, irrespective of the manner in which they are levied.
2. The existing taxes to which the Agreement shall apply are in particular:
 - a) in China:
 - (i) the individual income tax;
 - (ii) the income tax for enterprises with foreign investment and foreign enterprises;(hereinafter referred to as "Chinese tax");
 - b) in South Africa:
 - (i) the normal tax;
 - (ii) the secondary tax on companies;(hereinafter referred to as "South African tax").

3. The Agreement shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State 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 of any substantial changes which have been made in their respective taxation laws within a reasonable period of time after such changes.

Article 3

General Definitions

1. For the purposes of this Agreement, unless the context otherwise requires:
 - a) the term "China" means the People's Republic of China; when used in geographical sense, means all the territory of the People's Republic of China, including its territorial sea, in which the Chinese laws relating to taxation apply, and any area beyond its territorial sea, within which the People's Republic of China has sovereign rights of exploration for and exploitation of resources of the sea-bed and its sub-soil and superjacent water resources in accordance with international law;
 - b) the term "South Africa" means the Republic of South Africa and, when used in a geographical sense, includes the territorial sea thereof as well as any area outside the territorial sea, including the continental shelf, which has been or may hereafter be designated, under the laws of South Africa and in accordance with international law, as an area within which South Africa may exercise sovereign rights or jurisdiction;
 - c) the terms "a Contracting State" and "the other Contracting State" mean China or South Africa, as the context requires;
 - d) the term "tax" means Chinese tax or South African tax, as the context requires;
 - e) the term "person" includes an individual, a company and any other body of persons;
 - f) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

- 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 "national" means:
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
 - i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
 - j) the term "competent authority" means, in the case of China, the State Administration of Taxation or its authorized representative, and in the case of South Africa, the Commissioner for the South African Revenue Service or his authorized representative.
2. 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 Contracting State for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that Contracting State prevailing over a meaning given to the term under other laws of that Contracting State.

Article 4

Resident

1. For the purposes of this Agreement, the term "resident of a Contracting State" means:
- a) in China, any person who, under the laws of China, is liable to tax therein by reason of his domicile, residence, place of head office or any other criterion of a similar nature;
 - b) in South Africa, any individual who is ordinarily resident in South Africa and any other person which has its place of effective management in South Africa;
 - c) that State and any political subdivision or local authority thereof.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:
 - a) he shall be deemed to be a resident only 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 only of the State with which his personal and economic relations are closer (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 only 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 only 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 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 only of the State in which its place of effective management or its head office is situated. However, if such person has a place of effective management in a Contracting State and has a head office in the other Contracting State, the competent authorities of the Contracting States shall by mutual agreement determine the State of which the person in question is a resident.

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 of natural resources.
3. The term "permanent establishment" likewise encompasses:
- a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than 12 months;
 - b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the 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 aggregating more than 12 months within any twenty four month period.
4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:
- a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
 - b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
 - e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
 - f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting in a Contracting State on behalf of an enterprise of the other Contracting State, and has, and habitually exercises, an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.
6. An enterprise 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 State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.
7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6

Income from Immovable Property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise 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 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 business 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 a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary. The method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

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

Article 8

Shipping and Air Transport

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.
2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9

Associated Enterprises

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

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

2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State 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 paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 5 per cent of the gross amount of the dividends. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

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

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the 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 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 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, 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 or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11

Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 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. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and derived by the Government of the other Contracting State, a political subdivision, a local authority and the Central Bank thereof or any financial institution wholly owned by the Government of that other State, or by any other resident of that other State with respect to debt-claims indirectly financed by the Government of that other State, a political subdivision, a local authority and the Central Bank thereof or any financial institution wholly owned by the Government of that other State, shall be exempt from tax in the first-mentioned 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 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.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other 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 case the provisions of Article 7 or Article 14, as the case may be, 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 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 State in which the permanent establishment or fixed base 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 paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed:
 - a) in the case of royalties referred to in subparagraph a) of paragraph 3 of this Article, 10 per cent of the gross amount of the royalties;
 - b) in the case of royalties referred to in subparagraph b) of paragraph 3 of this Article, 10 per cent of the adjusted amount of the royalties. For the purpose of this subparagraph "the adjusted amount" means 70 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article comprises:
 - a) 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, or any patent, know-how, trade mark, design or model, plan, secret formula or process; and
 - b) payments of any kind received as a consideration for the use of, or the right to use, any industrial, commercial or scientific equipment.
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, or performs in that other 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 case the provisions of Article 7 or Article 14, as the case may be, 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 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 liability 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 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 royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 13

Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which 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 State.
3. 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. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that Contracting State.
5. Gains from the alienation of shares other than those mentioned in paragraph 4 representing a participation of at least 25 per cent in a company which is a resident of a Contracting State may be taxed in that State.
6. Gains from the alienation of any property other than that referred to in the preceding paragraphs, shall be taxable only in the Contracting State of which the alienator is a resident.

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 except in one of the following circumstances, when such income may also be taxed in the other Contracting State:
 - a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other State;
 - b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
 - a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned, and
 - b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
 - c) the remuneration is not borne by a permanent establishment or a fixed base 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 16

Directors' Fees

Directors' fees and other 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 State.

Article 17

Entertainers and Sportspersons

1. Notwithstanding the provisions of Articles 14 and 15, 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 his 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 his capacity as such accrues not to the entertainer or sportsperson 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 sportsperson are exercised.
3. Notwithstanding the preceding provisions of this Article, income derived by entertainers or sportspersons who are residents of a Contracting State from the activities exercised in the other Contracting State shall be exempt from tax in that other Contracting State if such activities are supported wholly or mainly from public funds of the Government of either Contracting State, a political subdivision or a local authority thereof, or take place under a plan of cultural exchange between the Governments of the Contracting States.

Article 18

Pensions

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.
2. Notwithstanding the provisions of paragraph 1, pensions paid and other similar payments made by the Government of a Contracting State, a political subdivision or a local authority thereof under a public welfare scheme of the social security system of that State shall be taxable only in that State.

Article 19

Government Service

1. a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or political subdivision or local authority thereof, shall be taxable only in that State.

- b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
 - (i) is a national of that State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.
- 2. a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or political subdivision or local authority thereof shall be taxable only in that State.
- b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that other State.
- 3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages and other similar remuneration, and to pensions, in respect of services rendered in connection with a business carried on by the Government of a Contracting State or a political subdivision or a local authority thereof.

Article 20

Teachers and Researchers

- 1. Remuneration which an individual who is or was immediately before visiting a Contracting State, a resident of the other Contracting State and who is present in the first-mentioned State for the primary purpose of teaching, giving lectures or conducting research at a university, college, school or educational institution or scientific research institution recognized by the Government of the first-mentioned State, derives for the purpose of such teaching, lectures or research shall not be taxed in the first-mentioned State, for a period of two years from the date of his first arrival in the first-mentioned State.
- 2. The provisions of paragraph 1 of this Article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

Article 21

Students and Trainees

1. Payments which a student, business apprentice or trainee who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned 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 State, provided that such payments arise from sources outside that State.
2. In respect of grants, scholarships and remuneration from employment not covered by paragraph 1, a student, business apprentice or trainee described in paragraph 1 shall, in addition, be entitled during such education or training to the same exemptions, reliefs or reductions in respect of taxes available to residents of the State which he is visiting.

Article 22

Other Income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.
3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of the Agreement and arising in the other Contracting State may also be taxed in that other State.

Article 23

Methods for the Elimination of Double Taxation

Double taxation shall be eliminated as follows:

- a) in China, where a resident of China derives income from South Africa the amount of the South African tax paid on that income in accordance with the provisions of this Agreement, may be credited against the Chinese tax imposed on that resident. The amount of the credit, however, shall not exceed the amount of the Chinese tax on that income computed in accordance with the taxation laws and regulations of China;
- b) in South Africa, Chinese tax paid by residents of South Africa in respect of income taxable in China, 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 24

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 are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.
5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Article 25

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with 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. They may also consult together for the elimination of double taxation in cases not provided for in the 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 paragraphs 2 and 3. When it seems advisable for reaching agreement, representatives of the competent authorities of the Contracting States may meet together for an oral exchange of opinions.

Article 26

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 laws of the Contracting States concerning taxes covered by the Agreement the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1. Any information received from 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 the 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 covered by the Agreement. Persons or authorities shall use the information only for such purposes. They shall not 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 administrative practice of that or of the other Contracting State;
 - b) to supply information which is not obtainable under the laws or in the course of the administration of that or of the other Contracting State;
 - c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).

Article 27

Members of Diplomatic Missions and Consular Posts

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

Article 28

Entry into Force

Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Agreement. The Agreement shall enter into force on the thirtieth day following the date of the later of these notifications and shall have effect as respects income derived during the taxable years beginning on or after the first day of January next following that in which the Agreement enters into force.

Article 29

Termination

This Agreement shall continue in effect indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give written notice of termination to the other Contracting State through the diplomatic channel. In such event the Agreement shall cease to have effect as respects income derived during the taxable years beginning on or after the first day of January in the calendar year next following that in which the notice of termination is given.

IN WITNESS whereof the undersigned, duly authorized thereto, have signed this Agreement.

Done at PRETORIA on the 25TH day of APRIL, 2000, in duplicate in the English and Chinese languages, both texts being equally authentic.



**For the Government of
the Republic of South Africa**



**For the Government of
the People's Republic of China**



Protocol

At the signing of the Agreement between the Government of the Republic of South Africa and the Government of the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (hereinafter referred to as "The Agreement") both sides have agreed upon the following provisions which form an integral part of the Agreement.

1. With reference to Article 3:

it is understood that in the case of South Africa, partnerships are excluded from the definition of "person" in subparagraph 1e).

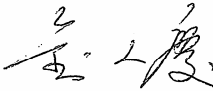
2. With reference to Article 24:

it is understood that 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 China, a tax at a rate which does not exceed the rate of normal tax on companies which are residents of South Africa by more than 5 percentage points.

IN WITNESS whereof the undersigned, duly authorized thereto, have signed this Protocol.

Done at PRETORIA on the 25th day of APRIL, 2000, in duplicate in the English and Chinese languages, both texts being equally authentic.


For the Government of
the Republic of South Africa


For the Government of
the People's Republic of China