

# Germany, F.R. - Zambia

## Income and Capital

**Agreement Signatories:** Germany, F.R., Zambia

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**In Force:** November 8, 1975

**Effective:** In the F.R.G., from January 1, 1971. In Zambia, from April 1, 1971. See Article 29. (From January 1, 1991, this treaty applies to the territory of the former German Democratic Republic.)

**Status:** In Force

**Tax Analysts classification:** Income

Agreement between the Federal Republic of Germany and the Republic of Zambia for the Avoidance of Double Taxation with respect to Taxes on Income and Capital.

Signed at Bonn on 30 May 1973

The Federal Republic of Germany and the Republic of Zambia.

Desiring to conclude an Agreement for the Avoidance of Double Taxation with respect to Taxes on Income and Capital.

Have agreed as follows:

### Article 1 Personal Scope

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

### Article 2 Taxes Covered

(1) This Agreement shall apply to taxes on income and on capital imposed on behalf of each Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

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

(3) The existing taxes to which this Agreement shall apply are, in particular:

(a) in the Federal Republic of Germany:

(i) the Einkommensteuer (income tax) including the Ergänzungsabgabe (surcharge) thereon,

(ii) the Körperschaftsteuer (corporation tax) including the Ergänzungsabgabe (surcharge) thereon.

(iii) the Vermögensteuer (capital tax), and

(iv) the Gewerbesteuer (trade tax)

(hereinafter referred to as “German tax”);

(b) in Zambia:

(i) the income tax,

(ii) the mineral tax, and (iii) the personal levy

(hereinafter referred to as “Zambian tax”).

(4) This Agreement shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes.

(5) The provisions of this Agreement in respect of taxation of income or capital shall likewise apply to the German trade tax, computed on a basis other than income or capital.

### **Article 3 General Definitions**

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

(a) the term “Federal Republic of Germany”, when used in a geographical sense, means the territory in which the Basic Law for the Federal Republic of Germany is in force, as well as any area adjacent to the territorial waters of the Federal Republic of Germany designated, in accordance with international law as related to the rights which the Federal Republic of Germany may exercise with respect to the sea bed and sub-soil and their natural resources, as domestic area for tax purposes;

(b) the term “Zambia” means the Republic of Zambia;

(c) the terms “a Contracting State” and “the other Contracting State” mean the Federal Republic of Germany or Zambia, as the context requires;

(d) the term “person” includes an individual or a company;

(e) the term “company” means any body corporate or any entity, which is treated as a body corporate for tax purposes;

(f) the terms “resident of a Contracting State” and “resident of the other Contracting State” mean a person who is a resident of the Federal Republic of Germany or a person who is a resident of Zambia, as the context requires;

(g) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(h) the term “national” means:

(aa) in respect of the Federal Republic of Germany any German in the meaning of Article 116, paragraph 1, of the Basic Law for the Federal Republic of Germany and any legal person, partnership and association deriving its status as such from the law in force in the Federal Republic of Germany;

(bb) in respect of Zambia any citizen of Zambia and any legal person, partnership and association deriving its status as such from the law in force in Zambia;

(i) the term “competent authority” means in the case of the Federal Republic of Germany the Federal Minister for Economics and Finance and in the case of Zambia the Commissioner of Taxes or his authorized representative.

(2) In the application of this Agreement 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 Agreement.

#### **Article 4 Fiscal Domicile**

(1) For the purposes of this Agreement, the term “resident of a Contracting State” means 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.

(2) Where by reason of the provisions of paragraph (1) an individual is a resident of both Contracting States, then this 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 both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

(3) Where by reason of the provisions of paragraph (1) a company is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

#### **Article 5 Permanent Establishment**

(1) For the purposes of this Agreement 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 building site or construction or assembly project which exists for more than nine months.

(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 on behalf of an enterprise of the other Contracting State--other than an agent of an independent status to whom paragraph (5) applies--shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

(5) 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.

(6) 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 make either company a permanent establishment of the other.

## **Article 6** **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.

(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 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 State but only so much of them as is attributable to 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 wholly independently 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 permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

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

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

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

## **Article 8 Ships And Aircraft**

Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

## **Article 9 Associated Enterprises**

Where

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

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

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

## **Article 10 Dividends**

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

(2) However, such dividends may 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 (excluding partnerships) which owns directly at least 25 per cent of the capital of the company paying the dividends;

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

3. Notwithstanding the provisions of paragraph (2) German tax on dividends paid to a company being a resident of Zambia by a company being a resident of the Federal Republic of Germany, at least 25 per cent of the capital of which is owned directly or indirectly by the former company itself, or by it together with other persons controlling it or being under common control with it, shall not exceed 27 per cent of the gross amount of such dividends as long as the rate of German corporation tax on distributed profits is lower than that on undistributed profits and the difference between those two rates is 15 percentage points or more.

(4) The term "dividends" as used in this Article means income from shares, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident, and income derived by a sleeping partner from his partnership as such and distributions on certificates of an investment trust.

(5) The provisions of paragraphs (1) to (3) 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.

(6) 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 of profits or income arising in such other State.

## **Article 11 Interest**

(1) Interest derived from a Contracting State by a resident of the other Contracting State shall be taxable in that other State.

(2) However, such interest may be taxed in the Contracting State from which it is derived, and according to the law of that State, but the tax so charged shall not exceed 10 per cent of the gross amount of such interest.

(3) Notwithstanding the provisions of paragraph (2),

(a) interest derived from the Federal Republic of Germany and paid to the Zambian Government or the Bank of Zambia shall be exempt from German tax;

(b) interest derived from Zambia and paid to the German Government, the Deutsche Bundesbank, the Kreditanstalt für Wiederaufbau and the Deutsche Gesellschaft für wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) m.b.H. shall be exempt from Zambian tax.

The competent authorities of the Contracting States shall 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 debt-claims of every kind as well as other income assimilated to income from money lent by the taxation law of the State from which the income is derived.

(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 be derived from a Contracting State when the payer is that State itself, a political subdivision or 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 such permanent establishment, then such interest shall be deemed to be derived from 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 Agreement.

## **Article 12** **Royalties**

(1) Royalties derived from a Contracting State by a resident of the other Contracting State shall be taxable only in that other State.

(2) However, such royalties may be taxed in the Contracting State from which they are derived, and according to the law of that State, but the tax so charged shall not exceed 10 per cent of the gross amount of such 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 or tapes for television or 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 paragraph (1) 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 arise 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 be derived from a Contracting State when the payer is that State itself, a political subdivision or a local authority thereof 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 by such permanent establishment, then such royalties shall be deemed to be derived from 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 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 Agreement.

## **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 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 State. However, gains from the alienation of movable property of the kind referred to in paragraph (3) of Article 22 shall be taxable only in the Contracting State in which such movable property is taxable according to the said Article.

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

#### **Article 14**

#### **Independent Personal Services**

1. Income derived by a resident of a Contracting State in respect of professional services or other independent services 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, 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 for a period or periods exceeding in the aggregate 183 days in the calendar year concerned, in which case so much of the income may be taxed in that other State as is attributable to the services performed in that other State.

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

#### **Article 15**

#### **Dependent Personal Services**

(1) Subject to the provisions of Articles 16, 18 and 19, 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 calendar year concerned, and

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

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

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



## **Article 16**

### **Directors' Fees**

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

## **Article 17**

### **Artists And Athletes**

(1) Notwithstanding the provisions of Articles 14 and 15, income derived by public entertainers, such as theatre, motion picture, radio or television artists, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which those activities are exercised.

(2) Notwithstanding anything contained in this Agreement, where the services of a public entertainer or an athlete mentioned in paragraph (1) are provided in a Contracting State by an enterprise of the other Contracting State, the profits derived by that enterprise from providing those services may be taxed in the first-mentioned State.

(3) The provisions of paragraphs (1) and (2) shall not apply to services of public entertainers and athletes, if their visit to a Contracting State is supported wholly or substantially from public funds of the other Contracting State.

## **Article 18**

### **Public Funds**

(1) Remuneration other than pensions paid by, or out of funds created by, a Contracting State, a political subdivision or a local authority to any individual in respect of an employment shall be taxable only in that State. If, however, the employment is exercised in the other Contracting State by a national of that State not being a national of the first-mentioned State, the remuneration shall be taxable only in that other State.

(2) The provisions of Articles 15, 16 and 17 shall apply to remuneration in respect of an employment in connection with any business carried on by a Contracting State, a political subdivision or a local authority for the purpose of profits.

(3) The provisions of paragraph (1) shall likewise apply in respect of remuneration paid, under a development assistance programme of a Contracting State, a political subdivision or a local authority, out of funds exclusively supplied by that State, those political subdivisions or local authorities, to any persons seconded to the other Contracting State with the consent of that other State.

## **Article 19**

### **Pensions**

Pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

## **Article 20**

### **Teachers And Students**

(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) A student or business apprentice who is, or was immediately before visiting a Contracting State, a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training shall be exempt from tax in the first-mentioned State on

(a) payments made to him by persons residing outside that first-mentioned State for the purposes of his maintenance, education or training; and

(b) remuneration not exceeding 6,000 DM or the equivalent in Zambian currency for a calendar year from personal services undertaken in that first-mentioned State to supplement resources available to him for his maintenance and education.

The benefits of this paragraph shall extend only for such period of time as may be reasonably or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this paragraph for more than three consecutive years.

(3) An individual who is, or was immediately before visiting a Contracting State, a resident of the other Contracting State and who is temporarily present in the first-mentioned State solely for the purpose of study, research or training as a recipient of a grant, allowance or award from a scientific, educational, religious or charitable organization or under a technical assistance programme entered into by the Government of a Contracting State shall, from the date of his first arrival in the first-mentioned State in connection with that visit, be exempt from tax in that State

(a) on the amount of such grant, allowance or award; and

(b) on all remittances from abroad for the purposes of his maintenance, education or training.

### **Article 21** **Income Not Expressly Mentioned**

Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles of this Agreement shall be taxable only in that State.

### **Article 22** **Capital**

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

(2) Capital represented by movable property forming part of the business property of a permanent establishment of an enterprise, or by movable property pertaining to a fixed base used for the performance of professional services, may be taxed in the Contracting State in which the permanent establishment or fixed base is situated.

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

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

### **Article 23** **Elimination Of Double Taxation**

(1) Tax shall be determined in the case of a resident of the Federal Republic of Germany as follows:

(a) Unless the provisions of sub-paragraph (b) apply, there shall be excluded from the basis upon which German tax is imposed, any item of income derived from Zambia and any item of capital situated within Zambia, which, according to this Agreement, may be taxed in Zambia. In the determination of its rate of tax applicable to any item of income or capital not so excluded, the

Federal Republic of Germany will, however, take into account any item of income and any item of capital so excluded.

The foregoing provisions shall likewise apply to dividends paid to a company being a resident of the Federal Republic of Germany by a company being a resident of Zambia if at least 25 per cent of the voting shares of the Zambian company is owned directly by the German company. There shall also be excluded from the basis upon which German tax is imposed any shareholding, the dividends of which, if paid, would be excluded from the basis upon which tax is imposed according to the immediately foregoing sentence.

(b) Subject to the provisions of German tax law regarding credit for foreign tax, there shall be allowed as a credit against German income tax and corporation tax, including the surcharge thereon, payable in respect of the following items of income derived from Zambia, the Zambian tax paid under the laws of Zambia and in accordance with this Agreement on:

- (i) dividends to which sub-paragraph (a) does not apply;
- (ii) interest to which paragraph (2) of Article 11 applies;
- (iii) royalties to which paragraph (2) of Article 12 applies;
- (iv) remuneration to which Article 16 applies;
- (v) income to which Article 17 applies.

The credit shall not, however, exceed that part of the German tax, as computed before the credit is given, which is appropriate to such items of income.

(2) Tax shall be determined in the case of a resident of Zambia as follows:

(a) Where a resident of Zambia derives income from the Federal Republic of Germany which may be taxed in the Federal Republic of Germany in accordance with the provisions of this Agreement, the amount of German tax payable in respect of that income shall be allowed as a credit against Zambian tax which is appropriate to that income, before allowing the credit.

(b) Where the income from the Federal Republic of Germany is a dividend paid by a company which is a resident of the Federal Republic of Germany, the credit shall take into account the German tax payable in respect of its profits by the company paying the dividend.

## **Article 24**

### **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.

This provision 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 or any other personal circumstances which it grants to its own residents.

(3) Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or

more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.

(4) In this Article the term “taxation” means taxes of every kind and description.

### **Article 25** **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 Agreement, 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.

(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 this Agreement.

(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 this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.

(4) The competent authorities of the Contracting States may communicate with each other directly for the purpose of applying the provisions of this Agreement.

### **Article 26** **Exchange Of Information**

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Agreement. 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 Agreement or the determination of appeals or the prosecution of offences in relation thereto.

(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 information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

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

### **Article 27** **Diplomatic And Consular Privileges**

Nothing contained in this Agreement shall affect diplomatic or consular privileges under the general rules of international law or under the provisions of special agreements.

### **Article 28** **Land Berlin**

This Agreement shall also apply to Land Berlin, provided that the Government of the Federal Republic of Germany has not made a contrary declaration to the Government of the Republic of Zambia within three

months from the date of entry into force of this Agreement.

### **Article 29 Entry Into Force**

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

(2) This Agreement shall enter into force on the day after the date of exchange of the instruments of ratification and shall have effect:

(a) in the Federal Republic of Germany for any assessment period beginning on or after 1st January, 1971;

(b) in Zambia for any charge year commencing on or after 1st April, 1971.

### **Article 30 Termination**

This Agreement 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 to the other Contracting State, through diplomatic channels, written notice of termination and, in such event, this Agreement shall cease to be effective:

(a) in the Federal Republic of Germany for any assessment period following that in which the notice of termination is given;

(b) in Zambia for any charge year following that in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

DONE at Bonn, this thirtieth day of May 1973, two originals, each in the German and English language, all the texts being equally authentic.

For the Federal Republic of  
Germany

Frank SCHULER

For the Republic of Zambia

Moto NKAMA

### **Final Protocol Signatories: Germany, F.R., Zambia**

**Citations:** 92 TNI 79-17; Doc 92-30092

**Signed:** May 30, 1973

**In Force:** November 8, 1975

**Effective:** In the F.R.G., from January 1, 1971. In Zambia, from April 1, 1971. See Article 29. (From January 1, 1991, this treaty applies to the territory of the former German Democratic Republic.)

**Status:** In Force

**Tax Analysts classification:** Income

The Federal Republic of Germany and the Republic of Zambia

Have agreed at the signing at Bonn on 30th May 1973, of the Agreement between the two States for the Avoidance of Double Taxation with respect to taxes on income and capital upon the following provisions which shall form an integral part of the said Agreement.

(1) With reference to Article 5,

an enterprise shall be deemed to have a permanent establishment in a Contracting State if it carries on supervisory activities in that State for more than nine months in connection with a building site or construction or assembly project, as defined in paragraph (2) (g) which is being undertaken in that State.

(2) With reference to Articles 6 to 21,

where any income, other than interest to which paragraph (3) of Article 11 applies, derived from outside of a Contracting State by a resident of that State is not subject to tax in that State by reason of its foreign origin, the provisions of these Articles shall not apply in the other Contracting State in respect of such income.

(3) With reference to Article 7,

if the information available to the taxation authorities concerned is inadequate to determine the profits to be attributed to the permanent establishment, nothing in this Article shall affect the application of the law of either Contracting State with respect of making an estimate by the taxation authorities of that Contracting State; provided that such estimate shall be aimed to establish taxation in accordance with the principles stated in this Article.

(4) With reference to Article 23,

notwithstanding the provision of paragraph (1) subparagraph (a), of Article 23 of the Agreement, the provisions of paragraph (1) sub-paragraph (b) of that Article shall apply likewise to the profits of, and to the capital represented by property forming part of the business property of, a permanent establishment; to dividends paid by, and to the share-holding in, a company; or to gains referred to in paragraph (2) of Article 13 of the Agreement; provided that the resident of the Federal Republic of Germany concerned does not prove that the receipts of the permanent establishment or company are derived exclusively or almost exclusively

(a) from producing or selling goods and merchandise, giving technical advice or rendering engineering services, or doing banking or insurance business, within Zambia, or

(b) from dividends paid by one or more companies, being residents of Zambia, more than 25 per cent of the capital of which is owned by the first-mentioned company, which themselves derive their receipts exclusively or almost exclusively from producing or selling goods or merchandise, giving technical advice or rendering engineering services, or doing banking or insurance business, within Zambia.

(5) With reference to Article 24,

nothing contained in this Article shall be construed nor as obliging Zambia to grant to non-nationals the relief available to Zambian nationals under Section 42C of the Zambian Income Tax Act 1966 nor as conferring any exemption from tax in the Contracting State in respect of dividends paid to a company which is a resident of the other Contracting State.

DONE at Bonn this thirtieth day of May 1973.

For the Federal Republic of  
Germany

Frank SCHULER

For the Republic of Zambia

Moto NKAMA