

# Kenya - Zambia

## Income

**Convention Signatories:** Kenya, Zambia

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**Effective:** In Kenya, from January 1, 1964. In Zambia, from April 1, 1964. See Article XX.

**Status:** In Force

**Tax Analysts classification:** Income

CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF ZAMBIA AND THE GOVERNMENT OF THE REPUBLIC OF KENYA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of Zambia and the Government of the Republic of Kenya,

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:

### Article I.

1. The taxes which are the subject of the present Convention are--

(a) in Zambia (and hereinafter referred to as "Zambian tax")--

- (i) the income tax;
- (ii) supertax;
- (iii) the undistributed profits tax; and
- (iv) the personal levy;

(b) in Kenya (and hereinafter referred to as "Kenyan tax")--

- (i) the income tax;
- (ii) the corporation tax;
- (iii) the undistributed income tax; and
- (iv) the graduated personal tax.

2. The present Convention shall also apply to any other taxes of a substantially similar character imposed in Zambia or Kenya subsequently to the date of signature of the present Convention. At the end of each year the taxation authorities of the Contracting States shall notify to each other any changes which have been made in their respective taxation laws.

## **Article II.**

1. In the present Convention, unless the context otherwise requires--

- (a) the term "Zambia" means the Republic of Zambia;
- (b) the term "Kenya" means the Republic of Kenya;
- (c) the terms "one of the Contracting States" and "the other Contracting State" mean Zambia or Kenya, as the context requires;
- (d) the term "tax" means Zambian tax or Kenyan tax, as the context requires;
- (e) the term "company" means anybody corporate, or any entity which is treated as a body corporate for tax purposes;
- (f) the term "person" includes any body of persons corporate or not corporate;
- (g) the term "resident of Zambia" means any person who is resident in Zambia for the purposes of Zambian tax and not resident in Kenya for the purposes of Kenyan tax; the term "resident of Kenya" means any person who is resident in Kenya for the purposes of Kenyan tax and not resident in Zambia for the purposes of Zambian tax, and a company shall be regarded as resident in Zambia if its business is managed and controlled in Zambia and resident in Kenya if its business is managed and controlled in Kenya;
- (h) the terms "resident of one of the Contracting States" and "resident of the other Contracting State" mean a resident of Zambia or a resident of Kenya, as the context requires;
- (i) the terms "Zambian enterprise" and "Kenyan enterprise" mean, respectively, an industrial, mining, commercial, plantation, agricultural or pastoral enterprise or undertaking carried on by a resident of Zambia, and an industrial, mining, commercial, plantation, agricultural or pastoral enterprise or undertaking carried on by a resident of Kenya;
- (j) the terms "enterprise of one of the Contracting States" and "enterprise of the other Contracting State" mean a Zambian enterprise or a Kenyan enterprise, as the context requires.

2. In the application of the provisions of the present Convention by the Government of one of the Contracting States, 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 the present Convention.

## **Article III.**

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

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

- (a) a place of management;
- (b) a branch;
- (c) an office;

- (d) a factory;
- (e) a workshop;
- (f) a mine, oil well, quarry or other place of extraction of natural resources;
- (g) a farm or plantation;
- (h) a building site or construction or assembly project which exists for more than six 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 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. An enterprise of one of the Contracting States shall be deemed to have a permanent establishment in the other Contracting State if--

(a) it carries on supervisory activities in that other Contracting State for more than six months in connection with a construction, installation or assembly project which is being undertaken in that other Contracting State;

(b) it carries on a business which consists of providing the services of public entertainers to in Article XIV, in that other Contracting State.

5. A person acting in one of the Contracting States on behalf of an enterprise of the other Contracting State--other than an agent of independent status to whom paragraph 6 applies--shall be deemed to be a permanent establishment in the former Contracting State if--

(a) he has, and habitually exercises in that former Contracting 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; or

(b) he maintains in that former Contracting State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf of the enterprise.

6. An enterprise of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other Contracting State through a broker, general commission agent or any other agent of independent status, where such persons are acting in the ordinary course of their business.

7. The fact that a company which is a resident of one of the Contracting States 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 either company a permanent establishment of the other.

#### **Article IV.**

1. The industrial and commercial 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, tax may be imposed in that other Contracting State, but only on so much of them as is attributable to the permanent establishment.

2. Where an enterprise of one of the Contracting States carries on business in the other Contracting State through a permanent establishment situated therein--

(a) 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;

(b) subject to the provisions of sub-paragraph (a) no industrial or commercial profits derived from sources outside that other Contracting State shall be attributed to that permanent establishment.

3. No part of the profits arising from the sale of goods or merchandise by an enterprise in one of the Contracting States shall be attributed to a permanent establishment situated in the other Contracting State by reason of the mere purchase of the goods or merchandise within that other Contracting State.

4. In determining the industrial or commercial profits of a permanent establishment, there shall be allowed as deductions all expenses, including administrative and executive expenses, which would be deductible if the permanent establishment were an independent enterprise in so far as they are reasonably allocable to the permanent establishment, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.

5. Nothing in this Article shall preclude either Contracting State from determining the profits to be attributed to a permanent establishment in that State on the basis of an apportionment of the total profits of the enterprise to its various parts 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.

6. Save where expressly provided elsewhere in this Convention, this Article shall not apply, if by reason of its application industrial and commercial profits which would normally be subject to tax in one of the Contracting States, would not be subject to tax in either of the Contracting States.

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

8. Where--

(a) an enterprise of one of the Contracting States 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 one of the Contracting States 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 V.**

Income or profits derived by the Government, a local authority or statutory corporation of one of the Contracting States from the operation of ships, aircraft or railways, shall be exempt from tax in the other Contracting State.

2. Income or profits derived by a resident of one of the Contracting States from the operation of ships and aircraft shall be exempt from tax in the other Contracting State unless the ship or aircraft is operated wholly or mainly between places within that other Contracting State.

3. (a) A resident of Zambia who derives profits from the operation of overland transportation services in Kenya, may be subject to tax in Kenya, on such proportion of those profits that derive from traffic originating in Kenya, but the tax so charged shall be allowed as a credit against any Zambian tax charged in respect of that same income.

(b) A resident of Kenya who derives profits from the operation of overland transport services in Zambia, may be subject to tax in Zambia on such proportion of those profits that derive from traffic originating in Zambia, but the tax so charged shall be allowed as a credit against any Kenya tax charged in respect of that same income.

#### **Article VI.**

1. Dividends paid by a company resident in Kenya to a resident of Zambia who is subject to Zambian tax in respect thereof shall be exempt from any tax in Kenya which is chargeable on dividends in addition to the tax chargeable on the profits or income of the company.

2. Dividends paid by a company resident in Zambia to a resident of Kenya who is subject to Kenyan tax in respect thereof shall be exempt from any tax in Zambia which is chargeable on dividends in addition to the tax chargeable on the profits or income of the company.

3. Where a company which is a resident of one of the Contracting States derives profits or income from sources within the other Contracting State, there shall not be imposed in that other Contracting State any form of taxation on dividends paid by the company to persons not resident in that other Contracting State, or any tax in the nature of an undistributed profits tax on undistributed profits of the company, whether or not those dividends or undistributed profits represent, in whole or in part, profits or income so derived.

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 Article IV concerning the allocation of profits to permanent establishments shall apply.

5. If the system of taxation applicable in either of the Contracting States to the profits and distributions of companies is altered the taxation authorities may consult each other in order to determine whether it is necessary for this reason to amend the provisions of paragraphs 1 and 2 of this Article.

#### **Article VII.**

1. Any royalty or rent, including royalty or rent in respect of cinematograph or television films or tapes, or any sound recording or advertising matter connected with such films, or any other

consideration received by or accrued to a resident of one of the Contracting States by virtue of the use in the other Contracting State, of or the grant of permission to use in that other Contracting State any patent, design, model, plan, trade mark, copyright, secret process, formula or other property of a similar nature, including any amount received or accrued for the imparting of or the undertaking to impart any knowledge directly or indirectly connected with the use of any such films, sound recording, advertising matter, patent design, model, plan, trade mark, copyright, secret process, formula or other property of a similar nature, shall be exempt from tax in the first mentioned Contracting State if such royalty or rent is subject to tax in the other Contracting State.

2. The term "royalty" as used in this Article includes, inter alia, a payment of any kind received as consideration for the use of or the right to use industrial, commercial or scientific experience, but does not include any amount paid in respect of the operation of a mine, oil well or quarry or of any other place of extraction of natural resources.

### **Article VIII.**

1. Interest from a source in one of the Contracting States derived by a resident in the other Contracting State shall be exempt from tax in that other Contracting State, unless it is not subject to tax in the first mentioned Contracting State.

2. 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 all other income assimilated to income from money lent by the taxation law of the Contracting State in which the income arises.

3. Where, owing to a special relationship between the payer and the recipient, or between both of them and some other person the amount of 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 recipients 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 taxation law of each Contracting State, due regard being had to the other provisions of this Convention.

### **Article IX.**

1. Remuneration, other than pensions, paid by the Government of Zambia to any individual for services rendered to that Government in the discharge of governmental functions shall be exempt from Kenyan tax if the individual is not ordinarily resident in Kenya, or is ordinarily resident in Kenya solely for the purpose of rendering those services.

2. Remuneration, other than pensions, paid by the Government of Kenya to any individual for services rendered to that Government in the discharge of governmental functions shall be exempt from Zambian tax if the individual is not ordinarily resident in Zambia or is ordinarily resident in Zambia solely for the purpose of rendering those services.

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

4. For the purposes of this Article the word "Government" shall include any local authority or statutory corporation of either of the Contracting States.

### **Article X.**

1. Any pension or annuity paid by the Government of Zambia to any individual for services rendered to the Government of Zambia in the discharge of governmental functions, or paid by the

Central African Pension Fund, which is deemed for the purposes of Zambian tax to be derived from a source in Zambia, shall be exempt from Kenyan tax.

2. Any pension or annuity paid by or out of funds created by the Government of Kenya to any individual for services rendered to the Government of Kenya in the discharge of governmental functions which is deemed for the purposes of Kenyan tax to be derived from a source in Kenya shall be exempt from Zambian tax.

3. For the purposes of this Article the word "Government" shall include any political or local authority or statutory corporation of either of the Contracting States.

4. Any pension or annuity, other than a pension referred to in paragraphs 1 and 2 derived from sources within Zambia by an individual who is a resident of Kenya, and subject to Kenyan tax in respect thereof, shall be exempt from Zambian tax.

5. Any pension or annuity, other than a pension referred to in paragraphs 1 and 2 derived from sources within Kenya by an individual who is a resident of Zambia, and subject to Zambian tax in respect thereof, shall be exempt from Kenyan tax.

### **Article XI.**

1. An individual who is resident of Zambia shall be exempt from Kenyan tax on his profits or remuneration in respect of personal, including professional services, unless the services are performed, or the employment is exercised in Kenya. To such extent as the services are performed or the employment is exercised in Kenya his profits or remuneration may be taxed in Kenya, but if--

(a) he is present within Kenya for a period or periods not exceeding in the aggregate 183 days during any year of assessment; and

(b) the services are performed for or on behalf of a person who is a resident of Zambia; and

(c) the remuneration or profits are subject to Zambian tax; and

(d) the remuneration or profits are not directly deductible from the income for Kenyan tax purposes of a permanent establishment in Kenya of that person;

such profits or remuneration shall be exempt from Kenyan tax.

2. An individual who is resident in Kenya shall be exempt from Zambian tax on his profits or remuneration in respect of personal, including professional, services unless the services are performed, or the employment is exercised in Zambia. To such extent as the services are performed or the employment is exercised in Zambia his profits or remuneration may be taxed in Zambia, but if--

(a) he is present within Zambia for a period or periods not exceeding in the aggregate 183 days during any year of assessment; and

(b) the services are performed for or on behalf of a person who is resident in Kenya; and

(c) the remuneration or profits are subject to Kenyan tax; and

(d) the remuneration or profits are not directly deductible from the income for Zambian tax purposes of a permanent establishment in Zambia of that person;

such profits or remuneration shall be exempt from Zambian tax.

3. Notwithstanding the preceding provisions of this Article, directors' fees and similar payments derived by a resident of one of the Contracting States in his capacity as a member of a the board of directors of a company resident in the other Contracting State, may be taxed in that other Contracting State.

4. Those profits or remuneration for personal services which are dealt with separately in other Articles of this Convention, shall not be affected by the provisions of this Article.

#### **Article XII.**

The remuneration derived by a professor or teacher from one of the Contracting States for teaching, during a period of temporary residence not exceeding two years, at a university, college, school or other recognised educational institution in the other Contracting State, shall be exempt from tax in that other Contracting State if such remuneration is subject to tax in the first-mentioned Contracting State.

#### **Article XIII.**

1. A student or business apprentice from one of the Contracting States who is receiving full-time education or training in the other Contracting State, and is temporarily resident there solely for the purpose of such education and training, shall be exempt from tax in that other Contracting State on all payments made to him by persons in the first-mentioned Contracting State for his maintenance, education or training.

2. Any individual from one of the Contracting States who is temporarily present for a period not exceeding two years in the other Contracting State for the purpose of study, research or training, and who is in receipt of a grant, allowance or award, from a scientific, educational religious or charitable organisation, or under a technical assistance programme of the Government of either Contracting State, shall be exempt from tax in that other Contracting State in respect of that grant, allowance or award, and in respect of any remuneration for personal services undertaken in connection with such study, research or training and incidental thereto.

#### **Article XIV.**

Income derived by public entertainers, such as theatre, motion picture, radio and television artistes and musicians, and by athletes from their personal activities as such, may be taxed in the Contracting State in which these activities are exercised, provided such income is not derived from a visit sponsored officially by the other Contracting State, the cost of which is borne wholly or mainly out of the public funds of that other Contracting State.

#### **Article XV.**

For the purposes of the present Convention:

1. Dividends paid by a company which is a resident of one of the Contracting States shall be treated as income from a source within that Contracting State.

2. Interest paid by one of the Contracting States, including any local authority or statutory corporation thereof, or by an enterprise of one of the Contracting States shall be treated as income from sources within that Contracting State; except that--

(a) interest paid by an enterprise of one of the Contracting States with a permanent establishment outside that Contracting State on indebtedness incurred for the use of such permanent establishment in the conduct of its trade and business, and borne by that permanent establishment shall be treated as income from sources within the State in which the permanent establishment is situated; and



(b) in the case of an enterprise of one of the Contracting States engaged in the business of banking, interest paid on deposits made with a permanent establishment of that business outside the Contracting State, shall be treated as income from sources within the State where the permanent establishment is situated.

3. Royalties as defined in paragraph 2 of Article VII of this Convention shall be treated as income from sources within the Contracting State in which the property referred to in that paragraph is used.

4. Income from immovable property (including income derived from the alienation of such property) and royalties paid in respect of the operation of a mine, oil well, quarry or of any other place of extraction of natural resources, shall be treated as derived from sources within the Contracting State in which such immovable property, mine, oil well, quarry or place of extraction of natural resources is situated.

### **Article XVI.**

1. Where a resident of Zambia derives income from sources within Kenya which, in accordance with the provisions of this Convention is exempt from Zambian tax but may be taxed in Kenya, then Zambia may, in calculating tax on the remaining income of that person, apply the rate of tax which would have been applicable if the income derived from sources within Kenya had not been so exempted.

2. Where a resident of Kenya derives income from sources within Zambia which, in accordance with the provisions of this Convention is exempt from Kenyan tax but may be taxed in Zambia, then Kenya may, in calculating tax on the remaining income of that person, apply the rate of tax which would have been applicable if the income derived from sources within Zambia had not been so exempted.

3. Where a resident of one of the Contracting States derives income from sources within the other Contracting State, which apart from the provisions of this Article may be taxed in both Contracting States, then the first mentioned Contracting State shall allow as a deduction from the tax on the income of that person an amount equal to the tax paid in that other Contracting State. Such deduction, however, shall not exceed that part of the tax, as computed before the deduction is given, which is appropriate to the income derived from that other Contracting State.

4. For the purposes of paragraph 3 of this Article the term "tax paid" shall be deemed to include any amount which would have been payable either as Zambian tax but for an exemption or reduction of tax granted under the Pioneer Industries (Relief from Income Tax) Act, 1965, or as Kenyan tax but for an exemption or reduction of tax under any equivalent law, or any similar law in either of the Contracting States of like purpose and effect.

### **Article XVII.**

1. Residents of one of the Contracting States 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 residents of that other Contracting State in the same circumstances are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of one of the Contracting States has in the other Contracting State shall not be less favourably levied in that other Contracting State than the taxation levied on enterprises of that other Contracting State carrying on the same activities.

3. Enterprises of one of the Contracting States, 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 or other similar enterprises of that first-mentioned Contracting State are or may be subjected.

4. This Article shall not be construed as obliging either one of the Contracting States to grant to residents of the other Contracting State any personal allowances, abatements, reliefs and reductions for tax purposes which by law are only available to its own residents.

5. In this Article the term "taxation" means taxes of every kind and description.

#### **Article XVIII.**

The taxation authorities of the Contracting States shall exchange such information, being information which is available under their respective taxation laws, as is necessary for the carrying out of the provisions of the present Convention or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of this Convention, or with the determination of appeals in relation thereto. No information shall be exchanged 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 XIX.**

1. Where it appears to the taxation authorities of one of the Contracting States that a taxpayer resident in that Contracting State has not received the treatment to which he is entitled under the provisions of this Convention, so that his income or any part of this income is subjected to double taxation, those taxation authorities shall, on due request by the taxpayer, consult with the taxation authorities of the other Contracting State with a view to the avoidance of the double taxation in question.

2. The taxation authorities of the Contracting States may communicate with each other directly for the purpose of giving effect to the provisions of the present Convention and for resolving any difficulty or doubt as to its application or interpretation.

#### **Article XX.**

The present Convention shall come into force on the date when the last of all such things shall have been done in Zambia and Kenya as are necessary to give the Convention the force of law in Zambia and Kenya respectively, and shall thereupon have effect--

(a) in Zambia, in respect of tax for any period of assessment or charge beginning after 1st April, 1964;

(b) in Kenya, in respect of tax for any period of assessment beginning after 1st January, 1964.

#### **Article XXI.**

1. The present Convention shall continue in effect indefinitely but either of the Contracting States may on or before the last day of March in any calendar year not earlier than 1969 give notice of termination to the other Contracting State and, in such event, the Convention shall cease to be effective--

(a) in Zambia, in respect of tax for any period of assessment or charge beginning on or after the first day of April in the calendar year next following that in which such notice is given;

(b) in Kenya, in respect of tax for any period of assessment beginning on or after the first day of January in the calendar year next following that in which such notice is given.

2. The termination of the present Convention shall not have the effect of reviving any convention, agreement or arrangement abrogated by the present Convention.

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

Done in duplicate at Naimbi this 27th day of August, one thousand nine hundred and sixty-eight.

For the Government of the Republic  
of Zambia:

W. J. PHIRI.

For the Government of the Republic  
of Kenya:

J. S. GICHURU.