

**SEEKING COMMON DEVIATIONS FROM SOUTH AFRICA'S TAX TREATY POLICY:
A COMPARATIVE ANALYSIS IDENTIFYING TRENDS (REGIONAL OR OTHERWISE)
IN TREATY PRACTICE IN BI-LATERAL TAX TREATIES WITH COUNTRIES IN ASIA,
AUSTRALASIA, NORTH AMERICA AND SOUTH AMERICA**

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ABSTRACT

South Africa experienced an unprecedented growth in its tax treaty network since 1994 as a result of an increase in global trade. In concluding these bi-lateral tax treaties with other countries, South Africa depends primarily on its national model policy during its negotiations with other contracting states.

The country's national tax treaty policy was previously defined in one document, the publication of which has since been discontinued. Apart from Professor C West's contribution to the global tax community, there is little research information available on the current tax treaty policy of South Africa. It is submitted that the OECD Model and its positions recorded in the commentaries are now widely accepted as the national tax treaty policy of South Africa. The findings of the comparative analysis between the previously documented tax treaty policy and this new widely accepted position of South Africa, suggested that the OECD Model and its recorded positions in the commentaries, subject to a few exceptions, is a fair reflection of South Africa's national tax treaty policy.

It is submitted that South Africa accepted common deviations from its national tax treaty policy when negotiating bi-lateral treaties with countries in the Americas, Asia and Australasia. Previous research failed to provide guidance in this aspect and in an attempt to seek common deviations from South Africa's national tax treaty policy, a comparative analysis was conducted to identify trends (whether regional or otherwise) in tax treaties with a sample of countries in Asia, Australasia, North America and South America. The findings of this comparative analysis indicated that South Africa successfully applied its national tax treaty policy to a large extent, but does accept common deviations from the policy.

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Abbreviations and Glossary

DTT	Double taxation treaty;
Foreign Jurisdiction	Jurisdictions in Australasia, Asia, North America and South America, but limited to the scope of this paper;
GTTC or Commentaries	Global Tax Treaty Commentaries;
IBFD	International Bureau of Fiscal Documentation;
Commentaries	Commentary on the articles of the relevant OECD Model drafted by the OECD Committee on Fiscal Affairs supplemented by reference to the relevant year in which the commentaries were published e.g. OECD Commentaries (1963);
OECD Model	Model Tax Convention on Income and Capital drafted by the Organisation for Economic Co-operation and Development supplemented by reference to the relevant year in which the model was published e.g. OECD Model (1963);
Old South African Model	The South African model agreement for the avoidance of double taxation contemplated in paragraph 2.5 of this paper, the publication of which has been discontinued;
PE	Permanent Establishment;
RSA	Republic of South Africa;
South Africa – Australia DTT	Convention between the Government of the Republic of South Africa and the Government of Australia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;
South Africa – Brazil DTT	Convention between the Government of the Republic of South Africa and the Government of Brazil for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;
South Africa – Canada DTT	Convention between the Government of the Republic of South Africa and the Government of Canada for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;
South Africa – Chile DTT	Convention between the Government of the Republic of South Africa and the Republic of Chile for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;
South Africa – China DTT	Convention between the Government of the Republic of South Africa and the People’s Republic of China for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;
South Africa – Grenada DTT	Convention between the Government of the Republic of South Africa and Grenada for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;

South Africa – Hong Kong DTT	Convention between the Government of the Republic of South Africa and the Government of Hong Kong for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;
South Africa – India DTT	Convention between the Government of the Republic of South Africa and the Government of the Republic of India for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;
South Africa – Indonesia DTT	Convention between the Government of the Republic of South Africa and the Government of the Republic of Indonesia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;
South Africa – Iran DTT	Convention between the Government of the Republic of South Africa and the Islamic Republic of Iran for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on income;
South Africa – Korea DTT	Convention between the Government of the Republic of South Africa and the Republic of Korea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on income;
South Africa – Malaysia DTT	Convention between the Government of the Republic of South Africa and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on income;
South Africa – Mexico DTT	Convention between the Government of the Republic of South Africa and the United Mexican States for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on income;
South Africa – New Zealand DTT	Convention between the Government of the Republic of South Africa and the Government of New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on income;
South Africa – Pakistan DTT	Convention between the Government of the Republic of South Africa and the Islamic Republic of Pakistan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;
South Africa – USA DTT	Convention between the Government of the Republic of South Africa and the United States of America for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;
USA	United States of America;
UN Model	UN Model Taxation Convention between developed and developing countries, supplemented by reference to the relevant year in which the model was published e.g. UN Model (1980).

1. Chapter 1 – Introduction

1.1 Background

Apart from early treaties, South Africa's treaties since the emergence into democracy have been based on the policy of following the OECD Model, subject to South Africa's positions on that model. These were initially presented to the Parliamentary committee in a comparative table, but later with reference to its recorded positions against the OECD Model from 2001.

South Africa's wide double tax treaty network for taxation on income and on capital reflects a broad geographic spread. While it is accepted that a bilateral tax treaty is a negotiated instrument, the existence of various national tax treaty models (published) around the world (and South Africa's policy to adopt the OECD Model subject to selected variations) indicate that it is the usual practice of negotiators to have a standard "wish list" with respect to treaty provisions which would be tempered with considerations of the other states' trade relations.

While it is obvious that the bilateral treaty is uniquely impacted by the specific bilateral negotiations, it is worthwhile to test whether the tax treaty policy is influenced by regional specificities, such as geographical location and other factors identified by common deviations from the South Africa treaty policy in respect of the specific region (termed hereunder as a "regional tax treaty focus").

The tax treaty policy deviations may be observable from the tax treaty practice. In observing the tax treaty practice, the researcher must also be mindful of the possibility of a change in tax treaty policy over time and the party under consideration. The findings of an analysis of these tax treaties could provide the essential information to determine the existence of any regional tax treaty focus as the outcome of these negotiations.

The primary purpose of this paper is identify whether the variations from South Africa's tax treaty policy can be found to be common with respect to a specific region when it concluded double taxation tax treaties with countries in Asia, North America, South America and Australasia ("Foreign Jurisdictions"). A sample of countries located on these continents have been identified and the tax treaties concluded by these countries with South Africa used for the comparative analysis.

To identify common regional deviations from the treaty policy, the actual treaty practice in respect of the identified countries in the Foreign Jurisdictions is compared against the commonly used tax treaty models developed by the Organisation for Economic Co-operation and Development ("OECD) and the United Nations ("UN"). The identified deviations are then compared against the formerly published "South African model" and the recorded positions against the OECD Model valid at the time when the treaty was concluded.

Deviations from the recorded position are then analysed to assess whether these reflect a unique aspect of the other contracting state or region or appear to may, subject to numerous other considerations and factors, indicate a new trend in South African tax treaty policy.

1.2 Objective of the Research

This paper would make a contribution to the global tax community by providing clarity in respect of the common variations agreed by South Africa from its tax treaty policy and, where possible, identifying where these common deviations are observable for a large part of a region. The practical benefit of the outcome of this paper is that it would provide:

- a. a map of the common variations from South African tax treaty policy when negotiating bilateral tax treaties with countries in Foreign Jurisdictions;
- b. the identification of “regional norms” in South Africa’s deviations in tax treaties with Foreign Jurisdictions; and
- c. a source for tax researchers to interpret international tax treaties between South Africa and countries in Foreign Jurisdictions.

1.3 Research Question

The research question is to determine whether there is any evidence supporting the submission that South Africa commonly accepts certain deviations from its tax treaty policy when it negotiated and concluded bilateral double taxation treaties with jurisdictions in Australasia, Asia, North and South America.

Secondary to the research question, is to determine the extent which South Africa successfully incorporated its tax treaty policy in the bilateral double taxation treaties concluded with jurisdictions in Australasia, Asia, North and South America.

A sample of countries on these continents provides the opportunity to consider jurisdictions with different cultures, different stages of development, but geographically coherent to test not only for adherence to South African tax treaty policy in general, but to test whether any regional or geographic outcomes are evident.

1.4 Research Method

This research paper follows the grounded theory whereby a comparative analysis is conducted on tax treaties concluded between South African and sample countries in an attempt to identify particular patterns. These patterns are then examined to determine whether any evidence supporting the

submission that South Africa commonly accepts certain deviations from its Tax Treaty Policy in respect of the Foreign Jurisdictions.

In terms of this research methodology, the following qualitative approach will be followed:

- a. the current tax treaty policy of South Africa will be identified;
- b. a sample of countries on the continents of Asia, Australasia, South America and North America will be identified;
- c. the treaties concluded by South Africa with these sample countries would be compared with the current tax treaty policy identified to determine any particular patterns in the deviations from the current tax treaty policy;
- d. the patterns identified in the comparative analysis shall be examined to determine whether these deviations are as a result of specific factors of the two contracting countries;
- e. deviations from the tax treaty policy will also be compared with the UN Model to determine the influence of the international instrument for developing countries; and
- f. countries that follow a national standard tax treaty model will be identified and the relevant tax treaty with South Africa will be compared with this particular national tax treaty model to determine the influence of a counter party's tax treaty policy in treaty negotiations.

Therefore, in order to determine the extent to which there is adherence and commonly accepted deviations from the tax treaty policy, a qualitative approach will be followed identifying all the potential patterns in respect of sample treaties that is a fair regional representation of the Americas, Asia and Australasia.

1.5 Limitation of Scope

The scope of the comparative analysis is limited to treaties concluded between South Africa and a sample of the countries on the continents Australasia, Asia, North America and South America ("Foreign Jurisdictions") which are set out in Annexure A.

The sample countries consist of a total of sixteen tax treaties, however the South Africa – Grenada DTT could not be included in the comparative analysis as it was concluded prior to the publication of the first OECD Model. With the exception of Grenada, it was noted from the sample countries, that the tax treaties were concluded during the period dated from 7 July 1995¹ until 16 October 2014². Subsequently, the OECD Model (2017) and the UN Model (2017) are also excluded from the scope of this paper.

¹ South Africa – Korea DTT.

² South Africa – Chile DTT.

This paper will make a distinction between tax treaties concluded during the following periods:

OECD Model Periods	UN Model Periods
From 1963 until 1976 ³	From 1980 until 2000 ⁴
From 1977 until 1994 ⁵ ;	
The year of 1995 ⁶ ;	
From 1996 until 1997 ⁷ ;	
From 1998 until 1999 ⁸ ;	
From 2000 until 2002 ⁹ ;	From 2001 until 2010 ¹⁰
From 2003 until 2004 ¹¹	
From 2005 until 2007 ¹²	
From 2008 until 2013 ¹³	From 2011 until 2017 ¹⁴ .
From 2014 until 2017 ¹⁵	

Although the comparative analysis will cover all the articles of the OECD and UN Models, only the patterns or potential patterns identified will be discussed in this paper.

1.6 Structure

The background and the purpose of the comparative analysis are set out in Chapter one. This chapter also discusses the research method and the scope of the paper to achieve the defined objectives.

Chapter two discusses the background and history of international tax convention models to provide context for their influence in the development of bi-lateral tax treaties. The chapter also identifies the existence of any national tax treaty models followed by a specific country in a Foreign Jurisdiction. The current tax policy of South Africa will also be articulated as the basis of the comparative analysis in Chapter three.

Chapter three of this paper examines the findings emanating from the comparative analyses with the identified South African tax policy. Any deviations are examined to determine whether any patterns

³ OECD Model (1963).

⁴ UN Model (1980).

⁵ OECD Model (1977).

⁶ OECD Model (1995).

⁷ OECD Model (1996).

⁸ OECD Model (1998).

⁹ OECD Model (2000).

¹⁰ UN Model (2001).

¹¹ OECD Model (2003).

¹² OECD Model (2005).

¹³ OECD Model (2008).

¹⁴ UN Model (2011).

¹⁵ OECD Model (2014).

could be identified in search of support of the submission that South Africa commonly accepts certain deviations from its tax treaty policy.

Specific factors identified that could have influenced the negotiation of DTT's with Foreign Jurisdictions are discussed in Chapter four. It would be relevant for the purposes of this paper to determine whether the commonly accepted deviations from the South African tax treaty policy are as a result of specific factors.

The purpose of Chapter five is to conclude the findings of the comparative analysis in the context of the primary and secondary research questions formulated in Chapter one.

2. Chapter 2 – Convention Models and National Standard Models

2.1 Introduction

The OECD developed a convention tax model with the objective to assist its member countries in developing and concluding bi-lateral treaties. The development of a model tax convention was also undertaken much later by the United Nations in the interest of developing countries. A brief overview of the history and background of these international tax conventions is discussed in this chapter to understand the extent of the influence of these model conventions in tax treaty practice.

This chapter also discusses the recorded position of South Africa as reflected in the OECD Commentaries and the Old South African Model. The recorded position of South Africa becomes relevant when compared with the patterns identified in Chapter 3 to establish whether it deviated, developed or confirmed the recorded position when negotiating tax treaties with countries in the Foreign Jurisdictions.

2.2 OECD Model

The progress of the Model Tax Convention by the OECD dates back to 1963. At the time it was known as the Draft Convention for the Avoidance of Double Taxation¹⁶ and its objective was to resolve the double taxation challenges between developed countries¹⁷ (i.e. OECD Member states)¹⁸.

The OECD Model is not considered to be an international instrument that binds its members, but rather as “a model tax convention” which is used as a baseline tool to negotiate and conclude the terms of bilateral tax treaties¹⁹.

The OECD Commentaries make provision for non-OECD member²⁰ positions to be recorded and is according to Du Plessis “by far the most influential of the model tax conventions and is used widely, not only by OECD members, but also by non-OECD members²¹”.

2.3 UN Model

The UN Model was developed in 1980, using the OECD Model as a point of departure, but reflecting the relationship between developing and developed countries²². The substantial similarities

¹⁶ OECD Model (1963).

¹⁷ Steenkamp, L. 2015. An analysis of the applicability of the OECD Tax Model Convention to non-OECD Member countries: The South African case. Masters. Dissertation. University of Stellenbosch.

¹⁸ Krause, F. 2015. A comparative study of double taxation agreements in Southern African context. Masters. Dissertation. University of Pretoria 22.

¹⁹ Du Plessis, I. 2012. Some Thoughts on the Interpretation of Tax Treaties in South Africa. SA Merc LJ 31-52.

²⁰ Para. 6 OECD Model (2010): Commentary on Article 7.

²¹ Du Plessis, I. 2012. Some Thoughts on the Interpretation of Tax Treaties in South Africa. SA Merc LJ 31-52

between the OECD and UN Models demonstrate the intention of the United Nations to remain consistent to the extent that it serves the interests of developing countries²³.

The key differences between the OECD and UN Models as acknowledged by the United Nations, reflects “the issue of how far one country or the other should forego, under a bilateral tax treaty, taxing rights which would be available to it under domestic law, with a view to avoiding double taxation and encouraging investment”²⁴. It is submitted that these differences will become relevant during the tax treaty negotiations between a developed and developing country.

It is important to note that the UN Model is not a binding model that is prescriptive, but rather to “equip decision-makers in countries with the information they need to understand the consequences of these divergent approaches for their country’s specific position”²⁵. The provisions of the UN Model are therefore also not enforceable²⁶ and the purpose of the model convention is merely to “facilitate the negotiation, interpretation and practical application of bilateral tax treaties based upon its provisions”²⁷.

2.4 South African National Tax Treaty Policy

A South African national standard model (“Old South African Model”) previously existed which was presented to the Parliamentary Committee²⁸. It, however, appears that the Old South African Model has been discontinued or least the publication thereof²⁹. This Old South African Model appears to have been superseded by the positions recorded in respect of the OECD Model from 1997 onwards and could be indicative of the national tax treaty policy³⁰.

²² Steenkamp, L. 2015. An analysis of the applicability of the OECD Tax Model Convention to non-OECD Member countries: The South African case. Masters. Dissertation. University of Stellenbosch.

²³ Economic & Social Affairs (2011). Model Double Taxation Convention between Developed and Developing Countries. New York: United Nations, pp.vi.

²⁴ Economic & Social Affairs (2011). Model Double Taxation Convention between Developed and Developing Countries. New York: United Nations, pp.vi.

²⁵ Economic & Social Affairs (2011). Model Double Taxation Convention between Developed and Developing Countries. New York: United Nations, pp.ix.

²⁶ Economic & Social Affairs (2011). Model Double Taxation Convention between Developed and Developing Countries. New York: United Nations, pp.ix.

²⁷ Economic & Social Affairs (2011). Model Double Taxation Convention between Developed and Developing Countries. New York: United Nations, pp.ix.

²⁸ West, C, Status Quo of South African Tax Treaty Policy (August 5, 2016). Status Quo of South African Tax Treaty Policy (南非现行税收协定政策考察), *International Taxation in China, Issue 11* (ISSN: 2095-6126), 2016. Available at SSRN: <https://ssrn.com/abstract=2882413>.

²⁹ West, C, Status Quo of South African Tax Treaty Policy (August 5, 2016). Status Quo of South African Tax Treaty Policy (南非现行税收协定政策考察), *International Taxation in China, Issue 11* (ISSN: 2095-6126), 2016. Available at SSRN: <https://ssrn.com/abstract=2882413>.

³⁰ West, C, Status Quo of South African Tax Treaty Policy (August 5, 2016). Status Quo of South African Tax Treaty Policy (南非现行税收协定政策考察), *International Taxation in China, Issue 11* (ISSN: 2095-6126), 2016. Available at SSRN: <https://ssrn.com/abstract=2882413>.

It is evident from the content of the memoranda tabled in Parliament since 1996 to ratify double taxation treaties, that the OECD Model is now the preferred standard tax treaty policy upon which treaty negotiations should be based³¹, a view which is supported by Du Plessis³². To this extend, South Africa recorded a number of reservations in the OECD Commentaries in respect of a number of articles of this model which reflects South Africa's position taken in the Old South African Model.

West also holds the view that the current position of South Africa is reflected in the OECD Commentaries which is a fair reflection of the Old South African model³³ and therefore, for the purposes of this paper, to determine the current tax treaty policy of South Africa, a comparative analysis will be conducted between the Old South African Model and the OECD Model with the recorded positions of South Africa in the Commentary.

2.5 The South African National Tax Treaty Policy

The economy of South Africa was primarily isolated as a result of a number of economic sanctions, however subsequent to a political change in 1990 and in particular with the adoption of the new Constitution in 1994, trade with other countries increased significantly³⁴. This is reflected by the twenty tax treaties which South Africa was a party to at the time, in comparison with the sixty treaties in force in 2009³⁵.

Mazansky holds the view that South Africa, in an attempt to attract foreign investments, is inclined to cede its taxing rights to developed capital-exporting countries or potential investing developing countries³⁶. According to West, double taxation treaties concluded by South Africa appear to reflect a mixture of the provisions of the OECD and UN Models which resulted in a hybrid treaty network with South Africa³⁷.

³¹ West, C, Status Quo of South African Tax Treaty Policy (August 5, 2016). Status Quo of South African Tax Treaty Policy (南非现行税收协定政策考察), *International Taxation in China, Issue 11* (ISSN: 2095-6126), 2016. Available at SSRN: <https://ssrn.com/abstract=2882413>.

³² Du Plessis, I. 2012. Some Thoughts on the Interpretation of Tax Treaties in South Africa. SA Merc LJ 31-52

³³ West, C. (n.d.). Status Quo of South African Tax Treaty Policy. p.2.

³⁴ Mazansky, E, 2018. South Africa's treaty network – why is South Africa the meat in the sandwich?. Bulletin for International Taxation, [Online]. Volume 63, No 4, 146. Available at: <https://www.ibfd.org/IBFD-Products/Journal-Articles/Bulletin-for-International-Taxation/collections/bit/html/bifd040903.html> [Accessed 27 July 2018].

³⁵ Mazansky, E, 2018. South Africa's treaty network – why is South Africa the meat in the sandwich?. Bulletin for International Taxation, [Online]. Volume 63, No 4, 146. Available at: <https://www.ibfd.org/IBFD-Products/Journal-Articles/Bulletin-for-International-Taxation/collections/bit/html/bifd040903.html> [Accessed 27 July 2018].

³⁶ Mazansky, E, 2018. South Africa's treaty network – why is South Africa the meat in the sandwich?. Bulletin for International Taxation, [Online]. Volume 63, No 4, 146. Available at: <https://www.ibfd.org/IBFD-Products/Journal-Articles/Bulletin-for-International-Taxation/collections/bit/html/bifd040903.html> [Accessed 27 July 2018].

³⁷ West, C, Status Quo of South African Tax Treaty Policy (August 5, 2016). Status Quo of South African Tax Treaty Policy (南非现行税收协定政策考察), *International Taxation in China, Issue 11* (ISSN: 2095-6126), 2016. Available at SSRN: <https://ssrn.com/abstract=2882413>.

The provisions of the Old South African Model forms part of the comparative analysis discussed in chapter three of this paper. The Old South African Model deviates from the Tax Treaty Policy in the following aspects:

2.5.1 Pre-ambles and scope

South Africa recorded a reservation in respect of Article 2(1) of the OECD Model³⁸ which is reflected in Article 2(1) of the Old South African Model whereby the reference to “local authorities” in its definition of taxes covered has been excluded. West holds the view that a possible reason for this exclusion is that the tax jurisdiction of local authorities in South Africa is limited and therefore not of any significance in cross border transactions.

Articles 2(1) and (2) of the Old South African Model only provided for prevention of double taxation in respect of income. Reference to “capital” in the OECD Model³⁹ was not incorporated in the Old South African Model. According to West, this practice continued in the treaties concluded by South Africa⁴⁰. It is also interesting to note that the article dealing with capital in the OECD Model⁴¹ was not reflected in the Old South African Model.

In addition, the OECD Model reference to the wording “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”⁴² was also excluded from the Old South African Model.

2.5.2 Persons Covered

South Africa recorded a reservation in the OECD Commentary whereby the term “person” is only included in the definition of entities which “are treated as [a] taxable unit under” domestic law⁴³. This position is also reflected in Article 3(1)(k) of the Old South African Model.

2.5.3 Taxes Covered

The reference to “local authorities” in its definition of taxes covered as provided for in Article 2(1) of the OECD Model has been omitted in the Old South African Model. Article 2(1) further omitted

³⁸ Para. 5 OECD Model (2014): Commentary on Article 2.

³⁹ Art. 2(2) of the OECD Model (1997).

⁴⁰ ⁴⁰ West, C, Status Quo of South African Tax Treaty Policy (August 5, 2016). Status Quo of South African Tax Treaty Policy (南非现行税收协定政策考察), *International Taxation in China, Issue 11* (ISSN: 2095-6126), 2016. Available at SSRN: <https://ssrn.com/abstract=2882413>.

⁴¹ Art. 22 of the OECD Model (1997).

⁴² Art. 2(2) of the OECD Model (1997).

⁴³ Para. 8 OECD Model (2014): Commentary on Article 4.

the OECD Model references to “capital” and “amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation”.

2.5.4 Permanent establishment

South Africa recorded a reservation in the Commentary to retain the right “to negotiate the period of time after which a building site or construction, assembly, or installation project should be regarded as a permanent establishment under paragraph 3”⁴⁴. Article 5(3)(a) of the Old South African Model provides that the following constitutes a PE:

a building site, a construction, assembly or installation project or any supervisory activity in connection with such site or project, but only where such site, project or activity continues for a period of more than months;

West holds the view that South Africa is a capital importing country and therefore Article 3 of the Old South African Model extended the definition to two additional classifications that are also recorded as a reservation in the Commentary⁴⁵. Articles 5(3)(b) and (c) of the Old South African Model includes the rendering of services and performance of professional services.

The definition of Article 5(3) in the OECD Model (1997) was extended in the Old South African Model to include the exploration and extraction of natural resources. South Africa is a mineral rich country according to West⁴⁶, which could justify the reason for extending this definition.

Mazansky interpreted Article 5(3)(c)⁴⁷ of the Old South African Model to specify that the rendering of services constitute a PE only if the services exceeded 183 days during any twelve month period, however, the period in respect of a construction PE is left blank⁴⁸. Article 5(3)(b) in the Old South African Model includes the following wording to constitute a PE, which is not provided for in the OECD Model:

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

⁴⁴ Para. 11 and 14 OECD Model (2014): Commentary on Article 5.

⁴⁵ Para. 10 OECD Model (2014): Commentary on Article 5.

⁴⁶ West, C, Status Quo of South African Tax Treaty Policy (August 5, 2016). Status Quo of South African Tax Treaty Policy (南非现行税收协定政策考察), *International Taxation in China, Issue 11* (ISSN: 2095-6126), 2016. Available at SSRN: <https://ssrn.com/abstract=2882413>.

⁴⁷ “the performance of professional services or other activities of an independent character by an individual, but only where those services or activities continue within a Contracting State for a period or periods exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned”.

⁴⁸ Mazansky, E, 2018. South Africa’s treaty network – why is South Africa the meat in the sandwich?. Bulletin for International Taxation, [Online]. Volume 63, No 4, 146. Available at: <https://www.ibfd.org/IBFD-Products/Journal-Articles/Bulletin-for-International-Taxation/collections/bit/html/bifd040903.html> [Accessed 27 July 2018].

2.5.5 Air, inland waterway and sea transportation

Article 8(1) of the OECD Model provides for the taxing of profits derived from the operation of ships or aircraft in international traffic in the country where the place of effective management of the enterprise is situated. The Commentary⁴⁹ provides an alternative to the OECD Model to accommodate contracting countries that prefer exclusive taxing rights in the country of residence of the enterprise by substituting Article 8(1) with the following wording:

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.

Article 8(1) of the Old South African Model deviates from the actual wording of the OECD Model in that profits of a resident enterprise operating the business of ships shall be taxed exclusively in that country. The substituting wording proposed in the OECD Commentary as alternative was followed by the Old South African Model.

The Old South African Model further provided for the taxation of “profits derived from rental on a bareboat basis of ships or aircraft used in international traffic”⁵⁰ if these profits were associated with the profits of the enterprise in Article 8(1). Article 8(3) goes further to include profits of an enterprise in Article 8(1) derived from the rental or use of containers. South Africa also recorded a reservation of the right to include profits derived from the leasing of containers⁵¹ and that from the leasing of ships or aircraft on a bare boat basis⁵². It was noted that these positions of South Africa deviate from the OECD Model.

The references to “inland waterways” in Article 8 of the OECD Model were removed in the Old South African Model⁵³ which is also a reservation recorded by South Africa in the Commentaries⁵⁴.

2.5.6 Associated enterprises

South Africa recorded a reservation to replace “shall” with the term “may” in Article 9(2) in its DTT’s⁵⁵ with the Foreign Jurisdictions. Article 9(2) of the Old South African Model in contrast to the OECD Model which incorporated the word “shall”, states that:

⁴⁹ Para. 2 OECD Model (2010): Commentary on Article 8.

⁵⁰ Art. 8(2) of the Old South African Model.

⁵¹ Para. 4 OECD Model (2014): Commentary on Article 8.

⁵² Para. 6 OECD Model (2014): Commentary on Article 8.

⁵³ Art. 8(2) and (3).

⁵⁴ Para. 7 OECD Model (2010): Commentary on Article 8.

⁵⁵ Para. 2 OECD Model (2014): Commentary on Article 9.

... if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State **may** make an appropriate adjustment to the amount of the tax charged therein on those profits.

2.5.7 Dividends

The percentage tax rates of dividends are provided for in Article 10(2)(a) and (b) of the OECD Model, however the position in the Old South African Model⁵⁶ is to reserve its right to determine these rates which confirms the reservation of South Africa in the Commentaries⁵⁷.

2.5.8 Interest

Mazansky interpreted the Old South African Model to tax income derived from interest exclusively in the “recipient’s residence state”⁵⁸. Article 10(1) states that:

Interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State, provided such resident is the beneficial owner of the interest.

Article 10(2) of the OECD Model which provides for a maximum of ten percent tax in the state of residence has been omitted in the Old South African Model.

2.5.9 Royalties

The Old South African Model⁵⁹ maintains the position that royalties may be taxed at source which deviates from the exclusive taxing rights of the resident state in Article 12(1) of the OECD Model which reflects the reservation of South Africa in the Commentary⁶⁰. Mazansky also observed that the maximum percentage which may be charged by the country of source are left blank⁶¹. Article 12(2) of the Old South African Model therefore includes the additional wording:

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 ... per cent of the gross amount of royalties.

⁵⁶ Art. 8(2)(a) and (b).

⁵⁷ Para. 6 OECD Model (2014): Commentary on Article 10.

⁵⁸ Mazansky, E, 2018. South Africa’s treaty network – why is South Africa the meat in the sandwich?. *Bulletin for International Taxation*, [Online]. Volume 63, No 4, 146. Available at: <https://www.ibfd.org/IBFD-Products/Journal-Articles/Bulletin-for-International-Taxation/collections/bit/html/bifd040903.html> [Accessed 27 July 2018].

⁵⁹ Art. 12(1).

⁶⁰ Para. 3 OECD Model (2014): Commentary on Article 12.

⁶¹ Mazansky, E, 2018. South Africa’s treaty network – why is South Africa the meat in the sandwich?. *Bulletin for International Taxation*, [Online]. Volume 63, No 4, 146. Available at: <https://www.ibfd.org/IBFD-Products/Journal-Articles/Bulletin-for-International-Taxation/collections/bit/html/bifd040903.html> [Accessed 27 July 2018].

The definition of “royalty” in Article 12(3) of the OECD Model was extended in the Old South African Model by including the following wording:

... and films, tapes, discs for radio or television broadcasting), any patent trade mark, design or model, plan secret formula or process or for information concerning industrial, commercial or scientific experience.

The Old South African Model further included the additional Article 12(5) below to determine when royalties are deemed to arise:

Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment with which the right or property in respect of which the royalties are paid is effectively connected and such royalties shall be deemed to arise in the State in which the permanent establishment is situated.

2.5.10 Technical services

The Old South African Model does not make provision for technical services and it is therefore the position of South Africa not to include an additional article to deal with this type of income⁶².

2.5.11 Pension, students and other Income

South Africa included the term “annuity” in Article 17 of the Old South African Model which reflects the reservation of South Africa in the Commentary⁶³.

2.5.12 Other Income

The Old South African Model included an additional Article 20(3) in respect of the other income which states:

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 the other State.

2.5.13 Capital

Article 22 in the OECD Model that deals with the taxation of capital has been omitted in the Old South African Model.

⁶² West, C, Status Quo of South African Tax Treaty Policy (August 5, 2016). Status Quo of South African Tax Treaty Policy (南非现行税收协定政策考察), *International Taxation in China, Issue 11* (ISSN: 2095-6126), 2016. Available at SSRN: <https://ssrn.com/abstract=2882413>.

⁶³ Para. 2 OECD Model (2014): Commentary on Article 18.

2.5.14 Elimination of double taxation

Article 21 of the Old South African Model maintains the position that tax credits are the only method to avoid double taxation which reflects the South African reservation recorded in the Commentary⁶⁴. The manner in which the credit method is applied in respect of the contracting state is left blank and the credit method relating to South Africa is specified as follows:

in South Africa, subject to the provisions of the law of South Africa regarding the deduction from tax payable in South Africa of tax payable in any country other than South Africa (which shall not affect the general principle hereof), tax paid by residents of South Africa in respect of income taxable in, 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.

2.5.15 Non-discrimination

Article 24(2) of the UN and OECD Models which deals with non-discrimination of taxpayers in respect of stateless persons has been omitted from the Old South African Model.

2.6 Conclusion

Although the findings of the comparative analysis confirmed West's view in that the OECD Model with the recorded positions in the Commentaries is a fair reflection of South Africa's national tax treaty policy, its deviations from the Old South African Model were noted. The current national tax treaty policy is therefore a combination of the Old South African Model and the OECD Model with its recorded positions.

⁶⁴ Para. 1 OECD Model (2014): Commentary on Article 21.

3. Chapter 3 - Tax Treaty Policy Deviations

3.1 Introduction

The DTT's deviations from the Old South African Model recorded in the comparative analysis are analysed in this chapter to determine the existence of any patterns. Recorded deviations are also compared with the UN Model to determine the extent of its influence in the DTT's with the Foreign Jurisdictions.

The versions of the OECD and UN Models which were available at the date when a particular DTT was concluded, are used for the purposes of the comparative analysis and the patterns identified are examined in this chapter.

This chapter three attempts to illustrate the extend which South Africa was successful in incorporating the Old South African Model into the DTT's concluded with the Foreign Jurisdictions and identify commonly accepted deviations from it.

It is submitted that a small number of countries adopted a national standard model which is used to reflect the key policy decisions of those countries during the negation and conclusion of their tax treaties. The USA was identified as such a country that adopted the US Model as a national standard tax treaty policy. The scope of the comparative analysis considers the impact of the patterns identified in the context of the US Model to determine the extend which the Old South African Model influenced the treaty negotiations with the USA.

3.2 Successful application of the South African National Model

3.2.1 Persons covered

The USA recorded a reservation in that it shall retain the right to tax its "citizens and residents, including certain former citizens and long-term citizens". Article 1(4)⁶⁵ of the USA double taxation treaty concluded with South Africa gives effect to this reservation to tax persons based on citizenship.

The findings of the comparative analysis confirmed that the DTT's followed the Old South African Model in respect of "persons covered" with the exception of the South Africa – USA DTT. It seems as if, despite that success application of the Old South African Model, a higher value was attached to the recorded position in the Commentaries during the treaty negotiations.

⁶⁵ "Notwithstanding any provision of the Convention, except paragraph 5 of this Article, the United States may tax its residents (as determined under Article 4 (Residence)), and by reason of citizenship may tax its citizens, as if the Convention had not come into effect".

3.2.2 Taxes covered and capital

Canada, Chile and the USA recorded a reservation in the Commentaries in the application of the OECD Model in respect of political subdivisions or local authorities⁶⁶. Chile did not give effect to this reservation in the South Africa – Chile DTT. With the exception of a few countries⁶⁷, the DTT's concluded with the Foreign Jurisdictions followed the Old South African Model by excluding the reference to “local authorities” in its definition of taxes covered as provided for in Article 2(1) of the OECD Model (2010).

The DTT's with Australia, Canada, India, New Zealand and Korea omitted Article 2(1) and (2) of the OECD Model. Australia, Japan and Korea recorded a reservation that Article 2(2) of the OECD Model shall apply to taxes on capital⁶⁸. The DTT's⁶⁹ concluded with the Foreign Jurisdictions followed the Old South African Model in this aspect by omitting the reference to “capital”.

3.2.3 Basic permanent establishment and inclusion list

Canada is rated as one of the highest five mineral production countries in the world⁷⁰ and in 2015 Chile was the world's largest producer of copper⁷¹. In 2014 Pakistan was ranked as the world's third largest producer of iron oxide pigments and tenth in the production of barite⁷². It was also reported that coal and gold were the leading exported mineral commodities of New Zealand during 2013⁷³.

⁶⁶ Para. 10 OECD Model (2010): Commentary on Article 2.

⁶⁷ Australia, Canada, India, New Zealand and Korea.

⁶⁸ Para. 11 OECD Model (2010): Commentary on Article 2.

⁶⁹ The only exception was noted in Article 2(1) of the South African – Chile DTT which included “capital” in its taxes covered.

⁷⁰ Mining Association of Canada (2018). *Facts & Figures 2017*. Facts and Figures of the Canadian Mining Industry. [online] p.6. Available at: <http://mining.ca/sites/default/files/documents/Facts-and-Figures-2017.pdf> [Accessed 4 Nov. 2018].

⁷¹ Chile Mining Sector 2016/2017: An EMIS Insights Industry Report. (2018). [online] EMIS, p.7. Available at: <http://www.google.co.za/url?sa=t&rct=j&q=&esrc=s&source=web&cd=14&cad=rja&uact=8&ved=2ahUKEwimqeXfq7reAhUHTBoKHe0GCFYQFjANegQIABAC&url=http%3A%2F%2F48inter.com%2Fwp-content%2Fuploads%2F2017%2F04%2FLe-secteur-minier-du-Chili-2016-2017.pdf&usg=AOvVaw3k-v9tm5qeDmDw-tC24q2> [Accessed 4 Nov. 2018].

⁷² Renaud, K. (2017). *The Mineral Industry of Pakistan*. U.S. Geological Survey Minerals Yearbook 2016. [online] U.S. Geological Survey, pp.20.1. Available at: <https://www.google.co.za/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&cad=rja&uact=8&ved=2ahUKEwjOngqrzbreAhWML8AKHYMuBmMQFjADegQIBhAC&url=https%3A%2F%2Fminerals.usgs.gov%2Fminerals%2Fpubs%2Fcountry%2F2014%2Fmyb3-2014-pk.pdf&usg=AOvVaw0plfpw4PphJcQkixXBZSJ> [Accessed 4 Nov. 2018].

⁷³ Tse, P. (2016). *The Mineral Industry of New Zealand*. U.S. Geological Survey Minerals Yearbook 2013. [online] pp.20.4. Available at: <https://www.google.co.za/url?sa=t&rct=j&q=&esrc=s&source=web&cd=14&cad=rja&uact=8&ved=2ahUKEwjP-cimsbreAhUkDsAKHfbVCawQFjANegQIBxAC&url=https%3A%2F%2Fminerals.usgs.gov%2Fminerals%2Fpubs%2Fcountry%2F2013%2Fmyb3-2013-nz.pdf&usg=AOvVaw0-6KgRjFXcCXEJmCwnX5Jv> [Accessed 4 Nov. 2018].

During the same year, it was reported that the export of minerals in Mexico was the second most important source of foreign currency for the country⁷⁴ and a year later it was reported that Iran was the “leading mineral commodity producer in the Middle East and North Africa region”⁷⁵.

Canada and Chile made provision for a reservation in Article 5(2) to replace the wording “of extraction” with “relating to the exploration for or the exploitation”⁷⁶. The DTT’s concluded with Chile⁷⁷, Canada⁷⁸ as well as Australia⁷⁹ gave effect to this reservation. Although a number of DTT’s⁸⁰ concluded by South Africa also included the additional wording “or exploitation” in Article 5(2)(f), no particular pattern was identified by the findings of the comparative analysis which is a deviation from the reservation made by South Africa in the OECD Commentary⁸¹.

It should however be noted that from an analysis of each of these countries that extended the wording of Article 5(2) to include “exploration for or the exploitation”, have substantial mineral deposits which are reported as significant economic contributors to these economies. The findings of the comparative analysis also indicated that mineral rich countries such as Brazil⁸² and Korea⁸³ followed the OECD Model in this respect, confirming that not all mineral rich countries included the wording “exploitation of natural resources” as provided for in Article 5(2)(f) of the Old South African Model.

3.2.4 Services permanent establishment

The wording used which provides for in the definition of a PE rendering of services by an enterprise is similar in the UN Model⁸⁴ and the Old South African Model. This position is however not reflected in the OECD Model and it seems as if it deals with income derived from services in a

⁷⁴ Perez, A. (2016). *The Mineral Industry of Mexico*. U.S. Geological Survey Minerals Yearbook 2013. [online] pp.20.1. Available at:

https://www.google.co.za/url?sa=t&rct=j&q=&esrc=s&source=web&cd=13&cad=rja&uact=8&ved=2ahUKEwj-0oTtLreAhWN34UKHaY1APMQFjAMegQIBhAC&url=https%3A%2F%2Fminerals.usgs.gov%2Fminerals%2Fpubs%2Fcountry%2F2014%2Fmyb3-2014-mx.pdf&usg=AOvVaw0rrLw5JpnZ2H6WyFR437_P [Accessed 4 Nov. 2018].

⁷⁵ U.S. Geological Survey (2017). *The Mineral Industry of Iran*. U.S. Geological Survey Yearbook 2014. [online] Available at:

https://www.google.co.za/url?sa=t&rct=j&q=&esrc=s&source=web&cd=5&cad=rja&uact=8&ved=2ahUKEwiTsYXltreAhUDxoUKHcR_CNgQFjAEegQIBxAC&url=https%3A%2F%2Fminerals.usgs.gov%2Fminerals%2Fpubs%2Fcountry%2F2014%2Fmyb3-2014-ir.pdf&usg=AOvVaw1wZfVLfGLN9TZV-wN01g_d [Accessed 4 Nov. 2018].

⁷⁶ Para. 55 OECD Model (2010): Commentary on Art. 5.

⁷⁷ Art. 5(2)(f) of the South Africa – Chile DTT.

⁷⁸ Art. 5(2)(f) of the South Africa – Canada DTT.

⁷⁹ Art. 5(2)(f) of the South Africa – Australia DTT.

⁸⁰ Pakistan, New Zealand, Mexico and Iran.

⁸¹ Para. 11 and 14 OECD Model (2014): Commentary on Article 5.

⁸² Meyer, A. (2011). *Brazil Economy*. [online] Brazil.org.za. Available at: <https://www.brazil.org.za/economy.html> [Accessed: 2018, August 4].

⁸³ Export.gov. (2017). *Exporting to Korea - Market Overview* | export.gov. [online] Available at: https://www.export.gov/article?series=a0pt0000000PAuBAAW&type=Country_Commercial_kav [Accessed 2018, August 4].

⁸⁴ Art. 5(3)(b) of the UN Model (1980).

manner similar to that of goods⁸⁵. This provision⁸⁶ in the UN Model states that the term PE shall include;

The furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if the activities of that nature continue (for the same or a connected project) within the Contracting State for a period or periods aggregating more than six months within any twelve month period.

The Article 5(3)(b) of UN Model (1980) was amended in the 2003 version by the inclusion of the additional wording "... or periods aggregating more than 183 days in any twelve month period commencing or ending in the fiscal year concerned".

Article 5(3)(b) of the UN Model⁸⁷ makes provision for the rendering of services in the definition of a PE that is not provided for in the US Model. The following additional wording has been included in the treaty concluded with the USA⁸⁸:

the furnishing of services, including consultancy services, within a Contracting State by an enterprise through employees or other personnel engaged by the enterprise for such purposes, but only if activities of that nature continue (for the same or a connected project) within that State for a period or periods aggregating more than 183 days in any twelve month period commencing or ending in the taxable year concerned.

It is interesting to note that the UN Model (1980) was available at the time when the South Africa – USA DTT was concluded, however it seems more likely that the influence during the negotiation in this aspect was as a result of the position set out in the Old South African Model than the UN Model as the update in Article 5(3)(b) with the test period of consulting services in aggregate of 183 days over 12 months only reflected later in the UN Model (2003).

Although the majority of the DTT's concluded with the Foreign Jurisdictions followed the Old South African Model in this respect with the exception of Brazil, India and Korea, it is interesting to note how the position of the Old South African Model influenced global treaty negotiations to the extent that it was later adopted by the UN Model (2003) in respect of services as set out in Article 5(3)(c)⁸⁹.

⁸⁵ Lennard, M. 2009. The UN Model Tax Convention as Compared with the OECD Model Tax Convention – Current Points of Difference and Recent Developments. *Asia-Pacific Tax Bulletin*, 49(08), pp. 4 [Online]. Available at: https://www.ibfd.org/IBFD-Products/Journal-Articles/.../apib_2009_08_int_1.html [Accessed: 2018, July 28].

⁸⁶ Art. 5(3)(b) of the UN Model (2001).

⁸⁷ 2001.

⁸⁸ Art. 5(2)(j) of the South Africa - USA DTT.

⁸⁹ Old South African Model.

3.2.5 Insurance permanent establishment

Under the UN Model⁹⁰, the collection of insurance premiums constitutes a PE, however in terms of the Old South African Model, the business activities of an independent insurance agent that collected premiums would not constitute a PE and subsequently the profits would not be subjected to tax under Article 5⁹¹.

The impact of the additional Article 5(7) of the UN Model is that the collection of insurance premiums by an independent agent would constitute a PE and be taxed in terms of Article 5⁹². This provision ensures the taxation of insurance profits in the jurisdiction where it was collected, regardless whether the collection agent is considered to be dependent or independent⁹³.

Considering the global trend of which only thirty percent of DTT's make provision for the collection of insurance premiums to constitute a PE⁹⁴, the findings of the comparative analysis suggested that the Old South African Model had a firm influence during treaty negotiations by reducing it to less than twenty percent of the DTT's⁹⁵ concluded with Foreign Jurisdictions.

3.2.6 Business profits

Article 7(1) of the UN Model (2001) contains a limited attraction rule which states that:

If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other state, but only so much as they are attributable to (a) that permanent establishment, (b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment or (c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.

⁹⁰ Art. 5(7) of the UN Model (2001).

⁹¹ Lennard, M. 2009. The UN Model Tax Convention as Compared with the OECD Model Tax Convention – Current Points of Difference and Recent Developments. *Asia-Pacific Tax Bulletin*, 49(08), pp. 7 [Online]. Available at: https://www.ibfd.org/IBFD-Products/Journal-Articles/.../aptb_2009_08_int_1.html [Accessed: 2018, July 28].

⁹² Lennard, M. 2009. The UN Model Tax Convention as Compared with the OECD Model Tax Convention – Current Points of Difference and Recent Developments. *Asia-Pacific Tax Bulletin*, 49(08), pp. 7 [Online]. Available at: https://www.ibfd.org/IBFD-Products/Journal-Articles/.../aptb_2009_08_int_1.html [Accessed: 2018, July 28].

⁹³ Lennard, M. 2009. The UN Model Tax Convention as Compared with the OECD Model Tax Convention – Current Points of Difference and Recent Developments. *Asia-Pacific Tax Bulletin*, 49(08), pp. 7 [Online]. Available at: https://www.ibfd.org/IBFD-Products/Journal-Articles/.../aptb_2009_08_int_1.html [Accessed: 2018, July 28].

⁹⁴ De Goede, J Wijnen, W, 2014. United Nations - The UN Model in Practice 1997–2013. *Bulletin for International Taxation*, 2014, [Online]. Volume 68, 118 - 136. Available at: https://online-ibfd-org.ezproxy.uct.ac.za/kbase/#topic=doc&url=/collections/bit/html/bit_2014_03_un_1.html&WT.z_nav=Navigationnn [Accessed 9 November 2018].

⁹⁵ Mexico, Iran and Chile followed the UN Model in this regard.

Lennard identified this limitation as the “force of attraction rule”⁹⁶ in the UN Model⁹⁷ whereby certain profits that are not necessarily attributable to a PE, such as the sale of merchandise in the country of source or other business activities of a similar kind, may be taxed as well. According to De Goede and Wijnen this strengthens the position of the state of source by extending its taxing rights to “non-PE profits to a PE of enterprise”⁹⁸.

Lennard holds the view that this rule may often be adopted by treaties following the UN Model to avoid taxing profits derived from an activity unrelated to a particular establishment which would not ordinarily constitute a PE⁹⁹. The Old South African Model and the OECD Model¹⁰⁰ on the other hand only allow for the taxation of profits to the extent that they are attributed to a PE under the “normal rules of profit attribution” to the PE¹⁰¹.

Although the findings of the comparative analysis indicated that the position of the South African Model was successfully applied in the DTT’s, it seems to be rather a global trend as only fourteen percent of treaties worldwide¹⁰² follow the UN Model in this regard.

3.2.7 Associated businesses

The UN Model¹⁰³ included an anti-abuse provision whereby the provisions relating to a “correlative adjustment” shall not apply in the event “where judicial, administrative or other legal proceedings have resulted in a final ruling that by actions giving rise to an adjustment of profits under paragraph 1, one of the enterprises concerned is liable to a penalty with respect to fraud, gross negligence or wilful default”.

⁹⁶ Lennard, M. 2009. The UN Model Tax Convention as Compared with the OECD Model Tax Convention – Current Points of Difference and Recent Developments. *Asia-Pacific Tax Bulletin*, 49(08), pp. 7 [Online]. Available at: https://www.ibfd.org/IBFD-Products/Journal-Articles/.../aptb_2009_08_int_1.html [Accessed: 2018, July 28].

⁹⁷ Art. 7(1) of UN Model (2001).

⁹⁸ De Goede, J Wijnen, W, 2014. United Nations - The UN Model in Practice 1997–2013. *Bulletin for International Taxation*, 2014, [Online]. Volume 68, 118 - 136. Available at: https://online-ibfd.org.ezproxy.uct.ac.za/kbase/#topic=doc&url=/collections/bit/html/bit_2014_03_un_1.html&WT.z_nav=Navigationnn [Accessed 9 November 2018].

⁹⁹ Lennard, M. 2009. The UN Model Tax Convention as Compared with the OECD Model Tax Convention – Current Points of Difference and Recent Developments. *Asia-Pacific Tax Bulletin*, 49(08), pp. 7 [Online]. Available at: https://www.ibfd.org/IBFD-Products/Journal-Articles/.../aptb_2009_08_int_1.html [Accessed: 2018, July 28].

¹⁰⁰ Art. 7(1) of OECD Model (2003).

¹⁰¹ Lennard, M. 2009. The UN Model Tax Convention as Compared with the OECD Model Tax Convention – Current Points of Difference and Recent Developments. *Asia-Pacific Tax Bulletin*, 49(08), pp. 7 [Online]. Available at: https://www.ibfd.org/IBFD-Products/Journal-Articles/.../aptb_2009_08_int_1.html [Accessed: 2018, July 28].

¹⁰² De Goede, J Wijnen, W, 2014. United Nations - The UN Model in Practice 1997–2013. *Bulletin for International Taxation*, 2014, [Online]. Volume 68, 118 - 136. Available at: https://online-ibfd.org.ezproxy.uct.ac.za/kbase/#topic=doc&url=/collections/bit/html/bit_2014_03_un_1.html&WT.z_nav=Navigationnn [Accessed 9 November 2018].

¹⁰³ Art. 9(3) of the UN Model (2001).

The findings of the comparative analysis indicated that all the treaties concluded between South Africa and the Foreign Jurisdictions follow the Old South African Model¹⁰⁴ which confirms the view of Lennard that the treaties concluded by developing countries preferred the provisions of the OECD Model in this aspect. This seems to be rather a global trend than a specific pattern relating to South Africa.

A significant number of the DTT's¹⁰⁵ did not follow Article 9(2) of the Old South African Model by substituting the word "shall" with "may" to make appropriate adjustments to the tax charged on profits between associated enterprises. Mexico and the USA DTT's can only make appropriate adjustments by agreement.

3.2.8 Dividends

Although the tax rates are discretionary in the Old South African Model, Article 10(2) of the OECD Model¹⁰⁶ provides that:

- a. 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends;
- b. 15 per cent of the gross amount of the dividends in all other cases.

The DTT's concluded with Chile and Korea, are the only DTT's with the Foreign Jurisdictions that follow this Article 10(2) of the OECD Model. The UN Model differs in that the percentages in Article 10(2)(a) and (b) are not specified and the threshold of 10 percent of the capital as opposed to the 25 percent in the OECD Model (2003) as stated below:

- a. ___ per cent (the percentage is to be established through bilateral negotiations) of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 10 per cent of the capital of the company paying the dividends;

The findings of the comparative analysis indicated that the DTT's with Indonesia, Pakistan, Australia and Hong Kong follow Article 10(2)(a) of the UN Model in respect of the wording "at least 10 per cent of the capital".

¹⁰⁴ Art. 9(2).

¹⁰⁵ Canada, Chile, China, Hong Kong, India, Korea, USA and Mexico.

¹⁰⁶ 2003.

The DTT's that do not follow the OECD Model are also inconsistent, for example the tax treaty concluded between South Africa and Iran only provides that "the tax so charged shall not exceed ten per cent of the gross amount of the dividends"¹⁰⁷ whilst the South Africa - China DTT levies a five percent withholding tax¹⁰⁸.

To conclude, the findings of the comparative analysis confirmed that the rates in Article 10(2)(a) and (b) follow the Old South African Model in that they are negotiated, however a number of the Foreign Jurisdictions¹⁰⁹ deviated from the beneficial owner test in Article 10(2)(a) by following the UN Model in this aspect.

3.2.9 Royalties

The UN Model¹¹⁰ provides for taxation of profits derived from royalties in the state of source, while the Old South African Model¹¹¹ provides for exclusive taxation in the state of residence. Lennard holds the view that although the approach of taxing at source in respect of income derived from royalties is not followed by Article 12(1) of the OECD Model (which is similar to that of the Old South African Model) that approximately half of the OECD member countries follow the approach adopted by the UN Model¹¹².

The majority¹¹³ of the DTT's followed the Old South African Model in respect of Article 12(1) which is also in alignment with the reservation recorded by South Africa in the Commentary¹¹⁴. Considering the views of Lennard, it is most probably a global trend rather than the influence of the Old South African during the treaty negotiations.

The additional Article 12(2) of the Old South African Model was included in DTT's¹¹⁵, however certain DTT's¹¹⁶ extended this provision by providing for a split between the maximum tax charged in the state which the income derived from royalties in respect of "any industrial, commercial or scientific equipment" and that of other income derived from royalties. It was noted that the maximum rates were not consistent in respect of these royalty income splits.

¹⁰⁷ Art. 10(2) of the South Africa – Iran DTT.

¹⁰⁸ Art. 10(2) of the South Africa – China DTT.

¹⁰⁹ Indonesia, Pakistan, Australia and Hong Kong.

¹¹⁰ Art. 12(1) of the UN Model (2001).

¹¹¹ Art. 12(1) of the OECD Model (2003).

¹¹² Lennard, M. 2009. The UN Model Tax Convention as Compared with the OECD Model Tax Convention – Current Points of Difference and Recent Developments. *Asia-Pacific Tax Bulletin*, 49(08), pp. 7 [Online]. Available at: https://www.ibfd.org/IBFD-Products/Journal-Articles/.../aptb_2009_08_int_1.html [Accessed: 2018, July 28].

¹¹³ With the exception of the USA.

¹¹⁴ Para. 3 OECD Model (2014): Commentary on Article 12.

¹¹⁵ With the exception of the South Africa – USA DTT.

¹¹⁶ Brazil, Canada, Chile, China and Malaysia.

Although the definition of the term “royalty” in Article 12(3) of the OECD Model were amended in all the DTT’s¹¹⁷, only five DTT’s¹¹⁸ reflected the wording of the Old South African Model in this respect.

Article 12(5) of the Old South African Model which provides for when income is deemed to be derived from royalties is reflected in the majority of DTT’s¹¹⁹. Although the principle of deemed royalty income is recognized in the South Africa – Mexico DTT, the wording of the Old South African Model is not followed.

It is therefore concluded that the DTT’s with the Foreign Jurisdictions follows Article 12(1) of the Old South African Model by providing for non-exclusive taxing rights in the state where the taxpayer is a resident¹²⁰ which is consistent with the approach of developing countries in attempt to retain taxing rights at source in bi-lateral treaties¹²¹. The Old South African Model was followed in respect the maximum tax in the state of source, but the wording in Article 12(2) was extended in certain DTT’s¹²². The logical deduction is that the Old South African Model, including the principle of deemed royalties, was a firm position of South Africa during the treaty negotiations with Foreign Jurisdictions with the exception of the USA.

3.2.10 Capital Gains

Article 13(4) of the UN Model provides that the country of source with the right to tax the income derived from the alienation of shares in companies, the assets of which principally consists of immovable property¹²³. In contrast to the Old South African Model, Article 13(4) includes trusts and partnerships that directly or indirectly have an interest in property¹²⁴.

Article 13(5) in the UN Model (2001) provides an additional clause which is not contained in the OECD Model, stating that:

¹¹⁷ Except the South Africa – USA DTT.

¹¹⁸ Australia, Brazil, Canada and India.

¹¹⁹ Except the USA.

¹²⁰ “Royalties arising in a Contracting State and beneficially owned by a resident of the other Contracting State may be taxed in that other State”.

¹²¹ Economic & Social Affairs. 2011. Model Double Taxation Convention between Developed and Developing Countries. New York: United Nations, pp.vi.

¹²² Brazil, Canada, Chile, China and Malaysia.

¹²³ Lennard, M. 2009. The UN Model Tax Convention as Compared with the OECD Model Tax Convention – Current Points of Difference and Recent Developments. *Asia-Pacific Tax Bulletin*, 49(08), pp. 7 [Online]. Available at: https://www.ibfd.org/IBFD-Products/Journal-Articles/.../aptb_2009_08_int_1.html [Accessed: 2018, July 28].

¹²⁴ Lennard, M. 2009. The UN Model Tax Convention as Compared with the OECD Model Tax Convention – Current Points of Difference and Recent Developments', *Asia-Pacific Tax Bulletin*, 49(08), pp. 7 [Online]. Available at: https://www.ibfd.org/IBFD-Products/Journal-Articles/.../aptb_2009_08_int_1.html [Accessed: 2018, July 28].

Gains, other than those to which paragraph 4 applies, derived by a resident of a Contracting State from the alienation of shares of a company which is a resident of the other Contracting State, may be taxed in that other State if the alienator, at any time during the 12-month period preceding such alienation, held directly or indirectly at least ___ per cent (the percentage is to be established through bilateral negotiations) of the capital of that company.

The findings of the comparative analysis indicated that only two DTT's¹²⁵ deviated from the Old South African Model in respect of Articles 13(4) and 13(5) by following the UN Model. Considering that the majority of the Foreign Jurisdictions are developing countries, the finding confirms South Africa's firm position on capital gains.

3.2.11 Pension

The DTT's followed the Old South African Model in respect of income derived from pensions with the exception of the three countries¹²⁶. The inclusion of the reference to the term "annuity" is in alignment with the reservation of South Africa in the Commentaries¹²⁷.

3.2.12 Additional Articles

Contrary to the Old South African Model, the DTT's concluded with Pakistan, Indonesia and India made provision for technical services. The South Africa - Malaysia DTT included a separate article¹²⁸ that deals only with technical services and the protocol in respect of the South Africa – Brazil DTT provides for income derived from royalties that shall apply to a limited extent to technical services as well.

The findings of the comparative analysis confirmed that only two of DTT's¹²⁹ made provision for teachers and researchers by including an additional Article. The DTT¹³⁰ concluded between South Africa and Iran extended the provisions of Article 20 which deals with students to include the taxation of income derived by teachers.

To conclude, although few exceptions were noted, the findings of the comparative analysis did not confirm any common deviations from the Old South African Model by the inclusion of additional articles.

¹²⁵ China and India.

¹²⁶ USA, China and Chile.

¹²⁷ Para. 2 OECD Model (2014): Commentary on Article 18.

¹²⁸ Art. 13 of the South Africa – Malaysia DTT.

¹²⁹ The South Africa – Brazil DTT and the South Africa - China DTT.

¹³⁰ Art. 20(2) of the South Africa – Iran DTT.

3.2.13 Non-discrimination

The DTT's followed the Old South African Model by the omission of Article 24(2) of the UN and OECD Models. The DTT's therefore do not make reference to stateless persons.

3.2.14 Elimination of Double Taxation

The findings of the comparative analysis indicated that although the credit method was followed in the DTT's, the DTT's did not follow the wording of the Old South African Model. These deviations are unique per DTT and a commonly accepted deviation could not be confirmed.

3.3 Commonly Accepted Deviations from the Old South African Model

3.3.1 Taxes covered

Although a small number of the DTT's¹³¹ followed Article 2(2) of the Old South African Model, it was noted that only Chile followed the OECD Model in this regard and included the wording "amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation". It has therefore been concluded that despite a significant number of deviations from the Old South African Model were recorded, a particular pattern could not be confirmed.

3.3.2 General definitions and territorial extension

Chile, Mexico and the USA recorded a reservation to omit the wording "operated by any enterprise that has its place of effective management in a Contracting State" from the definition of "international traffic"¹³². The findings of the comparative analysis confirmed a pattern in that all the DTT's reflected this reservation which is a commonly accepted deviation from the Old South African Model. This is an example of a reservation of Foreign Jurisdictions that resulted in a commonly accepted deviation from the Old South African Model.

It is therefore concluded that the Old South African Model is not followed in all aspects in respect of the definitions and that the high value is attached to the reservations recorded by a country may influence treaty negotiations with other countries.

3.3.3 Resident

The findings of the comparative analysis indicated that the majority of the treaties deviated from Article 4(1) of the Old South African Model. Korea reserved the right to use the term "head or main

¹³¹ Indonesia, Mexico, Iran, Malaysia and Hong Kong.

¹³² Para. 15 OECD Model (2010): Commentary on Art. 3.

office” instead of “place of effective management”¹³³ which was given effect to in the South Africa – Korea DTT¹³⁴ while the USA reserved the right to use the place of incorporation test, failing which, to deny dual resident companies certain benefits.

The wording “if the State in which he has his centre of vital interests” in Article 4(2)(a) was replaced with “sole residence” in three DTT’s¹³⁵ concluded by South Africa. This was identified as a regional pattern as all the sample countries in South America followed this approach.

Therefore to conclude, a regional pattern in respect of South America was recorded and the wording of the definition of “resident” in the Old South African Model was generally not followed by the DTT’s.

3.3.4 Construction permanent establishment

The definition in Article 5 of the OECD Model is a critical element to determine whether “the business profits of an enterprise of a Contracting State may be taxed in the other State” and if business activities “do not fall within the definition of what constitutes a permanent establishment, the profits from such activities may only be taxed in the country of residence”¹³⁶.

In order to preserve the taxing rights of the source country¹³⁷, the UN Model provides that construction sites in excess of a period of six months shall constitute a PE¹³⁸. The OECD Model¹³⁹ and the Commentary provide for a twelve month duration test¹⁴⁰. The global trend was reported that only thirty two percent of the DTT’s followed the OECD Model and forty three percent the UN Model in respect of the duration test¹⁴¹. Similarly the US Model also provides for a construction site to constitute a PE with a twelve month duration test which subsequently has been followed by the South African – USA DTT¹⁴².

¹³³ Para. 27 OECD Model (2010): Commentary on Art. 4.

¹³⁴ Art. 4(3) of the South Africa – Korea DTT.

¹³⁵ Brazil, Chile and Malaysia.

¹³⁶ United Nations. 2016. *Committee of Experts on International Cooperation in Tax Matters*. Thirteenth Session Guidance Note on Permanent Establishment Issues for the Extractive Industries. New York, p.7.

¹³⁷ Lennard, M. 2009. The UN Model Tax Convention as Compared with the OECD Model Tax Convention – Current Points of Difference and Recent Developments. *Asia-Pacific Tax Bulletin*, 49(08), pp. 4 [Online]. Available at: https://www.ibfd.org/IBFD-Products/Journal-Articles/.../aptb_2009_08_int_1.html [Accessed: 2018, July 27].

¹³⁸ Art. 5(3)(a) of the UN Model (2001).

¹³⁹ Art. 5(3) of the OECD Model (2003).

¹⁴⁰ Par 16 OECD Model (2010): Commentary on Art. 5.

¹⁴¹ De Goede, J Wijnen, W, 2014. United Nations - The UN Model in Practice 1997–2013. *Bulletin for International Taxation*, 2014, [Online]. Volume 68, 118 - 136. Available at: https://online-ibfd-org.ezproxy.uct.ac.za/kbase/#topic=doc&url=/collections/bit/html/bit_2014_03_un_1.html&WT.z_nav=Navigationn [Accessed 9 November 2018].

¹⁴² Art. (5)(2)(j).

Mexico reserved the right to tax “an enterprise that carries on supervisory activities for more than six months in connection with a building site or construction site, assembly or installation project”¹⁴³. Australia further reserved the right to¹⁴⁴:

Treat an enterprise as having a permanent establishment in a State if it carries on in that State supervisory or consultancy activities for a period more than 183 days in any twelve month period in connection with a building site or construction or installation project in that State.

Considering that an increase in construction activities in New Zealand was reported during 2013 as a key contributor to the country’s economy,¹⁴⁵ and the construction industry in Australia represented eight percent of its gross domestic product (GDP) in 2015¹⁴⁶, the logical deduction is that the specific economic activities in Australasia may have influenced the treaty negotiations in respect of the duration test.

The findings of the comparison between developing and developed countries in respect of the construction period test indicated a slight preference towards the provisions of the UN Model. Although the Old South African Model provided a blank for the duration test, a regional pattern was recorded in that the DTT’s concluded with Australia and New Zealand followed the provisions of UN Model.

3.3.5 Income from immovable property

The findings of the comparative analysis indicated that only a small number of DTT’s¹⁴⁷ followed the wording of Article 6 of the Old South African Model, however a particular pattern in terms of common deviations could not be confirmed.

Canada recorded a reservation¹⁴⁸ to provide for the alienation of immovable property. Article 6(3) of the South Africa – Canada DTT gave effect to this recorded position by including the wording “and to income from the alienation of such property.

¹⁴³ Par 61 OECD Model (2010): Commentary on Art. 5.

¹⁴⁴ Par 58 OECD Model (2010): Commentary on Art. 5.

¹⁴⁵ Tse, P. (2016). *The Mineral Industry of New Zealand*. U.S. Geological Survey Minerals Yearbook 2013. [online] pp.20.4. Available at: <https://www.google.co.za/url?sa=t&rct=j&q=&esrc=s&source=web&cd=14&cad=rja&uact=8&ved=2ahUKEwjP-cimsbreAhUkDsAKHfbVCawQFjANegQIBxAC&url=https%3A%2F%2Fminerals.usgs.gov%2Fminerals%2Fpubs%2Fcountry%2F2013%2Fmyb3-2013-nz.pdf&usg=AOvVaw0-6KgRjFXcCXEJmCwnX5Jv> [Accessed 4 Nov. 2018].

¹⁴⁶ Australian Industry Group Economics Research (2016). *Australia’s Construction Industry: Profile and Outlook July 2015*. [online] Available at: https://www.google.co.za/url?sa=t&rct=j&q=&esrc=s&source=web&cd=11&cad=rja&uact=8&ved=2ahUKEwju5qGWw7reAhVDkCwKHR_4CCgQFjAKegQIABAC&url=https%3A%2F%2Fwww.bciaustralia.com%2Fwp-content%2Fuploads%2F2018%2F06%2FAustralian-Construction-Market-Outlook-20182019-Preview.pdf&usg=AOvVaw1s5r_Xs9LWFjpWUCZkspGH [Accessed 4 Nov. 2018].

¹⁴⁷ Chile, China, Indonesia, Korea and Mexico.

¹⁴⁸ Para. 8 OECD Model (2010): Commentary on Art. 6.

The South Africa – New Zealand DTT reflected the New Zealand’s reservation¹⁴⁹ in Article 6(1) to include “fishing”, however it was also noted that an additional Article 6(4)¹⁵⁰ was included to read:

Any right referred to in paragraph 2 shall be regarded as situated where the immovable property, mineral, oil or gas deposits, quarries or natural resources, as the case may be, are situated or where the exploration may take place.

The reservation of Australia¹⁵¹ in the Commentaries was given effect by including “rights relating to all natural resources” in the South Africa – Australia DTT, however it should also be noted that the wording of Article 6 of the Old South African Model were not followed in Articles 6(1), (2) and (4).

Mexico recorded a reservation to consider any right in respect of the actual use of property as immovable property where such a right is not considered to be immovable property in the other contracting state¹⁵², however the findings of the comparative analysis indicated that this reservation was not given effect in the South Africa - Mexico DTT. It is submitted that it could be argued that South Africa had a firm position in this aspect during the treaty negotiations, however it should be noted Article 6 of the South Africa - Mexico DTT reflect additional wording to that of the Old South African Model.

3.3.6 Shipping, inland waterways and air transport

It is relevant to note (as a practical illustration of the application of residence tax) that in 2014, South Africa exported in value more than double than what it imported from Canada¹⁵³ and as a developing country, in addition, also exports to various other countries. The Old South African Model is followed in all the DTT’s¹⁵⁴ with the Foreign Jurisdictions to tax the resident enterprise¹⁵⁵. This preserves the right of South Africa to tax the income derived from export related trade which is a position recorded in the Commentaries¹⁵⁶.

An approach to tax an enterprise in its state of residence is generally followed by developed countries while developing countries attempt to retain taxing rights in the state where the income

¹⁴⁹ Para. 9 OECD Model (2010): Commentary on Art. 6.

¹⁵⁰ “Any right referred to in paragraph 2 shall be regarded as situated where the immovable property, mineral, oil or gas deposits, quarries or natural resources, as the case may be, are situated or where the exploration may take place”.

¹⁵¹ Para. 11 OECD Model (2010): Commentary on Art. 6.

¹⁵² Para. 12 OECD Model (2010): Commentary on Art. 6.

¹⁵³ Government of Canada. 2018. *Canada - South Africa Relations*, Available at: <http://www.canadainternational.gc.ca/southafrica-afrique-afrique-du-sud.aspx?lang=eng>

[Accessed: 2018, July 28].

¹⁵⁴ With the exception of the USA.

¹⁵⁵ “Profits of a resident of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated that State”

¹⁵⁶ Para. 2 OECD Model (2010): Commentary on Article 8.

arose¹⁵⁷. The only exception to this is found in South Africa - USA DTT which provides for exclusive taxing rights of the state of residence of the enterprise that derived its profits from international shipping or air transport¹⁵⁸.

It was noted that only two of DTT's¹⁵⁹ concluded with the Foreign Jurisdictions followed the wording in Articles 8(2) and (3) of the Old South African Model by including the profits derived from the rental of containers and rental income on a bare boat basis. The majority of the DTT's concluded with other Foreign Jurisdictions¹⁶⁰ combined Articles 8(2) and (3) into one Article. Except for a few exceptions¹⁶¹, the logical deduction is that where the wording of the Old South African Model was not followed, it influenced the treaty negotiations to include the principles.

The DTT's concluded with Foreign Jurisdictions excluded any reference to inland waterways¹⁶² which seems to emanate from the fact that there are no inland waterways between South Africa and countries in the Foreign Jurisdictions. This is also the position of South Africa recorded in the Old South African Model¹⁶³ and the reservations in the Commentaries¹⁶⁴.

The findings of the comparative analysis indicated that the DTT's follow the Old South African Model in Article 8(1) and its principles set out in Articles 8(2) and (3) where the wording was not followed. South Africa should perhaps revise and redraft the wording of Articles 8(2) and (3) into one article.

3.3.7 Interest

The DTT's do not follow Article 11(1) of the Old South African Model and a strong preference was noted towards the wording of the OECD Model in respect of the taxing profits derived from interest.

The findings of the comparative analysis further indicated a deviation from the Old South African Model in that the DTT's with the Foreign Jurisdictions¹⁶⁵, provided for an exemption of tax in respect of income derived from interest if it originates from a governmental division whether

¹⁵⁷ Economic & Social Affairs (2011). Model Double Taxation Convention between Developed and Developing Countries. New York: United Nations, pp.ix.

¹⁵⁸ Art. 8(1) of the South Africa - USA DTT.

¹⁵⁹ Indonesia and Mexico.

¹⁶⁰ Canada, Chile, India, Korea, Malaysia, New Zealand, Pakistan and the USA.

¹⁶¹ Australia, China, Hong Kong and Iran.

¹⁶² Art. 8 of the South Africa - Australia DTT.

¹⁶³ Art. 8(2) and (3).

¹⁶⁴ Para. 7 OECD Model (2010): Commentary on Article 8.

¹⁶⁵ except for that of Canada, USA and Chile.

beneficially owned or not, its agent or reserve bank of either contracting state, shall be exempted from tax¹⁶⁶.

3.3.8 Independent personal services

Income previously derived from Independent Personal Services¹⁶⁷ is dealt with under Articles 5 and 7¹⁶⁸ of the Old South African Model. For the purposes of the comparative analysis it was noted that Article 14 has been removed from the OECD Model¹⁶⁹, but retained in the UN Model¹⁷⁰

Article 14 of the South Africa – USA DTT included the following provision which is similar to that of the UN Model (2001) and not contained in the US Model:

For the purposes of this Convention, where an individual who is a resident of a Contracting State stays in the other Contracting State for a period or periods exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned, he shall be deemed to have a fixed base regularly available to him in that other State and the income that is derived from his activities that are performed in that other State shall be attributable to that fixed base.

De Goede and Wijnen are of the view that seventy seven percent of DTT's follow the UN Model by including the independent services in a separate article¹⁷¹. The findings of the comparative analysis confirmed a pattern in that DTT's¹⁷² followed the global trend and deviated from the Old South African Model in this regard.

3.3.9 Entertainers and sportsmen¹⁷³

The findings of the comparative analysis indicated a common deviation from the Old South African Model in that the DTT's exempted tax in respect of income derived from the activities of sports persons and entertainers funded by the other contracting state or institution thereof.

¹⁶⁶ "... 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".

¹⁶⁷ The "PE test" under Article 5 replaced the "fixed based test" in Article 14.

¹⁶⁸ Lennard, M. 2009. The UN Model Tax Convention as Compared with the OECD Model Tax Convention – Current Points of Difference and Recent Developments', *Asia-Pacific Tax Bulletin*, 49(08), pp. 7 [Online]. Available at: https://www.ibfd.org/IBFD-Products/Journal-Articles/.../aptb_2009_08_int_1.html [Accessed: 2018, July 28].

¹⁶⁹ OECD Model (2003).

¹⁷⁰ UN Model (2001).

¹⁷¹ De Goede, J Wijnen, W, 2014. United Nations - The UN Model in Practice 1997–2013. *Bulletin for International Taxation*, 2014, [Online]. Volume 68, 118 - 136. Available at: https://online-ibfd-org.ezproxy.uct.ac.za/kbase/#topic=doc&url=/collections/bit/html/bit_2014_03_un_1.html&WT.z_nav=Navigationn [Accessed 9 November 2018].

¹⁷² With the exception of Brazil, Chile, Hong Kong and New Zealand.

¹⁷³ South Africa has adopted the gender-neutral title "Entertainers and Sportspersons" in most of its treaties.

The exceptions to this pattern are found in the DTT's concluded with Grenada and the USA. Article 17 of the South Africa – USA DTT deviates from the US Model in that it contains the following additional provisions to incorporate the exemption:

Income referred to in the preceding paragraphs of this Article, derived by a resident of Contracting State in respect of activities exercised in the other Contracting State, shall not be taxed in that other State if the visit of the entertainers or sportsmen to that other State is supported wholly or mainly from the public funds of the Government of the first-mentioned State or of a political subdivision or local authority thereof.

The Contracting States may, through the exchange of diplomatic notes, agree to increase the amount referred to in paragraph 1 to reflect economic or monetary developments.

The comparative analysis conducted of DTT's by Wijnen and de Goede did not record this exemption as a global trend¹⁷⁴, the scope of which included 1 586 DTT's. Considering the global trends and that the South Africa - USA DTT deviated from the US Model to incorporate this exemption, it seems to be a new position taken by South Africa which was not yet been recorded in the Commentaries, but applied successfully during treaty negotiations.

3.3.10 Mutual agreement procedure, exchange of information and assistance in recovery

Article 23(4) of the Old South African Model in respect of mutual agreement procedures provides that:

The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

The UN Model (2001) extended the provisions in a the similar provision in Article 25(4)¹⁷⁵ to allow competent authorities to develop “bilateral procedures”, however a common deviation¹⁷⁶ from the Old South African Model was noted in the omission of the wording “including through a joint commission consisting of themselves or their representatives” from Article 23(4).

¹⁷⁴ De Goede, J Wijnen, W, 2014. United Nations - The UN Model in Practice 1997–2013. *Bulletin for International Taxation*, 2014, [Online]. Volume 68, 118 - 136. Available at: https://online-ibfd.org.ezproxy.uct.ac.za/kbase/#topic=doc&url=/collections/bit/html/bit_2014_03_un_1.html&WT.z_nav=Navigationn [Accessed 9 November 2018].

¹⁷⁵ “The competent authorities, through consultations, may develop appropriate bilateral procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article”.

¹⁷⁶ With the exception of Hong Kong.

The findings of the comparative analysis also indicated that the majority¹⁷⁷ of the DTT's do not make provision for the bi-lateral assistance in the collection of taxes.

3.4 Conclusion

The majority of the treaties deviated from Article 4(1) of the South African national tax treaty policy which deals with the concept of residence, however a regional pattern in South America was identified in respect of Article 4(2)(a).

Despite the fact that the national tax treaty policy provided a blank for the duration test in respect of a construction PE, a regional pattern was recorded in that the DTT's in Australasia followed the provisions of UN Model.

Although the principles in Articles 8(2) and (3) dealing with shipping, inland waterway and air transport were incorporated in the DTT's, the exact wording was not followed. The DTT's also do not follow Article 11(1) of the Old South African Model which deals with income derived from interest and a strong preference was noted towards the wording of the OECD Model in this aspect.

A common deviation is also noted in the additional provision for the exemption of tax in respect of income derived from interest, entertainment and sportspersons, if the income was funded by the governmental of a contracting state.

The DTT's also do not make provision for the bi-lateral assistance in the collection of taxes as provided for in the South African tax treaty policy.

¹⁷⁷ Brazil, Canada, Chile, China, Hong Kong, Iran, Indonesia, Korea, Malaysia, New Zealand and Pakistan.

4. Chapter 4 – Relevant Factors that Influence Tax Treaty Negotiations

4.1 Introduction

Specific factors that could have potentially influenced the conclusion of tax treaties by South Africa with the sample countries in the Foreign Jurisdictions which resulted in that certain patterns are identified and discussed in this chapter. For example, it is anticipated that economic and political elements could be the driving factors for the conclusion of double taxation agreements and may be relevant in explaining certain patterns identified in the empirical comparative analysis.

4.2 Global Relations with South Africa

South Africa is considered by the United Nations as a developing country¹⁷⁸ and followed the OECD Model in the conclusion of most of its double taxation agreements with other countries¹⁷⁹. South Africa has been a member of the United Nations since 7 November 1945¹⁸⁰, however it is not a member of the OECD¹⁸¹ and for the purposes of its geographical relevance, it is a country located on the continent of Africa.

According to West, South Africa is a capital exporting country in respect of the continent of Africa, however a capital importing country in respect of the countries in the Foreign Jurisdictions¹⁸². The recorded position of South Africa was developed with the objective to enhance trade relations with foreign countries¹⁸³.

Although the relationships with other countries are the driving factor for South Africa to enter into double taxation agreements, the patterns identified in the comparative analysis indicated that South Africa maintained a position in certain aspects. However, the South Africa – USA DTT followed the US Model and not the Old South African Model which confirms the importance of the driving factor to expand its tax treaty network.

¹⁷⁸ United Nations. 2017. *World Economic Situation and Prospects, 2017*. 165. New York: Development Policy and Analysis Division of the Department of Economic and Social Affairs.

¹⁷⁹ Steenkamp, L. 2017. The use of the OECD Model Convention as an Interpretative Aid: The Static vs the Ambulatory Approach Debate Considered from a South African Perspective. *Journal of Economic and Financial Sciences*. 10(2):195-205

¹⁸⁰ United Nations. 2011. Model Double Taxation Convention between Developed and Developing Countries. New York: Department of Economic & Social Affairs.

¹⁸¹ Organisation for Economic Co-operation and Development. 2018. List of OECD Member countries - Ratification of the Convention on the OECD. Available: <http://www.oecd.org/about/membersandpartners/list-oecd-member-countries.htm> [2018, April 15].

¹⁸² West, C, Status Quo of South African Tax Treaty Policy (August 5, 2016). Status Quo of South African Tax Treaty Policy (南非现行税收协定政策考察), *International Taxation in China*, Issue 11 (ISSN: 2095-6126), 2016. Available at SSRN: <https://ssrn.com/abstract=2882413>.

¹⁸³ West, C, Status Quo of South African Tax Treaty Policy (August 5, 2016). Status Quo of South African Tax Treaty Policy (南非现行税收协定政策考察), *International Taxation in China*, Issue 11 (ISSN: 2095-6126), 2016. Available at SSRN: <https://ssrn.com/abstract=2882413>.

4.3 Geographical Location

Braun and Zagler hold the view that the geographical distance between two jurisdictions plays a significant role in the conclusion of double taxation agreements and therefore the geographical interdependence is a contributing factor¹⁸⁴ in explaining the patterns of DTT's concluded by South Africa and Foreign Jurisdictions, for example, landlocked countries are dependent on neighbouring countries for access international seaports.

For the purposes of this paper, it is important to note that South Africa is not located on any continent of the Foreign Jurisdictions, therefore the conclusion of double taxation agreements to access ports for landlocked countries will not be considered in the comparative analysis.

However, it is important to note that South Africa benefits economically from its established relations with other African countries which makes the country an attractive economic partner¹⁸⁵. It is therefore submitted that the potential economic benefit for Foreign Jurisdictions to access the African continent may be a more significant factor in the conclusion of double taxation agreements¹⁸⁶ than its geographical location.

4.4 Developing and Developed Countries

The purpose of a double taxation agreement between South Africa and a country in a Foreign Jurisdiction is to avoid “double taxation and the prevention of fiscal evasion with respect to taxes of income”¹⁸⁷.

The findings of a comparative analysis of treaties concluded between developed and developing countries were considered by Neumayer who concluded that developed countries are driven by their own interests when concluding treaties with developed countries and only consider the interest of

¹⁸⁴ Braun, J. Zagler, J. 2014. An Economic Perspective on Double Tax Treaties with(in) Developing Countries. *World Tax Journal*. October 2014: 242

¹⁸⁵ Mazansky, E, 2018. South Africa's treaty network – why is South Africa the meat in the sandwich?. *Bulletin for International Taxation*, [Online]. Volume 63, No 4, 146. Available at: <https://www.ibfd.org/IBFD-Products/Journal-Articles/Bulletin-for-International-Taxation/collections/bit/html/bifd040903.html> [Accessed 27 July 2018].

¹⁸⁶ Braun, J. Zagler, M, 2014. An Economic Perspective on Double Tax Treaties. *World Tax Journal*, [Online]. October 2014, 242. Available at: https://www.ibfd.org/sites/ibfd.org/files/content/.../wtj_2014_03_int_4-free-article.pdf [Accessed 27 July 2018].

¹⁸⁷ Preamble of the OECD Model (2010).

developing countries to a lesser extent¹⁸⁸. These economic (and possible political) interests are rather the reason for the conclusion of double taxation agreements than to reduce double taxation¹⁸⁹.

Subsequent to Neumayer's finding above, the Netherlands as a developed country incorporated a policy towards developing countries in their Summary Memorandum on Dutch Tax Treaty Policy¹⁹⁰ which recognizes the importance of Dutch enterprises investing in developing countries and to widen its treaty network to include more developing countries. The Netherlands therefore adopted a policy to support tax administrations in developing countries on both a bilateral and a multinational level" with the objective to reduce the dependency on developed countries¹⁹¹.

Since 1990 South Africa experienced an expansion of its taxation treaty network which reflects the political and negotiating power of the other contracting states. Mazansky notes that¹⁹²:

An analysis of South Africa's tax treaties shows that when South Africa concludes treaties with developed, capital-exporting countries from which South Africa seeks to attract investment, South Africa cedes its taxing rights to those countries.

The findings of the comparative analysis confirmed that the position of Mazansky is not absolute in, for example, the taxing of income in respect of royalties. Here, South Africa maintained the position to follow the UN Model whereby income is taxed at source although this seems to be rather a global trend than specific to South Africa¹⁹³.

The UN Model attempts to favour the retention of the "source country taxing rights under a tax treaty the taxation rights of the host country of investment as compared to those of the residence country of the investor"¹⁹⁴. The preservation of the right to tax at source is significant to developing

¹⁸⁸ Neumayer, E, 2006. Self-interest, foreign need and good governance: are bilateral investment treaty programs similar to aid allocation?. *Foreign Policy Analysis*, [Online]. 2 (3), 245-268. Available at: <http://www.blackwellpublishing.com/subs.asp?ref=1743-8586> [Accessed 2018, July 28].

¹⁸⁹ Neumayer, E, 2006. Self-interest, foreign need and good governance: are bilateral investment treaty programs similar to aid allocation?. *Foreign Policy Analysis*, [Online]. 2 (3), 245-267. Available at: <http://www.blackwellpublishing.com/subs.asp?ref=1743-8586> [Accessed 2018, July 28].

¹⁹⁰ Ministerien van Financien (2011). *Memorandum on Dutch Tax Treaty Policy*.

¹⁹¹ Ministerien van Financien (2011). *Memorandum on Dutch Tax Treaty Policy*.

¹⁹² Mazansky, E, 2018. South Africa's treaty network – why is South Africa the meat in the sandwich?. *Bulletin for International Taxation*, [Online]. Volume 63, No 4, 146. Available at: <https://www.ibfd.org/IBFD-Products/Journal-Articles/Bulletin-for-International-Taxation/collections/bit/html/bifd040903.html> [Accessed 27 July 2018].

¹⁹³ Lennard, M. 2009. The UN Model Tax Convention as Compared with the OECD Model Tax Convention – Current Points of Difference and Recent Developments. *Asia-Pacific Tax Bulletin*, 49(08), pp. 7 [Online]. Available at: https://www.ibfd.org/IBFD-Products/Journal-Articles/.../apib_2009_08_int_1.html [Accessed: 2018, July 28].

¹⁹⁴ Economic & Social Affairs (2011). *Model Double Taxation Convention between Developed and Developing Countries*. New York: United Nations, pp.vi.

countries, however it has been noted in double taxation treaties that developed countries also shared this position¹⁹⁵.

The United Nations attempts, through their policies, to encourage foreign investment in developing countries on terms that are beneficial from a political, social and economic perspective¹⁹⁶. All the countries in the Foreign Jurisdictions covered by this paper are developing countries in accordance with the UN classification with the exception of New Zealand, Australia and the United States¹⁹⁷.

Taxing at source occurs when a country taxes income in terms of its domestic legislation if there is a nexus between the income generated and country levying the tax¹⁹⁸. This nexus includes the assets or business activities performed by a PE or an enterprise within the borders of the country¹⁹⁹.

Residence tax occurs when a country taxes income in terms of its domestic legislation if there is a nexus between the enterprise, PE or person earning the income and the particular country²⁰⁰. Taxpayers that are subjected residence tax generally have to pay tax to a particular country in respect of income generated on a worldwide basis²⁰¹.

South Africa also deviated from the OECD and UN Models by maintaining the position to tax at residence in respect of income derived from the operations of international shipping and aircraft. It therefore did not waive its taxing rights in respect income derived by a resident enterprise under Article 8 of the OECD Model.

The pattern identified in the comparative analysis indicated that South Africa as a developing country largely followed the OECD Model in concluding double taxation treaties with the sample countries in the Foreign Jurisdictions which is in alignment with the Old South African Model.

¹⁹⁵ Economic & Social Affairs (2011). *Model Double Taxation Convention between Developed and Developing Countries*. New York: United Nations, pp.vi.

¹⁹⁶ Economic & Social Affairs (2011). *Model Double Taxation Convention between Developed and Developing Countries*. New York: United Nations, pp.vi.

¹⁹⁷ United Nations (2014). *World Economic Situation and Prospects 2014*. [online] New York, p.2. Available at: http://www.google.co.za/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwjNj_7Nqb_cAhUIK8AKHdNXBV8QFjAAegQIABAC&url=http%3A%2F%2Fwww.un.org%2Fen%2Fdevelopment%2Fdesa%2Fpolicy%2Fwesp%2Fwesp_current%2Fwesp2014.pdf&usq=AOvVaw3OkFGpONx-Rh48RfTcmeFE [Accessed 2018, July 27].

¹⁹⁸ United Nations. 2018. In: *Update of the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries*. New York: Committee of Experts on International Cooperation in Tax Matters, p.18.

¹⁹⁹ Blom, OJJ. 2017. *The Legal Status of Tax Treaties in South Africa*. Masters. Dissertation. University of Stellenbosch.

²⁰⁰ Committee of Experts on International Cooperation in Tax Matters: *Revision of the manual for the Negotiation of Bilateral Tax Treaties Report* (10 October 2011) 11.

²⁰¹ Blom, OJJ. 2017. *The Legal Status of Tax Treaties in South Africa*. Masters. Dissertation. University of Stellenbosch.

4.5 Conclusion Date of Treaties

The double taxation treaty between the USA and South Africa which has been concluded on 13 December 1946, was terminated on 1 July 1987 in response to the apartheid legislation in South Africa²⁰². Subsequently, the South Africa – USA DTT was concluded on 17 February 1997 which is currently in force.

In 1994 South Africa went through radical political change after a democratic election which was followed by a period of economic transformation²⁰³. During the period between 1994 and 2000, South Africa concluded approximately seventy multilateral treaties²⁰⁴.

With the exception of Grenada, all the tax treaties between South Africa and the countries in Foreign Jurisdictions were concluded after 1994. The South Africa – Grenada DTT was proclaimed in 1946²⁰⁵, however it was subsequently amended by the protocol in 1961²⁰⁶ which was before the first OECD²⁰⁷ and UN²⁰⁸ Models were available.

It is therefore submitted that the political position of South African in respect of the sample countries in the Foreign Jurisdictions did influence the conclusion of double taxation treaties, but as all of these treaties were concluded after 1990, it is not possible to determine its impact on the patterns identified in the comparative analysis.

4.6 Conclusion

The specific factors therefore only influenced the negotiations of double taxation treaties to a limited extend. The geographical location, whether a particular country is classified as a developing country or not, and the conclusion dates were not significant considerations during treaty any negotiations with the Foreign Jurisdictions.

²⁰² Madelein, A. 1997. *Submittal to the President of the United States of America*.

²⁰³ Inglis, J. 2009. *Post Apartheid South Africa at the United Nations: Patterns and Implications*. Masters. Dissertation. University of Stellenbosch.

²⁰⁴ Inglis, J. 2009. *Post Apartheid South Africa at the United Nations: Patterns and Implications*. Masters. Dissertation. University of Stellenbosch.

²⁰⁵ South Africa – Grenada DTT. 1946. Proclamation. 229 of 1946. Government Printers.

²⁰⁶ South Africa – Grenada DTT. 1961. Proclamation 32 of 1961. Government Printers.

²⁰⁷ OECD Model (1963): Commentary.

²⁰⁸ UN Model (1973).

5. Chapter 5 – Conclusion

The findings of the comparative analysis did not confirm any particular pattern in respect of the position of developing versus developed countries. Notwithstanding being a developing country, the South African national tax treaty policy is largely based on the OECD Model. There are however a few instances, regardless whether a particular contracting state is classified as a developed country or not, where deviations (unique and common) from the South African national tax treaty policy, indicated a preference towards a particular provision of the UN Model²⁰⁹.

Only two regional patterns were identified; Australasia in respect of a construction PE and South America in respect of the definition of “resident”. These regional patterns influenced the DTT negotiations as it deviated from the South African national tax treaty policy uniquely from the other Foreign Jurisdictions.

The importance of the Old South African Model is demonstrated in its contribution to the global tax community by influencing the services permanent establishment in 5(3) Article of the UN Model (2003) with South Africa’s position.

The recorded reservations of South Africa and the Foreign Jurisdictions in the Commentaries were given effect in the DTT’s with two recorded exceptions²¹⁰. It was noted in at least one instance that the recorded positions²¹¹ of other Foreign Jurisdictions resulted in a commonly accepted deviation of the South African national tax treaty policy. This confirms that the OECD and its recorded positions is “the most influential of the model” for treaty negotiations²¹².

The reservations recorded in the Commentaries are a fair, but not an accurate reflection of the deviations between the Old South African Model and the OECD Model, for example the omission of the taxation of capital in the Old South African Model. South Africa would therefore benefit by recording these material differences in the Commentaries.

The findings of the comparative analysis confirmed that South Africa was largely successful in incorporating its national tax treaty policy in the DTT’s concluded with the Foreign Jurisdictions. The USA was however more successful in implementing their unique national model as the South Africa – USA DTT mainly reflects the provisions of the US Model. Certain provisions of this DTT with the USA were however influenced by the South African national tax treaty policy.

²⁰⁹ For example incorporating Article 14 that deals with independent services into the treaties.

²¹⁰ South Africa - Mexico DTT in respect of Article 6 of the OECD Model, South Africa – Chile DTT in respect of Article 2(1) of the OECD Model.

²¹¹ Reservations recorded by Chile, Mexico and the USA in respect of Article 3 of the OECD Model.

²¹² Du Plessis, I. 2012. Some Thoughts on the Interpretation of Tax Treaties in South Africa. SA Merc LJ 31-52

The findings of the comparative analysis confirmed that South Africa accepted common deviations from the South African national tax treaty policy when it concluded DTT's with Foreign Jurisdictions as summarized in the table below:

No	Article		Commonly accepted deviations identified:
1.	Article 2(2)	Taxes covered	Inclusion of the wording "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".
2.	Article 3(1)(i)	General definitions	Definition of "international traffic" amended by the omission of the wording "operated by any enterprise that has its place of effective management in a Contracting State".
3.	Article 4(2)(a)	Resident	South America replaced the wording "if the State in which he has his centre of vital interests" in Article 4(2)(a) with "sole residence".
4.	Article 5(3)(a)	Permanent Establishment	Countries in Australasia followed the provisions of UN Model.
5.	Article 6	Income from immovable property	Wording of Article 6 were not followed, however a particular pattern in terms of common deviations could not be confirmed.
6.	Article 8	Shipping and air transport	Combined Articles 8(2) and (3) into one Article, except for a few exceptions to include the principles.
7.	Article 11(1)	Interest	Did not follow Article 11(1) and a strong preference was noted towards the wording of the OECD Model in respect of the taxing profits derived from interest.
8.	Article 11(3)	Interest	Provided for an exemption of tax in respect of income derived from interest if it originates from a governmental division whether beneficially owned or not, its agent or reserve bank of either contracting state, shall be exempted from tax.
9.	Article 14	Independent personal services	Followed the UN Model by including Article 14.
10.	Article 16(3)	Entertainers and sportspersons	Exempted from tax in respect of income derived from the activities of sports persons and entertainers funded by the other contracting state or institution thereof.
11.	Article 23(4)	Assistance in collection of taxes	Did not make provision for the bi-lateral assistance in the collection of taxes.

The exemptions applicable to Articles 11(3) and 16(3) which were recorded as commonly accepted deviations seem to be the new position of South Africa in respect of these articles. It is interesting to note that this was successfully enforced in the DTT's.

There is room for refinement of Articles 8(2) and (3) in the Old South African Model to be more palatable for Foreign Jurisdictions to incorporate into their DTT's. However, despite the largely successful implementation of the South African national tax treaty model, other commonly accepted deviations such as the inclusion of Article 14 dealing with independent personal services and income derived from interest seem to be areas where South Africa had to compromise.

Annexure A – Sample Countries

Australasia

1. Australia;
2. Indonesia;
3. New Zealand;

Asia

4. China;
5. Hong Kong;
6. India;
7. Iran;
8. Korea;
9. Malaysia;
10. Pakistan

North America;

11. Canada;
12. Granada;
13. Mexico;
14. United States of America;

South America;

15. Brazil;
16. Chile;

Annexure B – Treaty Analysis Notes

5.1 South Africa – Australia DTT

Article	Title	Deviations from OECD (2003)	Deviations from UN Model (2003)
Article 1	Persons covered	The term "convention" was replaced with "agreement".	The term "convention" was replaced with "agreement".
Article 2	Taxes covered	Par (1) and (2) have been removed. Second part of par 4 was amended to allow for notification to the other party within a reasonable period of time after those changes to its domestic tax legislation. Included an additional par (3) and (4) in respect of taxes applicable under Article 23A, 25 and 25A.	Par (1) and (2) have been removed. Second part of par 4 was amended to allow for notification to the other party within a reasonable period of time after those changes to its domestic tax legislation. Included an additional par (3) and (4) in respect of taxes applicable under Article 23A, 25 and 25A.
Article 3	General definitions	In par (a) the definitions were amended to specifically make reference to the parties' respective legislation and geographical locations. The wording in par (b) includes "company" and the wording in par (c) was replaced with a definition for "Competent Authority". The term "Contracting State" was defined and the wording "place of effective management" removed from the definition of "International Traffic". The wording "legal person, partnership or association company" was replaced with "company" in the definition of "National".	Par (a) to (i) were removed and replaced with definitions for "Australia", "South Africa", "company", "competent authority", "contracting state", "enterprise of contracting state", "international traffic", "tax" and "person".

Article 4		Par (c) of the tie breaker rule was amended to provide that if country of vital interests could not be established, that the country of which taxpayer is a national shall be applicable. Includes par 5 whereby tax relief in one state shall not apply to temporarily residents.	Par (c) of the tie breaker rule was amended to provide that if country of vital interests could not be established, that the country of which taxpayer is a national shall be applicable. Includes par 5 Includes par 5 whereby tax relief in one state shall not apply to temporarily residents.
Article 5	Permanent Establishment	The definition of a permanent establishment in par 2 specifically includes mineral explorations, agricultural, forestry or pastoral property. Par 3 reduced the period of construction projects to 6 months. The operation of substantial equipment exceeding 90 days, consulting services and activities for a period exceeding 183 days have been included in the definition. Par 6(a) and 6(b) excludes irregular delivery of goods. Exclusions listed must be of an auxiliary or preparatory nature. Par 7(b) extends the definition of agent to include a person manufacturing / processing goods on behalf of another enterprise. Par 10 provides that Article 5 is used to determine a PE under Articles 11(7) and 12(5).	The definition of a permanent establishment in par 2 specifically includes mineral explorations, agricultural, forestry or pastoral property. The operation of substantial equipment exceeding 90 days, consulting services and activities for a period exceeding 183 days have been included in the definition. Par 6(a) and 6(b) excludes irregular delivery of goods. Exclusions listed must be of an auxiliary or preparatory nature. Par 7(b) extends the definition of agent to include a person manufacturing / processing goods on behalf of another enterprise. Par 10 provides that Article 5 is used to determine a PE under Articles 11(7) and 12(5).

Article 6	Income from immovable property	Par (2) was replaced by defining immovable property in terms of the applicable domestic law of the parties. Par (3) was included to provide for rights in respect of immovable property. Par 5 includes income from real property used for the performance of independent personal services.	Par (2) was replaced by defining immovable property in terms of the applicable domestic law of the parties. Par (3) was included to provide for rights in respect of immovable property. Par 5 includes income from real property used for the performance of independent personal services.
Article 7	Business profits	Par 2 was amended to provide that profits are attributed to a PE which may reasonably be expected in relation to such a PE. Par 3 for that provides for the deduction of expenses was amended to include which would be deductible if the PE was an independent entity which paid those expenses. par 4 which relates to apportionment of profits to a PE, was removed. Par 6 was amended to provide that Article 7 shall not be interpreted to limit the application of any domestic tax legislation. Par 8 now includes beneficial interests or entitlements in trusts.	Par 1 was amended to make provision only for profits attributable to a PE. Par 2 was amended to provide that profits are attributed to a PE which may reasonably be expected in relation to such a PE. Par 3 for that provides for the deduction of expenses was amended to include which would be deductible if the PE was an independent entity which paid those expenses. par 4 which relates to apportionment of profits to a PE, has was removed. Par 5 was amended to provide that Article 7 shall not be interpreted to limit the application of any domestic tax legislation. Par 8 now includes beneficial interests or entitlements in trusts.

Article 8	Shipping, inland waterways and air transport	Par 1 and 2 makes a distinction between profits of an enterprise that may be taxed in the state of the enterprise and profits derived directly / indirectly from ship or aircraft operations of the enterprise in the other state. Par 3 is amended to include specific types of operations applicable to Par 1 and 2. Par 4 provides that profits shall be taxed where these operations are discharged.	Par 1 and 2 makes a distinction between profits of an enterprise that may be taxed in the state of the enterprise and profits derived directly / indirectly from ship or aircraft operations of the enterprise in the other state. Par 3 is replaced with specific types of operations that are applicable to Par 1 and 2. Par 4 provides that profits shall be taxed where these operations are discharged.
Article 9	Associated enterprises	Par 1 was amended in the comparison with third parties to what can reasonably be expected between independent entities. Par 2 was amended in that the wording should be interpreted not to change domestic legislation in determining tax liability. Par 3 was amended to include profits which might have reasonably have accrued in a contracting state.	Par 1 was amended in the comparison with third parties to what can reasonably be expected between independent entities. Par 2 was amended in that the wording should be interpreted not to change domestic legislation in determining tax liability. Par 3 was replaced with wording to include profits which might have reasonably have accrued in a contracting state. The adjustments as a result of judicial proceedings as exclusions of par 2 have been removed.

Article 10	Dividends	<p>Par 1 includes dividends paid to a beneficially owned by a resident. Par 2(a) has been amended to include dividends paid to a beneficial owner that is a company that holds 10% or more of the voting rights in the company paying the dividends. The wording re the mutual agreement between competent authorities in respect of the mode of limitations has been removed. The definition of "dividend" was changed not to specifically include "<i>jouissance</i>" shares or "<i>jouissance</i>" rights, mining shares, founders' shares". Par 4 includes personal services which must be considered under Article 14. Par 6 includes a limit of 5% of tax in respect of a profits attributable to a PE. Par 7, the provisions against double taxation benefits shall not be applicable if the initial intention was assign the dividends.</p>	<p>Par 1 includes dividends paid to a beneficially owned by a resident. Par 2(a) has been amended to include dividends paid to a beneficial owner that is a company that holds 10% or more of the voting rights in the company paying the dividends. The wording re the bilateral agreement between competent authorities in respect of the mode of limitations has been removed. The definition of "dividend" was changed not to specifically include "<i>jouissance</i>" shares or "<i>jouissance</i>" rights, mining shares, founders' shares". Par 4 includes personal services which must be considered under Article 14. Par 6 includes a limit of 5% of tax in respect of profits attributable to a PE. Par 7, the provisions against double taxation benefits shall not be applicable if the initial intention was assign the dividends.</p>
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Article 11	Interest	<p>Par 1 was amended to make reference to "interest beneficially owned". Par 2, the provision for the mode of application of the 10% limitation by mutual agreement has been removed. Par 3 provides for scenarios when interest may not be taxed by the contracting state in which it arose. The definition of "interest" in par 5 does not specifically exclude penalty interest. Par 6 makes reference to independent services which should fall under Article 14. In par 6 and 7, interest connected with a PE is extended to include that of a "fixed base". Par 8 includes debt which exceeds the amount which might reasonably have been expected to have been agreed upon.</p>	<p>Par 1 was amended to make reference to "interest beneficially owned". Par 2, the provision for the mode of application of the 10% limitation by mutual agreement has been removed. Par 3 provides for scenarios when interest may not be taxed by the contracting state in which it arose. The definition of "interest" in par 5 does not specifically exclude penalty interest. Par 6 makes reference to independent services which should fall under Article 14. In par 6 and 7, interest connected with a PE is extended to include that of a "fixed base". Par 8 includes debt which exceeds the amount which might reasonably have been expected to have been agreed upon.</p>
Article 12	Royalties	<p>Par 1 provides that royalties may be taxed in the resident state, but shall not exceed 5% according to par 2. The definition of royalties was extended in par 3. References to PE are extended to include the concept a "fixed base". Par 5 was included to provide when royalties arise. Par 6 makes provision for considering amounts which might have reasonably have been expected to have been agreed upon in respect of royalties. par 7 makes provision that no tax relief shall be available in the event that the initial intention was to assign the rights in respect of which royalties are paid.</p>	<p>Par 1 provides that royalties may be taxed in the resident state, but shall not exceed 5% according to par 2. The definition of royalties was amended in par 3. References to PE are extended to include the concept a "fixed base". Par 5 was included to provide when royalties arise. Par 6 makes provision for considering amounts which might have reasonably have been expected to have been agreed upon in respect of royalties. par 7 makes provision that no tax relief shall be available in the event that the initial intention was to assign the rights in respect of which royalties are paid.</p>

Article 13	Capital gains tax	Par 2 was amended to provide for all property other than real property and includes alienation of a fixed base. Par 4 includes alienation of comparable interests to that of shares. Par 5 is limited to gains of a capital nature.	Par 2 was amended to provide for all property other than real property and includes alienation of a fixed base. Par 4 includes alienation of comparable interests to that of shares. In par 4 reference to capital stock, interest in partnership and trusts has been removed. Par 5 is limited to gains of a capital nature.
Article 14	Independent personal services	Par 1 was included to provide for independent services. Par 2 was included to make provision for professional services.	In par 1 reference is made to a fixed base whereby the other state may also be entitled to impose taxes.
Article 15	Income from employment	The reference to remuneration in respect of employment of inland waterway boats has been removed.	The reference to remuneration in respect of employment of inland waterway boats has been removed.
Article 16	Directors fees	A grammar change in par 1.	In par 2 the income of an official in a top-level managerial position has been removed.
Article 17	Artistes and sportsmen	Par 2 includes article 14.	Grammar changes.
Article 18	Pensions	The scope of Article 18 is amended to include annuities from sources in a contracting state. Par 2 provides that an annuity paid to an individual by of a lumpsum may be taxed in the state where the insurer paid the lumpsum. Par 3 defines the term "annuity".	The reference to "other similar payments" has been replaced in par 1 and 2 with "annuities". Par 2 provides that an annuity paid to an individual by of a lumpsum may be taxed in the state where the insurer paid the lumpsum. Par 3 defines the term "annuity".
Article 19	Government service	Par 1 specifically excludes pensions and annuities and requires that services must be rendered in that state.	Par 1 specifically excludes pensions and annuities and requires that services must be rendered in that state.
Article 20	Students	In par 1 a business apprentice has been excluded from the scope of the Article.	In par 1 a business apprentice has been excluded from the scope of the Article.

Article 21	Other income	The term "convention" was replaced with "agreement" in par 1 and "immovable" with "real" property in par 2. Reference to income under Article 14 is also included. Par 3 provides that income not covered by preceding Articles may also be taxed by the other contracting state.	The term "convention" was replaced with "agreement" in par 1 and "immovable" with "real" property in par 2. Par 3 provides that income not covered by preceding Articles may also be taxed by the other contracting state.
Article 22	Capital	Reference to Capital is not made	Reference to Capital is not made
	Source of income	In par 1 and 2, income derived under articles 6 - 8 and 10 to 19 may be taxed by the other contracting state and shall be deemed income from that other state and may be taxed in that other state.	In par 1 and 2, income derived under articles 6 - 8 and 10 to 19 may be taxed by the other contracting state and shall be deemed income from that other state and may be taxed in that other state.
Article 23	Methods for elimination of double taxation	Par 1 tax paid in South Africa shall be allowed a credit in Australia by resident. In par 2, a company in South Africa which pays dividends to an Australian resident holding more than 10% interest, shall be entitled to a credit in Australia. In par 3, the credit method shall be applied in South Africa, however the 10 interest in a company is not required.	Par 1 tax paid in South Africa shall be allowed a credit in Australia by resident. In par 2, a company in South Africa which pays dividends to an Australian resident holding more than 10% interest, shall be entitled to a credit in Australia. In par 3, the credit method shall be applied in South Africa, however the 10 interest in a company is not required.
Article 24	Non discrimination	In par 2, reference to stateless persons has been removed. Reference to on account of civil status or family responsibilities was removed. Par 5 now includes exclusions to which the Article shall not apply. Par 6 includes the scope of anti tax avoidance measures.	In par 2, reference to stateless persons has been removed. Reference to on account of civil status or family responsibilities was removed. Par 5 now includes exclusions to which the Article shall not apply. Par 6 includes the scope of anti tax avoidance measures.

Article 25	Mutual Agreement Procedures	In par 4, reference to joint commission was removed. Par 5 makes provision that any dispute may be referred to the Counsel for Trade Services.	In par 4, reference to joint commission was removed. Par 5 makes provision that any dispute may be referred to the Counsel for Trade Services.
Article 26	Exchange of information	Par 3 provides limitations of the exchange of information. Par 5 provides for provisions when a request of information cannot be declined.	Par 3 provides limitations of the exchange of information. Par 5 provides for provisions when a request of information cannot be declined.
Article 27	Assistance in the collection of taxes	Par 2 the definition of "revenue claim" was amended. Par 5 makes reference to the priority of these claims collected on behalf of the other state. Par 8(e) includes reference to assistance if that State considers that the taxes with respect to which assistance is requested are imposed contrary to generally accepted taxation principles.	Par 2 the definition of "revenue claim" was amended. Par 5 makes reference to the priority of these claims collected on behalf of the other state. Par 8(e) includes reference to assistance if that State considers that the taxes with respect to which assistance is requested are imposed contrary to generally accepted taxation principles.
Article 28	Diplomatic missions	No significant changes	No significant changes
Article 29	Territorial extension	Excluded	Excluded
Article 30	Entry into force	Provision is made to include the provisions of the protocol as part of the treaty.	Provision is made to include the provisions of the protocol as part of the treaty.
Article 31	Termination	Provision is made for termination under an additional article.	Provision is made for termination under an additional article.
	Protocol	The article makes provision for subsequent amendments.	The article makes provision for subsequent amendments.

5.2 South Africa – Brazil DTT

Article	Title	Deviations from OECD (2003)	Deviations from UN Model (2001)
Article 1	Persons covered	No deviations	No deviations
Article 2	Taxes covered	Par 1, political sub divisions or local authorities not specifically included. Par 2, taxes relate only to income or elements of income.	Par 1, political sub divisions or local authorities not specifically included. Par 2, taxes relate only to income or elements of income.
Article 3	General definitions	Par 1, the term "person" was replaced with the definition of the contracting parties. Par 1(c) was replaced with the term competent authority. Par 1(e), the term international traffic was amended not to include place of effective management. Par 1(h), the term "competent authority" was replaced with "nationality" which is extended into par (i).	Par 1, the term "person" was replaced with the definition of the contracting parties. Par 1(c) was replaced with the term competent authority. Par 1(e), the term international traffic was amended not to include place of effective management. Par 1(h), the term "competent authority" was replaced with "nationality" which is extended into par (i).
Article 4	Resident	Par 1, definition amended not to specifically exclude "any person who is liable to tax in that other state in respect only of income from sources in that state or capital.	Par 1, definition amended not to specifically exclude "any person who is liable to tax in that other state in respect only of income from sources in that state or capital.
Article 5	Permanent establishment	Par 3, a construction PE includes an "assembly". Project, construction, assembly for a period longer than six months.	Par 3, a construction PE includes an "assembly". Par 7 amended to reflect the wording of the OECD model in respect of Agent.

Article 6	Income from immovable property	Par 4 includes income from immovable property used in the performance of independent services.	Par 4, the term "independent personal services" is amended to refer to "independent services"
Article 7	Business profits	Par 1 is amended to only refer to profits attributable to that permanent establishment. Par 4, the provision precluding par 2 from being interpreted not to attribute a portion of profits to a PE has been removed. Par 6 re the same method of attribution has been removed.	Par 1 is amended to only refer to profits attributable to that permanent establishment. Par 4 ,5 and 6 were replaced with the wording that no profits shall be attributed by reason of mere purchase by that PE of goods and merchandise for the enterprise.
Article 8	Shipping and Air Transport	Par 1, the profits of an enterprise in respect of the international operation of ships and aircraft are taxed. These operation types have been defined in par 2. Par 3, profits are only taxed in apportionment to participation in joint operations.	Par 1, the profits of an enterprise in respect of the international operation of ships and aircraft are taxed. Reference to inland waterways has been removed. These operation types have been defined in par 2. Par 3, profits are only taxed in apportionment to participation in joint operations.
Article 9	Associated enterprises	Par 2 removed that makes provision for adjustments in comparison to independent enterprises.	Par 2 removed that makes provision for adjustments in comparison to independent enterprises. Par 3 has been removed that provides for exclusions of legal proceedings in respect of the adjustments in par 2.

Article 10	Dividends	Par 2 was amended to provide for 10% tax and does not specifically exclude a partnership. Direct ownership of shares amended to mere ownership of shareholding. Par 4 makes reference to independent services from a fixed base. Par 5 specifically makes provision for a PE to a max of 10% tax. Par 6 makes provision for a fixed based as well. Par 7 makes provision for an anti-abuse rule.	Par 2 was amended to provide for 10% tax and does not specifically exclude a partnership. At least 25% shares must be held in company paying dividends. Direct ownership of shares amended to mere ownership of shareholding. Par 4 makes reference to independent services from a fixed base. Par 5 specifically makes provision for a PE to a max of 10% tax. Par 6 makes provision for a fixed based as well. Par 7 makes provision for an anti-abuse rule.
Article 11	Interest	Par 2, mutual agreement to settle mode of application of limitation has been removed. Tax rate limited to 15%. Par 3, the term "interest" was amended. Par 5 also makes provision for interest derived from a fixed base. Par 6, tax rate limitation shall not apply to interest arising in a state and paid to a PE in a 3rd state. Par 8 provides for anti abuse rules.	Par 2, mutual agreement to settle mode of application of limitation has been removed. Tax rate limited to 15%. Par 3, the term "interest" was amended. Par 5 also makes provision for interest derived from a fixed base. Par 6, tax rate limitation shall not apply to interest arising in a state and paid to a PE in a 3rd state. Par 8 provides for anti abuse rules.

Article 12	Royalties	Par 1, royalties MAY be taxed in state which profits arose. Par 2, 15% limitation re right to use trademarks, 10% re other royalty income. Par 3, definition "royalties" amended. Par 4, provision made for fixed based. Par 5 makes provision re when royalties are deemed to arise re a PE or a fixed base. Par 7 provides for an anti abuse rule.	Par 2, 15% limitation re right to use trademarks, 10% re other royalty income. Par 3, definition "royalties" amended. Par 4, provision made for fixed based. Par 7 provides for an anti abuse rule.
Article 13	Capital Gains	Par 2 makes provision for a fixed base. Par 3 makes reference to gains of an enterprise in lieu of place of effective management and reference to boats and inland waterways transport removed. Par 4, reference to resident was removed and not limited to 50% of stock. Par 5, gains not covered in this article MAY be taxable in other state.	Par 3 makes reference to gains of an enterprise in lieu of place of effective management and reference to boats and inland waterways transport removed. Par 4, reference to resident was removed and not limited to 50% of stock limited a company. Par 5, gains not covered in this article MAY be taxable in other state.
Article 14	Independent Services	Makes provision for independent services.	Par 1(b), includes a person performing services on behalf of a person. Par 1(c) includes another exception whereby services are performed through a fixed base regularly available.
Article 15	Income from employment	Par 2(c) includes income from a fixed base. Par 3, employment re an inland waterways transport has been removed.	Par 3, employment re an inland waterways transport has been removed.

Article 16	Director fees	Par 1 includes a director of "any council"	Par 1 includes a director of "any council". Par 2, reference to income of a person in managerial capacity has been removed.
Article 17	Entertainers and sportspersons	Par 3 included whereby the persons paid by the state or political subdivision, such income shall only be taxed where he a resident.	Par 3 included whereby the persons paid by the state or political subdivision, such income shall only be taxed where he a resident.
Article 18	Pensions	Par 1, includes annuities. Par 2 excludes pensions and other similar payments made by social security system of a state or political subdivision and shall be taxable only in that state.	Par 1, includes annuities.
Article 19	Government service	No changes	No changes
	Teachers and researchers	Par 1, makes provision for teachers and researchers upon invitation of the government, educational or cultural institution or under an official cultural exchange programme in that state for not longer than 2 years for a specific purpose.	Par 1, makes provision for teachers and researchers upon invitation of the government, educational or cultural institution or under an official cultural exchange programme in that state for not longer than 2 years for a specific purpose.
Article 20	Student and apprentices	Par 1, income limited to purpose of student or apprentice's education or training. Par 2, income not covered in par 1, shall be entitled to same exemptions, relief as residents of state visited.	Par 1, income limited to purpose of student or apprentice's education or training.

Article 21	Other income	Par 2, makes provision for income for independent services from a fixed base. Par 3 provides that income not dealt with under other articles, may be taxed also at source.	No changes
Article 22	Capital	Deleted	Deleted
Article 23	Double Tax elimination	Par 1, provision is made for a tax credit to an amount taxed in the other state. Par 3, deleted the exclusion to capital owned.	Par 1, provision is made for a tax credit to an amount taxed in the other state. Par 3, deleted the exclusion to capital owned.
Article 24	Non-discrimination	Par 1 amended not to provide for persons not resident in one or both states. Par 2, reference to stateless persons removed. Par 4, the provision for debt that can be deducted against taxable capital has been removed.	Par 1 amended not to provide for persons not resident in one or both states. Par 2, reference to stateless persons removed. Par 4, the provision for debt that can be deducted against taxable capital has been removed.
Article 25	Mutual Agreement	Par 1, prescription of 3 years was replaced with that of domestic law. Par 2, provision that agreement shall be implemented regardless of the timelines has been removed. Par 3, provision for states to consult together was removed. Par 4, reference to joint commission has been removed.	Par 1, prescription of 3 years was replaced with that of domestic law. Par 2, provision that agreement shall be implemented regardless of the timelines has been removed. Par 3, provision for states to consult together was removed. Par 4, reference to joint commission has been removed. The requirement for bilateral procedures, methods and terms has been removed.

Article 26	Exchange of information	Par 1, reference to political state divisions and local authorities was removed. The provision for disclosure of information in public court proceedings was removed.	Par 1, reference to collection of information to prevent fraud or tax evasion in specific was removed. Information shall be kept secret, regardless whether it was originally regarded as secret. The provision for disclosure of information in public court proceedings was removed. The requirement for bilateral procedures, methods and terms has been removed.
Article 27	Assistance in the collection of taxes	Not included	Not included

5.3 South Africa – Canada DTT

Article	Title	Deviations from OECD (1995)	Deviations from UN Model (1980)
Article 1	Persons covered	No deviation	No deviation
Article 2	Taxes covered	Par 1 and 2 removed. Par 3 covers existing taxes under domestic legislation.	Par 1 and 2 removed. Par 3 covers existing taxes under domestic legislation.
Article 3	General definitions	Par 1, the term "person" is amended, the terms "Canada" and South Africa" defined, the term "company" included, the term "national" is defined, "competent authority" defined.	Par 1, the term "person" is amended, the terms "Canada" and South Africa" defined, the term "company" included, the term "national" is defined, "competent authority" defined.

Article 4	Resident	Par 1, the term "resident" was amended to make a distinction between Canada and South Africa. Par 3 was included to determine the status of a company is a resident in both states.	Par 1, the term "resident" was amended to make a distinction between Canada and South Africa. Par 3 was included to determine the status of a company is a resident in both states.
Article 5	Permanent Establishment	Par 1, enterprise replaced with resident. Par 3, a construction PE includes an assembly project, consulting services or supervisory activities re of the PE. Par 5, the term "enterprise" is replaced with "resident".	Par 1, enterprise replaced with resident. Par 3, a construction PE includes an assembly project and the time period is 12 months.
Article 6	Income from immovable property	Par 2, the term "boat" has been removed. Par 3, includes income from alienation of property. Par 4 includes income from immovable property in carrying business or in the performance of independent personal services.	Par 2, the term "boat" has been removed. Par 3, includes income from alienation of property. Par 4 includes income from immovable property in carrying business or in the performance of independent personal services.
Article 7	Business profits	Par 1 and 2, enterprise replaced with resident.	Par 1, enterprise is replaced with resident. Reference to income attributed to sales in the other state and other business activities removed. Par 3, limitation to deduction has been removed. Par 5, no business profits shall be attributed to PE by mere purchase by PE of goods / merchandise.

Article 8	Shipping and air transport	Par 1, reference to effective place of management has been removed. Par 2 and 3, reference to inland water ways removed. Par 4 provides for specific profit inclusions re operation of ships.	Par 1, reference to effective place of management has been removed. Par 2 and 3, reference to inland water ways removed. Par 4 provides for specific profit inclusions re operation of ships.
Article 9	Associated Persons	Par 1 and 2, enterprise replaced with resident. Profit replace with income. Par 3 provides time limits for price adjustments. Par 4, exclusion of tax benefit in the event of fraud.	Par 1 and 2, enterprise replaced with resident. Profit replace with income. Par 3 provides time limits for price adjustments. Par 4, exclusion of tax benefit in the event of fraud.
Article 10	Dividends	Par 2(a), 5% limitation except re dividends paid to non-resident investment corporation, must control at least 10% of voting power re Canada and 10% of capital re RSA. Par 6, provision made for max of 5% additional tax on earnings of a PE.	Par 2(a), 5% limitation except re dividends paid to non-resident investment corporation, must control at least 10% of voting power re Canada and 10% of capital re RSA. Par 6, provision made for max of 5% additional tax on earnings of a PE.
Article 11	Interest	Par 2, reference to mutual agreement removed. Par 3, rules for taxing interest re Canada and RSA respectively set out. Par 3(d) makes reference to interest paid with respect to a debt as a result of a sale or providing credit by associated persons.	Par 2, reference to mutual agreement removed. Par 3, rules for taxing interest re Canada and RSA respectively set out. Par 3(d) makes reference to interest paid with respect to a debt as a result of a sale or providing credit by associated persons.

Article 12	Royalties	Par 1, royalties MAY be taxed in the other state. Par 2, Limitation of taxing rights of other state to 6% in certain circumstance and 10% in all other cases. Par 3, definition of royalties amended. Par 5, reference to when royalties is deemed to have arisen.	Par 1, royalties MAY be taxed in the other state. Par 2, Limitation of taxing rights of other state to 6% in certain circumstance and 10% in all other cases. Par 3, definition of royalties amended. Par 5, reference to political subdivision and government removed.
Article 13	Capital gains tax	Par 2, reference to enterprise replaced with resident. Par 3, reference to inland waterways removed. Par 4, reference made to gains re the alienation of shares or interest in trust / partnership. Immovable property defined. Par 6, tax relief available to person resident longer than 6 years.	Par 2, reference to enterprise replaced with resident. Par 3, reference to inland waterways removed. Par 4, reference made to gains re the alienation of shares or interest in trust / partnership. Immovable property defined. Par 6, tax relief available to person resident longer than 6 years.
Article 14	Independent services	Par 1, limited to an individual and a time limit of 183 after which a fixed base shall be deemed. Par 3 makes provision for the conditional deletion of 3rd sentence.	Par 1, limited to an individual and a time limit of 183 after which a fixed base shall be deemed. Par 3 makes provision for the conditional deletion of 3rd sentence.
Article 15	Income from employment	Par 3, reference to inland waterways and reference to place of effective management removed.	Par 2, 12 month period included in addition to fiscal. Par 3, reference to inland waterways and reference to place of effective management removed.

Article 16	Director fees	Par 1, board of directors or similar organ included.	Par 1, board of directors or similar organ included. Par 2, Reference to top level managerial level removed.
Article 17	Entertainers and sportsmen	Par 3, entertainer or sportsman must participate directly or indirectly in the profits. Par 4, excludes income paid from public funds.	Par 1 and 2, term athlete replaced with sportsman. Par 3, entertainer or sportsman must participate directly or indirectly in the profits. Par 4, excludes income paid from public funds.
Article 18	Pensions	Par 1, other similar remuneration is replaced with "annuities". Reference to past employment removed.	Par 1, other similar remuneration is replaced with "annuities". Reference to past employment removed.
Article 19	Government service	Par 1(b), reference to pension removed.	Par 1(b), reference to pension removed.
Article 20	Students	par 1, apprentice replaced with trainee.	par 1, apprentice replaced with trainee. Par 2, income not covered by this article, removed.
Article 21	Other income	Par 2, condition that if resident derives income from other state, state of source may also tax.	Par 2, condition that if resident derives income from other state, state of source may also tax.
Article 22	Capital	Removed	Removed
Article 23	Double taxation	Par 1, provision made for Canada to avoid double taxation. Par 2(b), provision made for Canada for tax credits. Par 2, provision made for RSA for tax credits in terms of domestic law. Par 3 when income would be deemed to arise from source.	Par 1, provision made for Canada to avoid double taxation. Par 2(b), provision made for Canada for tax credits. Par 2, provision made for RSA for tax credits in terms of domestic law. Par 3 when income would be deemed to arise from source.

Article 24	Non-discrimination	Par 2, reference to stateless persons removed. Par 4 removed, income from resident shall be treated in other state in similar conditions as resident of other state.	Par 2, reference to national removed. Par 3, reference to stateless persons removed. Par 4 removed, income from resident shall be treated in other state in similar conditions as resident of other state.
Article 25	Mutual Agreement	Par 1, application must be submitted in writing within two years. Par 3, prohibition against increase the tax base of a taxpayer after 5 years which would have been charged by other state. Par 4, joint commission replaced with consult together. Par 5, provision made for arbitration, the rules of which shall be determined.	Par 1, application must be submitted in writing within two years. Par 3, prohibition against increase the tax base of a taxpayer after 5 years which would have been charged by other state. Par 4, joint commission replaced with consult together. Par 5, provision made for arbitration, the rules of which shall be determined.
Article 26	Exchange of information	Par 1, provision when information may disclosed removed. Par, information for other state shall be obtained in same manner as if it was tax information for that state.	Par 1, provision when information may disclosed removed. Par, information for other state shall be obtained in same manner as if it was tax information for that state.

5.4 South Africa – China DTT

Article	Title	Deviations from OECD (2000)	Deviations from UN Model (1980)
Article 1	Persons covered	No deviation	No deviation

Article 2	Taxes covered	Par 2, reference to types of income covered removed, but existing taxes in respect of each state referred to.	Par 2, reference to types of income covered removed, but existing taxes in respect of each state referred to.
Article 3	Definitions	Par 1, term China and South Africa defined, tax, person, national and contracting state defined. Term "business" and "enterprise" removed.	Par 1, term China and South Africa defined, tax, person, national and contracting state defined. Term "business" and "enterprise" removed.
Article 4	Resident	Par 1, definition of "resident" amended be an ordinarily resident of China or RSA. Par 3, by mutual agreement determine resident status if person has POEM in one state, and HQ in another state.	Par 1, definition of "resident" amended be an ordinarily resident of China or RSA. Par 3, by mutual agreement determine resident status if person has POEM in one state, and HQ in another state.
Article 5	Permanent Establishment	Par 2, construction PE to include building site, assembly or installation project for period of 12 months. Construction PE to include services for period more than 12 months every 24 months.	Par 2, construction PE for a period of 12 months. Includes services for a period in excess of 12 months within any 24 months. Par 5, ref to agent that <u>habitually</u> exercises authority to conclude contracts unless activities are limited in par 4.
Article 6	Income from immovable property	Par 4, ref made to independent personal services	No material deviation
Article 7	Business profits	No material changes	Par 1, the limitation to the attribution to a PE, sales and other business activities removed. Par 3, ref to the prohibition to certain deductions removed. Par 5, no profit shall be attributed to PE by mere purchase by PE of goods for the enterprise.

Article 8	Shipping and air transport	Par 1, profits of an enterprise replaced the reference to POEM. Par 2 and 3, reference to inland waterways removed.	Par 1, profits of an enterprise replaced the reference to POEM. Par 2 and 3, reference to inland waterways removed.
Article 9	Associated enterprises	No material changes	Par 3, exception of application of article in the event of judicial or legal proceedings have been removed.
Article 10	Dividends	Par 2, limited to 5% of gross amount of dividends. Mode of application by mutual agreement. Par 3, removed ref to shares, <i>jouissance</i> shares or rights. Par 4, makes reference to independent personal services from a fixed base.	Par 2, limited to 5% of gross amount of dividends. Mode of application by mutual agreement. Par 3, removed ref to shares, <i>jouissance</i> shares or rights.
Article 11	Interest	Par 3, inserted exception of Government and political subdivision. Par 5, makes reference to independent services from a fixed base. Par 6 makes ref to fixed base.	Par 2, tax limited to 10%. Par 3, inserted exception of Government and political subdivision.
Article 12	Royalties	Par 2, definition of "Royalties" amended. Limitation of tax 10% re gross amount. Par 5 reference is made when royalties are deemed to arise.	Par 2, definition of "Royalties" amended. Limitation of tax 10% re gross amount. Par 5 reference is made when royalties are deemed to arise.
Article 13	Capital Gains	Par 2, reference is made to independent personal services pertaining to a fixed base. Par 3, ref to inland waterways removed. Par 4, reference to alienation of shares of the capital stock of a company consisting of directly or indirectly of immovable property. Par 5, gains from alienation of shares other than that in par 4, representing at least 25% of the company.	Par 3, ref to inland waterways removed. Par 4, reference to alienation of shares of the capital stock of a company consisting of directly or indirectly of immovable property. Par 5, gains from alienation of shares other than that in par 4, representing at least 25% of the company.

Article 14	Independent personal services	Provision for personal services included	No material deviation
Article 15	Dependent personal services	Par 3, ref to fixed base. Par 3, reference to inland waterways removed.	Par 3, reference to inland waterways removed.
Article 16	Directors fees	No changes	Par 2, reference to top level managers was removed.
Article 17	Entertainers and sportspersons	Par 3, exempt in one state from tax if income paid by Government of other state.	Par 3, exempt in one state from tax if income paid by Government of other state.
Article 18	Pensions	Par 2, pensions and other similar payments paid by the Government, shall C36 be taxable only in that state.	Par 2, grammar changes.
Article 19	Government service	Par 3, reference to income under Articles 15, 16 and 18 removed.	No material deviation
	Teachers and researchers	Provision made for teachers re lecturers / research.	Provision made for teachers re lecturers / research.
Article 20	Students and trainees	Par 2, income not covered by article 20, shall be entitled to same exemptions available to residents of the visiting state.	Par 2, income not covered by article 20, shall be entitled to same exemptions available to residents of the visiting state.
Article 21	Other income	Par 2, reference to other state independent personal services from a fixed base.	No material deviation
Article 22	Capital	Not included	Not included

Article 23	Elimination of double taxation	Par 1, where resident of China derives income from RSA, the amount of RSA tax paid may be credited against Chinese tax, but shall not exceed the amount of Chinese tax. Par 2, where resident of RSA paid tax in China, the taxes shall be deducted according to RSA fiscal law.	Par 1, where resident of China derives income from RSA, the amount of RSA tax paid may be credited against Chinese tax, but shall not exceed the amount of Chinese tax. Par 2, where resident of RSA paid tax in China, the taxes shall be deducted according to RSA fiscal law.
Article 24	Non-discrimination	Par 2, reference to stateless persons removed. Par 3, deleted the reference to debts which shall be deductible in determining the taxable capital of an enterprise.	Par 2, reference to stateless persons removed. Par 3, deleted the reference to debts which shall be deductible in determining the taxable capital of an enterprise.
Article 25	Mutual Agreement procedure	Par 4, reference to joint commission was removed.	Par 4, reference to joint commission was removed. Reference to bilateral procedures, methods, conditions and techniques removed.
Article 26	Exchange of information	No material changes	Par 1, the requirement that methods, techniques shall be made, has been removed.
Article 27	Assistance in the collection of taxes	Deleted	Deleted

5.5 South Africa – Chile DTT

Article	Title	Deviations from OECD (2014)	Deviations from UN Model (2011)
Article 1	Persons covered	No changes	No changes
Article 2	Taxes covered	No changes	No changes

Article 3	General definitions	Par 1, the terms "Chile" and "South Africa" defined. The term "person" amended, term "international traffic" amended, "competent authority" amended, the term "business" amended.	Par 1, the terms "Chile" and "South Africa" defined. The term "person" amended, term "international traffic" amended, "competent authority" amended, the term "business" amended.
Article 4	Resident	Par 1, includes "place of incorporation". Par 3 makes provision for income of a resident to be taxed. Par 4, in event where individual is resident of states, a mutual agreement process must be followed.	Par 1, includes "place of incorporation". Par 3 makes provision for income of a resident to be taxed. Par 4, in event where individual is resident of states, a mutual agreement process must be followed.
Article 5	PE	Par 1, reference to exploration or the exploitation of natural resources. Par 2, definition of construction PE amended to include services. The time period is 6 months for building site and 12 months for services. Par 4, maintenance of fixed place of business removed. Reference made to advertising and scientific research. Par 6, collection of insurance premiums amounts to a PE.	Par 1, reference to exploration or the exploitation of natural resources. Par 2, definition of construction PE amended to include services. The time period is 12 months for services. Performance of professional services. Par 4, maintenance of fixed place of business removed. Reference made to advertising and scientific research. Par 5, agent must habitually exercises an authority to conclude contracts. Par 7, wording of commission agent amended.
Article 6	Immovable property	No changes	Par 4, reference to independent services removed.

Article 7	Business profits	Par 2, provision made for attribution to PE as if it was an independent enterprise engaged in similar activities. Par 3 provides for deductions in determining the profits of a PE. Par 4, provision made for contracting state to tax the apportionment of income attributed to a PE. Par 5, no profits shall be attributed to a PE by mere purchase of that PE of goods and merchandise for the enterprise. Par 6, profits attributed to PE shall be determined by the same method every year unless there is good reason to the contrary.	Par 1, in respect of profits attribution to a PE, reference to good and merchandise and other business of similar kind has been removed. Par 3 provides for deductions in determining the profits of a PE. Par 5, no profits shall be attributed to a PE by mere purchase of that PE of goods and merchandise for the enterprise. Par 6, profits attributed to PE shall be determined by the same method every year unless there is good reason to the contrary.
Article 8	Shipping and air transport	Par 1, reference to profits of an enterprise re operations of ships / aircraft. Par 2, reference to inland waterways removed and provides for specific inclusions of "operation of ships / aircraft". Par 3, reference to place of effective management removed.	Par 1, reference to profits of an enterprise re operations of ships / aircraft. Par 2, reference to inland waterways removed and provides for specific inclusions of "operation of ships / aircraft". Par 3, reference to place of effective management removed.
Article 9	Associated enterprises	Par 2, ref to if it agrees that the adjustment made by first mentioned state is justified both in principle and as regards to the amount.	Par 2, ref to if it agrees that the adjustment made by first mentioned state is justified both in principle and as regards to the amount.

Article 10	Dividends	Par 2, exclusion of partnership removed. Provision made for additional tax payable in Chile. Par 3, term "dividends" amended. Par 6, provision made for anti-abuse.	Par 2, 5% and 15% limitations respectively. Exclusion of partnership removed. Provision made for additional tax payable in Chile. Par 3, term "dividends" amended. Par 6, provision made for anti-abuse.
Article 11	Interest	Par 2, limitation 5% of gross amount of interest derived from loans, bonds or securities, 15% re all other cases. Par 3, term "interest" amended.	Par 2, limitation 5% of gross amount of interest derived from loans, bonds or securities, 15% re all other cases. Par 3, term "interest" amended. Par 4, reference to independent personal services removed.
Article 12	Royalties	Par 1, other contracting state MAY tax. Par 2, limitation of other contracting state to tax (5% and 10%). Par 3, term "royalties" amended. Par 5, reference to when royalties are deemed to arise. Par 7, anti abusive rule.	Par 2, limitation of other contracting state to tax (5% and 10%). Par 3, term "royalties" amended. Par 4, reference to fixed base and independent personal services removed. Par 5, reference to when royalties are deemed to arise. Par 7, anti abusive rule.
Article 13	Capital Gains	Par 3, reference to inland waterways and place of effective management removed. Par 4, shares representing more than 50% of the shares removed.	Par 2, ref to movable property pertaining to a fixed based removed. Par 3, reference to inland waterways and place of effective management removed. Par 4, shares representing more than 50% of the shares removed.
Article 14	Independent personal services	No changes	Removed

Article 15	Income from employment	Par 3, ref to inland waterways and place of effective management has been removed.	Par 3, ref to inland waterways and place of effective management has been removed.
Article 16	Director fees	Par 1, provision for similar organ to board of directors.	Par 1, provision made for similar organ to board of directors. Par 2, reference to top managerial position removed.
Article 17	Entertainers and sportsperson	No material changes	No material changes
Article 18	Pensions	Par 1, pensions tax not exclusive to source state. Ref to other similar remuneration removed. Par 2, ref to alimony and maintenance payments shall ONLY be taxed in resident state.	Par 1, pensions tax not exclusive to source state. Ref to other similar remuneration removed. Par 2, ref to alimony and maintenance payments shall ONLY be taxed in resident state.
Article 19	Government Services	Par 1, excludes pension. Par 2, ref to pension and other similar remuneration removed.	Par 1, excludes pension. Par 2, ref to pension and other similar remuneration removed.
Article 20	Students	no material changes	Par 1, ref to trainee removed.
Article 21	Other income	Par 3, income not covered by the articles, may also be taxed by the other state.	No changes
Article 22	Taxation of capital	Par 3, ref to POEM replaced with resident.	Par 3, ref to POEM replaced with resident.
Article 23	Methods for the avoidance of double taxation	Par 1, ref to Chile re double taxation avoidance re a resident of Chile to provide for a credit. Chile may take into account exempted income or capital. Par 2, tax paid by RSA residents in Chile, shall be credited to a maximum.	Par 1, ref to Chile re double taxation avoidance re a resident of Chile to provide for a credit. Chile may take into account exempted income or capital. Par 2, tax paid by RSA residents in Chile, shall be credited to a maximum.

Article 24	Non-discrimination	Par 2, ref to stateless persons removed.	Par 2, ref to stateless persons removed.
Article 25	Mutual agreement	Par 3, ref to consulting of parties removed. Par 4, ref to joint commission removed. Par 5,	Alternative B followed, Par 3, ref to consulting of parties removed. Par 4, ref to joint commission removed. Par 5,
Article 26	Exchange of information	Par 1, reference to "foreseeable relevant" replaced with necessary. Ref to the exchange of information to prevent tax avoidance, removed. Par 3, provides that information shall be collected the same way as if its own taxation is involved.	Par 1, reference to "foreseeable relevant" replaced with necessary. Ref to the exchange of information to prevent tax avoidance, removed. Par 3, provides that information shall be collected the same way as if its own taxation is involved.
Article 27	Assistance in collection of taxes	Not included	Not included

5.6 South Africa – Hong Kong DTT

Article	Title	Deviations from OECD (2014)	Deviations from UN Model (2011)
Article 1	Persons covered	No deviations	No deviations
Article 2	Taxes covered	No material deviation	No material deviation
Article 3	General definitions	Par 1, Hong Kong Special Administrative Region defined, South Africa defined, the term "business" defined, term "competent authority" amended. Par 2, penalty interest excluded.	Par 1, Hong Kong Special Administrative Region defined, South Africa defined, the term "business" defined, term "competent authority" amended. Par 2, penalty interest excluded.

Article 4	Resident	Par 1, difference is made between resident of Hong Kong and RSA. Par 2(c), tie breaker rule amended that if person has a right to abode in Hong Kong or a national in the case of RSA. Par 3, provision made of mutual agreement, failing which tax payer shall not be entitled to any benefits, except under Articles 21, 22 and 23.	Par 1, difference is made between resident of Hong Kong and RSA. Par 2(c), tie breaker rule amended that if person has a right to abode in Hong Kong or a national in the case of RSA. Par 3, provision made of mutual agreement, failing which tax payer shall not be entitled to any benefits, except under Articles 21, 22 and 23.
Article 5	Permanent Establishment	Par 3, construction PE follows similar wording of UN Model, providing for 6 month period re construction and making provision for services for a period exceeding 12 months.	Par 5, insurance PE removed. Par 6, agency PE follows similar wording of OECD Model.
Article 6	Income from immovable property	No material deviation	Par 4, ref to income re independent personal services removed.
Article 7	Business profits	Par 3, in determining the profits of a PE, deductions may be allowed. Par 4, method of apportionment shall be in accordance with principles in Articles. Par 5, No profits shall be attributed by reason of mere purchase by that PE of goods or merchandise for the enterprise. Par 6, Method of attribution shall be the same method year by year.	Par 1, profits of an enterprise: limitation re profit attribution removed. Par 3, in determining the profits of a PE, deductions may be allowed. Exceptions to deductions were removed. Par 4, method of apportionment shall be in accordance with principles in Articles. Par 5, No profits shall be attributed by reason of mere purchase by that PE of goods or merchandise for the enterprise. Par 6, Method of attribution shall be the same method year by year.

Article 8	Shipping and air transport	Par 1, ref to PoEM removed. Tax at residents. Par 2, ref to inland waterways removed. Par 3, ref to POEM and inland waterways removed.	Par 1, ref to PoEM removed. Tax at residents. Par 2, ref to inland waterways removed. Par 3, ref to POEM and inland waterways removed.
Article 9	Associated enterprises	No material deviation	Par 3, exceptions relating to judicial, administrative or other legal proceedings that resulting in a final ruling, has been removed.
Article 10	Dividends	Par 2, limit adjusted to 10% in all other instances. Shareholding interest requirement reduced to 10%. Par 3, term dividends amended. Par 6, anti-abuse rule included.	Par 2, limit adjusted to 10% in all other instances. Shareholding interest requirement reduced to 10%. Par 3, term dividends amended. Par 6, anti-abuse rule included.
Article 11	Interest	Par 3, provision made for exemptions from tax re interest. Par 8, provision made of anti-abuse rule.	Par 3, provision made for exemptions from tax re interest. Par 5, reference to independent personal services re a fixed base removed. Par 8, provision made of anti-abuse rule.
Article 12	Royalties	Par 1, beneficially owned replaced with "paid" may be taxed. No exclusive rights. Par 2, 5% limitation to tax by resident state. Par 3, term "Royalties" amended. Par 4, provision made for when royalties are deemed to arise. Par 7, provision made for anti-abuse rule.	Par 1, beneficially owned replaced with "paid" may be taxed. No exclusive rights. Par 2, 5% limitation to tax by resident state. Par 3, term "Royalties" amended. Par 4, provision made for when royalties are deemed to arise. Ref to independent personal services removed. Par 7, provision made for anti-abuse rule.

Article 13	Capital Gains	Par 3, ref to PoEM re aircraft and ships removed. Par 4, exemptions capital gains.	Par 2, ref to gains re fixed property and independent personal services removed. Par 3, ref to PoEM re aircraft and ships removed. Par 4, exemptions capital gains.
Article 14	Independent personal services	No deviations	Removed
Article 15	Income from employment	Par 3, ref to inland waterways and PoEM removed.	Par 3, ref to inland waterways and PoEM removed.
Article 16	Directors fees	No material deviation	Par 2, ref to income of persons on top manager level removed.
Article 17	Artistes and sportspersons	No material deviation	No material deviation
Article 18	Pensions	Par 1, other similar remuneration includes lumpsum payments. Re to social security pensions.	Par 1, other similar remuneration includes lumpsum payments. Re to social security pensions.
Article 19	Government services	Par 1(b), ref to national defined with re Hong Kong and RSA respectively. Par 2, lumpsum payments under similar remuneration included. Par 3, provision made for lumpsum payments re other similar remuneration.	Par 1(b), ref to national defined with re Hong Kong and RSA respectively. Par 2, lumpsum payments under similar remuneration included. Par 3, provision made for lumpsum payments re other similar remuneration.
Article 20	Students	Par 1, ref to business apprentice removed.	Par 1, ref to business trainee and apprentice removed.
Article 21	Other income	No material deviation	Par 2, reference to independent personal services re a fixed base removed.
Article 22	Capital	Removed	Removed

Article 23	Methods for elimination of double taxation	Par 1 and 2, subject to domestic legislation, the credit method shall be applied.	Par 1 and 2, subject to domestic legislation, the credit method shall be applied.
Article 24	Non-discrimination	Par 1, ref to nationals amended to reflect persons with the right of abode in Hong Kong. Par 2, ref to stateless persons removed. Par 3, ref to debts of an enterprise removed	Par 1, ref to nationals amended to reflect persons with the right of abode in Hong Kong. Par 2, ref to stateless persons removed. Par 3, ref to debts of an enterprise removed
Article 25	Mutual Agreement Process	Par 1, provision made for persons with right of abode in Hong Kong. Par 5, removed, no provision for unresolved cases arbitration.	Par 1, provision made for persons with right of abode in Hong Kong. Par 5, removed, no provision for unresolved cases arbitration.
Article 26	Exchange of information	Par 2, the provision that the information collected received by a contracting state may be used for other purposes has been removed.	Par 6, the provision that competent authorities shall through consultation develop appropriate methods and techniques has been removed.
Article 27	Assistance in the collection of taxes	Removed	Removed

5.7 South Africa – USA DTT

Article	Title	Deviations from relevant National Model of 1996
Article 1	General Scope	Par 1(4), The US may tax based on reason of US citizenship.
Article 2	Taxes covered	Par 1, blank fields populated with ref to contracting states' domestic legislation.
Article 3	Definitions	Provision made for seabed and term "National" defined.

Article 4	Resident	Par 4(a)(i) place of effective management removed. Par 4(a) distinction made between RSA resident and USA resident in definition.
Article 5	Permanent Establishment	Par 3, provision made for warehouse facilities, furnishing of services for a period longer than 183 days.
Article 6	Income from Immovable property	par 1, the term Immovable property includes "include property accessory to immovable property, livestock equipment used in agriculture and forestry, certain rights and usufructs, but excludes ships, boats and aircraft shall not be regarded as immovable property. Par 5, computation of tax re income on a net basis as if such income were business profits attributable to a permanent establishment in such other State were removed.
Article 7	Business profits	Par 3, prohibits a deduction in respect of amounts, if any, incurred (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices under certain circumstances. Par 5, income covered by other Articles excluded from Article 7. Par 6, definition of "business profits" removed.
Article 8	Shipping and air transport	Par 2, reference to rental of ships or aircraft on a bareboat basis removed. Reference to incidental profits amended.
Article 9	Associated enterprises	Par 2, provision made for an adjustment by agreement.
Article 10	Dividends	Par 3, provides for dividends paid by investment companies. Par 5, ref to corporation undistributed profits, except as provided for in par 8 has been removed. Par 6, dividend equivalent amount tax limit 5%. Par 7, dividend equivalent amount defined. Par 8, dividend may not be taxed where taxpayer is a resident under certain circumstances.
Article 11	Interest	Par 5, interest that is contingent interest of a type that does not qualify as portfolio interest under US law may be taxed.

Article 12	Royalties	No material changes
Article 13	Capital Gains Tax	Par 3, gains from alienation of movable property forming part of the business property of a PE.
Article 14	Independent Personal Services	Par 1, taxed only to the proportion attributed to the fixed base. Deemed to have a fixed base for period excess of 183 days over any twelve month period.
Article 15	Dependent personal services	No material changes
Article 16	Directors fees	No material changes
Article 17	Entertainers and sportsmen	Par 1, limitation of USD 7500. Par 3, exclusive taxation if funds paid by government.
Article 18	Pensions and annuities	Par 1, may be taxed in state of source to a max of 15% if US is state of Source. Where state of source is RSA, beneficial owner of pension was employed in RSA for period of 10 years and more. Par 3, annuities derived by resident of a state, shall only be taxable in that state. Par 4, alimony paid by one resident paid by resident of contracting state and not deductible therein shall be exempt from tax in both states. Par 7, pension and other similar remuneration is deemed to arise from sources within a contracting state to the extent that the pensionable service to which it relates is performed in that state.
Article 19	Government services	Par 3, shall not apply to payments in respect of services rendered in connection with any trade / business carried on by either of the Contracting States.
Article 20	Students	Par 1, provision made for full time education or training shall be exempted from tax in visiting state.
Article 21	Other income	No material changes
Article 22	Limitation of benefits	Par 2, includes a legal person incorporated under the laws of a contracting state that is generally exempt from tax. Also includes a trust if it meets certain conditions. Par 6, provision made for 3rd party jurisdictions.

Article 23	Elimination of double taxation	par 2, provision for a credit in respect of the of the other state (non-USA) has been made for taxes paid by RSA residents that shall be deducted to an amount not exceeding the amount which bears to the total RSA tax payable.
Article 24	Non-discrimination	Par 1, for purposes of USA taxation, USA nationals are not in the same circumstances as RSA nationals who are not residents of USA.
Article 25	Mutual Agreement procedures	Par 1, case must be presented within 3 years from date of notification. Par 3, competent authorities of states may consult. Par 4, competent authorities may communicate with each other and develop procedures, conditions, methods and techniques for implementation of mutual agreement.
Article 26	Exchange of information	Par 3, provision for authority to obtain and provide info held by financial institutions, nominees / persons removed. Par 5, states may not impose on each other administrative measures which are different in nature from used in the collection of its own taxes.
Article 27	Diplomatic agents	Par 1, amended to include members of diplomatic missions or consular posts.

5.8 South Africa – India DTT

Article	Title	Deviations from OECD (2008)	Deviations from UN Model (2011)
Article 1	Persons covered	No material deviations	No Material deviations
Article 2	Taxes covered	No material deviations	No Material deviations
Article 3	General definitions	Par 1, the terms "India", "South Africa", "competent authority" and "person" defined.	Par 1, the terms "India", "South Africa", "competent authority" and "person" defined.

Article 4	Resident	Par 1, term resident amended to mean resident in terms of domestic law of the respective states. Par 3, if PoEM could not be determined, competent authorities shall settle by mutual agreement.	Par 1, term resident amended to mean resident in terms of domestic law of the respective states. Par 3, if PoEM could not be determined, competent authorities shall settle by mutual agreement.
Article 5	Permanent Establishment	Par 2, specifically includes installation or structure used for exploration of natural resources and a warehouse. Par 2, a construction, assembly project or supervisory activity in connection with such a site if it exceeds 6 months shall constitute a PE.	Par 2, specifically includes installation or structure used for exploration of natural resources and a warehouse. Par 2, a construction, assembly project or supervisory activity in connection with such a site if it exceeds 6 months shall constitute a PE. Par 5, includes an agent that habitually exercises an authority to conclude contracts on behalf of enterprise. Par 6, the condition that independent agent should not be devoted wholly on behalf of enterprise has been removed.
Article 6	Income from immovable property	Par 4, includes income from immovable property used for the performance of independent personal services.	No Material deviations

Article 7	Business profits	Par 3, in determining the profits of PE, deductions shall be allowed. Par 4, method of apportionment attributed to a PE shall in accordance with provisions of this Article. Par 6, profits attributed shall be determined by the same method year by year.	Par 3, in determining the profits of PE, deductions shall be allowed. Limitation in respect of deductions has been removed. Par 4, method of apportionment attributed to a PE shall in accordance with provisions of this Article. Par 6, profits attributed shall be determined by the same method year by year.
Article 8	Shipping and air transport	Par 1, profits of an enterprise operating ships and aircraft in international shall be taxable only in that state. Par 2, inland waterways removed. Par 3, ref to inland waterways removed, but includes income re rental.	Par 1, profits of an enterprise operating ships and aircraft in international shall be taxable only in that state. Par 2, inland waterways removed. Par 3, ref to inland waterways removed, but includes income re rental.
Article 9	Associated enterprises	No material deviations	Par 3, the reference to judicial and legal proceedings that resulted in a final ruling has been removed.
Article 10	Dividends	Par 2, limitation to 10% of gross amount. Par 3, the term "dividends" was amended,. Par 4, includes independent personal services from a fixed base.	Par 2, limitation to 10% of gross amount. Par 3, the term "dividends" was amended.

Article 11	Interest	Par 3, provides for exemptions e.g. Reserve Bank. Par 5, includes independent personal services from a fixed base.	Par 3, provides for exemptions e.g. Reserve Bank.
Article 12	Royalties	Par 1, includes technical services. Par 2, limit of 10% tax in state of source. Par 3, term "royalties" defined. Par 4, term "technical services" defined. Par 6, provides when Royalties or Fees for Technical Services are deemed to have arisen.	Par 1, includes technical services. Par 2, limit of 10% tax in state of source. Par 3, term "royalties" defined. Par 4, term "technical services" defined. Par 6, provides when Royalties or Fees for Technical Services are deemed to have arisen.
Article 13	Capital Gains	Par 2, includes ref to independent personal services. Par 3, ref to inland waterways removed. Par 4, Gains of alienation of shares or interest in a trust, partnership may be taxed in that state. Par 5, threshold of 50% removed.	Par 2, includes ref to independent personal services. Par 3, ref to inland waterways removed. Par 5, period of 12 months removed.
Article 14	Independent Personal Services	Included	No Material deviations
Article 15	Income from employment	Par 3, ref to inland waterways removed.	Par 3, ref to inland waterways removed.
Article 16	Director fees	No material deviations	Par 2, ref to other top level managerial positions removed.
Article 17	Entertainers and sport persons	Par 3, income exempted if fund by a state.	Par 3, income exempted if fund by a state.

Article 18	Pensions	Par 2, reference to annuity and wording "in respect of pas employment" removed.	Par 2, reference to annuity and wording "in respect of pas employment" removed.
Article 19	Government service	Par 1, excludes pensions.	Par 1, excludes pensions.
Article 20	Students	Par 2, payments received by student or business apprentice not exceeding USD 3000 shall be exempted from tax in state residence.	Par 2, payments received by student or business apprentice not exceeding USD 3000 shall be exempted from tax in state residence.
Article 21	Other income	No material deviations	No Material deviations
Article 22	Capital	Removed	Removed
Article 23	Elimination of double taxation	Par 1, where resident of India derives income which may be taxed in RSA, India shall allow a deduction. Vice versa re RSA.	Par 1, where resident of India derives income which may be taxed in RSA, India shall allow a deduction. Vice versa re RSA.
Article 24	Non-discrimination	Par 2, ref to stateless persons removed. Par 4, ref to determining taxable profits of an enterprise, it shall be deductible under same conditions as if they has been paid to resident in first state removed.	Par 2, ref to stateless persons removed. Par 4, ref to determining taxable profits of an enterprise, it shall be deductible under same conditions as if they has been paid to resident in first state removed.

Article 25	Mutual Agreement	Par 4, ref to joint commission removed. Par 5, competent authorities may communicate with each directly for the purposes of reaching an agreement and where advisable through a joint commission.	Par 4, ref to joint commission removed. Par 5, competent authorities may communicate with each directly for the purposes of reaching an agreement and where advisable through a joint commission.
Article 26	Exchange of information	No material deviations	Par 2, information collected may be used for other purposes when permitted by domestic law.
Article 27	Assistance in recovery	Par 1, to the extent permitted by the respective domestic law, led assistance to each other to recover taxes. Par 2, claims subjected to requests, shall not have priority over taxes owing to other contracting state.	Par 1, to the extent permitted by the respective domestic law, led assistance to each other to recover taxes. Par 2, claims subjected to requests, shall not have priority over taxes owing to other contracting state.

5.9 South Africa – India DTT

Article	Title	Deviations from OECD (1995)	Deviations from UN Model (1980)
Article 1	General Scope	No deviations	No Deviations
Article 2	Taxes covered	Par 1, tax on capital removed. Par 2, taxes on capital, capital appreciation and taxes on total amount of wages / salaries removed.	Par 1, tax on capital removed. Par 2, taxes on capital, capital appreciation and taxes on total amount of wages / salaries removed.

Article 3	General Definitions	Par 1, term "Indonesia" and RSA defined, term national amended,.	Par 1, term "Indonesia" and RSA defined, term national amended,.
Article 4	Resident	Par 1, term "resident" amended to make specific reference to RSA and Indonesia respectively. Par 3, where taxpayer is resident of both contracting states, the competent authorities shall settle by mutual agreement.	Par 1, term "resident" amended to make specific reference to RSA and Indonesia respectively. Par 3, where taxpayer is resident of both contracting states, the competent authorities shall settle by mutual agreement.
Article 5	Permanent Establishment	Par 2, includes a warehouse, a ship, drilling rig or structure for the exploration of natural resources. Par 3, building site, construction, assembly or installation project for a period longer than 6 months. Includes the furnishing of services for period longer than 120 days within twelve month period.	Par 2, includes a warehouse, a ship, drilling rig or structure for the exploration of natural resources. Par 3, building site, construction, assembly or installation project for a period longer than 6 months. Includes the furnishing of services for period longer than 120 days within twelve month period. Par 5, provision for agent amended to follow OECD model.
Article 6	Immovable property	No deviations	No Deviations
Article 7	Business profits	Par 1, provision made for attribution of profits to a PE, sales in that other state re goods and merchandise, other business activities.	Par 3, in determining profits of a PE, the wording of the OECD model is followed.

Article 8	Shipping and air transport	par 1, residence tax of enterprise re income from operation of ships / aircraft. Par 2, ref to inland waterways removed. Profits incidental to rental on a bare boat basis included. Par 3, profits from use / rental of containers used for international transport shall be taxed only in that state.	par 1, residence tax of enterprise re income from operation of ships / aircraft. Par 2, ref to inland waterways removed. Profits incidental to rental on a bare boat basis included. Par 3, profits from use / rental of containers used for international transport shall be taxed only in that state.
Article 9	Associated enterprises	Par 2, the other state MAY make an appropriate adjustment.	Par 2, the other state MAY make an appropriate adjustment.
Article 10	Dividends	Par 2, tax limit 10% if the beneficial owner is a company or 15% if gross amount of dividend in all other cases. Par 3, the term "dividend" was amended.	Par 2, tax limit 10% if the beneficial owner is a company or 15% if gross amount of dividend in all other cases. Par 3, the term "dividend" was amended.
Article 11	Interest	Par 3, provides for exemptions re Government funds and Bank of Indonesia / Reserve Bank. Par 4, the definition of "interest" was amended to include interest re deferred payment sales.	Par 3, provides for exemptions re Government funds and Bank of Indonesia / Reserve Bank. Par 4, the definition of "interest" was amended to include interest re deferred payment sales.
Article 12	Royalties	Par 1, not exclusive taxing rights re state of source. Par 2, State of source limited to 10% tax. Par 3, term "Royalties" amended. Par 5, provision made for when royalties are deemed to arise.	Par 1, not exclusive taxing rights re state of source. Par 2, State of source limited to 10% tax. Par 3, term "Royalties" amended. Par 5, provision made for when royalties are deemed to arise.

Article 13	Capital gains	Par 3, exclusive tax in resident state re alienation of ships, inland waterways removed.	Par 3, exclusive tax in resident state re alienation of ships, inland waterways removed. Par 4, reference to gains from alienation of shares removed.
Article 14	Independent services	Par 1, provision made for individual who exceeds 120 days during a 12 month period shall be deemed to have a fixed base.	Par 1, provision made for individual who exceeds 120 days during a 12 month period shall be deemed to have a fixed base. Other reference to "fixed based" removed.
Article 15	Independent services	Par 3, ref to inland waterways removed.	Par 3, ref to inland waterways removed.
Article 16	Directors fees	Par 1, includes other similar organ.	par 1, reference to "top level managerial officials" removed.
Article 17	Entertainer and sports persons	Par 3, provision for exemption if funded by Government.	Par 3, provision for exemption if funded by Government.
Article 18	Pensions and annuities	Par 1, no exclusive taxing rights for resident state. Par 2, "annuities" defined.	Par 1, no exclusive taxing rights for resident state. Par 2, "annuities" defined.
Article 19	Government Services	No material deviation	No material deviation
Article 20	Students	Par 1, must be solely for purpose of education / training.	Par 1, must be solely for purpose of education / training.
Article 21	Other income	Par 1, may be taxed by other state if not taxed by 1st state. Par 2, exemptions removed.	Par 1, may be taxed by other state if not taxed by 1st state. Par 2, exemptions removed.
Article 22	Capital	Removed	Removed
Article 23	Elimination of double taxation	Par 1, provision made for credit method.	Par 1, provision made for credit method.

Article 24	Non-discrimination	Par 2, reference to stateless persons removed. Par 4, nothing shall prohibit Indonesia and RSA from imposing taxes on PE that shall not exceed 10%.	Par 2, reference to stateless persons removed. Par 4, nothing shall prohibit Indonesia and RSA from imposing taxes on PE that shall not exceed 10%.
Article 25	Mutual Agreement	Par 1, timeline is two years. Par 2, prescribes after 10 years. Par 3, provision made for a joint commission.	Par 1, timeline is two years. Par 2, prescribes after 10 years. Par 3, provision made for a joint commission.
Article 26	Exchange of information	Par 1, if information is originally regarded as secret, it shall be disclosed only to bodies involved in the assessment / enforcement of taxes subject to DTA.	Par 1, if information is originally regarded as secret, it shall be disclosed only to bodies involved in the assessment / enforcement of taxes subject to DTA. Consultation process removed.
Article 27	Members of diplomatic missions and consular posts	No material deviation	No material deviation

5.10 South Africa – Iran DTT

Article	Title	Deviations from 1997 OECD	Deviations from 1980 UN Model
Article 1	General Scope	No changes	No changes
Article 2	Taxes covered	Par 2, removed wording "taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation"	Par 2, removed wording "taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation"

Article 3	General Definitions	Par 1, registered office, South Africa, Islamic Republic of Iran, competent authority and national defined.	Par 1, registered office, South Africa, Islamic Republic of Iran, competent authority and national defined.
Article 4	Resident	Par 1, definition of "resident" amended to make reference to the respective contracting states. Par 3, place of registered office replaced PoEM.	Par 1, definition of "resident" amended to make reference to the respective contracting states. Par 3, place of registered office replaced PoEM.
Article 5	Place of effective management	Par 3, wording of construction PE follows that of the UN Model except that the period is six months. Par 6, exclusion of agents that do not conclude agreements that were not made under arms length conditions.	Par 3, construction PE period is that of 12 months. Par 5, wording re agency follows the OECD Model. Par 6, exclusion of agents that do not conclude agreements that were not made under arms length conditions.
Article 6	Income from immovable property	Par 4, where the ownership of shares or other corporate rights in a company entitles the owner of such shares or corporate rights to the enjoyment of immovable property held by the company, the income from direct use, letting, or use in any other form of such a right to enjoyment may be taxed in the Contracting State in which the immovable property is situated	Par 4, where the ownership of shares or other corporate rights in a company entitles the owner of such shares or corporate rights to the enjoyment of immovable property held by the company, the income from direct use, letting, or use in any other form of such a right to enjoyment may be taxed in the Contracting State in which the immovable property is situated

Article 7	Business Profits	Par 3, in determining the profits of a PE, expenses of PE can be deducted as if it was an independent enterprise.	Par 3, in determining the profits of a PE, expenses of PE can be deducted as if it was an independent enterprise.
Article 8	Shipping and air transport	Par 1, exclusive tax at source. Par 2, reference to inland waterways removed.	Par 1, exclusive tax at source. Par 2, reference to inland waterways removed.
Article 9	Associated enterprise	No changes	No material changes
Article 10	Dividends	Par 2, 10% limit is applicable to all dividends. Par 3, term "dividends" amended.	Par 2, 10% limit is applicable to all dividends. Par 3, term "dividends" amended.
Article 11	Interest	par 2, source state tax limit is 5%. Ref to mutual agreement as to the mode of taxation has been removed. Par 4, exemption of interest paid by Government.	par 2, source state tax limit is 5%. Ref to mutual agreement as to the mode of taxation has been removed. Par 4, exemption of interest paid by Government.
Article 12	Royalties	par 1, no exclusivity of resident state. Par 2, source state limited to 10% tax. Par 3, definition of "Royalties" amended. Par 5 provides for when royalties are deemed to have arisen.	par 1, no exclusivity of resident state. Par 2, source state limited to 10% tax. Par 3, definition of "Royalties" amended. Par 5 provides for when royalties are deemed to have arisen.
Article 13	Capital gains	Par 3, resident taxation, reference to inland waterways removed. Par 4, provided for gains from the alienation of shares.	Par 3, resident taxation, reference to inland waterways removed.

Article 14	Independent services	Par 1, who is a resident of a Contracting State is present in the other Contracting State for a period or periods exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned, he shall be deemed to have a fixed base. Par "professional services" term amended.	Par 1, who is a resident of a Contracting State is present in the other Contracting State for a period or periods exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned, he shall be deemed to have a fixed base. Par "professional services" term amended.
Article 15	Dependent personal services	Par 3, reference to inland waterways removed.	Par 3, reference to inland waterways removed.
Article 16	Director fees	No changes	Par 2, ref to top level managerial position removed.
Article 17	Entertainers and sport persons	Par 3, exemption provided for funds paid by the other contracting state.	Par 3, exemption provided for funds paid by the other contracting state.
Article 18	Pension and annuities	Par 1, not exclusive taxation in resident state. Par 2, exclusive taxation if pension paid by the state funds.	Par 1, not exclusive taxation in resident state. Par 2, exclusive taxation if pension paid by the state funds.
Article 19	Government Service	Par 2, reference to pensions removed.	Par 2, reference to pensions removed.

Article 20	Students	Par 2, exemption of remuneration received by a teacher or by a researcher who is a national of a Contracting State and who is present in the other Contracting State for the primary purpose of teaching or engaging in scientific research for a period or periods not be taxed in that State exceeding two years	Par 2, exemption of remuneration received by a teacher or by a researcher who is a national of a Contracting State and who is present in the other Contracting State for the primary purpose of teaching or engaging in scientific research for a period or periods not be taxed in that State exceeding two years
Article 21	Other income	Par 1, taxes not covered by the DTA, may be taxed. Par 2, reference to PE removed.	Par 1, taxes not covered by the DTA, may be taxed. Par 2, reference to PE removed.
Article 22	Capital	Removed	Removed
Article 23	Elimination of double taxation	Par 1, provision made for credit method.	Par 1, provision made for credit method.
Article 24	non-discrimination	Par 2, ref to stateless persons removed. Par 3, ref to interpretation against the allowance to residents of the other Contracting State any personal allowances, reliefs and reductions removed.	Par 2, ref to stateless persons removed. Par 3, ref to interpretation against the allowance to residents of the other Contracting State any personal allowances, reliefs and reductions removed.
Article 25	Mutual agreement	Par 4, ref to joint commission removed.	Par 4, ref to development of unilateral procedures, conditions etc. removed.
Article 26	Exchange of information	No material deviations	Par 1, all information shall only be disclosed to persons involved in the assessment or collection. Ref to development of appropriate conditions, methods and techniques removed.

Article 27	Members of diplomatic missions	No material deviations	No material changes
Article 28	Entry into force	States shall notify each other of procedures required to bring DTA into force. DTA shall enter into force from the date of receipt of these notifications	States shall notify each other of procedures required to bring DTA into force. DTA shall enter into force from the date of receipt of these notifications

5.11 South Africa – Korea DTT

Article	Title	Deviations from 1992 OECD	Deviations from 1980 UN Model
Article 1	Persons covered	No changes	No changes
Article 2	Taxes covered	Par 1, ref to which taxes the convention applies removed. Par 2, ref to types of taxes removed. Par 3, existing taxes populated.	Par 1, ref to which taxes the convention applies removed. Par 2, ref to types of taxes removed. Par 3, existing taxes populated.
Article 3	Gen definitions	Par 1, Korea, South Africa, tax, contracting state, national, competent authority defined.	Par 1, Korea, South Africa, tax, contracting state, national, competent authority defined.
Article 4	Resident	Par 1, the term "resident" amended with reference to respective domestic legislation. Par 3, in cases of doubt, competent authorities of contracting states shall settle the question by mutual agreement.	Par 1, the term "resident" amended with reference to respective domestic legislation. Par 3, in cases of doubt, competent authorities of contracting states shall settle the question by mutual agreement.
Article 5	Permanent Establishment	No material changes	Wording of OECD model is followed.
Article 6	Income from immovable	No material changes	No material changes

	property		
Article 7	Business profits	Par 4, ref that attribution of profits to PE removed. Wording of UN Mode followed.	No material changes
Article 8	Shipping and air transport	Par 1, makes provision for residence tax and not exclusive source taxing. Par 2, ref to inland waterways has been removed and profits from rentals arrangements included.	Par 1, makes provision for residence tax and not exclusive source taxing. Par 2, ref to inland waterways has been removed and profits from rentals arrangements included.
Article 9	Associated enterprises	No material changes	No material changes
Article 10	Dividends	Par 3, term "dividend" amended.	Par 2, wording of OECD Model followed whereby beneficial ownership must be 25%. Par 3, term "dividend" amended.
Article 11	Interest	Par 2, mode of application to be determined by mutual agreement settlement removed. Par 3, exemption provided for interest paid to a government and interest paid in connection with sale of credit in respect of certain equipment. Par 4, Government is defined.	Par 2, mode of application to be determined by mutual agreement settlement removed. Par 3, exemption provided for interest paid to a government and interest paid in connection with sale of credit in respect of certain equipment. Par 4, Government is defined.

Article 12	Royalties	Par 1, not exclusive taxing rights, but state of source may tax up to 10%. Par 2, state of source limited to 10%. Par 3, definition of "royalties" amended. Par 5, Provision made for when royalties are deemed to arise.	Par 2, state of source limited to 10%. Par 3, definition of "royalties" amended.
Article 13	Capital Gains	Par 3, inland waterways removed.	Par 3, inland waterways removed. Par 4, wording of OECD followed whereby ref to alienation of shares removed. Par 5, wording of OECD model followed whereby ref to alienation of shares removed.
Article 14	Independent Personal Services	par 1, provision made for 183 days in a twelve month period, shall be deemed to have a fixed base regularly available to him.	par 1, provision made for 183 days in a twelve month period, shall be deemed to have a fixed base regularly available to him.
Article 15	Dependent personal services	Par 3, ref to inland waterways removed.	Par 3, ref to inland waterways removed.
Article 16	Director fees	No material changes	Par 2, ref to top level managerial position removed.
Article 17	Entertainers and sportsmen	Par 3, exemption for income paid by Government	Par 3, exemption for income paid by Government
Article 18	Pensions	Par 1, pensions, other similar arrangements and annuities MAY be taxed in source state. It is also not in respect of past employment only. Par 2, annuity defined.	Par 1, pensions, other similar arrangements and annuities MAY be taxed in source state. It is also not in respect of past employment only. Par 2, annuity defined.
Article 19	Government service	Par 4, Contracting State or political subdivision includes Bank of Korea, SARB etc.	Par 4, Contracting State or political subdivision includes Bank of Korea, SARB etc.

Article 20	Students, apprentice and business trainees	No material changes	Par 2, condition that student shall be entitled to reductions in respect of taxes available to residents in state which he is visiting removed.
	Professors and researchers	Par 1, provision made for researchers working for non-profit organizations (university, college, school etc) period not exceeding 2 years, shall be exempted from tax by resident state.	Par 1, provision made for researchers working for non-profit organizations (university, college, school etc) period not exceeding 2 years, shall be exempted from tax by resident state.
Article 21	Other income	No changes	No material changes
Article 22	Capital	Removed	Removed
Article 23	Methods for elimination of tax	Provision made for credit	Provision made for credit
Article 24	Non-discrimination	Par 2, ref to "stateless persons" removed. Par 3, reference made to enterprises owned by residents. Par 4, provision for debt to be deducted from profits removed. Par 5, ref to capital removed.	Par 2, ref to "stateless persons" removed. Par 3, reference made to enterprises owned by residents. Par 4, provision for debt to be deducted from profits removed. Par 5, ref to capital removed.
Article 25	Mutual Agreement	No material changes	Par 4, ref to the development of bilateral procedures has been removed. Provision made to reach agreement by oral exchange.
Article 26	Exchange of information	No Changes	Wording of OECD model is followed.
Article 27	Diplomatic missions	No material changes	No material changes
Article 28	Entry into force	Par 1, each contracting party shall notify the other of the procedures require reference to application of taxes.	Par 1, each contracting party shall notify the other of the procedures require reference to application of taxes.

5.12 South Africa – Malaysia DTT

Article	Title	Deviations from 2008 OECD	Deviations from 2011 UN Model
Article 1	Persons covered	No changes	No changes
Article 2	Taxes covered	Par 2, wording was amended to only make reference to income.	Par 2, wording was amended to only make reference to income.
Article 3	Definitions	Par 1, the definitions of certain terms were amended.	Par 1, the definitions of certain terms were amended.
Article 4	Resident	Par 2(b), ref to vital interest has been removed. Par 3, where a company is resident in both states, competent authorities shall settle by mutual agreement.	Par 2(b), ref to vital interest has been removed. Par 3, where a company is resident in both states, competent authorities shall settle by mutual agreement.
Article 5	Permanent Establishment	Par 3, provision for building and construction site amended to provide for construction / assembly project of 12 months and consultancy services for 183 days. Par 5, includes agent that habitually maintains stock of goods or merchandise belonging to enterprise.	Par 3, provision for building and construction site amended to provide for construction / assembly project of 12 months and consultancy services for 183 days. Par 5, includes agent that habitually maintains stock of goods or merchandise belonging to enterprise.
Article 6	Income from immovabe property	Par 4, includes income from immovable property used for the performance of independent personal services.	No changes

Article 7	Business profits	Par 4, provision is made for apportionment in the event that information is inadequate to determine profits attributed.	Par 1, ref only to PE. Par 3, wording of the OECD model is followed. Par 4, provision is made for apportionment in the event that information is inadequate to determine profits attributed.
Article 8	Shipping and air transport	Par 1, makes provision for residence tax. Par 2, reference to inland waterways removed.	Par 1, makes provision for residence tax. Par 2, reference to inland waterways removed.
Article 9	Associated enterprises	Par 1, associated enterprise defined.	Par 1, associated enterprise defined.
Article 10	Dividends	Par 2, exclusion of partnership removed. Provision for mutual agreement to determine mode of application of limitations. Par 3, definition of "dividends" amended. Par 5, makes provision for independent personal services.	Par 2, exclusion of partnership removed. Provision for mutual agreement to determine mode of application of limitations. Minimum of 25% threshold of capital of company paying dividends. Par 3, definition of "dividends" amended.
Article 11	Interest	Par 4, the term "Government" is defined which includes the reserve bank. Government interest excluded. Par 6, provision is made for independent personal services.	Par 4, the term "Government" is defined which includes the reserve bank.

Article 12	Royalties	Par 1, not exclusive residence tax anymore. Par 2, state of source may tax to a max of 5%. Par 3, term "Royalties" amended. Par 5, provides when royalties are deemed to arise.	Par 1, not exclusive residence tax anymore. Par 2, state of source may tax to a max of 5%. Par 3, term "Royalties" amended. Par 5, provides when royalties are deemed to arise.
	Fees for technical services	Provision is made for technical services at a maximum of 5% tax.	Provision is made for technical services at a maximum of 5% tax.
Article 13	Capital Gains	Par 2, provision made for independent personal services. Par 3, ref to inland waterways removed. Par 4, the 50% threshold in respect of alienation of shares removed.	Par 3, ref to inland waterways removed. Par 4, wording of OECD model followed, except that the 50% threshold in respect of alienation of shares removed.
Article 14	Independent Personal Services	Wording of UN Model followed.	No changes
Article 15	Dependent Personal Services	Par 3, ref to inland waterways removed.	Par 3, ref to inland waterways removed.
Article 16	Directors Fees	No changes	No changes
Article 17	Entertainers and sports persons	No material changes	Par 2, wording of OECD Model followed.
Article 18	Pensions	Par 1, includes annuities. Not exclusive source taxing rights. Par 2, "annuity" is defined.	Par 1, includes annuities. Not exclusive source taxing rights. Par 2, "annuity" is defined.
Article 19	Government Service	No material changes	No material changes
Article 20	Students	Par 1, students who qualify amended. Includes researchers.	Par 1, students who qualify amended. Includes researchers.
Article 21	Other income	No material changes	No material changes
Article 22	Capital	Removed	Removed

Article 23	Elimination of double taxation	Credit method applied	Credit method applied
Article 24	Non-discrimination	Par 2, ref to stateless persons removed. Par 3, provision that DTA shall not be interpreted to provide resident of other contracting state any allowances that it grants its own residents, removed. Par 6, nothing shall prevent RSA from imposing profits attributable to PE in RSA which is resident of Malaysia a tax rate not exceeding 5%.	Par 2, ref to stateless persons removed. Par 3, provision that DTA shall not be interpreted to provide resident of other contracting state any allowances that it grants its own residents, removed. Par 6, nothing shall prevent RSA from imposing profits attributable to PE in RSA which is resident of Malaysia a tax rate not exceeding 5%.
Article 25	Mutual agreement procedures	Par 4, ref to joint commission removed. Par 5, ref to unresolved cases removed.	Par 4, ref to joint commission removed. Par 5, ref to unresolved cases removed.
Article 26	Exchange of information	No material changes	Wording of OECD followed
Article 27	Assistance in collection of taxes	Removed	Removed
Article 28	Members of diplomatic missions	No material changes	No material changes

5.13 South Africa – Mexico DTT

Article	Title	Deviations from OECD Model (2008)	Deviations from UN Model (2003)
Article 1	Persons covered	No changes	No changes
Article 2	Taxes covered	No material changes	No material changes
Article 3	General definitions	Par 1, certain definitions were changed.	Par 1, certain definitions were changed.

Article 4	Resident	Par 3, a company that is resident in both states, shall be determined by mutual agreement process. Par 4, A partnership or a trust is a resident of a Contracting State only to the extent that the income it derives is subject to tax in that State as the income of a resident.	Par 2, wording of the OECD model followed. Par 3, a company that is resident in both states, shall be determined by mutual agreement process. Par 4, A partnership or a trust is a resident of a Contracting State only to the extent that the income it derives is subject to tax in that State as the income of a resident.
Article 5	Permanent Establishment	Par 3, provision made for a construction PE exceeding 6 months and furnishing of services for 183 days. Par 6, provision made for insurance PE.	Par 3, provision made for a construction PE exceeding 6 months and furnishing of services for 183 days. Par 6, provision made for insurance PE.
Article 6	Income from Immovable Property	No material changes	Par 4, ref to independent personal services removed.
Article 7	Business profits	Par 1, provision made for attribution of profits where sales in that other State of goods or merchandise of the same or similar kind as the goods or merchandise sold through that permanent establishment. Par 3, prohibition of certain deductions and wording of UN Model followed.	Par 1, provision made for attribution of profits where sales in that other State of goods or merchandise of the same or similar kind as the goods or merchandise sold through that permanent establishment.

Article 8	Shipping and air transport	Par 1, exclusive taxing for resident state. Par 2, ref to inland waterways removed. Par 4, provision made for profits from rental containers.	Par 1, exclusive taxing for resident state. Par 2, ref to inland waterways removed. Par 4, provision made for profits from rental containers.
Article 9	Associated Enterprises	No material changes	Wording of the OECD model is followed.
Article 10	Dividends	Par 2, threshold for ownership is 10% of the capital of a company and a maximum of 10% tax re dividends in all other cases. Par 3, the term "dividend" was amended.	Par 2, threshold for ownership is 10% of the capital of a company and a maximum of 10% tax re dividends in all other cases. Par 3, the term "dividend" was amended.
Article 11	Interest	Par 3, exemption from taxes in contracting in certain circumstances. Par 4, provision made for The term "interest" shall not include any item of income which is considered as a dividend.	Par 3, exemption from taxes in contracting in certain circumstances. Par 4, provision made for The term "interest" shall not include any item of income which is considered as a dividend.
Article 12	Royalties	Par 1, resident tax not exclusive. Par 2, resident state may tax maximum of 10%. Par 3, definition of "royalties" amended. Par 4, when royalties are deemed to arise.	Par 1, resident tax not exclusive. Par 2, resident state may tax maximum of 10%. Par 3, definition of "royalties" amended. Par 4, when royalties are deemed to arise.

Article 13	Capital Gains	Par 3, ref to inland waterways removed. Par 5, provision made for alienation of shares, participation or other rights in the capital of a company which may be taxed at a maximum rate of 20%.	Par 3, ref to inland waterways removed. Par 5, provision made for alienation of shares, participation or other rights in the capital of a company which may be taxed at a maximum rate of 20%.
Article 14	Independent personal services	No changes	Removed
Article 15	Income from employment	Par 3, ref to inland waterways removed.	Par 2, wording of the OECD Model followed.
Article 16	Directors fees	Par 1, provision made for similar organ to that of a board.	Par 2, ref to top managerial position removed.
Article 17	Entertainers and sportspersons	Par 3, tax exempted if paid from public funds.	Par 3, tax exempted if paid from public funds.
Article 18	Pensions	Par 1, not exclusive taxing for state of source. Includes annuities. Par 2, annuities defined. Ref to past employment removed.	Par 1, not exclusive taxing for state of source. Includes annuities. Par 2, annuities defined. Ref to past employment removed.
Article 19	Government services	No material changes	Wording of the OECD model is followed.
Article 20	Students	Par 1, only students shall be exempted from tax.	Par 1, only students shall be exempted from tax.
Article 21	Other income	No material changes	Wording of the OECD model is followed.
	Limitation on benefits	Limitation on benefits of a resident under this DTA set out in this Article.	Limitation on benefits of a resident under this DTA set out in this Article.

Article 23	Elimination of double taxation	Credit method	Credit method
Article 24	Non-discrimination	Par 2, ref to stateless persons removed. Par 4, provisions for debts of an enterprise to be deductible under the same conditions removed. Par 5, prohibition that articles shall prevent South Africa from imposing on the profits attributable to a PE in South Africa of a company by more than 5%.	Par 2, ref to stateless persons removed. Par 4, provisions for debts of an enterprise to be deductible under the same conditions removed. Par 5, prohibition that articles shall prevent South Africa from imposing on the profits attributable to a PE in South Africa of a company by more than 5%.
Article 25	Exchange of information	No material changes	Wording of the OECD model is followed.
Article 26	Assistance in the Collection of Taxes	No material changes	Wording of the OECD model is followed.
Article 27	Members of Diplomatic Missions and Consular Posts	No material changes	Wording of the OECD model is followed.

5.14 South Africa – New Zealand DTT

Article	Title	Deviations from OECD (2000)	Deviations from UN Model (2001)
Article 1	Persons covered	No deviations	No deviations
Article 2	Taxes covered	Par 1, ref to types of taxes covered removed and taxes covered are specified in par 3 per state.	Par 1, ref to types of taxes covered removed and taxes covered are specified in par 3 per state.

Article 3	General definitions	Par 1, definition of contracting states, professional services, competent authority, national amended.	Par 1, definition of contracting states, professional services, competent authority, national amended.
Article 4	Resident	Par 2(a), ref to state of vital interest replaced with "sole residence".	Par 2(a), ref to state of vital interest replaced with "sole residence".
Article 5	Permanent Establishment	Par 3, ref made to assembly project or supervisory activity in connection with such site or project. Time period is UN Model, 6 months. Par 4, PE shall be deemed if exploration of natural resources exceeds 6 months. Par 5, the PE includes services exceeding 183 days. Par 6, anti-fragmentation rule applied.	Par 3, ref made to assembly project or supervisory activity in connection with such site or project. Time period is UN Model, 6 months. Par 4, PE shall be deemed if exploration of natural resources exceeds 6 months. Par 5, the PE includes services exceeding 183 days. Par 6, anti-fragmentation rule applied.
Article 6	Immovable property	Par 2, definition of "immovable property" amended to include rights to explore for or exploit natural resources.	Par 2, definition of "immovable property" amended to include rights to explore for or exploit natural resources.
Article 7	Business profits	Par 3, ref to attribution of profits to PE, no deduction allowed that is not allowed in domestic legislation. Par 4, ref to apportionment of profits removed. Par 6, provision made for trusts as well. Par 8, ref made to profit from insurance.	Par 1, ref to sale / purchasing of goods re PE removed. Par 3, ref to attribution of profits to PE, no deduction allowed that is not allowed in domestic legislation. Par 4, ref to apportionment of profits removed. Par 6, provision made for trusts as well. Par 8, ref made to profit from insurance

Article 8	International transport	Par 1, non-exclusive residence tax. Par 2, ref to such profits may also be taxed in the other Contracting State where they are profits from the operations confined solely to places in that other State. Ref to inland waterways removed. Par 3, ref to rental on a bare boat basis and of containers.	Par 1, non-exclusive residence tax. Par 2, ref to such profits may also be taxed in the other Contracting State where they are profits from the operations confined solely to places in that other State. Ref to inland waterways removed. Par 3, ref to rental on a bare boat basis and of containers. Ref to place of effective management removed.
Article 9	Associated enterprises	No material change	No material change
Article 10	Dividends	Par 1, ref made to dividends beneficial owned. Par 2, limited to 15% in case of New Zealand and 15% in respect of RSA if at least 25% of ownership is held in company and 5% in all other cases. Par 3, the term "dividends" amended. Par 5, article shall not apply to person who is a resident of both states.	Par 1, ref made to dividends beneficial owned. Par 2, limited to 15% in case of New Zealand and 15% in respect of RSA if at least 25% of ownership is held in company and 5% in all other cases. Par 3, the term "dividends" amended. Par 5, article shall not apply to person who is a resident of both states.
Article 11	Interest	Par 3, exemption provided for interest derived by the Government of a Contracting State, or by a bank performing central banking functions. Par 4, term "interest" amended to exclude dividends.	Par 3, exemption provided for interest derived by the Government of a Contracting State, or by a bank performing central banking functions. Par 4, term "interest" amended to exclude dividends.
Article 12	Royalties	Par 1, royalties may be taxed in state of residence. Par 2, state of source may tax royalties up to a max of 10%. Par 3, definition of "royalties" amended. Par 5, ref made in respect of a PE as to when royalties shall arise.	Par 1, royalties may be taxed in state of residence. Par 2, state of source may tax royalties up to a max of 10%. Par 3, definition of "royalties" amended. Par 4, ref to personal independent services removed. Par 5, ref made in respect of a PE as to when royalties shall arise.

Article 13	Capital Gains	Par 3, ref to inland waterways removed. Par 4, provides for income, profits or gains derived by a resident of a Contracting State from the alienation of any shares or other interests in a company, or of an interest of any kind in which a partnership or trust or other entity. Par 5, article does not affect the application of domestic law.	Par 3, ref to inland waterways removed. Par 4, provides for income, profits or gains derived by a resident of a Contracting State from the alienation of any shares or other interests in a company, or of an interest of any kind in which a partnership or trust or other entity. Par 5, article does not affect the application of domestic law.
Article 14	Independent personal services	No changes	Removed
Article 15	Income from employment	Par 3, ref to inland waterways removed.	Par 3, ref to inland waterways removed.
Article 16	Director fees	No changes	No changes
Article 17	Entertainers and sportspersons	No material change	No material change
Article 18	Pension and annuities	Par 1, ref to past employment removed and includes annuities. Par 2, "annuity" defined.	Par 1, ref to past employment removed and includes annuities. Par 2, "annuity" defined.
Article 19	Government service	Par 1, salaries and wages paid by state, excluding pensions shall be exempt from tax by other state.	Par 1, salaries and wages paid by state, excluding pensions shall be exempt from tax by other state.
Article 20	Students	Par 1, ref to business apprentice removed.	Par 1, ref to business apprentice removed.
Article 21	Other income	No material change	No material change
Article 22	Capital	Removed	Removed
Article 23	Elimination of double taxation	Credit method is applied	Credit method is applied

Article 24	Non-discrimination	Par 2, ref to stateless persons removed. Par 3, ref to 3rd party state. Par 4, ref to royalties, interest and other income in relation to domestic legislation removed. Par 5 includes anti-avoidance provisions. Par 6 provides that this Article shall not prevent RSA from imposing on the profits attributable to a PE in RSA of a company, which is a resident of New Zealand, a tax at a rate which does not exceed the rate of normal tax on companies by more than 5%.	Par 2, ref to stateless persons removed. Par 3, ref to 3rd party state. Par 4, ref to royalties, interest and other income in relation to domestic legislation removed. Par 5 includes anti-avoidance provisions. Par 6 provides that this Article shall not prevent RSA from imposing on the profits attributable to a PE in RSA of a company, which is a resident of New Zealand, a tax at a rate which does not exceed the rate of normal tax on companies by more than 5%.
Article 25	Mutual agreement procedure	No material change	Wording of OECD Model followed.
Article 26	Exchange of information	No material change	Wording of OECD Model followed.
Article 27	Members of diplomatic posts	No material change	No material change

5.15 South Africa – Pakistan DTT

Article	Title	Deviations from OECD (1996)	Deviations from UN Model (1980)
Article 1	Persons covered	No deviations	No deviations
Article 2	Taxes Covered	Par 2, amended to include taxes in respect of all income. Par 3, taxes defined with reference to domestic legislation.	Par 2, amended to include taxes in respect of all income. Par 3, taxes defined with reference to domestic legislation.
Article 3	Definitions	Amendments were made to certain definitions.	Amendments were made to certain definitions.

Article 4	Resident	Par 1, definition of resident amended.	Par 1, definition of resident amended. Par 2 and 3, the wording of the OECD Model is followed.
Article 5	Permanent Establishment	Par 2, PE include a warehouse and a sales outlet. Par 3, the wording of the UN Model is followed.	Par 2, PE include a warehouse and a sales outlet. Par 4 and 5 follows the wording of the OECD Model.
Article 6	Income from immovable property	No material deviations	No material deviations
Article 7	Business Profits	Par 3, limitation in respect of deductions of profits attributed to a PE.	Par 3, limitation in respect of deductions of profits attributed to a PE.
Article 8	Shipping and Airtransport	Par 1, provision made for residence taxation. Par 2, tax in state of source shall be reduced by 50%. Par 3, ref to inland waterways has been removed.	Par 1, provision made for residence taxation. Par 2, tax in state of source shall be reduced by 50%. Par 3, ref to inland waterways has been removed.
Article 9	Associated enterprises	Par 3, adjustments MAY be made. Previously it was "shall be made".	Par 3, adjustments MAY be made. Previously it was "shall be made".
Article 10	Dividends	Par 2, a max of 10% if beneficial owner owns more than 10% in company and a max of 15% tax in all other cases. Par 3, the term "dividend" was amended.	Par 2, a max of 10% if beneficial owner owns more than 10% in company and a max of 15% tax in all other cases. Par 3, the term "dividend" was amended.
Article 11	Interest	Par 3, provision made of exempting certain interest from tax e.g. Reserve Bank.	Par 3, provision made of exempting certain interest from tax e.g. Reserve Bank.

Article 12	Royalties	Par 1, non-exclusive tax at source. Par 2, resident tax limited at 10%. Par 3, term "royalties" amended. Par 4, ref made to "fees for technical services". Par 6, provision made for when royalties are deemed to arise.	Par 1, non-exclusive tax at source. Par 2, resident tax limited at 10%. Par 3, term "royalties" amended. Par 4, ref made to "fees for technical services". Par 6, provision made for when royalties are deemed to arise.
Article 13	Capital gains	Par 3, ref to inland waterways removed. Provision made for resident tax in respect of international air and ships traffic.	Par 3, ref to inland waterways removed. Provision made for resident tax in respect of international air and ships traffic.
Article 14	Independent Personal Services	Par 1, provision made for a person that is resident for a period longer than 183 days shall be considered to have a fixed base in that country.	Par 1, provision made for a person that is resident for a period longer than 183 days shall be considered to have a fixed base in that country. Ref to fixed base removed.
Article 15	Dependent Personal Services	Par 3, ref to inland waterways removed.	Par 3, ref to inland waterways removed.
Article 16	Director Fees	No material deviations	Par 2, ref to top managerial positions removed.
Article 17	Entertainers and sports persons	Par 3, exempted from tax if funds paid by other contracting state.	Par 3, exempted from tax if funds paid by other contracting state.
Article 18	Pensions	Par 1, annuities included. Par 2, ref to past employment removed and includes government pensions. Par 3, term "annuity" is defined.	Par 1, annuities included. Par 2, ref to past employment removed and includes government pensions. Par 3, term "annuity" is defined.
Article 19	Government Service	No material deviations	No material deviations

Article 20	Student, apprentices and trainees	Par 1, includes trainee.	Par 1, includes trainee. Par 2, ref to reduction in taxes removed.
Article 21	Other income	No material deviations	No material deviations
Article 22	Capital	Removed	Removed
Article 23	Elimination of double taxation	Credit method applied	Credit method applied
Article 24	Non-discrimination	Par 2, ref to stateless persons removed. Par 4, ref to deduction under same condition as in domestic legislation removed.	Par 2, ref to stateless persons removed. Par 4, ref to deduction under same condition as in domestic legislation removed.
Article 25	Mutual Agreement	Par 4, ref to joint commission removed. Provision made for competent authorities to develop bi-lateral policies.	Par 4, ref to joint commission removed. Provision made for competent authorities to develop bi-lateral policies.
Article 26	Exchange of information	No material deviations	Wording of the OECD Model is followed.
Article 27	Entry into force	Each contracting state shall provide the other with the procedures to follow to effect the provisions of the DTA. Upon receipt of such a notification, the DTA shall become effective.	Each contracting state shall provide the other with the procedures to follow to effect the provisions of the DTA. Upon receipt of such a notification, the DTA shall become effective.

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