

Canada - Zambia

Income

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CONVENTION BETWEEN CANADA AND THE REPUBLIC OF ZAMBIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME /1/ SIGNED AT LUSAKA ON FEBRUARY 16, 1984

/1/ Entered into force December 28, 1989

The Government of Canada and the Government of the Republic of Zambia desiring to conclude a Convention for the avoidance of double taxation of income and the prevention of fiscal evasion, have agreed as follows:

Article I Personal Scope

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

Article II Taxes Covered

1. This Convention shall apply to taxes on income imposed on behalf of each Contracting State, irrespective of the manner in which they are levied.

2. The existing taxes which are the subject of this Convention are:

(a) in Canada, the income taxes imposed by the Government of Canada, (hereinafter referred to as "Canadian tax");

(b) in Zambia

(i) the income tax;

(ii) the mineral tax;

(iii) the personal levy;

(hereinafter referred to as "Zambian tax").

3. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of this Convention in addition to, or in place of, the existing taxes. The Contracting States shall notify each other of changes which have been made in their respective taxation laws.

4. At the end of each year the competent authorities of the Contracting States shall notify each other of the publication by their respective Contracting States of any material concerning the application of this Convention, whether in the form of regulations, rulings, judicial decisions or otherwise, by transmitting the texts of any such materials to the competent authority of the other Contracting State.

Article III General Definitions

1. In this Convention, unless the context otherwise requires:

(a) (i) the term "Canada" used in a geographical sense means the territory of Canada, including any area beyond the territorial waters of Canada which under the laws of Canada, is an area within which Canada may exercise rights with respect to the sea-bed and sub-soil and their natural resources;

(ii) the term "Zambia" means the Republic of Zambia;

(b) the terms "a Contracting State" and "the other Contracting State" mean, as the context requires, Canada or Zambia;

(c) the term "State" means any national State, whether or not one of the Contracting States;

(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 "societe" 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 "international traffic" means any voyage of a ship or aircraft operated by a resident of one of the Contracting States except where such voyage is confined solely to places within a Contracting State;

(h) 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 Zambia, the Commissioner of Taxes or his authorized representative;

(i) the term "tax" means Canadian tax or Zambian tax, as the context requires;

(j) the term "national" means:

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

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

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 IV Fiscal Residence

1. For the purposes of this Convention, the term "resident of a Contracting State" means, subject to the provisions of paragraphs 2 and 3, any person who, under the law 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. The terms "resident of Zambia" and "resident of Canada" shall be construed accordingly.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his case shall be determined in accordance with the following rules:

(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 closest (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 neither Contracting State, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person, other than an individual, 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 Convention to such person.

Article V Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business in 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 mine, oil well, quarry or other place of extraction of natural resources;

(g) a farm, plantation or other place where agricultural, forestry, or related activities are carried on;

(h) a building site or construction or assembly project or supervisory activities in connection therewith, where such site, project or activity continues for a period of more than three months;

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

3. The term "permanent establishment" shall not be deemed 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 for 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 similar activities which have a preparatory or auxiliary character, for the enterprise.

4. A person acting in a Contracting State for or on behalf of an enterprise of the other Contracting State -- other than an agent of an independent status to whom the provisions of paragraph 6 apply -- shall be deemed to be a permanent establishment in the first- mentioned State if:

(a) he has, and habitually exercises in that State a general authority to negotiate and enter into contracts for or on behalf of the enterprise, or

(b) he has no such authority, but maintains in that first- mentioned State a stock of goods or merchandises belonging to that enterprise from which he regularly fills orders on behalf of that enterprise.

5. An insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other State if it collects premiums in the territory of that State or insures risks situated therein through an employee or through a representative who is not an agent of independent status within the meaning of paragraph 6.

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, where such persons are acting in the ordinary course of their business. However, where the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise he would not be considered an agent of an independent status within the meaning of this paragraph.

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.

Article VI

Income From Immovable Property

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

2. The term "immovable property" shall be defined in accordance with the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment 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 shall apply to income derived from the direct use, letting, or use in any other form of immovable property and to profits from the alienation of such property.

4. Where a resident of a Contracting State has immovable property in the other Contracting State the income from such property shall, if the resident so elects, be determined in the same manner and under the same conditions as apply to residents of that other Contracting State. To be admissible such election must be made in writing within two years from the end of the year in which the income has accrued.

5. The provisions of paragraphs 1, 3 and 4 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional services.

Article VII

Business Profits

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

(a) that permanent establishment; or

(b) sales of goods or merchandise of the same or similar kind as those sold, or from other business activities of the same or similar kind as those effected, through that permanent establishment.

2. 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 at arm's length with the enterprise of which it is a permanent establishment.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the 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 but no deductions shall be allowed for any expenses which, under the law of the State in which the permanent establishment is situated, would not be allowed as deductions by an independent enterprise of that State.

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 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 laid down in this Article.

5. For the purpose 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. 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.

7. Where profits include items of income 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 VIII **Shipping And Air Transport**

1. Notwithstanding the provisions of Articles V and VII, profits of an enterprise 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. Notwithstanding the provisions of paragraph 1 and Article VII, profits derived from the operation of ships used principally to transport passengers or goods exclusively between places in a Contracting State may be taxed in that State.

3. The provisions of paragraphs 1 and 2 shall also apply to profits referred to in those paragraphs derived by an enterprise of a Contracting State from its participation in a pool, a joint business or in an international operating agency.

Article IX **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 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.

2. 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 taxed accordingly, 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, then the first-mentioned State shall make an appropriate adjustment to the amount of tax charged on those profits in the first-mentioned State.

In determining such an adjustment due regard shall be had to the other provisions of this Convention in relation to the nature of the income.

3. A Contracting State shall not change the profits of an enterprise in the circumstances referred to in paragraph 1 after the expiry of the time limits provided in its national laws and, in any case, after six years from the end of the year in which the profits which would be subject to such change would have accrued to an enterprise of that State. This paragraph shall not apply in the case of fraud, willful default or neglect by the enterprise.

Article X

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 Contracting State.

2. However, such dividends may be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the law of that State; but where the resident of the other Contracting State is the beneficial owner of the dividends, the tax so charged shall not exceed 15 per cent of the gross amount of the dividends. 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 or other rights, not being debt-claims, participating in profits, as well as income assimilated to income from shares or any other item which is deemed to be a dividend or distribution of a company by the law 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 recipient of the dividends, being a resident of a Contracting State, carries on in the other Contracting State of which the company paying the dividends is a resident, a trade or business through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the holding by virtue of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article VII or Article XIV, as the case may be, shall apply.

5. Where a company is a resident of only one Contracting State, the other Contracting 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.

6. Nothing in this Convention shall be construed as preventing a Contracting State from imposing on the earnings of a company attributable to a permanent establishment in that State, tax in addition to the tax which would be chargeable on the earnings of a company which is a national of that State, provided that any additional tax so imposed shall not exceed 15 per cent of the amount of such earnings which have not been subjected to such additional tax in previous taxation years. For the purpose of this provision, the term "earnings" means the profits attributable to a permanent establishment in a Contracting State in a year and previous years after deducting therefrom all taxes, other than the additional tax referred to herein, imposed on such profits by that State.

Article XI

Interest

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

2. However, such interest may be taxed in the Contracting State in which it arises, and according to the law of that Contracting State; but where such interest is paid to a resident of the other Contracting State who is subject to tax there in respect thereof, the tax so charged in the Contracting State in which the interest arises shall not exceed 15 per cent of the gross amount of the interest.

3. 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 profits, and in particular, income from government securities and income from bonds or debentures, including premiums attaching to such securities, bonds or debentures, as well as income assimilated to income from money lent by the law of the Contracting State in which the income arises, and including interest (stated or otherwise) on deferred payments on the sale of movable property. However, the term "interest" does not include income dealt with in paragraph 3 of Article X.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the interest, being a resident of a Contracting State, carries on in the other Contracting State in which the interest arises a trade or business through a permanent establishment situated therein, or performs in that other State professional 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 a case, the provisions of Article VII or Article XIV, as the case may be, shall apply.

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

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

Article XII

Royalties

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

2. However, such royalties may be taxed in the Contracting State in which they arise, and according to the law of that Contracting State; but where such royalties are paid to a resident of the other Contracting State who is subject to tax there in respect thereof, 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, video tapes for use in connection with television or tapes for use in connection with radio), 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 or for rental of movable property.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the royalties, being a resident of a Contracting State, carries on in the other Contracting State in which the royalties arise a trade or business through a permanent establishment situated therein, or performs in that other State professional 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 a case, the provisions of Article VII or Article XIV, 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 political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or fixed base in connection with which the obligation to pay the royalties was incurred, and those royalties are borne by that permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

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

Article XIII

Gains From The Alienation Of Property

1. Gains from the alienation of immovable property as defined in paragraph 2 of Article VI may be taxed in the Contracting State in which such property is situated.

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 professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base may be taxed in the other Contracting State.

3. Notwithstanding the provisions of paragraph 2, gains derived by an enterprise of a Contracting State from the alienation of ships or 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 the alienation of

(a) shares of a company, the property of which consists principally of immovable property situated in a Contracting State, and

(b) an interest in a partnership or a trust, the property of which consists principally of immovable property situated in a Contracting State,

may be taxed in that State. For the purposes of this paragraph the term "immovable property" includes the shares of a company referred to in subparagraph (a) or an interest in a partnership or a trust referred to in subparagraph (b).

5. Gains from the alienation of any property, other than those mentioned in paragraphs 1, 2, 3, and 4 shall be taxable only in the Contracting State of which the alienator is a resident.

6. The provisions of paragraph 5 shall not affect the right of either of the Contracting States to levy, according to its law, a tax on gains from the alienation of any property derived by an individual who is a resident of the 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 XIV Independent Personal Services

1. Income derived by an individual resident of a Contracting State in respect of his professional services or other independent activities of a similar character shall be taxable only in that State unless:

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

(b) he is present in the other Contracting State for the purpose of performing his services or activities for a period or periods amounting to or exceeding in the aggregate 183 days in the taxable year concerned, in which case so much of the income may be taxed in that other State as is attributable to the services or activities performed in that other State; or

(c) his remuneration for his services or activities in the other Contracting State derived from residents of that Contracting State exceeds 10,000 Canadian dollars or its equivalent in Zambian Kwacha in the taxable year (not including travel expenses directly related to the services or activities in the other Contracting State), notwithstanding that his stay in that State is for a period or periods amounting to less than 183 days during the taxable year.

2. The term "professional services or other independent activities" 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 XV Dependent Personal Services

1. Subject to the provisions of Articles XVI, XVIII and XIX, 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, 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 taxable year concerned;

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

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

3. Notwithstanding the provisions of paragraphs 1 and 2, remuneration in respect of 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 XVI

Directors' Fees

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

Article XVII

Artistes And Athletes

1. Notwithstanding the provisions of Articles VII, XIV and XV, income derived by 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 these activities are exercised.

2. Where income in respect of personal activities as such of an entertainer or athlete accrues not to that entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles VII, XIV and XV, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. The provisions of paragraph 2 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.

Article XVIII

Pensions And Annuities

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 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 15 per cent of the gross amount of the payment.

3. Any pension paid by, or out of funds created by, the Government, a political subdivision or a local authority of Zambia to any individual shall be taxable only in Zambia.

4. Annuities arising in a Contracting State and paid to a resident of the other Contracting State may 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 gross amount of the payment. 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 income-averaging annuity contract.

5. Notwithstanding anything in this Convention:

(a) pensions and allowances received from Canada under the Pension Act, the Civilian War Pensions and Allowances Act or the War Veterans Allowance Act and compensation

received under regulations made under section 7 of the Aeronautics Act shall not be taxable in Zambia so long as they are not subject to Canadian tax;

(b) war disability and war widow's pensions and allowances received from Zambia shall not be taxable in Canada so long as they are not subject to Zambian tax.

6. 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.

Article XIX Government Functions

1. (a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to any individual in respect of services rendered to that State or subdivision or local authority thereof shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the Contracting State of which the recipient is a resident if the services are rendered in that State and the recipient did not become a resident of that State solely for the purpose of performing the services.

2. The provisions of this Article shall not apply to remuneration in respect of an employment in connection with any trade or business carried on by a Contracting State, a political subdivision or a local authority thereof for the purpose of profits.

Article XX Students And Apprentices

1. Students, apprentices or business trainees who are 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 students, apprentices or business trainees who are nationals of that other State in the same circumstances are or may be subjected.

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

Article XXI Income Not Expressly Mentioned

1. Subject to the provisions of paragraph 2 of this Article, items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles of this Convention shall be taxable only in that Contracting State except that, if such income is derived from sources in the other Contracting State, such income may also be taxed in the other Contracting State and according to the law of that other State.

2. Where income from an estate or trust in Canada is derived by a resident of Zambia who is subject to tax there in respect thereof the tax charged in Canada shall not exceed 15 per cent of the gross amount of the income.

Article XXII Elimination Of Double Taxation

1. Subject to the existing provisions of the law of Zambia regarding the allowance as a credit against Zambian tax of tax payable in a territory outside Zambia and to any subsequent modification of those provisions -- which shall not affect the general principle hereof -- tax payable under the laws of Canada, whether directly or by deduction, on profits, income or chargeable gains from sources within Canada shall be allowed as a credit against any Zambian tax computed by reference to the same profits, income or chargeable gains by reference to which Canadian tax is computed. Provided that in the case of a dividend the credit against Zambian tax shall take into account only such Canadian tax payable in respect thereof as is additional to any Canadian tax payable by the company on the profits out of which the dividend is paid and is ultimately borne by the recipient of the dividend.

2. 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 Zambia on profits, income or gains arising in Zambia 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 Zambia.

3. For the purposes of paragraph 2(a), tax payable in Zambia by a company which is a resident of Canada

(a) in respect of profits attributable to a trade or business carried on by it in Zambia, or

(b) in respect of dividends received by it from a company which is a resident of Zambia,

shall be deemed to include any amount which would have been payable as Zambian tax for any year but for an exemption from, or reduction of, tax granted for that year or any part thereof under --

(c) Sections 20, 22, 23, 24 and 25 of the Industrial Development Act, 1977 so far as they were in force on, and have not been modified since, the date of signature of this Convention, or have been modified only in minor respects so as not to affect their general character; and except to the extent that the said provisions have the effect of exempting or relieving a source of income for a period in excess of ten years;

(d) any other provision which may subsequently be made granting an exemption or reduction of tax which is agreed by the competent authorities of the Contracting States to be of a substantially similar character, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character.

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

Article XXIII **Non-discrimination**

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other Contracting 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 Contracting State than the taxation levied on enterprises of that other Contracting State carrying on the same activities.

3. The provisions of this Article shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents. However, individuals who are residents of a Contracting State may claim the same personal allowances, reliefs and reductions for the purposes of taxation in the other Contracting State as nationals of that other Contracting State who are not residents of that other Contracting State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of 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. In this Article, the term "taxation" means taxes which are the subject of this Convention.

Article XXIV

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, without prejudice to the remedies provided by the national laws 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 within two years from the first notification of the action which gives rise to taxation not in accordance with the Convention.

2. The competent authority referred to in paragraph 1 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.

3. A Contracting State shall not, after the expiry of the time limits provided in its national laws and, in any case, after six 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 this Convention. In particular, the competent authorities of the Contracting States may agree:

(a) to the same attribution of profits to a resident of one of the Contracting States and its permanent establishment situated in the other Contracting State;

(b) to the same allocation of income, deductions, credits, or allowances between a resident of one of the Contracting States and any related person and to the readjustment of taxes imposed by each Contracting State to reflect such allocation;

(c) to the same determination of the source of particular items of income and allocation of deductions, credits, or allowances to such items of income; or

(d) to the same characterization of particular items of income.

5. The competent authorities of the Contracting States may consult together for the elimination of double taxation in cases not provided for in the Convention.

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

Article XXV

Exchange Of Information

1. The competent authorities of the Contracting States shall exchange such information including documents, as is necessary for the carrying out of this Convention or of the domestic laws (including the provisions for the prevention of fraud or fiscal evasion) of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is not contrary to this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons, authorities or courts other than those concerned with the assessment or collection of the taxes which are the subject of this Convention.

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

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

(b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

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

Article XXVI

Diplomatic And Consular Officials

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

2. This Convention shall not apply to International Organizations, to organs or officials thereof and to persons who are members of a diplomatic, consular or permanent mission of a third State, 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 world income as are residents thereof.

Article XXVII

Miscellaneous Rules

1. The provisions of this Convention shall not be construed to restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded

(a) by the laws of one of the Contracting States in the determination of the tax imposed by that Contracting State, or

(b) by any other agreement entered into by a Contracting State.

2. Nothing in this Convention shall be construed as preventing Canada from imposing a tax on amounts included in the income of a resident of Canada according to section 91 of the Canadian Income Tax Act (Foreign accrual property income).

3. The competent authorities of the Contracting States may communicate with each other directly for the purpose of applying this Convention.

Article XXVIII Entry Into Force

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at . . .

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

(a) in 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 in the calendar year 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 January in the calendar year in which the exchange of instruments of ratification takes place;

(b) in Zambia: in respect of income for any charge year beginning on or after the first day of April in the calendar year in which the exchange of instruments of ratification takes place.

Article XXIX Termination

This Convention shall remain in effect indefinitely, but either of the Contracting States may, on or before 30th June in any calendar year beginning after the date of its entry into force, give to the other Contracting State, through diplomatic channels, written notice of termination. In such event, the Convention shall cease to have effect:

(a) in 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 in the calendar year next following that in which the notice is given; and

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

(b) in Zambia: in respect of income for any charge year beginning on or after the first day of April in the calendar year next following that in which the notice is given.

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

DONE in duplicate at [Lusaka, this 16th day of February 1984] in the English and French languages, each version being equally authentic.

FOR THE GOVERNMENT OF CANADA: FOR THE GOVERNMENT OF THE REPUBLIC OF ZAMBIA:

Final Protocol **Signatories: Canada, Zambia**

Citations: 94 TNI 34-25; Doc 94-30046

Signed: February 16, 1984

In Force: December 28, 1989

Effective: In Canada, from January 1, 1989. In Zambia, from April 1, 1989. See Article XXVIII.

Status: In Force

Tax Analysts classification: Income

Canada and the Republic of Zambia have agreed at the signing at _____ on the _____ day of _____ 19__, of the Convention between the two States for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income upon the following provisions which shall form an integral part of the said Convention --

With reference to Article VII, paragraph 3, it is understood that no deductions 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 by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken in the determination of the profits of a permanent establishment, for 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 service performed or for management, or by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

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

DONE in duplicate at Lusaka, this [16th day of February 1984] in the English and French languages, each version being equally authentic.

FOR THE GOVERNMENT OF CANADA:
FOR THE GOVERNMENT OF

THE REPUBLIC OF ZAMBIA: