

The Agreement between the Government of the Republic of South Africa and the Government of Southern Rhodesia (which is now of application to Zimbabwe) for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, was published in Government Gazette No. 1234 dated 24 September 1965 and entered into force on 3 September 1965.

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

The Government of the Republic of South Africa and the Government of Southern Rhodesia desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion in respect of taxes on income, have agreed as follows: -

**Article I**

(1) The taxes which are the subject of this Agreement are –

(a) in the Republic of South Africa –

- (i) the normal tax; and
- (ii) the provincial income tax; and
- (iii) all other taxes on persons or on the incomes of persons which are chargeable in the Republic of South Africa;

(hereinafter referred to as “South African tax”);

(b) in Southern Rhodesia –

- (i) the income tax; and
- (ii) the supertax; and
- (iii) all other taxes on persons or on the incomes of persons which are chargeable in Southern Rhodesia;

(hereinafter referred to as “Southern Rhodesian tax”).

(2) This Agreement shall also apply to any other taxes of a substantially similar character imposed by either Contracting Government subsequently to the date of signature of this Agreement.

**Article II**

(1) In this Agreement, unless the context otherwise requires –

(a) the term “South Africa” means the Republic of South Africa;

(b) the terms “one of the territories” and “the other territory” mean South Africa or Southern Rhodesia, as the context requires;

(c) the term “tax” means South African tax or Southern Rhodesian tax, as the context requires;

- (d) the term "person" includes any body of persons, corporate or not corporate;
- (e) the term "company" includes any body corporate;
- (f)
  - (i) the terms "resident of South Africa" and "resident of Southern Rhodesia" mean respectively any person who is ordinarily resident in South Africa for the purposes of South African tax and any person who is ordinarily resident in Southern Rhodesia for the purposes of Southern Rhodesian tax; but
  - (ii) where by reason of the provisions of sub-paragraph (i) an individual is a resident of both territories, then this case shall be solved in accordance with the following provisions -
    - (aa) He shall be deemed to be a resident of the territory in which he has a permanent home available to him; if he has a permanent home available to him in both territories, he shall be deemed to be a resident of the territory with which his personal and economic relations are closest (hereinafter referred to as "his centre of vital interests");
    - (bb) if the territory in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either territory, he shall be deemed to be a resident of the territory in which he has an habitual abode;
    - (cc) if he has an habitual abode in both territories or in neither of them, he shall be deemed to be a resident of the territory of which he is a national;
    - (dd) if he is a national of both territories or of neither of them, the taxation authorities of the territories shall determine the question by mutual agreement;
  - (iii) where by reason of the provisions of sub-paragraph (i) a legal person is a resident of both territories, then it shall be deemed to be a resident of the territory in which its place of effective management is situated; the same provision shall apply to partnerships and associations which under the national laws by which they are governed are not legal persons;
- (g) the terms "company of one of the territories" and "company of the other territory" mean a company which is a resident of South Africa or a company which is a resident of Southern Rhodesia, as the context requires;
- (h) the terms "South African enterprise" and "Southern Rhodesian enterprise" mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of South Africa and an industrial or commercial enterprise or undertaking carried on by a resident of Southern Rhodesia; and the terms "enterprise of one of the territories" and "enterprise of the other territory" mean a South African enterprise or a Southern Rhodesian enterprise, as the context requires;

- (i) the term “industrial or commercial enterprise or undertaking” includes an enterprise or undertaking engaged in mining, agricultural or pastoral activities or in the business of banking, insurance or dealing in investments, and the term “industrial or commercial profits” includes profits from such activities or business but does not include income in the form of –
  - (i) dividends;
  - (ii) interest;
  - (iii) rents or royalties, including rents or royalties of cinematograph or television films or any sound recording or advertising matter connected with such films, and any amount received or accrued for the imparting of or the undertaking to impart any knowledge directly or indirectly connected with the use of any such film, sound recording or advertising matter or of any patent, design, model, plan, trade mark, copyright, secret process, formula or other property of a similar nature;
  - (iv) management charges;
  - (v) remuneration for personal services;
  - (vi) profits from the operation of transport services;
- (j) (i) the term “permanent establishment” means a fixed place of business in which the business of the enterprise is wholly or partly carried on;
- (ii) a permanent establishment shall include especially -
  - (aa) a place of management;
  - (bb) a branch;
  - (cc) an office;
  - (dd) a factory;
  - (ee) a workshop;
  - (ff) a mine, quarry, or other place of extraction of natural resources;
- (iii) the term “permanent establishment” shall not include –
  - (aa) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
  - (bb) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
  - (cc) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
  - (dd) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;

- (ee) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise;
- (iv) an enterprise of one of the territories shall be deemed to have a permanent establishment in the other territory if it carries on the activity of providing the services of public entertainers or of athletes referred to in Article X, in that other territory;
- (v) a person acting in one of the territories on behalf of an enterprise of the other territory, other than an agent of an independent status to whom subparagraph (vi) applies, shall be deemed to be a permanent establishment in the first-mentioned territory if he has, and habitually exercises in that territory, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise;
- (vi) an enterprise of one of the territories shall not be deemed to have a permanent establishment in the other territory merely because it carries on business in that other territory through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business;
- (vii) the fact that a company which is a resident of one of the territories controls or is controlled by a company which is a resident of the other territory, or which carries on business in that other territory, whether through a permanent establishment or otherwise, shall not of itself constitute either company a permanent establishment of the other;
- (viii) the fact that an enterprise of one of the territories is erecting plant or machinery in the other territory shall not of itself constitute a permanent establishment of such enterprise in the other territory, if the erection is an integral part of the contract for the supply of such plant and machinery;
- (k) the term "profits" means taxable income, and in the case of Southern Rhodesia includes supertax income;
- (l) the term "taxation authorities" means the Secretary for Inland Revenue or his authorised representative in the case of South Africa and the Commissioner of Taxes or his authorised representative in the case of Southern Rhodesia.

(2) The terms "South African tax" and "Southern Rhodesian tax" do not include any sum payable in respect of any default or omission in relation to the taxes which are the subject of this Agreement or which represents a penalty imposed under the laws of either territory relating to those taxes.

(3) In the application of the provisions of this Agreement by one of the Contracting Governments any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting Government relating to the taxes which are the subject of this Agreement.

### Article III

(1) The industrial and commercial profits of an enterprise in one of the territories shall not be subject to tax in the other territory unless the enterprise is engaged in trade or business in the other territory through a permanent establishment in that other territory. If it is so engaged tax may be imposed on those profits by the other territory but only on so much of them as is attributable to that permanent establishment.

(2) Where an enterprise of one of the territories is engaged in trade or business in the other territory through a permanent establishment situated therein –

- (a) there shall be attributed to that permanent establishment the industrial or commercial profits which it might be expected to derive in that other territory if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment;
- (b) subject to the provisions of sub-paragraph (a), no profits derived from sources outside that other territory shall be attributed to that permanent establishment.

(3) No portion of any profits arising from the sale of goods or merchandise by an enterprise of one of the territories shall be attributed to a permanent establishment situated in the other territory by reason of the mere purchase of the goods or merchandise within that other territory.

(4) In determining the industrial or commercial profits of a permanent establishment there shall be allowed as deductions all expenses which would be deductible if the permanent establishment were an independent enterprise in so far as they are reasonably allocable to the permanent establishment, including executive and general administrative expenses so deductible and allocable, whether incurred in the territory in which the permanent establishment is situated or elsewhere.

(5) This Article shall not apply in any case in which its application would have the result that income, which but for such application would be subject to tax in one of the territories, would not be subject to tax in either territory.

### Article IV

Where -

- (a) an enterprise of one of the territories participates directly or indirectly in the management, control or capital of an enterprise of the other territory; or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the territories and an enterprise of the other territory;

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

#### **Article V**

Notwithstanding the provisions of Articles III and IV, profits derived by the Government of or by a resident of one of the territories from operating transport services in the other territory shall be exempt from tax in that other territory.

#### **Article VI**

(1) Any royalty or rent, including royalty or rent in respect of cinematograph or television films, or any sound recording or advertising matter connected with such films, or any other consideration received by or accrued to a resident of one of the territories by virtue of the use in the other territory of, or the grant of permission to use in that other territory any patent, design, model, plan, trade mark, copyright, secret process, formula or other property of a similar nature, including any amount received or accrued for the imparting of or the undertaking to impart any knowledge directly or indirectly connected with the use of any such films, sound recording, advertising matter, patent, design, model, plan, trade mark, copyright, secret process, formula or other property of a similar nature, shall be exempt from tax in that first-mentioned territory if such royalty, rent or other consideration is subject to tax in the other territory.

(2) In this Article, the term "royalty" includes, inter alia, a payment of any kind received as consideration for the use of or the right to use industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience, but does not include any amount paid in respect of the operation of a mine, oil well or quarry or of any other extraction of natural resources.

#### **Article VII**

(1) Any pension, other than a pension paid by the Government of South Africa for services rendered to it in the discharge of governmental functions, and any annuity, derived or deemed to have been derived from sources within South Africa by an individual who is a resident of Southern Rhodesia, shall be exempt from South African tax to the extent that it is included in income for Southern Rhodesian tax purposes.

(2) Any pension (other than a pension paid by the Government of Southern Rhodesia for services rendered to it in the discharge of governmental functions or a pension paid by the Central African Pension Agency which is deemed for Southern Rhodesian tax purposes to be from a source in Southern Rhodesia) and any annuity, derived or deemed to have been derived from sources within Southern Rhodesia by an individual who is a resident of South Africa, shall be exempt from Southern Rhodesian tax to the extent that it is included in income for South African tax purposes.

(3) The term "annuity" means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in consideration of money paid.

### Article VIII

(1) Remuneration, other than pensions, paid by one of the Contracting Governments to any individual for services rendered to that Contracting Government in the discharge of governmental functions shall be exempt from tax in the territory of the other Contracting Government if the individual is not ordinarily resident in that territory or is ordinarily resident in that territory solely for the purpose of rendering those services.

(2) Any pension paid by one of the Contracting Governments to any individual for services rendered to that Contracting Government in the discharge of governmental functions shall be exempt from tax in the territory of the other Contracting Government if, immediately prior to the cessation of those services, the remuneration therefor was exempt from tax in that territory, whether under paragraph (1) of this Article or otherwise, or would have been exempt under that paragraph if this Agreement had been in force at the time the remuneration was paid.

(3) The provisions of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the Contracting Governments for purposes of profit.

(4) For the purposes of this Article remuneration paid by the Government of the former Federation of Rhodesia and Nyasaland shall be treated in the same manner as remuneration paid by the Government of Southern Rhodesia.

(5) For the purposes of this Article a pension paid by the Central African Pension Agency and which is deemed for Southern Rhodesian tax purposes to be from a source in Southern Rhodesia shall be treated in the same manner as a pension paid by the Government of Southern Rhodesia.

(6) For the purposes of this Article the term "Contracting Government" in the case of South Africa, includes the Administrations of the Provinces of South Africa.

### Article IX

(1) An individual who is a resident of South Africa shall be exempt from Southern Rhodesian tax on profits or remuneration in respect of personal, including professional, services performed within Southern Rhodesia in any year of assessment if –

- (a) he is present within Southern Rhodesia for a period or periods not exceeding in the aggregate 183 days during that year; and
- (b) the services are performed for or on behalf of a person resident in South Africa; and
- (c) the profits or remuneration are subject to South African tax.

(2) An individual who is a resident of Southern Rhodesia shall be exempt from South African tax on profits or remuneration in respect of personal, including professional, services performed within South Africa in any year of assessment if –

- (a) he is present within South Africa for a period or periods not exceeding in the aggregate 183 days during that year; and
- (b) the services are performed for or on behalf of a person resident in Southern Rhodesia; and

- (c) the profits or remuneration are subject to Southern Rhodesian tax.

#### **Article X**

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

#### **Article XI**

The remuneration derived by a professor or teacher who is ordinarily resident in one of the territories, for teaching, during a period of temporary residence not exceeding two years, at a university, college, school or other educational institution in the other territory, shall be exempt from tax in that other territory if such remuneration is subject to tax in such first-mentioned territory.

#### **Article XII**

A student or business apprentice from one of the territories who is receiving full-time education or training in the other territory shall be exempt from tax in that other territory on payments made to him by persons in the first-mentioned territory for the purposes of his maintenance, education or training.

#### **Article XIII**

(1) Subject to the provisions of the law in Southern Rhodesia regarding the allowance of a credit against Southern Rhodesian tax of tax payable in South Africa, South African tax payable in respect of profits from sources within South Africa shall be allowed as a credit against any Southern Rhodesian tax payable in respect of such profits.

(2) Where Southern Rhodesian tax is payable in respect of profits derived from sources within Southern Rhodesia by a person ordinarily resident in South Africa, South Africa shall either impose no tax on such profits or, subject to such provisions, which shall not affect the general principle hereof, as may be enacted in South Africa, shall allow the Southern Rhodesian tax as a credit against any South African tax payable in respect of such profits.

(3) For the purposes of this Article profits or remuneration for personal, including professional, services performed in one of the territories shall be deemed to be profits from sources within that territory, and the services of an individual whose services are wholly or mainly performed in aircraft or other transport vehicles operated by a resident of one of the territories shall be deemed to be performed in that territory.



#### **Article XIV**

The taxation authorities of the Contracting Governments shall exchange such information, being information available under the respective taxation laws of the Contracting Governments, as is necessary for carrying out the provisions of the present Agreement or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of this Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of this Agreement. No information shall be exchanged which would disclose any trade secret or trade process.

#### **Article XV**

This Agreement shall come into force on the date on which the last of all such things shall have been done in both territories as are necessary to give this Agreement the force of law in each territory and shall thereupon have effect –

- (a) in South Africa, in respect of assessments for the year of assessment ended on the last day of February, 1964, and subsequent years;
- (b) in Southern Rhodesia, in respect of assessments for the year of assessment ended on the thirty-first day of March, 1964, and subsequent years.

#### **Article XVI**

This Agreement shall continue in effect indefinitely, but either of the Contracting Governments may, on or before the thirtieth day of September in any calendar year after the year 1966, give notice of termination to the other Contracting Government and, in such event, this Agreement shall cease to be effective -

- (a) in South Africa, in respect of any year of assessment beginning on or after the first day of March in the calendar year next following that in which such notice is given;
- (b) in Southern Rhodesia, in respect of any year of assessment beginning on or after the first day of April in the calendar year next following that in which such notice is given.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being authorised thereto by their respective Governments, have signed this Agreement and have affixed thereto their seals.

DONE in duplicate in the English and Afrikaans languages, at Cape Town this tenth day of June, 1965.

T. E. DÖNGES

For the Government of the Republic of South Africa:

R.B.N. WETMORE

For the Government of Southern Rhodesia