

LEGAL SUPPLEMENT

to the Government Gazette of Mauritius No. 42 of 6th June, 1992

Government Notice No. 72 of 1992.

THE INCOME TAX ACT

**Regulations made by the Minister under section 137
of the Income Tax Act**

1. These regulations may be cited as the Double Taxation Agreement (Zimbabwe) Regulations 1992.
2. In these regulations —
"Agreement" means the agreement entered into with the Republic of Zimbabwe in pursuance of section 83 of the Income Tax Act and set out in the Schedule to these regulations.
3. The Agreement shall come into operation on the dates specified in Article 29 thereof.

Made on the Minister on 13 May 1992.

SCHEDULE
(regulations)

**CONVENTION
BETWEEN**

**THE GOVERNMENT OF MAURITIUS
AND**

**THE GOVERNMENT OF THE REPUBLIC OF ZIMBABWE
FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE
PREVENTION OF FISCAL EVASION WITH RESPECT TO
TAXES ON INCOME, CAPITAL AND CAPITAL GAINS.**

**THE GOVERNMENT OF MAURITIUS
AND**

THE GOVERNMENT OF THE REPUBLIC OF ZIMBABWE

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

HAVE AGREED AS FOLLOWS :

CHAPTER 1
SCOPE OF THE CONVENTION

ARTICLE 1

PERSONAL SCOPE

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

ARTICLE 2

TAXES COVERED

(1) The Convention shall apply to taxes on income, capital and capital gains imposed on behalf of a Contracting State.

(2) There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amount of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

(3) The taxes to which the Convention shall apply are in particular:

- (a) in Mauritius: the income tax (hereinafter referred to as "Mauritius tax").
- (b) in Zimbabwe:
 - (i) the income tax;
 - (ii) the branch profits tax;
 - (iii) the non-residents' shareholders' tax;
 - (iv) the non-residents' tax on interest;
 - (v) the non-residents' tax on fees;
 - (vi) the non-residents' tax on royalties; and
 - (vii) the capital gains tax;

(hereinafter referred to as "Zimbabwean tax").

(4) This Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Convention in addition to, or in place of, the existing taxes.

(5) The competent authorities of the Contracting States shall notify each other of any substantial changes which are made in their respective taxation laws.

GENERAL DEFINITIONS

ARTICLE 3

(1) For the purposes of this Convention, unless the context otherwise requires:

- (a) the term "Mauritius" means all the territories, including all the islands, which, in accordance with the laws of Mauritius, constitute the State of Mauritius and includes:
 - (i) the territorial sea of Mauritius; and
 - (ii) any area outside the territorial sea of Mauritius which in accordance with international law has been or may hereafter be designated, under the laws of Mauritius as an area, including the Continental Shelf, within which the rights of Mauritius with respect to the sea, the sea bed and sub-soil and their natural resources may be exercised;
- (b) the term "Zimbabwe" means the Republic of Zimbabwe;
- (c) the term "national" means, in relation to either Contracting State, any individual possessing the citizenship of the Contracting State and any legal person, partnership, association or other entity deriving its status as such from the laws in force in that State;
- (d) the term "Contracting State" means either Contracting State that has subscribed to this Convention;
- (e) the term "person" includes an individual, a company and any other body of persons, corporate or not corporate and shall be deemed to include an estate or a trust;
- (f) the term "company" means any body corporate or any entity which is treated as a company or body corporate for tax purposes;

- (g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (i) the term "competent authority" means, in the case of Mauritius the Commissioner of Income Tax or his authorised representative, and in the case of Zimbabwe, the Commissioner of Taxes or his authorised representative.

(2) In the application of the provisions of this Convention by a Contracting State, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of this Convention.

ARTICLE 4

RESIDENT

(1) For the purposes of this Convention, the term "resident of a Contracting State" means, subject to the provisions of paragraphs (2) and (3) of this Article, any person who, under the laws of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

(2) Where by reason of the provisions of paragraph (1) of this Article an individual is a resident of both Contracting States, then his status shall be determined as follows:

- (a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests);

- (b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
 - (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
 - (d) if he is a national of both Contracting States, or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
- (3) Where by reason of the provisions of paragraph (1) of this Article a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

ARTICLE 5

PERMANENT ESTABLISHMENT

- (1) For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of the enterprise is wholly or partly carried on.
- (2) The term "permanent establishment" shall include especially:
- (a) a place of management;
 - (b) a branch;
 - (c) an office;
 - (d) a factory;
 - (e) a workshop;
 - (f) a warehouse, in relation to a person providing storage facilities for others;
 - (g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
 - (h) an installation or structure used for the exploration of natural resources;
 - (i) a farm or plantation.

(3) The term "permanent establishment" likewise encompasses a building site or construction, assembly or installation project, or supervisory activities in connection therewith, but only where such site, project or activity continues for a period of more than six months for the same or a connected site, project or activity.

(4) Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for any other activities which have a preparatory or auxiliary character, for the enterprise;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), subject to the overall activity of the fixed place of business resulting from this combination being of a preparatory or auxiliary character.

(5) Notwithstanding the provisions of paragraphs (1) and (2) of this Article, where a person - other than an agent of an independent status to whom the provisions of paragraph (6) apply - is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise

shall be deemed to have a permanent establishment in the first-mentioned Contracting State if that person:

- (a) has, and habitually exercises in that first-mentioned State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to those mentioned in paragraph (4) of this Article;
- (b) has no such authority, but habitually maintains in that first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly delivers goods or merchandise on behalf of the enterprise.

(6) An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, a general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business. An agent shall not be regarded as of an independent status if he acts exclusively or almost exclusively for the enterprise.

(7) The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

CHAPTER III

TAXATION OF INCOME

ARTICLE 6

INCOME FROM IMMOVABLE PROPERTY

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

(2) (a) The term "immovable property" shall, subject to the provisions of sub-paragraph (b) below, be defined in accordance with the law of the Contracting State in which the property in question is situated.

(b) The term "immovable property" shall in any case include property accessory to immovable property, equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

(3) The provisions of paragraph (1) of this Article shall apply to income derived from the direct use, letting or use in any other form of immovable property.

(4) The provisions of paragraphs (1) and (3) of this Article, shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

(5) Notwithstanding the preceding provisions of this Article profits derived by an agricultural, forestry or plantation enterprise shall be dealt with in accordance with the provisions of Article 7.

ARTICLE 7

BUSINESS PROFITS

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

(2) Subject to the provisions of paragraph (3) of this Article, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

(3) In determining the profits of a permanent establishment, there shall be allowed as deductions all expenses of the enterprise which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise no account shall be taken, in determining the profits of a permanent establishment, of amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

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

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

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

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

ARTICLE 8

SHIPPING AND AIR TRANSPORT

(1) Profits 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.

(2) If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

(3) The provisions of paragraph (1) of this Article shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9

ASSOCIATED ENTERPRISES

Where:

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

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

ARTICLE 10

DIVIDENDS

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

(2) However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed:

- (a) ten per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which controls, directly or indirectly, at least 25 per cent of the voting power in the company paying the dividends;
- (b) twenty per cent of the gross amount of the dividends in all other cases.

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

(3) The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the company making the distribution is a resident.

(4) The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

(5) Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits, to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11

INTEREST

(1) Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

(2) However, subject to the provisions of paragraph (3) of this Article, such interest may also be taxed in the Contracting State in which it arises and according to the law of that State, but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 10% of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

(3) (a) Subject to subparagraph (b), interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by :

- (i) the Government or a local authority of the other Contracting State;
- (ii) such agency or instrumentality of the Government of the other Contracting State as may be agreed in writing between the competent authorities of both Contracting States; or
- (iii) a bank carrying on a bona fide banking business which is a resident of the other Contracting State.

(b) In the case of Zimbabwe, the exemption referred to in subparagraph (a) (iii) of this paragraph shall only apply if the indebtedness in respect of which the interest is paid is one approved by the Zimbabwean Minister of Finance for the purposes of that subparagraph.

(4) The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article. The term "interest" shall not include any item which is treated as a distribution under the provisions of Article 10 of this Convention.

(5) The provisions of paragraphs (1), (2) and (3) of this article shall not apply if the recipient of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

(6) Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred and such interest is borne by that permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

(7) Where, by reason of a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 12**ROYALTIES**

(1) Royalties arising in a Contracting State and derived by a resident of the other Contracting State may be taxed in that other State.

(2) However, such royalties may also be taxed in the Contracting State in which they arise and according to the law of that Contracting State; but, if the recipient is beneficial owner of the royalties, the tax so charged in the Contracting State in which the royalties arise shall not exceed 15 per cent of the gross amount of the royalties.

(3) The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, tapes and works, recorded for radio and television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

(5) Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the obligation to pay the royalties was incurred and such royalties are borne by that permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

(6) Where, by reason of a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State due regard being had to the other provisions of this Convention.

ARTICLE 13

CAPITAL GAINS

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

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

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

(4) Gains from alienation of shares of capital stock of a company the property of which consists directly or indirectly principally of immoveable property situated in a Contracting State may be taxed in that State.

(5) Capital gains from the alienation of any property other than that mentioned in paragraphs (1), (2), (3) and (4) of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14**INDEPENDENT PERSONAL SERVICES**

(1) Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other Contracting State but only so much of it as is attributable to that fixed base.

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

ARTICLE 15**DEPENDENT PERSONAL SERVICES**

(1) Subject to the provisions of Articles 16, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

(2) Notwithstanding the provisions of paragraph (1) of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

(3) Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

ARTICLE 16

DIRECTORS' FEES

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

ARTICLE 17

ARTISTES AND ATHLETES

(1) Notwithstanding the provisions of Articles 14 and 15, 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 Contracting State in which those activities are exercised.

(2) Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State, in which the activities of the entertainer or athlete are exercised.

(3) The provisions of paragraph (1) or (2) of this Article shall not apply to income derived as aforesaid if the activities of the entertainers or athletes in the Contracting State are supported wholly or substantially from public funds of the other Contracting State, directly or indirectly.

ARTICLE 18

PENSIONS AND SOCIAL SECURITY PAYMENTS

(1) Subject to the provisions of paragraph (2) of Article 19, pensions and other similar remuneration paid to a resident of one of the Contracting States from a source in the other Contracting State in consideration of past employment or services in that other Contracting State, and any annuity paid to such a resident from such a source, shall be taxable only in that other State.

(2) 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 return for adequate and full consideration in money or money's worth.

(3) Notwithstanding the provisions of paragraph (1), pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State or a local authority thereof shall be taxable only in that State.

ARTICLE 19

GOVERNMENTAL FUNCTIONS

(1) (a) Remuneration, other than a pension, paid by or out of funds created by a Contracting State, a local authority or a public body thereof to an individual in respect of services rendered to that State, authority or public body shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who:

(i) is a national of that State; or

(ii) did not become a resident solely for the purpose of rendering the services.

(2) (a) Any pension paid by, or out of funds created by, a Contracting State, a local authority or a public body thereof to an individual in respect of services rendered to that State, authority or public body shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident, and a national, of that State.

(c) For the purposes of this paragraph, any pension paid out of the Central African Pension Fund and subject to tax under the law of Zimbabwe shall be treated as if it were a pension paid by or out of funds created by, Zimbabwe.

(3) The provisions of Articles 15, 16 and 18 shall apply to remunerations and pensions in respect of services rendered in connection with a business carried on by a Contracting State, a local authority or a public body thereof.

ARTICLE 20

STUDENTS

(1) An individual who is or was, immediately before making a visit to one of the Contracting States, a resident of the other Contracting State and is temporarily resident in the first mentioned Contracting State solely as a student at a university, college or school or other similar recognised educational institution in the first mentioned Contracting State or as a business or technical apprentice therein, shall be exempt from tax in that Contracting State on :

- (a) all remittances, for the purposes of his maintenance, education or training, made to him from sources outside that Contracting State; and
- (b) the amount of any grant, allowance or award, being a grant, allowance or award:
 - (i) from the Government of either of the Contracting States; or
 - (ii) from a scientific, educational, religious or charitable organization; or
 - (iii) under a technical assistance programme entered into by either of the Contracting States.

(2) Notwithstanding the provisions of Articles 14 and 15, salaries, wages and other similar remuneration derived by an individual referred to in paragraph (1) for services rendered in the first mentioned Contracting State shall be exempt from tax in that Contracting State if the Services are performed in connection with his study or training, or are incidental thereto.

ARTICLE 21

PROFESSORS AND TEACHERS

(1) An individual who is a resident of a Contracting State at the time he becomes temporarily present in the other Contracting State, at the invitation of that other State or of a university, college, school or other recognised educational institution in the other State, for the primary purpose of teaching

or engaging in research, or both, at a university, college, school or other recognised educational institution, shall be exempt from tax in that other State on his income from personal services for teaching or research at such university, college, school or educational institution, for a period not exceeding two years, in the aggregate or otherwise, from the date of his first assumption of duty in that other State, provided that such income is derived by him from outside that other State.

(2) This article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

ARTICLE 22

OTHER INCOME

(1) Subject to the provisions of paragraphs (2) and (3) of this Article, items of income of a resident of a Contracting State, wherever arising, being income of a class or from sources not expressly mentioned in the foregoing Articles of this Convention in respect of which he is subject to tax in that State, shall be taxable only in that State.

(2) The provisions of paragraph (1) of this Article shall not apply if the person deriving the income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right of property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or 14, as the case may be, shall apply.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this Article, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention and arising in the other Contracting State may be taxed in that other State.

CHAPTER IV

ARTICLE 23

TAXATION OF CAPITAL

(1) Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

(2) Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purposes of performing independent personal services, may be taxed in that other State.

(3) Capital represented by ships and aircraft operated in international traffic and by movable property pertaining to the operation of such ships and aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

(4) All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

CHAPTER V

METHODS FOR ELIMINATION OF DOUBLE TAXATION

ARTICLE 24

ELIMINATION OF DOUBLE TAXATION

(1) Double taxation shall be avoided in accordance with the following paragraphs.

(2) In the case of Mauritius:

(a) Subject to the other subparagraphs of this paragraph and to the provisions of the laws of Mauritius regarding the allowance as a credit against Mauritius tax of tax payable in a territory outside Mauritius (which shall not affect the general principle hereof),

where a resident of Mauritius derives profits, income or gains from sources within Zimbabwe and which, under the laws of Zimbabwe and in accordance with this Convention are taxable or may be taxed in Zimbabwe, whether directly or by deduction, Mauritius shall allow the Zimbabwean tax payable on such profits, income or gains as a credit against any Mauritius tax payable on the same profits, income or gains, provided that such credits shall not exceed the Mauritius tax payable.

- (b) In the case of a dividend, the credit referred to in subparagraph (a) shall only take into account such tax in respect thereof as is additional to any tax payable in Zimbabwe by the company on the profits out of which the dividend is paid and is ultimately borne by the recipient of the dividend without any reference to any tax so payable.
 - (c) Where a company which is a resident of Zimbabwe pays a dividend to a company which is a resident of Mauritius and which controls directly or indirectly at least twenty five per cent of the voting power of the company paying the dividend, the credit shall take into account (in addition to any Zimbabwean tax for which credit may be allowed under the provisions of subparagraphs (a) and (b) of this paragraph) the Zimbabwean tax payable by the first-mentioned company in respect of the profits out of which such dividend is paid.
- (3) In the case of Zimbabwe :
- (a) Subject to the other subparagraphs of this paragraph and to the provisions of the law of Zimbabwe regarding the allowance as a credit against Zimbabwean tax of tax payable in a territory outside Zimbabwe (which shall not affect the general principle hereof), where a resident of Zimbabwe derives profits, income or gains from sources within Mauritius and which, under the laws of Mauritius and in accordance with this Convention, are taxable or may be taxed in Mauritius, whether directly or by deduction, Zimbabwe shall allow the Mauritius tax payable on such profits, income or gains as a credit against

any Zimbabwean tax payable on the same profits, income or gains, provided that such credit shall not exceed the Zimbabwean tax payable.

- (b) In the case of a dividend, the credit referred to in subparagraph (a) shall only take into account such tax in respect thereof as is additional to any tax payable in Mauritius by the company on the profits out of which the dividend is paid and is ultimately borne by the recipient of the dividend without any reference to any tax so payable.
 - (c) Where a company which is a resident of Mauritius pays a dividend to a company which is a resident of Zimbabwe and which controls directly or indirectly at least twenty five per cent of the voting power of the company paying the dividend, the credit shall take into account (in addition to any Mauritius tax for which credit may be allowed under the provisions of subparagraphs (a) and (b) of this paragraph) the Mauritius tax payable by the first-mentioned company in respect of the profits out of which such dividend is paid.
4. (a) For the purpose of paragraph (3) of this Article, the term "Mauritius tax payable" shall, subject to subparagraph (b), be deemed to include any amount which would have been payable as Mauritius Tax for any year but for an exemption or reduction of tax granted for that year, or any part thereof, under the provisions of the Income Tax Act in respect of incentives provided to an enterprise with a view to promoting economic development under—
- (i) the laws specified in subparagraph (c); and
 - (ii) any other law which may subsequently come into operation and agreed by the competent authorities of the Contracting States as having its main object the promotion of economic development.
- (b) (i) Credits against Zimbabwean tax shall not be given by virtue of this paragraph in respect of income of an enterprise if the income arises in a period starting more

than ten years after the exemption from, or reduction of, Mauritius tax was first granted to that enterprise in respect of that income.

(ii) Where an exemption or reduction of tax is granted under subparagraph (a) of this paragraph, the tax which would have been payable but for that exemption or reduction shall be taken into account for the purposes of this paragraph only where the exemption or reduction, specified in subparagraph (a), is certified by the competent authority of Mauritius as having been given with a view to promoting economic development in Mauritius within that subparagraph.

(c) The laws referred to in subparagraph (a) of this paragraph are:—

(i) The Development Incentives Act;

(ii) The Export Processing Zones Act;

(iii) The Hotel Management Incentives Act, 1982;

so far as they were in force on, and have not been modified since, the date of the signature of this Convention, or have been modified only in minor respects so as not to affect their general character; and

(iv) any law falling under subparagraph (a) (ii) of the paragraph, if it is not modified thereafter or is modified only in minor respects so as not to affect its general character.

(5) For the purposes of paragraphs (2) and (3) of this Article, profits, income and gains owned by a resident of a Contracting State which is taxable or may be taxed in the other Contracting State in accordance with this Convention shall be deemed to arise from sources in that other Contracting State.

(6) Where profits on which an enterprise of a Contracting State has been charged to tax in that State are also included in the profits of an enterprise of the other Contracting State and the profits so included are profits which

would have accrued to that enterprise of the other State if the conditions made between the enterprises had been those which would have been made between independent enterprises dealing wholly independently, the amount included in the profits of both enterprises shall be treated for the purposes of this Article as income from a source in the other State of the enterprise of the first-mentioned State and relief shall be given accordingly under the provisions of paragraphs (2) or (3) of this Article.

CHAPTER VI

SPECIAL PROVISIONS

ARTICLE 25

NON-DISCRIMINATION

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

(2) The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. Provided that this paragraph shall not prevent a Contracting State from imposing on the profits attributable to a permanent establishment in that Contracting State of a company which is a resident of the other Contracting State a tax not exceeding five per cent of those profits in addition to the tax which would be chargeable on those profits if they were profits of a company which was a resident of the first-mentioned State.

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

(4) Nothing contained in this Article shall be considered as obliging either Contracting State to grant to individuals not resident in that State any of the personal allowances, reliefs and reductions for tax purposes which are granted to individuals so resident.

ARTICLE 26

MUTUAL AGREEMENT PROCEDURE

(1) Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, irrespective of the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident, or if his case comes under paragraph (1) of Article 25, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Convention.

(2) The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits on the domestic law of the Contracting States.

(3) The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention, with the object of facilitating any appropriate adjustment of liability.

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

ARTICLE 27**EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting State shall exchange such information as is necessary for carrying out the provisions of the Convention or of the domestic laws of the Contracting States concerning taxes covered by this Convention, insofar as the taxation thereunder is not contrary to the Convention, in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Article 1. Any information so exchanged shall be treated as secret in the manner as information obtained under the domestic laws of that State, but may be disclosed only to persons or authorities (including courts or administrative bodies) concerned with assessment, collection, enforcement or prosecution in respect of, or determination of appeals in relation to, the taxes which are the subject of this Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchanges of information shall be made, including, where appropriate, exchanges of information regarding tax avoidance.

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

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

ARTICLE 28**DIPLOMATS**

(1) Nothing in this Convention shall affect the fiscal privileges of members of diplomatic or consular missions under the general rules of international law or under the provisions of special agreements.

(2) Notwithstanding the provisions of paragraph (1) of Article 4, an individual who is a member of the diplomatic or consular mission of a Contracting State or any third State which is situated in the other Contracting State and who is subject to tax in that other State only if he derives income from sources therein, shall not be deemed to be a resident of that other State.

CHAPTER VII**FINAL PROVISIONS****ARTICLE 29****ENTRY INTO FORCE**

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

2. This Convention shall enter into force on the date of the exchange of the instruments of ratification and its provisions shall have effect:

(a) in Mauritius:

in respect of income tax for any year of assessment beginning on or after 1st July in the calendar year in which the instruments of ratification are exchanged;

(b) in Zimbabwe:

(i) in respect of income tax, branch profits tax and capital gains tax, for any year of assessment beginning on or after 1st April in the calendar year in which the instruments of ratification are exchanged;

(ii) in respect of non-resident shareholders' tax, non-residents' tax on interest, and non-residents' tax on royalties, on or after the date of entry into force of this Convention.

ARTICLE 30

TERMINATION

This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Convention, through the diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after a period of five years from the date on which the Convention enters into force. In such event, the Convention shall cease to have effect:

- (a) in Mauritius:
 - in respect of income tax for any year of assessment beginning on or after 1 July in the calendar year next following that in which the notice is given;
- (b) in Zimbabwe:
 - (i) in respect of income tax, branch profits tax and capital gains tax, for any year of assessment beginning on or after 1st April in the calendar year next following that in which the notice is given;
 - (ii) in respect of non-resident shareholders' tax, non-residents' tax on interest and non-residents' tax on royalties, from the 1st April in the calendar year next following that in which the notice is given;

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Convention.

Done in duplicate at London, this 6th day of March, nineteen hundred and ninety two.

Hon. RAMAKRISHNA SITHANEN

Minister of Finance
For the Government of Mauritius

STEPHEN CLETUS CHIKETA

His Excellency the High Commissioner
For the Government of the Republic of Zimbabwe