

Proclamations

by the State President of the Republic of South Africa

No. R. 125, 1973

INCOME TAX ACT, 1962

AGREEMENT BETWEEN THE REPUBLIC OF SOUTH AFRICA AND THE FEDERAL REPUBLIC OF GERMANY FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME

In terms of section 108(2) of the Income Tax Act, 1962 (Act 58 of 1962), I do hereby declare that the Agreement set out in the Schedule to this Proclamation has, under section 108(1) of the said Act, been entered into between the Republic of South Africa and the Federal Republic of Germany for the avoidance of double taxation with respect to taxes on income.

Given under my Hand and the Seal of the Republic of South Africa at Cape Town on this First day of May, One thousand Nine hundred and Seventy-three.

J.J. FOUCHÉ, State President.

By Order of the State President-in-Council.

N. DIEDERICHS.

In terms of the provisions of paragraph 2 of Article 25, the date of entry into force of the Agreement is 28 February 1975.

The Agreement was published in Government Gazette No 3898 dated 25 May 1973.

SCHEDULE

**AGREEMENT BETWEEN THE REPUBLIC OF SOUTH AFRICA AND THE
FEDERAL REPUBLIC OF GERMANY FOR THE AVOIDANCE OF DOUBLE
TAXATION WITH RESPECT TO TAXES ON INCOME**

THE REPUBLIC OF SOUTH AFRICA

and

THE FEDERAL REPUBLIC OF GERMANY

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

Have agreed as follows:

Article 1

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

Article 2

(1) This Agreement shall apply to taxes on income imposed on behalf of each Contracting State or of its Länder, 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 this Agreement shall apply are, in particular:

(a) in the Republic of South Africa:

the normal tax;
the undistributed profits tax;
the non-resident shareholders' tax;
the non-resident tax on interest;
the provincial income tax;

and all other taxes on persons or on the incomes of persons which are chargeable in South Africa;

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

(b) in the Federal Republic of Germany:

die Einkommensteuer (the income tax);
die Körperschaftsteuer (the corporation tax); and
die Gewerbesteuer (the trade tax);

(hereinafter referred to as "German tax").

(4) This Agreement shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of the existing taxes.

(5) The provisions of this Agreement in respect of the taxation of income shall likewise apply to the German Gewerbesteuer (trade tax) computed on a basis other than income.

Article 3

- (1) In this Agreement, unless the context otherwise requires:
- (a) the term "South Africa" means the Republic of South Africa and, when used in a geographical sense, includes that area of the high seas designated, in accordance with international law as related to the rights which South Africa may exercise with respect to the sea bed and sub-soil and their natural resources, as domestic area for tax purposes;
 - (b) the term "Federal Republic" means the Federal Republic of Germany and, when used in a geographical sense, means the territory in which the Basic Law for the Federal Republic of Germany is in force, as well as any area adjacent to the territorial waters of the Federal Republic of Germany designated, in accordance with international law as related to the rights which the Federal Republic may exercise with respect to the sea bed and sub-soil and their natural resources, as domestic area for tax purposes;
 - (c) the terms "a Contracting State" and "the other Contracting State" mean South Africa or the Federal Republic, as the context requires;
 - (d) the term "tax" means South African tax or German tax, as the context requires;
 - (e) the term "person" includes any body of persons, corporate or not corporate;
 - (f) the term "company" means any body corporate and any entity which is treated as a body corporate for tax purposes;
 - (g) (aa) the term "resident of South Africa" means any person (other than a company) who is ordinarily resident in South Africa for the purposes of South African tax and any company which is incorporated, managed or controlled in South Africa;
 - (bb) the term "resident of the Federal Republic" means any person who is resident in the Federal Republic (subject to unlimited tax liability) for the purposes of German tax;
 - (cc) where by reason of the provisions of subparagraphs (aa) and (bb) an individual is a resident of both Contracting States, then this case shall be determined in accordance with the following rules:
 - (i) He shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closest (centre of vital interests);
 - (ii) if the Contracting 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 Contracting State he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
 - (iii) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;

- (iv) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement;
- (dd) where by reason of the provisions of subparagraphs (aa) and (bb) a legal person is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated. The same provision shall apply to partnerships and associations which under the national laws by which they are governed are not legal persons;
- (h) the terms "resident of a Contracting State" and "resident of the other Contracting State" mean a person who is a resident of South Africa or a person who is a resident of the Federal Republic, as the context requires;
- (i) the terms "South African enterprise" and "Federal Republic enterprise" mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of South Africa and an industrial or commercial enterprise or undertaking carried on by a resident of the Federal Republic, and the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean a South African enterprise or a Federal Republic enterprise, as the context requires;
- (j) (aa) the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on;
- (bb) a permanent establishment shall include especially:
 - a place of management;
 - a branch;
 - an office;
 - a factory;
 - a workshop;
 - a mine, quarry or other place of extraction of natural resources;
 - a building site or construction or assembly project which exists for more than 12 months;
- (cc) the term "permanent establishment" shall not be deemed to include:
 - The use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
 - the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
 - 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;
- (dd) a person acting in a Contracting State on behalf of an enterprise of the other Contracting State - other than an agent of an independent

status to whom subparagraph (ee) 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;

- (ee) 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, where any such person is acting in the ordinary course of his business;
- (ff) 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;
- (k) the term “nationals” means:
 - (aa) in the case of the Federal Republic:
 - all Germans in the meaning of Article 116(1) of the Basic Law for the Federal Republic of Germany and all legal persons, partnerships and associations deriving their status as such from the law in force in the Federal Republic;
 - (bb) in the case of South Africa:
 - all South African citizens and all legal persons, partnerships and associations deriving their status as such from the law in force in South Africa;
- (l) the term “competent authorities” means the Secretary for Inland Revenue in the case of South Africa and the Federal Minister of Finance, in the case of the Federal Republic.

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

Article 4

(1) The industrial or commercial profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on a trade or business in the other Contracting State through a permanent establishment situated therein. If it carries on a trade or business as aforesaid, tax may be imposed on those profits in the other State but only on so much of them as is attributable to that permanent establishment.

(2) Where an enterprise of a Contracting State carries on a trade or business in the other Contracting State through a permanent establishment situated therein there shall be attributed to that permanent establishment the commercial or industrial profits which it might be expected to derive in that other State 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) 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.

(4) In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. If the expenses are so incurred they shall be allowed to the extent that they are deductible under the law of the State in which the permanent establishment is situated.

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

Article 5

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 either 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 6

(1) Profits from the operation of ships or aircraft in international traffic (including traffic between places in one country in the course of a voyage which extends over more than one country), shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

(2) The provisions of paragraph (1) shall likewise apply in respect of participations in pools, in a joint business or in an international operations agency of any kind by enterprises engaged in the operation of ships and aircraft in international traffic.

(3) Ships and aircraft owned and operated in international traffic by an enterprise the place of effective management of which is situated in South Africa shall be exempt from capital tax in the Federal Republic.

Article 7

(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 be taxed in the Contracting 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) 7,5 per cent of the gross amount of the dividends if the recipient is a company (excluding partnerships) which owns directly at least 25 per cent of the voting shares of the company paying the dividends;
- (b) 15 per cent of the gross amount of the dividends in cases not dealt with in subparagraph (a) if such dividends are subject to tax in the other Contracting State.

(3) Notwithstanding the provisions of paragraph (2) German tax on dividends paid to a company being a resident of South Africa by a company being a resident of the Federal Republic, at least 25 per cent of the capital of which is owned directly or indirectly by the former company itself, or by it together with other persons controlling it or being under common control with it, shall not exceed 25,75 per cent of the gross amount of such dividends as long as the rate of German corporation tax on distributed profits is lower than that on undistributed profits and the difference between those two rates is 20 units or more. Where the difference between the rates is 10 units or more but less than 20 units, German tax on such dividends shall not exceed 15 per cent of the gross amount of such dividends.

(4) The term "dividends" as used in this Article means, income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as 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. It includes the income derived by a sleeping partner (stiller Gesellschafter) from his participation as such and income from distribution on certificates of an investment trust.

(5) The provisions of paragraphs (1) to (3) shall not apply if the recipient of the dividends, being a resident of a Contracting State, has in the other Contracting State of which the company paying the dividends is a resident, a permanent establishment with which the holding giving rise to the dividends is effectively connected. In such case, the provisions of Article 4 shall apply.

(6) 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 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 8

(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 be taxed in the Contracting 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 if such interest is subject to tax in the other Contracting State.

(3) The term "interest" as used in this Article means income from Government securities, from bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and debt-claims of every kind 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 paragraph (1) shall not apply if the recipient of the interest, being a resident of a Contracting State, has in the other Contracting 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 4 shall apply.

(5) Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a land, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment 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 Contracting 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 lastmentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 9

(1) Royalties arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State, if such royalties are subject to tax in such other State.

(2) 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.

(3) The provisions of paragraph (1) shall not apply if the recipient of the royalties, being a resident of a Contracting State, has in the other Contracting 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 4 shall apply.

(4) Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a land, a political subdivision, a local authority or 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 in connection with which the obligation to pay the royalties was incurred, and the royalties are borne by the permanent establishment, then the royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

(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 lastmentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 10

(1) Income from immovable property may be taxed in the Contracting State in which such property is situated.

(2) The term “immovable property” shall be defined in accordance with the laws 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 of agricultural and forestry enterprises, 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 and other natural resources; ships and aircraft shall not be regarded as immovable property.

(3) The provisions of paragraphs (1) and (2) shall apply to income derived from the direct use, letting or use in any other form of immovable property, including income from agricultural or forestry enterprises. They shall likewise apply to profits from the alienation of immovable property.

(4) The provisions of paragraphs (1) to (3) shall also apply to the income from immovable property of any enterprises other than agricultural or forestry enterprises and to income from immovable property used for the performance of professional services.

Article 11

(1) 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 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. However, 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 Contracting State in which the place of effective management of the enterprise is situated.

(2) Gains from the alienation of any movable property other than those mentioned in paragraph (1), shall be taxable only in the Contracting State of which the alienator is a resident.

Article 12

(1) Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless such income is not subject to tax in that State or such resident has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, such part of that income as is attributable to that base may be taxed in that other State. If he has no such fixed base and the income is not subject to tax in the Contracting State of which he is a resident he may be taxed in the other Contracting State on the income derived from his activities performed therein.

(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.

(3) Director's fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 13

(1) Subject to the provisions of Articles 15, 16 and 17, 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 income 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 the income is subject to tax therein and:

- (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 in respect of an employment exercised aboard a ship or aircraft in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 14

Notwithstanding anything contained in this Agreement, income derived by public entertainers, such as theatre, motion picture, radio or television artists and musicians, and by athletes, from their personal activities as such, may be taxed in the Contracting State in which these activities are exercised.

Article 15

(1) Remuneration in respect of present services paid by, or out of funds created by South Africa or any political subdivision thereof shall be taxable only in that State, unless the payment is made to a national of the Federal Republic who is not also a national of South Africa.

(2) Remuneration in respect of present services paid by, or out of funds created by the Federal Republic or its Länder or any political subdivision thereof, shall be taxable only in that State unless the payment is made to a national of South Africa who is not also a national of the Federal Republic.

(3) The provisions of paragraphs (1) and (2) shall not apply to remuneration in respect of services rendered in connection with any trade or business carried on by either of the Contracting States, a land or political subdivision thereof for purposes of profit.

(4) The provisions of paragraphs (1) and (2) shall also apply to remuneration paid by the Deutsche Bundesbank, the Deutsche Bundesbahn, the Deutsche Bundespost and the corresponding organisations of South Africa, including the Department of Transport, and the Tourist Corporation of the Republic of South Africa.

Article 16

(1) 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 if such income is subject to tax in that State.

(2) Notwithstanding the provisions of paragraph (1), pensions and other similar remuneration paid by, or out of funds created by, a Contracting State, a land or any political subdivision thereof in consideration of past employment shall be exempt from tax in the other Contracting State.

(3) The provisions of paragraph (2) shall also apply to pensions and similar remuneration paid in consideration of past employment by the Deutsche Bundesbank, the Deutsche Bundesbahn, the Deutsche Bundespost and the corresponding organisations of South Africa, including the Department of Transport, and the Tourist Corporation of the Republic of South Africa.

(4) Paragraph (2) shall likewise apply in respect of pensions, annuities and other recurring or non-recurring remuneration paid to any individual by a Contracting State, a land or any political subdivision thereof as compensation for an injury or damage sustained as a result of hostilities or political persecution.

Article 17

A professor or teacher from one of the Contracting States, who receives remuneration for carrying out advanced study or research or for teaching, during a period of temporary residence not exceeding two years, at a university, research institute, college, school or other similar institution in the other Contracting State, shall be exempt from tax in that other State in respect of such remuneration.

Article 18

Payments which a student or business apprentice (including in the Federal Republic a Volontär or a Praktikant) from a Contracting State who is present in the other Contracting 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 19

Any income not dealt with in the foregoing provisions derived by a resident of a Contracting State shall be taxable only in that State if such income is subject to tax in that State.

Article 20

(1) Where German tax is payable under the laws of the Federal Republic and in accordance with this Agreement in respect of income derived by a person who is a resident of South Africa, South Africa shall either:

- (a) impose no tax on such income; or
- (b) allow the German tax as a credit against any South African tax payable in respect of such income:

Provided that nothing contained in this paragraph shall effect the exemptions from South African tax resulting from paragraph (2) of Article 15 and paragraphs (2) and (4) of Article 16.

(2) In the case of a resident of the Federal Republic the tax shall be determined as follows:

(a) Unless the provisions of subparagraph (b) apply, there shall be excluded from the basis upon which German tax is imposed, any item of income from sources within South Africa which, according to this Agreement, may be taxed in South Africa. The Federal Republic, however, retains the right to take into account in the determination of its rate of tax the items of income so excluded. The first sentence of this subparagraph shall in the case of income from dividends apply only to such dividends as are paid to a company being a resident of the Federal Republic by a company being a resident of South Africa, if at least 25 per cent of the voting shares of the South African company are owned by the Federal Republic company. If according to the foregoing provisions income from sources within South Africa is to be excluded from the basis upon which German tax is imposed, then the property situated in South Africa giving rise to such income, if any, shall be excluded from the basis upon which the capital tax is imposed.

(b) Subject to the provisions of German tax law regarding credit for foreign tax, there shall be allowed as a credit against German tax payable in respect of the following items of income the South African tax paid in accordance with this Agreement on-

- (aa) dividends in the meaning of paragraph (4) of Article 7, not dealt with in subparagraph (a) above;
- (bb) interest in the meaning of paragraph (3) of Article 8;
- (cc) remuneration in the meaning of paragraph (3) of Article 12;
- (dd) remuneration in the meaning of Article 15 paid by, or out of funds created by South Africa or any political subdivision thereof to a national of the Federal Republic who is not also a national of South Africa.

Article 21

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for the implementation of this Agreement. If such information is exchanged it shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the application, including judicial determination, of the Agreement.

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

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

Article 22

(1) Where a resident of a Contracting State considers that the actions of the tax authorities in one or both of the Contracting States result or will result in taxation not in accordance with this Agreement, he may, notwithstanding the remedies provided by the laws of those States, present his case to the competent authority of the State of which he is a resident. Should his claim be deemed worthy of consideration, the competent authority of the State to which the claim is made shall endeavour to come to an agreement with the competent authority of the other State with a view to avoidance of taxation not in accordance with the Agreement.

(2) For the settlement of difficulties or doubts in the interpretation or application of this Agreement or in respect of its relation to Agreements of the Contracting States with third States the competent authorities of the Contracting States shall reach a mutual agreement as quickly as possible.

(3) The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

Article 23

(1) The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

(2) The taxation of 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) 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 that first-mentioned State are or may be subjected.

Article 24

This Agreement shall apply also to Land Berlin provided that the Government of the Federal Republic of Germany has not delivered a contrary declaration to the Government of the Republic of South Africa within three months from the date of entry into force of this Agreement.

Article 25

(1) This Agreement shall be ratified and the instruments of ratification shall be exchanged at Pretoria as soon as possible.

(2) This Agreement shall enter into force on the date on which the instruments of ratification are exchanged and shall thereupon have effect:

- (a) in South Africa, as respects taxes which are levied for the year of assessment ending on 28 February 1965, and subsequent years of assessment;
- (b) in the Federal Republic, as respects taxes which are levied for the assessment period 1965 and subsequent assessment periods; and
- (c) in both Contracting States, as respects taxes withheld at source, on dividends, interest and royalties paid after 31 December 1964.

Article 26

This Agreement supersedes the Agreement for the avoidance of double taxation on the income derived from shipping and aircraft concluded by exchange of notes of 9 May 1955, and of 26 August 1955, between South Africa and the Federal Republic and that Agreement shall cease to have effect for the year of assessment or the period of assessment for which this Agreement is first applied in terms of paragraph (2) of Article 25 and subsequent years or periods of assessment.

Article 27

(1) This Agreement shall continue in force indefinitely but either of the Contracting States may, on or before the 30th day of September in any calendar year after the year 1973, give to the other Contracting State, through diplomatic channels, written notice of termination, and in such event this Agreement shall cease to be effective:

- (a) in South Africa, as respects taxes which are levied for the year of assessment next commencing after the calendar year in which such notice is given and subsequent years of assessment;
- (b) in the Federal Republic, as respects taxes which are levied for the assessment period next commencing after the assessment period in which such notice is given and subsequent periods of assessment; and
- (c) in both Contracting States, as respects taxes withheld at source on dividends, interest and royalties paid after the end of the calendar year in which such notice is given.

(2) The termination of this Agreement shall not have the effect of reviving any agreement or arrangement abrogated by this Agreement.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Agreement and have affixed thereto their seals.

Done in duplicate at Bonn this 25th day of January 1973, in the English, Afrikaans and German languages, all three texts being equally authentic except in the case of doubt when the English text shall prevail.

For the Republic of South Africa:

(Signed) D B Sole.

Ambassador Extraordinary and Plenipotentiary of the Republic of South Africa,
Cologne

For the Federal Republic of Germany:

(Signed) Frank.

(Signed) Schuler

Secretaries of State of the Federal Republic of Germany.

The Federal Minister of Foreign Affairs
Bonn, 25 January 1973

His Excellency
Mr Donald Bell Sole
Ambassador Extraordinary and Plenipotentiary
of the Republic of South Africa,
Cologne,

Excellency,

With reference to the Agreement signed today between the Federal Republic of Germany and the Republic of South Africa for the Avoidance of Double Taxation with respect to Taxes on Income, I have the honour to inform you on behalf of the Government of the Federal Republic of Germany, that the two Contracting States have agreed that the provisions referred to below shall be applied as follows:

Paragraph 2 (a) of Article 20 shall apply to the profits of a permanent establishment or to dividends paid by a company only if the profits of such permanent establishment or the income of such company are derived exclusively or almost exclusively:

- (a) from producing, selling goods or merchandise, leasing or renting, giving technical advice or rendering engineering services, or doing banking or insurance business, within South Africa; or
- (b) from dividends paid by one or more companies, being residents of South Africa, at least 25 per cent of the voting shares of which are owned by the first-mentioned company, which themselves derive their income exclusively or almost exclusively from producing, selling goods or merchandise, leasing or renting, giving technical advice or rendering engineering services or doing banking or insurance business, within South Africa.

In case these conditions are not complied with paragraph 2 (b) of Article 20 shall apply rather than paragraph (2)(a) of that Article.

I should be grateful if you would confirm your agreement with the above and that, in such case, this Note and your reply thereto should be deemed to be part of the Agreement.

Please accept, Excellency, the assurance of my highest consideration.

For the Minister of Foreign Affairs
(Signed) Frank

Embassy of the Republic of South Africa
Cologne, 25 January 1973

His Excellency
the Minister of Foreign Affairs of the
Federal Republic of Germany,
Mr Walter Scheel,
Bonn

I have the honour to acknowledge receipt of your note of today's date which read as follows:

"With reference to the Agreement signed today between the Federal Republic of Germany and the Republic of South Africa for the Avoidance of Double Taxation with respect to Taxes on Income, I have the honour to inform you on behalf of the Government of the Federal Republic of Germany, that the two Contracting States have agreed that the provisions referred to below shall be applied as follows:

Paragraph 2 (a) of Article 20 shall apply to the profits of a permanent establishment or to dividends paid by a company only if the profits of such permanent establishment or the income of such company are derived exclusively or almost exclusively:

- (a) from producing, selling goods or merchandise, leasing or renting, giving technical advice or rendering engineering services, or doing banking or insurance business, within South Africa; or
- (b) from dividends paid by one or more companies, being residents of South Africa, at least 25 per cent of the voting shares of which are owned by the first-mentioned company, which themselves derive their income exclusively or almost exclusively from producing, selling goods or merchandise, leasing or renting, giving technical advice or rendering engineering services or doing banking or insurance business, within South Africa.

In case these conditions are not complied with paragraph 2 (b) of Article 20 shall apply rather than paragraph (2) (a) of that Article.

I should be grateful if you would confirm your agreement with the above and that, in such case, this Note and your reply thereto should be deemed to be part of the Agreement."

In reply thereto, I have the honour to inform you that the Government of the Republic of South Africa are in agreement with the foregoing and that your Note and the present reply shall be deemed to be part of the Agreement between our two Governments.

Please accept, Excellency, the assurance of my highest consideration.

Ambassador Extraordinary and Plenipotentiary of the Republic of South Africa
Cologne. (Signed) D B Sole