

# Agreement Between Canada and 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

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This consolidated version of the Canada - Zimbabwe Income Tax Convention signed on April 16, 1992 is provided for convenience of reference only and has no official sanction.

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The Government of Canada and the Government of the Republic of Zimbabwe desiring to conclude an Agreement 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:

### 1. Scope of the Agreement

#### Article 1

##### Personal Scope

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

#### Article 2

##### Taxes Covered

1. This Agreement shall apply to taxes on income, capital and capital gains imposed on behalf of a Contracting State, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income, capital and capital gains all taxes imposed on total income, on total capital, on total capital gains or on elements of income, capital or capital gains as well as taxes on capital appreciation.

3. The existing taxes to which the Agreement shall apply are, in particular:

*a)* in the case of Canada: the taxes imposed by the Government of Canada under the Income Tax Act, (hereinafter referred to as "Canadian tax");

*b)* in the case of Zimbabwe:

*(i)* the income tax;

*(ii)* the branch profits tax;

*(iii)* the non-resident 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. The Agreement shall apply also to any identical or substantially similar taxes and to taxes on capital which are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws.

## II. Definitions

### Article 3

#### General Definitions

1. For the purposes of this Agreement, unless the context otherwise requires:

*a)* the term "Canada" used in a geographical sense, means the territory of Canada, including

(i) any area beyond the territorial seas of Canada which, in accordance with international law and the laws of Canada, is an area within which Canada may exercise rights with respect to the seabed and subsoil and their natural resources;

(ii) the seas and airspace above every area referred to in subparagraph (i) of this paragraph in respect of any activity carried on in connection with the exploration for or the exploitation of the natural resources referred to therein;

b) the term "Zimbabwe" means the Republic of Zimbabwe;

c) the terms "a Contracting State" and "the other Contracting State" mean, as the context requires, Canada or Zimbabwe;

d) the term "person" includes an individual, an estate, a trust, a company and any other body of persons;

e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes; in French, the term "société" also means a "corporation" within the meaning of Canadian law;

f) 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;

g) the term "competent authority" means:

(i) in the case of Canada, the Minister of National Revenue or his authorized representative,

(ii) in the case of Zimbabwe, the Commissioner of Taxes or his authorized representative;

h) the term "tax" means Canadian tax or Zimbabwean tax, as the context requires;

i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State except where the principal purpose of the transport is to transport passengers or property between places within the other Contracting State;

j) the term "national" means:

(i) any individual possessing the nationality of a Contracting State;

(ii) any legal person and association deriving its status as such from the laws in force in a Contracting State.

2. As regards the application of the Agreement by a Contracting State at any time, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has at that time under the law of that State concerning the taxes to which the Agreement applies.

## **Article 4**

### **Resident**

1. For the purposes of this Agreement, the term "resident of a Contracting State" means:

*a)* any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature;

*b)* the Government of that Contracting State or a political subdivision or local authority thereof or any agency or instrumentality of any such government, subdivision or authority.

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

*b)* if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;

*c)* if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;

*d)* if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 of this Article a company is a resident of both Contracting States, then its status shall be determined as follows:

*a)* it shall be deemed to be a resident of the State of which it is a national;

*b)* if it is a national of neither of the States, it shall be deemed to be a resident of the State in which its place of effective management is situated.

4. Where by reason of the provisions of paragraph 1 of this Article a person other than an individual or a company is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavour to settle the question and to determine the mode of application of the Agreement to such person.

## Article 5

### Permanent Establishment

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise of a Contracting State is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

*a)* a place of management;

*b)* a branch;

*c)* an office;

*d)* a factory;

*e)* a workshop;

*f)* a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. The term "permanent establishment" likewise encompasses:

*a)* a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than six months;

*b)* the furnishing of services, including consultancy services, by an enterprise through employees or other personnel where activities of that nature continue (for the same or a connected project) within the country for a period or periods aggregating more than six months within any 12 month period.

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

*a)* the use of facilities solely for the purpose of storage or display 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 or display;

c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;

d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e) of this paragraph, provided that the overall activity of the fixed of business resulting from this combination is 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 paragraph 6 of this Article applies - 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 in respect of any activities which that person undertakes for the enterprise, if such a person:

a) habitually exercises in that State an authority to conclude contacts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 of this Article which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or

b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise 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, general commission agent or any other agent of an independent status or merely because it maintains in that other State a stock of goods with an agent of an independent status from which deliveries are made by that agent, provided that such persons are acting in the ordinary course of their business.

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

## III. Taxation of Income

## Article 6

### Income from Immovable Property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. For the purposes of this Agreement, the term "immovable property" shall have the meaning which it has under the taxation laws of the Contracting State in which the property in question is situated and shall include any option or similar right in respect thereof. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which a provision of general law respecting landed property rights apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be considered as immovable property.

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

## 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 or has carried on business as aforesaid, the profits of the enterprise may be taxed in other State but only so much of them as is 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) any other business activities carried on in that other State of the same or similar kind as those effected through 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 and with all other persons.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions those deductible expenses which are incurred for the purposes of the business of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

4. 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.

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

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

## **Article 8**

### **Shipping and Air Transport**

1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1 of this Article and Article 7, profits derived from the operation of ships or aircraft used principally to transport passengers or goods exclusively between places in a Contracting State may be taxed in that State.

3. The provisions of paragraph 1 of this Article shall also apply to profits referred to in that paragraph derived by an enterprise of a Contracting State from its participation in a pool, a joint business or an international operating agency.

4. In this Article,

a) the term "profits" includes profits, net profits, gross receipts and revenues derived directly from the operation of ships or aircraft in international traffic;

b) the term "operation of ships or aircraft" in international traffic by an enterprise, includes

(i) the charter or rental of ships or aircraft,

(ii) the use or rental of containers and related equipment, and

(iii) the alienation of ships, aircraft, containers and related equipment,

by that enterprise provided that such charter, rental or alienation is incidental to the operation by that enterprise of ships or aircraft in international traffic.

## **Article 9**

### **Associated Enterprises**

#### 1. Where

a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

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

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any income or 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 income or the profits, as the case may be, of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the income or profits of an enterprise of that State - and taxes accordingly - income or profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the income or profits, as the case may be, so included are income or profits which would have accrued to the first-mentioned enterprise if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of tax charged therein on that income or those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

3. A Contracting State shall not change the income or profits of an enterprise in the circumstances referred to in paragraph 1 of this Article after the expiry of the time limits provided in its national laws.

4. The provisions of paragraphs 2 and 3 of this Article shall not apply in the case of fraud, wilful default or neglect.

## 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) 10 per cent of the gross amount of the dividends if the beneficial owner is a company which controls directly or indirectly at least 25 per cent of the voting power in the company paying the dividends;

b) in all other cases, 15 per cent of the gross amount of the dividends if that State is Canada and 20 per cent of the gross amount of the dividends if that is Zimbabwe.

The provisions of this paragraph shall not affect the taxation of the company on the profits out of which the dividends are paid.

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

4. The provisions of paragraph 2 of this Article 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 15, 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 undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

## Article 11

### Interest

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

2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2 of this Article,

*a)* interest arising in Canada and paid in respect of a bond, debenture or other similar obligation of the government of Canada or of a political subdivision or local authority thereof shall, provided that the interest is beneficially owned by a resident of Zimbabwe, be taxable only in Zimbabwe;

*b)* interest arising in a Contracting State and paid to a resident of the other Contracting State which was constituted and is operated exclusively to administer or provide benefits under one or more pension, retirement or other employee benefits plans registered as such for tax purposes in that other State shall not be taxable in the first-mentioned State provided that

*(i)* the resident is the beneficial owner of the interest and is generally exempt from tax in the other State, and

*(ii)* the interest is not derived from carrying on a trade or a business or from a related person.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as income which is subjected to the same taxation treatment as income from money lent by the laws of the State in which the income arises. However, the term "interest" does not include income dealt with in Article 10.

5. The provisions of paragraph 2 of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with (a) such permanent establishment or fixed

base, or with (b) business activities referred to in subparagraph (c) of paragraph 1 of Article 7. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.

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

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

## **Article 12**

### **Royalties**

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

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 10 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, patent, trade mark, design or model, plan, secret formula or process or other intangible property, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience, and includes payments of any kind in respect of motion picture films and works on film, videotape or other means of reproduction for use in connection with radio or television.

4. The provisions of paragraph 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 (a) such permanent establishment or fixed

base or with (b) business activities referred to in subparagraph (c) of paragraph 1 of Article 7. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.

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

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

## **Article 13**

### **Technical**

1. Technical fees arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such technical fees may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the recipient is the beneficial owner of the technical fees, the tax so charged shall not exceed 10 per cent of the gross amount of the technical fees.

3. The term "technical fees" as used in this Article means payment of any kind to any person, other than to an employee of the person making the payments, in consideration for any service of an administrative, technical, managerial or consultancy nature, unless the payment is the reimbursement of actual expenses incurred by that person with respect to the service.

4. The provisions of paragraph 2 of this Article shall not apply if the recipient of the technical fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the technical fees arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the technical fees are effectively connected with such permanent establishment or fixed base. In such a base, the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. Technical fees shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the technical fees, 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 technical fees was incurred, and such technical fees are borne by that permanent establishment or fixed base, then such technical fees shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the technical fees 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 Agreement.

## **Article 14**

### **Capital Gains**

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

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

3. Gains from the alienation of ships or aircraft operated in international traffic by an enterprise of a Contracting State and movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.

4. Gains derived by a resident of a Contracting State from the alienation of a substantial interest in a partnership, trust or estate, established under the law in the other State, the value of which is derived principally from immovable property situated in that other State, may be taxed in that other State. For the purposes of this paragraph, the term "immovable property" includes an interest in a partnership, trust or estate referred to above but does not include any property, other than rental property, in which the business of the partnership, trust or estate is carried on.

5. Gains derived by a resident of a Contracting State from the alienation of shares in a company which is a resident of the other Contracting State may be taxed in the other State.

6. Where a resident of one of the Contracting States alienates property in the course of a corporate organization, reorganization, amalgamation, division or similar transaction and profit, gain or income with respect to such alienation is not recognized for the purpose of taxation in that State, if requested to do so by the person who acquires the property, the competent authority of the other State may agree, subject to terms and conditions satisfactory to such competent authority, to defer the recognition of the profit, gain or income with respect to such property for the purpose of taxation in that other State until such time and in such manner as may be stipulated in the agreement.

7. Gains from the alienation of any property, other than that referred to in paragraphs 1, 2, 3, 4 and 5 of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

8. The provisions of paragraph 7 of this Article shall not affect the right of a Contracting State to levy, according to its law, a tax on gains from the alienation of any property, other than immovable property located in the other Contracting State, derived by an individual who is a resident of that other Contracting State and has been a resident of the first-mentioned State at any time during the six years immediately preceding the alienation of the property.

## **Article 15**

### **Independent Personal Services**

1. Subject to the provisions of Article 13, income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State:

a) if he has or had a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or

b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding the aggregate 183 days in any twelve month period commencing or ending in the calendar year concerned; in that case, he shall be deemed, for the purposes of this Agreement, to have had a fixed base in the other Contracting State during his period or periods and the income is derived from his activities performed in that other State during this period or periods shall be deemed to be 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 16**

### **Dependent Personal Services**

1. Subject to the provisions of Articles 17, 19 and 20, 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 any twelve month period commencing or ending in the calendar year concerned; and

b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and

c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State, shall be taxable only in that State.

## **Article 17**

### **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 18**

### **Income Earned by Entertainers and Athletes**

1. Notwithstanding the provisions of Articles 7, 15 and 16, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a

musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or 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, 15 and 16, be taxed in the Contracting State in which the activities of the entertainer are exercised.

3. The provisions of paragraph 2 of this Article shall not apply if it is established that neither the entertainer or the athlete nor persons related thereto, participate directly or indirectly in the profits of the person referred to in that paragraph.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply to income derived from activities performed in a Contracting State by a resident of the other Contracting State which is a non-profit organization or an entertainer or athlete, provided the visit to the first-mentioned Contracting State is substantially supported by public funds and the activities are not performed for the purpose of profit.

## **Article 19**

### **Pensions and Social Security Payments**

1. Pensions and annuities arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. Pensions arising in a Contracting State and paid to a resident of the other Contracting State may also be taxed in the State in which they arise, and according to the law of that State. However, in the case of periodic pension payments, the tax so charged shall not exceed the lesser of

a) 15 per cent of the gross amount of payment, and

b) the rate determined by reference to the amount of tax that the recipient of the payment would otherwise be required to pay for the year on the total amount of the periodic pension payments received by him in the year, if he were resident in the Contracting State in which the payment arises.

3. Annuities arising in a Contracting State and paid to a resident of the other Contracting State may also be taxed in the State in which they arise, and according to the law of that State; but the tax so charged shall not exceed 15 per cent of the portion thereof that is subject to tax in that State. However, this limitation does not apply to lump-sum payments arising on the surrender, cancellation, redemption, sale or other alienation of an annuity, or to payments of any kind under an annuity contract the cost of which was deductible, in whole or in part, in computing the income of any person who acquired the contract.

4. Notwithstanding anything in this Agreement:

a) war pensions and allowances (including pensions and allowances paid to war veterans or paid as a consequence of damages or injuries suffered as a consequence of a war) arising in a Contracting State and paid to a resident of the other Contracting State shall be exempt from tax if received by a resident of the first-mentioned State; and

b) alimony and other similar payments arising in a Contracting State and paid to a resident of the other Contracting State who is subject to tax therein in respect thereof, shall be taxable only in that other State.

5. Notwithstanding the provisions of paragraph 1 of this Article pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State or a political subdivision or a local authority thereof shall be taxable only in that State.

6. a) Notwithstanding paragraphs 1 and 2 of this Article, any pension paid by, or out of funds created by, Zimbabwe or a political subdivision or a local authority thereof to an individual in respect of services rendered to Zimbabwe or subdivision or authority shall be taxable only in Zimbabwe.

b) However, such pension shall be taxable only in Canada if the individual is a resident, and a national of, Canada

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.

7. The provisions of paragraph 6 of this Article shall not apply to pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

## **Article 20**

### **Government Service**

1. Remuneration, other than a pension, paid by a Contracting State or political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority in any other State shall be taxable only in the first-mentioned State. 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 other State who:

a) is a national of that other State; or

b) did not become a resident of that other State solely for the purpose of rendering the services.

2. The provisions of paragraph 1 of this Article shall not apply to remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

## **Article 21**

### **Students**

1. Payments which a student or business apprentice who is, or was immediately before visiting a Contracting State, a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

2. A student or business apprentice referred to in paragraph 1 of this Article shall, in addition, be entitled during such education or training to the same tax exemptions, reliefs or reductions directly applicable to grants and scholarships as are available to residents of the State which he is visiting.

## **Article 22**

### **Other Income**

1. Subject to the provisions of paragraph 2 of this Article, items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.

2. However, if such income is derived by a resident of a Contracting State from sources in the other Contracting State, such income may also be taxed in the State in which it arises, and according to the law of that State. However, where income from an estate or trust is derived from sources within Canada by a resident of Zimbabwe, the tax charged in Canada shall, provided that the income is taxable in Zimbabwe, not exceed 15 per cent of the gross amount of the income.

3. The provisions of paragraph 1 of this Article shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent person services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.

## IV. Taxation of Capital

### Article 23

#### Capital

1. Capital represented by immovable property 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 purpose of performing independent personal services, may be taxed in that other State.
3. Capital represented by ships, aircraft and containers operated in international traffic by an enterprise of a Contracting State and by movable property pertaining to the operation of such ships, aircraft, and containers shall be taxable only in that State.
4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

## V. Methods for the Elimination of Double Taxation

### Article 24

#### Elimination of Double Taxation

1. In the case of Canada, double taxation shall be avoided as follows:
  - a) Subject to the existing provisions of the law of Canada regarding the deduction from tax payable in Canada of tax paid in a territory outside Canada and to any subsequent modification of those provisions -- which shall not affect the general principle hereof -- and unless a greater deduction or relief is provided under the laws of Canada, tax payable in Zimbabwe on profits, income or gains arising in Zimbabwe shall be deducted from any Canadian tax payable in respect of such profits, income or gains.
  - b) Subject to the existing provisions of the law of Canada regarding the determination of the exempt surplus of a foreign affiliate and to any subsequent modification of those provisions -- which shall not affect the general principle hereof -- for the purpose of computing Canadian tax, a company resident

in Canada shall be allowed to deduct in computing its taxable income any dividend received by it out of the exempt surplus of a foreign affiliate resident in Zimbabwe.

2. In the case of Zimbabwe and subject to the provisions of the law of Zimbabwe regarding the allowance as a credit against Zimbabwean tax of the tax payable in a territory outside Zimbabwe which shall not affect the general principle hereof, Canadian tax payable, whether directly or by deduction, in respect of taxable income or chargeable gains from sources within Canada shall be allowed as a credit against any Zimbabwean tax computed by reference to the same taxable income or chargeable gains by reference to which the Canadian tax is computed.

3. For the purposes of this Article, profits, income or gains of a resident of a Contracting State which are taxed in the other Contracting State in accordance with this Agreement shall be deemed to arise from sources in that other State.

## 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.

3. Nothing in this Article shall be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

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

5. Nothing in this Agreement shall be construed as preventing a Contracting State from imposing on the profits of a company attributable to a permanent establishment in that State, a tax in addition to the tax which would be chargeable on the profits of a company which is a national of that State, provided that any additional tax so imposed shall not exceed 10 per cent of the amount of such profits which have not been subjected to such additional tax in previous taxation years. For the purpose of this provision, the term "profits" in the case of a permanent establishment in Canada means the profits attributable to a permanent establishment in a year and previous years after deducting therefrom all taxes, other than the additional tax referred to herein, imposed on such profits by Canada.

6. The provisions of this Article shall apply to taxes which are subject of the Agreement.

## **Article 26**

### **Mutual Agreement Procedure**

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, address to the competent authority of the Contracting State of which he is a resident an application in writing stating the grounds for claiming the revision of such taxation. To be admissible, the said application must be submitted, in the case of Canada within two years and in the case of Zimbabwe within three years, from the first notification of the action which gives rise to taxation not in accordance with the Agreement.

2. The competent authority referred to in paragraph 1 of this Article shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Agreement.

3. A Contracting State shall not, after the expiry of the time limits provided in its national laws and, in any case, after five years from the end of the taxable period in which the income concerned has accrued, increase the tax base of a resident of either of the Contracting States by including therein items of income which have also been charged to tax in the other Contracting State. This paragraph shall not apply in the case of fraud, wilful default or neglect.

4. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement.

5. The competent authorities of the Contracting States may consult together for the elimination of double taxation in cases not provided for in the Agreement and may communicate with each other directly for the purpose of applying the Agreement.

6. 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. In addition, a competent authority may devise appropriate unilateral procedures, conditions, methods and techniques to facilitate the above-mentioned bilateral actions and the implementation of the mutual agreement procedure.

## Article 27

### Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement, in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Article 1. However, if the information is originally regarded as secret in the transmitting State, it shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement in respect of, or the determination of appeals in relation to, the taxes covered by the Agreement. Such persons or authorities shall use the information only for such purposes but may disclose the information in public court proceedings or in judicial decisions.

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

*a)* to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

*b)* to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

*c)* to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).

3. Subject to the provisions of paragraph 2 of this Article, if information is requested by a Contracting State in accordance with this Article, the other Contracting State shall endeavour to obtain the information to which the request relates in the same way as if its own taxation was involved notwithstanding the fact that the other State does not, at that time, need such information. If

specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall endeavour to provide information under this Article in the form requested, such as depositions of witnesses and copies of unedited original documents (including books, papers, statements, records, accounts or writings), to the same extent such depositions and documents can be obtained under the laws and administrative practices of that other State with respect to its own taxes.

## **Article 28**

### **Diplomatic Agents and Consular Officers**

1. Nothing in this Agreement shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.
2. Notwithstanding Article 4, an individual who is a member of a diplomatic mission, consular post or permanent mission of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed for the purposes of the Agreement to be a resident of the first-mentioned State if he is liable in that State to the same obligations in relation to tax on his total income as are residents of that State.
3. The Agreement shall not apply to international organizations, to organs or officials thereof and to persons who are members of a diplomatic mission, consular post or permanent mission of a third State or group of States, being present in a Contracting State and who are not liable in either Contracting State to the same obligations in relation to tax on their total income as are residents thereof.

## **Article 29**

### **Miscellaneous Rules**

1. The provisions of this Agreement shall not be construed to restrict in any manner any exemption, allowance, credit or other deduction accorded
  - a) by the laws of a Contracting State in the determination of the tax imposed by that State; or
  - b) by any other agreement entered into by a Contracting State.
2. Nothing in the Agreement shall be construed as preventing Canada from imposing a tax on amounts included in the income of a resident of Canada with respect to a partnership, trust, or controlled foreign affiliate, in which he has an interest.

3. The Agreement shall not apply to any company, trust or partnership that is a resident of a Contracting State and is beneficially owned or controlled directly or indirectly by one or more persons who are not residents of that State, if the amount of the tax imposed on the income or capital of the company, trust or partnership by that State is substantially lower than the amount that would be imposed by that State if all of the shares of the capital stock of the company or all of the interests in the trust or partnership, as the case may be, were beneficially owned by one or more individuals who were residents of that State.

4. In the event that, at any time, an agreement concluded by Zimbabwe with a third State after the entry into force of this Agreement contains a provision under which Zimbabwe provides tax relief with respect to persons who render services under a development assistance programme of that third State, similar relief shall be provided for amounts paid after that time to persons who render services under a Canadian development assistance programme.

## VII. Final Provisions

### Article 30

#### Entry into Force

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

2. The Agreement shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:

*a)* in the case of Canada:

*(i)* in respect of tax withheld at the source on amounts paid or credited to non-residents on or after the first day of the month following that in which the exchange of instruments of ratification takes place; and

*(ii)* in respect of other Canadian tax for taxation years beginning on or after the first day of the month following that in which the exchange of instruments of ratification takes place.

*b)* in the case of 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 exchange of the instruments of ratification takes place;

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

## Article 31

### Termination

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may, on or before June 30 of any calendar year after the year of the exchange of instruments of ratification, give to the other Contracting State a notice of termination in writing through diplomatic channels; in such event, the Agreement shall cease to have effect:

a) in the case of Canada:

(i) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after the first day of January of the next following calendar year; and

(ii) in respect of other Canadian tax for taxation years beginning on or after the first day of January of the next following calendar year;

b) in the case of 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 of the next following calendar year;

(ii) in respect of non-resident shareholders' tax, non-residents' tax on interest, non-residents' tax on fees and non-residents' tax on royalties from the 1st April of the next following calendar year.

**IN WITNESS WHEREOF** the undersigned, duly authorized to that effect, have signed this Agreement.

**DONE** in duplicate at Harare, this 16th day of April 1992, in the English and French languages, each version being equally authentic.

**FOR THE GOVERNMENT OF CANADA:**

Charles P. Bassett

**FOR THE GOVERNMENT OF ZIMBABWE:**

Dr. Bernard Chidzero