

India - Zambia

Income

Convention Signatories: India, Zambia

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CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE REPUBLIC OF ZAMBIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME SIGNED AT LUSAKA ON JUNE 5, 1981.

The Government of the Republic of India and the Government of the Republic of Zambia, desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have agreed as follows:

CHAPTER I

SCOPE OF CONVENTION

Article 1 **Personal Scope**

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

Article 2 **Taxes Covered**

1. The taxes to which this Convention shall apply are:

(a) In the case of India:

(i) the income-tax including any surcharge thereon imposed under the Income-tax Act, 1961 (43 of 1961); and

(ii) the surtax imposed under the Companies (Profits) Surtax Act, 1964 (7 of 1964);

(hereinafter referred to as "Indian tax")

(b) In the case of Zambia:

(i) the income tax;

(ii) the mineral tax; and

(iii) the personal levy

(hereinafter referred to as "Zambian tax").

2. The Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of the present Convention in addition to, or in place of, the taxes referred to in paragraph 1 of this Article.

3. At the end of each year, the competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws which are the subject of this Convention, and furnish copies of relevant enactments and regulations.

CHAPTER II

DEFINITIONS

Article 3 General Definitions

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

(a) the terms “a Contracting State” and “the other Contracting State” mean India or Zambia, as the context requires;

(b) the term “tax” means Indian tax or Zambian tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty imposed relating to those taxes;

(c) the term “person” includes individuals, companies and all other entities which are treated as taxable units under the taxation laws in force in the respective Contracting States;

(d) the term “company” means any body corporate or any entity which is treated as a company under the taxation laws in force in the respective Contracting State;

(e) the term “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;

(f) the term “competent authority” means in the case of India, the Central Government in the Ministry of Finance (Department of Revenue); and in the case of Zambia, the Commissioner of Taxes or his authorized representative;

(g) the term “nationals” means:

(i) in respect of India:

all individuals possessing the nationality of India and all legal persons, partnerships and associations deriving their status from the law in force in India;

(ii) in respect of Zambia:

all individuals possessing the nationality of Zambia and all legal persons, partnerships and associations deriving their status as such from the law in force in Zambia.

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

Article 4 Fiscal Domicile

1. For the purposes of this Convention, the term “resident of a Contracting State” means any person who,

under the laws of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of similar nature.

2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his residential status for the purposes of this Convention 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 closer (hereinafter referred to as his "centre of vital interest");

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

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

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

3. Whereby reason of the provisions of paragraph 1, a person other than an individual is a resident of both of Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

Article 5

Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include:--

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a mine, a quarry, an oil field or other place of extraction of natural resources;

(g) a farm, plantation or other place where, agricultural, forestry plantation 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 supervisory activity continues for a period of more than 9 months;

(i) a warehouse or other facilities for the maintenance of a stock of goods or merchandise belonging to the enterprise from which orders are filled.

3. The term "permanent establishment" shall not be deemed 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 processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, 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 or for scientific research, being activities solely of a preparatory or auxiliary character, in the trade or business of 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 of that enterprise in the first-mentioned State if:

(i) he has, and habitually exercises in that State, an authority to conclude contracts for or on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or

(ii) he has no such authority but he habitually maintains in the first-mentioned Contracting State a stock of goods or merchandise belonging to that enterprise from which he regularly fulfills orders on behalf of the 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 Contracting State if it collects premiums in the territory of that other 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, when 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 Contracting State (whether through a permanent establishment or otherwise), shall not, of itself, constitute for either company a permanent establishment of the other.

8. An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it carries on a business which consists of providing the services of public entertainers (such as theatre, motion picture, radio or television artistes and musicians) or athletes in that other Contracting State unless the enterprise is directly or indirectly supported wholly or substantially, from the public funds of the Government of the first-mentioned Contracting State in connection with the provision of such services.

CHAPTER III

TAXATION OF INCOME

Article 6

Income From Immovable Property

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

2. The term "immovable property" shall be defined in accordance with the law and usage of the Contracting State in which the property 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, oilwells, quarries and other places of extraction of 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.

4. The provisions of paragraphs 1 and 3 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 7 Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that Contracting State unless the enterprise carried 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 that permanent establishment.

2. If an enterprise of a Contracting State, which has a permanent establishment in the other Contracting State, sells goods or merchandise of the same or similar kind as those sold by the permanent establishment or renders services of the same or similar kind as those rendered by the permanent establishment, the profits of such activities may be attributed to the permanent establishment unless the enterprise proves that such sales or services are not attributable to the activity of the permanent establishment.

3. 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 the permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment. In any case, where the correct amount of profits attributable to a permanent establishment is incapable of determination or the ascertainment thereof presents exceptional difficulties, the profits attributable to the permanent establishment may be estimated on a reasonable basis.

4. In so far 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 3 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. 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 this does not include any expenses which, under the law of that State, would not be allowed to be deducted by an enterprise of that State.

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 purpose of export to the enterprise of which it is the permanent establishment.

7. 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.

8. The term “business profits” means income derived by an enterprise from the carrying on of trade or business; but does not include income in the form of rents, royalties (including rents or royalties in respect of cinematographic films or video tapes for television), fees for technical services, management charges, or remuneration or fees for providing services of technical or other personnel, interest, dividends, capital gains, remuneration for labour or personal (including professional) services or income from the operation of ships or aircraft.

Article 8

Air Transport

1. Profits derived by an enterprise of a Contracting State from the operation of 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. The provisions of paragraph 1 of this Article shall also apply to a share of profits from the operation of aircraft in international traffic derived by an enterprise of a Contracting State through participation in a pooled service, in a joint air transport operation or in an international operating agency.

3. For the purpose of paragraph 1, interest on funds connected with the operation of aircraft in international traffic shall be regarded as income from the operation of such aircraft, and the provisions of Article 11 shall not apply in relation to such interest.

Article 9

Associated Enterprises

Where

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

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

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

Article 10

Dividends

1. Dividends paid by a company which is resident of a resident of the other Contracting State may be taxed in that other Contracting 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 law of that State, but the tax so charged shall not exceed:

(a) 5 per cent of the gross amount of the dividends if the recipient is a company which owns at least 25 per cent of the shares of the company paying the dividends during the period of six months immediately preceding the date of payment of the dividends;

(b) 15 per cent of the gross amount of the dividends in all other cases.

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 from other corporate rights assimilated to income from shares or any other item which is deemed to be a dividend or distribution of a company by the taxation 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, has in the other Contracting State, of which the company paying the dividends is a resident, a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a case, the provisions of Article 7 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 to persons who are not residents of that other State, or 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 or profits or income arising in that other State.

Article 11 **Interest**

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 law of that State, but the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2 interest arising in a Contracting State and paid to the Government of the other Contracting State or local Authority thereof, the Central Bank of that other Contracting State, or any agency wholly owned by that Government or local authority shall be exempt from tax of the first mentioned Contracting State. The competent authorities of the Contracting States may determine by mutual agreement any other governmental institution to which this paragraph shall apply.

4. The term "interest" as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and other debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the Contracting State in which the income arises.

5. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the interest, being a resident of a Contracting State, has in the other Contracting State in which the interest arises a permanent establishment with which the debt-claim from which the interest arises is effectively connected. In such a case the provisions of Article 7 shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that Contracting 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 in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by that permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

7. 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 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 law of that State, but 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 of literary, artistic or scientific work (including cinematograph films and films or tapes for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the royalties, being a resident of a Contracting State, has in the other Contracting State in which the royalties arises a permanent establishment with which the right or property giving rise to the royalties is effectively connected. In such a case, the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting 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 in connection with which the liability to pay the royalties was incurred, and such royalties are borne of such permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment 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 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 13 Capital Gains

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

2. Gains from the alienation of movable property forming part of 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 that other State.

3. Notwithstanding the provisions of paragraph 2, gains derived by an enterprise of a Contracting State from the alienation of ships and aircraft which it operates in international traffic and movable property pertaining to the operation of such ships and aircraft shall be taxable only in that State.

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

5. The term "alienation" means the sale, exchange, transfer, or relinquishment of the property or the extinguishment of any rights therein or the compulsory acquisition thereof under any law in force in the respective Contracting States.

Article 14 Management And Consultancy Fees

1. Management and consultancy 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 fees may be taxed in the Contracting State in which they arise and according to the law of the State, but the tax so charged shall not exceed 10 per cent of the gross amount of the fees.

3. The term “management and consultancy fees” as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a managerial technical or consultancy nature.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the management and consultancy fees, being a resident of a Contracting State, has in the other Contracting State in which the fees arise a permanent establishment with which the services giving rise to the fees are effectively connected. In such a case, the provisions of Article 7 shall apply.

5. Management and consultancy fees shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the fees, whether he is a resident of that State or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the fees was incurred and such fees are borne by such permanent establishment then such fees shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where, owing to a special relationship between payer and the recipient or between both of them and some other person, the amount of the management and consultancy fees paid, having regard to the services 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 15 **Independent Personal Services**

1. Subject to the provisions of Article 16, income derived by a resident of a Contracting State in respect of 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 purposes of performing his 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 activities for a period or periods exceeding in the aggregate 183 days in relevant “previous year” in the case of India and in the relevant “charge year” in the case of Zambia and in which case so much of the income may be taxed in that other State as is attributable to the activities performed in that other State.

(c) his remuneration for his services or activities in the other Contracting State derived from residents of that Contracting State exceeds K 10,000 or its equivalent in Indian currency 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” includes 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, 18, 19, 20, 21 and 22, 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 Contracting 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 Contracting State if:

(a) the recipient is present in the other Contracting State for a period not exceeding in the aggregate 183 days in the fiscal year concerned; and

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

(c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other Contracting 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 only in the Contracting State in which the place of effective management of the enterprise is situated.

Article 17

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 18

Artistes And Athletes

1. Notwithstanding the provisions of Articles 15 and 16, income derived by public entertainers (such as theatre, motion picture, radio or television artistes and musicians) or athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised:

Provided that such income shall not be taxed in the said Contracting State if the visit of the public entertainers or athletes to that State is supported, wholly or substantially, from the public funds of the Government of the other Contracting State.

2. For the purposes of this Article, the term 'Government' includes a State Government, a political sub-division, or a local or statutory authority of either Contracting State.

Article 19

Governmental Functions

1. Remuneration paid by or out of funds created by a Contracting State, a political sub-division or a local authority thereof, to a citizen of that State in respect of an employment shall be taxable only in that State.

2. Any person paid by or out of funds created by a Contracting State a political sub-division, or a local authority thereof, to any individual may be taxed in that Contracting State.

3. The provisions of paragraph 1 of this Article shall not apply to payments in respect of services rendered in connection with any business carried on by the Government of either of the Contracting States for the purposes of profit.

4. For the purposes of this Article, the term "Government" shall include any State Government or local authority of either Contracting State and in particular the Reserve Bank of India and the Bank of Zambia.

Article 20

Non-government Pensions And Annuities

1. Any pension (other than a pension referred to in Article 19) or annuity derived by a resident of a Contracting State from sources within the other Contracting State may be taxed only in the first-mentioned Contracting State.
2. The term "pension" means a periodic payment made in consideration of services rendered in the past or by way of compensation for injuries received in the course of performance of services.
3. The term "annuity" means a stated sum payable periodically at stated times, during the 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 21

RESEARCH PERSONNEL, STUDENTS AND BUSINESS APPRENTICES

1. (a) An individual who is a resident of one of the Contracting States at the time he becomes temporarily present in the other Contracting State for the primary purpose of--

- (i) studying at a University or other recognised educational institution in that other Contracting State, or
- (ii) securing training required to qualify him to practise a profession or professional speciality, or
- (iii) studying or doing research as a recipient of a grant allowance, or award from a Governmental religious, charitable, scientific, literary, or educational organisation,

shall be exempt from tax by that other Contracting State with respect to amounts described in sub-paragraph (b) for a period not exceeding 5 taxable years from the date of his arrival in that other Contracting State.

(b) The amounts referred to in sub-paragraph (a) are:--

- (i) gifts abroad for the purpose of his maintenance, educational, study, research, or training;
- (ii) the grant, allowance, or award; and
- (iii) income from personal services performed in that other Contracting State in an amount not in excess of 1,500 Zambian Kwacha or its equivalent Indian Rupees for any taxable year.

2. An individual who is a resident of one of the Contracting States and who is temporarily present in that other Contracting State as on employee of, or under contract with, a resident of the first-mentioned Contracting State, for the primary purpose of--

- (a) acquiring technical, professional, or business experience from a person other than that resident of the first-mentioned Contracting State or other than a person, related to such resident, or
- (b) studying at a University or other recognised educational institution in that other Contracting State, shall be exempt from tax in that other Contracting state for a period not exceeding 1 year with respect to his income from personal services in an aggregate amount not in excess of 2,500 Zambian Kwacha or its equivalent Indian Rupees.

3. An individual who is a resident of one of the Contracting States and who is temporarily present in that other Contracting State for a period not exceeding 1 year, as a participant in a programme sponsored by the Government of that other Contracting State, for the primary purpose of training, research, or study, shall be exempt from tax in that other Contracting State with respect to his income from personal services in respect of such training, research, or study performed in that other Contracting State in an aggregate

amount not in excess of 3,500 Zambian Kwacha or its equivalent Indian Rupees.

Article 22

Professors And Teachers

1. A professor or teacher 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 for a period not exceeding two years for the purpose of carrying out advanced study or research or for teaching at a university, college, school or other educational institution shall be exempt from tax in the first-mentioned State in respect of any remuneration which he receives for such work, provided that such remuneration is derived by him from outside that State.
2. This Article shall not apply to income from research if such research is undertaken primarily for the private benefit of a specific person or persons.
3. For the purposes of this Article 21 an individual shall be deemed to be a resident of a Contracting State if he is resident in that Contracting State in the "previous year" or the "charge year", as the case may be, in which he visits the other Contracting State or in the immediately preceding "previous year" or the "charge year".

Article 23

Income Not Expressly Mentioned

Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State except that if such income arises in the other Contracting State, it may also be taxed in that other State.

CHAPTER IV

METHOD FOR ELIMINATION OF DOUBLE TAXATION

Article 24

Avoidance Of Double Taxation

1. The laws in force in either of the Contracting States will continue to govern the taxation of income in the respective Contracting States except where provisions to the contrary are made in this Convention.
2. (a) The amount of Zambian tax payable, under the laws of Zambia and in accordance with the provisions of this Convention, whether directly or by deduction, by a resident of India, in respect of income from sources within Zambia which has been subjected to tax both in India and Zambia, shall be allowed as a credit against the Indian tax payable in respect of such income provided that such credit shall not exceed Indian tax (as computed before allowing any such credit), which is appropriate to the income derived from sources within Zambia; so, however, that where such resident is a company by which surtax is payable in India, the credit aforesaid shall be allowed in the first instance against income-tax payable by the company in India, and as to the balance, if any against surtax payable by it in India;

(b) For the purpose of the credit referred to in subparagraph (a) above, the term "Zambian tax payable" shall be deemed to include any amount which would have been payable as Zambian tax for any year but for any provisions granting an exemption or reduction of tax which the competent authorities of the Contracting States agree to be for the purpose of economic development.
3. (a) The amount of Indian tax payable, under the laws of India and in accordance with the provisions of this Convention, whether directly or by deduction, by a resident of Zambia in respect of income from sources within India which has been subjected to tax both in India and Zambia shall be allowed as a credit against Zambian tax payable in respect of such income provided that such credit shall not exceed the Zambian tax (as computed before allowing any such credit), which is appropriate to the income derived from sources within India;

(b) For the purposes of the credit referred to in sub-paragraph (a) above, the term “Indian tax payable” shall be deemed to include any amount by which Indian tax has been reduced by the special incentive measures set forth in the following sections of the Income-tax Act, 1961:

- (i) Section 10(4)--relating to exemption from tax on interest payable to a non-resident on any security notified by the Government of India.
- (ii) Section 10(4A)--relating to exemption from tax on interest payable to a non-resident on moneys in a Non-resident (External) Account;
- (iii) Section 10(15)(iv)--relating to exemption from tax of (a) a non-resident in respect of moneys lent by him to the Government or local authority in India; (b) an approved foreign financial institution in respect of interest on moneys lent by it to an industrial undertaking in India under a loan agreement; and (c) a non-resident in respect of interest on moneys lent or credit facilities allowed by him to an industrial undertaking in India for the purchase outside India of raw materials or capital plant and machinery or for industrial development in India;
- (iv) Section 32A--relating to investment allowance in respect of ships, aircrafts, machinery or plant;
- (v) Section 33A--relating to development allowance for planting or replanting of tea bushes;
- (vi) Section 35C--relating to the agricultural development allowances;
- (vii) Section 54E--relating to capital gains;
- (viii) Section 80CC--relating to deduction in respect of investment in certain new shares.
- (ix) Section 80HH--relating to deduction in respect of profits and gains from newly established industrial undertakings or hotel business in backward areas;
- (x) Section 80J--relating to deduction in respect of profits and gains from eligible industrial undertakings or ships or hotels;
- (xi) Section 80K--relating to deduction in respect of dividends attributable to profits and gains from eligible industrial undertakings or ships or hotels;
- (xii) any other provisions which may subsequently be enacted granting an exemption or reduction of tax which the competent authorities of the contracting States agree to be for the purposes of economic development.

4. Income which, in accordance with the provisions of this Convention is not to be subjected to tax in a Contracting State, may be taken into account for calculating the rate of tax to be imposed in that Contracting State.

CHAPTER V

SPECIAL PROVISIONS

Article 25

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 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 in the same circumstances.

3. Nothing contained in this Article shall be construed as obliging a Contracting State to grant to persons not resident in that State any personal allowances, reliefs and reductions for taxation purposes which are by law available only to persons who are so resident.

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 Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected in the same circumstances.

5. In this Article, the term "taxation" means taxes which are the subject of this Convention.

Article 26

Mutual Agreement Procedure

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident. This case must be presented within three years of the date of receipt of notice of the action which gives rise to taxation not in accordance with the Convention.

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

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult each other for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. 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 27

Exchange Of Information

1. The competent authorities of the Contracting States shall exchange such information or document as is necessary for carrying out the provisions of this Convention or for the prevention of evasion of taxes which are the subject of this Convention. Any information or document so exchanged shall be treated as secret but may be disclosed to persons (including a court or other authorities) concerned with the assessment, collection, enforcement, investigation or prosecution in respect of the taxes which are the subject of this Convention, or to persons with respect to whom the information or document relates.

2. The exchange of information or documents shall be either on a routine basis or on request with reference to particular cases. The competent authorities of the Contracting States shall agree from time to time on the list of the information or documents which shall be furnished on a routine basis.

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

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

(b) to supply information or documents 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 or documents 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.

Article 28

Diplomatic And Consular Activities

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.

CHAPTER VI

FINAL PROVISIONS

Article 29

Entry Into Force

1. This Convention shall come into force on the date when the last of all such things shall have been done in India and Zambia as are necessary to give the Convention the force of law in India and Zambia respectively.

2. The Contracting States shall notify each other of the completion of the requirements mentioned in paragraph 1 of this Article. The exchange of diplomatic notes certifying that this requirement has been completed shall take place at Lusaka.

3. Upon the exchange of such diplomatic notes, this Convention shall have effect:

(a) In India, in respect of income assessable for any assessment year commencing on or after the 1st day of April, 1979.

(b) In Zambia, in respect of income arising for any charge year commencing on or after the 1st day of April, 1979.

Article 30

Termination

This Convention shall continue in effect indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give the other Contracting State through diplomatic channels, written notice of termination and in such event this Convention shall cease to be effective:

(a) in Zambia, in respect of income assessable for the assessment year commencing on the 1st day of April in the second calendar year next following the calendar year in which the notice is given, and subsequent years;

(b) in India, in respect of income arising for the year of income next following the calendar year in which the notice of termination is given, and subsequent years.

In witness whereof the undersigned, being duly authorised thereto, have signed the present convention.

Done in duplicate at LUSAKA this FIFTH day of JUNE one thousand nine hundred and Eighty one in English language.

Sd-
HON. S. K. MUSSOKOTWANE, M.P.,

Minister of Finance,
Government of the
Republic of Zambia.

Sd-
KEDAR PANDEY,
Minister of Railways,
Government of the
Republic of India.