

No. 27700

**FEDERAL REPUBLIC OF GERMANY
and
ZIMBABWE**

**Agreement for the avoidance of double taxation with respect
to taxes on income, capital and capital gains (with proto-
col). Signed at Harare on 22 April 1988**

Authentic texts: German and English.

Registered by Germany on 7 December 1990.

**RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
et
ZIMBABWE**

**Convention tendant à éviter la double imposition en matière
d'impôts sur le revenu, sur la fortune et sur les gains en
capital (avec protocole). Signée à Harare le 22 avril 1988**

Textes authentiques : allemand et anglais.

Enregistrée par l'Allemagne le 7 décembre 1990.

AGREEMENT¹ BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE REPUBLIC OF ZIMBABWE FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME, CAPITAL AND CAPITAL GAINS

The Federal Republic of Germany
and
the Republic of Zimbabwe

desiring to conclude an Agreement for the avoidance of double taxation with respect to taxes on income, capital and capital gains,

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 a Contracting State, of a Land or a political subdivision or local authority thereof, 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:

- (a) in the Federal Republic of Germany:
 - (i) the income tax (Einkommensteuer);
 - (ii) the corporation tax (Körperschaftsteuer);

¹ Came into force on 22 April 1990, i.e., one month after the exchange of the instruments of ratification, which took place at Bonn on 22 March 1990, in accordance with article 29 (2).

- (iii) the capital tax (Vermögensteuer); and
 - (iv) the trade tax (Gewerbsteuer);
- (hereinafter referred to as "German tax");

(b) in the Republic of Zimbabwe:

- (i) the income tax;
 - (ii) the branch profits tax;
 - (iii) the non-resident shareholders' tax;
 - (iv) the non-residents' tax on interest;
 - (v) the non-residents' tax on fees;
 - (vi) the non-residents' tax on royalties; and
 - (vii) the capital gains tax;
- (hereinafter referred to as "Zimbabwean tax").

(4) This Agreement shall apply also to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Agreement in addition to, or in place of, the existing taxes. At the end of each year the competent authorities of the Contracting States shall, if necessary, notify each other of changes which have been made in their respective taxation laws.

Article 3

General Definitions

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

- (a) the terms "a Contracting State" and "the other Contracting State" mean the Federal Republic of Germany or the Republic of Zimbabwe as the context requires, and, when used in a geographical sense, the territory in which the tax law of the State concerned is in force;
- (b) the term "person" includes an individual, a company and any other body of persons;
- (c) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (d) 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;

- (e) the term "national" means:
 - (i) in relation to the Federal Republic of Germany any German within 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;
 - (ii) in relation to the Republic of Zimbabwe any citizen of the Republic of Zimbabwe and any legal person, partnership, association or other entity deriving its status as such from the law in force in the Republic of Zimbabwe;
- (f) the term "international traffic" means any transport by a ship or aircraft, including transport by container, operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (g) the term "competent authority" means in the case of the Federal Republic of Germany the Federal Ministry of Finance, and in the case of the Republic of Zimbabwe the Commissioner of Taxes or his authorized representative.

(2) As regards the application of this Agreement by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that 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 laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.

(2) Where by reason of the provisions of paragraph (1) of this Article an individual is a resident of both Contracting States, then his status shall be determined as follows:

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

- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

(3) Where by reason of the provisions of paragraph (1) of this Article a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the 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 through which the business of an enterprise is wholly or partly carried on.

(2) The term "permanent establishment" includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and
- (g) an installation or structure used for the exploration or exploitation of natural resources.

(3) A building site or construction or installation project constitutes a permanent establishment only if it lasts more than six months.

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

- (a) the use of facilities solely for the purpose of storage, 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 of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e) of this paragraph, provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

(5) Notwithstanding the provisions of paragraphs (1) and (2) of this Article, where a person, other than an agent of an independent status to whom paragraph (6) of this Article applies, is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities, which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph (4) of this Article which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

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

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

Article 6

Income from Immovable Property

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

(2) The term "immovable property" shall have the meaning which it has under 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) of this Article 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) of this Article shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7

Business Profits

(1) The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on 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) Subject to the provisions of paragraph (3) of this Article, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

(3) In determining 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) of this Article 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 contained 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

International Traffic

(1) Profits from international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

(2) If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

(3) The provisions of paragraph (1) of this Article shall apply also to profits from the participation in a pool, a joint business or an international operating agency.

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 derived by a resident of a Contracting State from a company which is a resident of the other Contracting State may be taxed in the first-mentioned State.

(2) However, such dividends may also be taxed in the Contracting State of which the company from which the dividends are derived is a resident and according to the law of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

- (a) 10 percent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 percent of the capital of the company paying the dividends;
- (b) 20 percent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

(3) Notwithstanding the provisions of paragraph (2) of this Article, German tax on dividends paid to a company being a resident of the Republic of Zimbabwe by a company being a resident of the Federal Republic of Germany, at least 25 percent 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 15 percent 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 dividends on shares including income from shares, "jouissance" shares or "jouissance" rights, mining shares, "founders'" shares or other rights, not being debt-claims, participating in profits, and other income which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident, and income derived by a sleeping partner from his participation as such and distributions on certificates of an investment trust.

(5) The provisions of paragraphs (1) to (3) of this Article shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, 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, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other State.

Article 11

Interest

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

(2) However, such interest may also be taxed in the Contracting State in which it arises and according to the law of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 percent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

(3) Notwithstanding the provisions of paragraph (2) of this Article:

- (a) interest arising in the Federal Republic of Germany and paid to the Zimbabwean Government shall be exempt from German tax;
- (b) interest arising in the Republic of Zimbabwe and paid to the German Government shall be exempt from Zimbabwean tax.

(4) The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, but shall not include any item which is treated as a distribution under the provisions of Article 10. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

(5) The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

(6) Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a Land, 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 Contract-

ing State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

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

Article 12

Royalties and Fees for Technical Services

(1) Royalties and fees for technical services 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 and fees for technical services may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the recipient is the beneficial owner of the royalties or of the fees for technical services the tax so charged shall not exceed 7½ percent of the gross amount of such royalties and fees for technical services. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

(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 term "fees for technical services" as used in this Article means payments of any kind to any person, other than payments to an employee of the person making the payments, in consideration for any services of a managerial, technical, administrative or consultancy nature rendered in the Contracting State of which the payer is a resident.

(5) The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services arise through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right, property or contract in respect of which the royalties or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

(6) Royalties and fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a Land, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties or fees for technical services, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the obligation to make the payments was incurred and the payments are borne by that permanent establishment or fixed base, then the royalties or fees for technical services shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

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

Article 13

Capital Gains

(1) Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

(2) Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for

the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

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

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

(5) Gains from the alienation of any property other than that mentioned in paragraphs (1) to (4) of this Article, 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 activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.

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

Article 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) of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in 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 State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

(3) Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic 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

Artistes and Athletes

(1) Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

(2) Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

Article 18

Pensions

(1) Subject to the provisions of paragraph (1) of Article 19, any pension or other similar remuneration paid to a resident of one of the Contracting States from a source in the other Contracting State in consideration of past employment or services in that other Contracting State and any annuity paid to such a resident from such a source shall be taxable only in that other State.

(2) The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

Article 19

Government Service

(1) Remuneration including pensions paid by, or out of funds created by, a Contracting State, a Land, a political subdivision or a local authority thereof to an individual in respect of services rendered to that State, Land, subdivision or authority shall be taxable only in that State. However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State, if the individual is a resident of that State, a national of that State and not a national of the first-mentioned State.

(2) For the purposes of paragraph (1) of this Article any pension paid out of the Central African Pension Fund and subject to tax under the law of the Republic of Zimbabwe shall be treated as if it were a pension paid by, or out of funds created by, the Republic of Zimbabwe.

(3) The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State, a Land, a political subdivision or a local authority thereof.

(4) The provisions of paragraph (1) of this Article shall likewise apply in respect of remuneration paid, under a development assistance programme of a Contracting State, a Land, a political subdivision or a local authority thereof, out of funds exclusively supplied by that State, Land, political subdivision or local authority, to a specialist or volunteer seconded to the other Contracting State with the consent of that other State.

Article 20

Teachers, Students and Trainees

(1) An individual who visits a Contracting State at the invitation of that State or of a university, college, school, museum or other cultural institution of that State or under an official programme of cultural exchange for a period not exceeding two years solely for the purpose of teaching, giving lectures or carrying out research at such institution and who is, or was immediately before that visit, a resident of the other Contracting State shall be exempt from tax in the first-mentioned State on his remuneration for such activity, provided that such remuneration is derived from sources outside that State.

(2) An individual who is present in a Contracting State solely:

- (a) as a student at a university, college or school in that Contracting State;
- (b) as a business apprentice (including in the case of the Federal Republic of Germany a *Volontär* or a *Praktikant*);
- (c) as the recipient of a grant, allowance or award for the primary purpose of study or research from a religious, charitable, scientific or educational organisation; or
- (d) as a member of a technical cooperation programme entered into by the Government of that Contracting State; and who is, or was immediately before visiting that State, a resident of the other Contracting State, shall be exempt from tax in the first-mentioned State in respect of 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, wherever arising, which are not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.

Article 22

Capital

(1) Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

(2) Capital represented by movable property forming part of the business property of a permanent establishment which an enter-

prise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.

(3) Capital represented by ships and aircraft operated in international traffic and by movable property pertaining to the operation of such ships or 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) of this paragraph apply, there shall be excluded from the basis upon which German tax is imposed, any item of income arising in the Republic of Zimbabwe and any item of capital situated within the Republic of Zimbabwe, which, according to this Agreement, may be taxed in the Republic of Zimbabwe. The Federal Republic of Germany, however, retains the right to take into account in the determination of its rate of tax the items of income and capital so excluded. In the case of income from dividends the foregoing provisions shall apply only to such dividends as are paid to a company (not including partnerships) being a resident of the Federal Republic of Germany by a company being a resident of the Republic of Zimbabwe at least 25 percent of the capital of which is owned directly by the German company. For the purpose of taxes on capital there shall also be excluded from the basis upon which German tax is imposed any shareholding, the dividends of which are excluded or, if paid, would be excluded, according to the immediately foregoing sentence, from the basis upon which German tax is imposed.
- (b) Subject to the provisions of German tax law regarding credit for foreign tax, there shall be allowed as a credit against German income and corporation tax payable in respect of the following items of income arising in the Republic of Zimbabwe the Zimbabwean tax paid under the law of the Republic of Zimbabwe and in accordance with this Agreement on:

- (i) dividends not dealt with in sub-paragraph (a)-of this paragraph;
 - (ii) interest;
 - (iii) royalties and fees for technical services;
 - (iv) remuneration to which Article 16 applies;
 - (v) income to which Article 17 applies.
- (c) For the purpose of the credit referred to in sub-paragraph (b) of this paragraph the Zimbabwean tax shall be deemed to be 10 percent of the gross amount in the case of royalties and fees for technical services.
- (d) The provisions of sub-paragraph (a) of this paragraph shall not apply to the profits of, and to the capital represented by, movable and immovable property forming part of the business property of a permanent establishment and to the gains from the alienation of such property; to dividends paid by, and to the shareholding in, a company; 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:
- (i) from producing or selling goods or merchandise, giving technical advice or rendering engineering services, or doing banking or insurance business, within the Republic of Zimbabwe; or
 - (ii) from dividends paid by one or more companies, being residents of the Republic of Zimbabwe, more than 25 percent 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 the Republic of Zimbabwe.

In such case Zimbabwean tax payable under the law of the Republic of Zimbabwe and in accordance with this Agreement on the above-mentioned items of income and capital shall, subject to the provisions of German tax law regarding credit for foreign tax, be allowed as a credit against German income or corporation tax payable on such items of income or against German capital tax payable on such items of capital.

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

Subject to the provisions of the law of the Republic of Zimbabwe regarding the allowance as a credit against Zimbabwean tax of the

tax payable in a territory outside the Republic of Zimbabwe (which shall not affect the general principle hereof), German tax payable, whether directly or by deduction, in respect of taxable income or chargeable gains from sources within the Federal Republic of Germany shall be allowed as a credit against any Zimbabwean tax computed by reference to the same taxable income or chargeable gains by reference to which the German tax is computed.

Article 24

Non-discrimination

(1) Nationals of a Contracting State shall not be subject 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. This provision shall, notwithstanding the provisions of Article 1, apply also to persons who are not residents of one or both of the Contracting States.

(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 their civil status or family responsibilities which it grants to its own residents.

(3) Except where the provisions of Article 9, paragraph (7) of Article 11, or paragraph (7) of Article 12 apply, interest, royalties, fees for technical services and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

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

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

Article 25

Mutual Agreement Procedure

(1) Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph (1) of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.

(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 a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with this Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law 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 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 reaching an agreement in the sense of the preceding paragraphs.

Article 26

Exchange of Information

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic law of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collec-

tion of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of this Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

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

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).

Article 27

Diplomatic and Consular Privileges

(1) Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic or permanent missions or consular posts or officials of an international organisation under the general rules of international law or under the provisions of special agreements.

(2) Notwithstanding the provisions of Article 4, an individual who is a member of a diplomatic mission or consular post of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed for the purposes of the Agreement to be a resident of the sending State if:

- (a) in accordance with international law he is not liable to tax in the receiving State in respect of income from sources outside that State; and
- (b) he is liable in the sending State to the same obligations in relation to tax on his world income as are residents of that State.

Article 28**Land Berlin**

This Agreement shall also apply to Land Berlin, provided that the Government of the Federal Republic of Germany does not make a contrary declaration to the Government of the Republic of Zimbabwe within three months of 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 in Bonn.

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

(a) in the Federal Republic of Germany:

- (i) in respect of taxes which are levied for any assessment period beginning on or after 1 January 1987;
- (ii) in respect of taxes withheld at source on dividends, interest, royalties and fees for technical services paid after 31 December 1986;

and

(b) in the Republic of Zimbabwe:

- (i) in respect of income tax, branch tax and capital gains tax, for any year of assessment beginning on or after 1 April 1987;
- (ii) in respect of non-resident shareholders' tax, for dividends distributed on or after 1 April 1987;
- (iii) in respect of non-residents' tax on interest, for interest paid on or after 1 April 1987;
- (iv) in respect of non-residents' tax on fees, for fees paid on or after 1 April 1987;
- (v) in respect of non-residents' tax on royalties, for royalties paid on or after 1 April 1987.

Article 30

Termination

(1) This Agreement shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate this Agreement through diplomatic channels by giving written notice of termination at least on or before the thirtieth day of June in any calendar year beginning after the expiration of five years from the date of entry into force of this Agreement. In such event, this Agreement shall cease to be effective:

(a) in the Federal Republic of Germany:

- (i) in respect of taxes which are levied for any assessment period following that in which the notice is given;
- (ii) in respect of taxes withheld at source on dividends, interest, royalties and fees for technical services paid after 31 December of the year in which the notice is given;

and

(b) in the Republic of Zimbabwe:

- (i) in respect of income tax, branch profits tax and capital gains tax, for any year of assessment beginning on or after 1 April in the calendar year next following that in which the notice is given;
- (ii) in respect of non-resident shareholders' tax on dividends distributed on or after 1 April in the calendar year next following that in which the notice is given;
- (iii) in respect of non-residents' tax on interest paid on or after 1 April in the calendar year next following that in which the notice is given;
- (iv) in respect of non-residents' tax on fees paid on or after 1 April in the calendar year next following that in which the notice is given;
- (v) in respect of non-residents' tax on royalties paid on or after 1 April in the calendar year next following that in which the notice is given.

[For the testimonium and signatures, see p. 52 of this volume.]

GESCHEHEN zu Harare am 22. April 1988 in zwei Urschriften, jede in deutscher und englischer Sprache, wobei jeder Wortlaut gleichermaßen verbindlich ist.

DONE at Harare on 22 April 1988 in duplicate in the German and English languages, both texts being equally authentic.

Für die Bundesrepublik Deutschland:
For the Federal Republic of Germany:
FRANZ FREIHERR VON MENTZINGEN

Für die Republik Simbabwe:
For the Republic of Zimbabwe:
ENOS NKALA

Protocol

The Federal Republic of Germany

and

the Republic of Zimbabwe

have, at the signing at Harare on 22nd April 1988 of the Agreement between the two States for the avoidance of double taxation with respect to taxes on income, capital and capital gains, agreed upon the following provisions which shall form an integral part of the said Agreement.

(1) With reference to Article 3

In the case of the Republic of Zimbabwe the definition of "person" in sub-paragraph (b) of paragraph (1) includes an estate and a trust.

(2) With reference to Article 7

- (a) Profits which arise from a delivery of goods made, whether in connection with this activity or independently of it, by the principal permanent establishment or another permanent establishment of the enterprise or a third party shall not be attributed to the building site or construction or installation project.
- (b) Profits arising from planning, project work, design or research as well as technical services which a resident of one Contracting State performs outside the other Contracting State for the building site, construction or installation project located in that other Contracting State shall not be attributed to that building site, construction or installation project.

(3) With reference to Articles 10 and 11

Notwithstanding the provisions of these Articles, dividends and interest may be taxed in the Contracting State in which they arise, and according to the law of that State, if they:

- (a) are derived from rights or debt-claims carrying a right to participate in profits (including income derived by a sleeping partner from his participation as such, from a "partiarisches Darlehen" and from "Gewinnobligationen" within the meaning of the tax law of the Federal Republic of Germany); and

- (b) are deductible in the determination of profits of the debtor of such income.

(4) With reference to Article 23

Where a company being a resident of the Federal Republic of Germany distributes income derived from sources within the Republic of Zimbabwe, paragraph (1) shall not preclude the compensatory imposition of corporation tax on such distribution in accordance with the provisions of German tax law.

(5) With reference to Article 24

It is understood that the Republic of Zimbabwe shall have the right to implement the branch profits tax according to the law of the Republic of Zimbabwe on profits attributable to a permanent establishment of a German company but the tax so imposed shall not exceed 5 percent of such profits.

[For the testimonium and signatures, see p. 57 of this volume.]

GESCHEHEN zu Harare am 22. April 1988 in zwei Urschriften, jede in deutscher und englischer Sprache, wobei jeder Wortlaut gleichermaßen verbindlich ist.

DONE at Harare on 22 April 1988 in duplicate in the German and English languages, both texts being equally authentic.

Für die Bundesrepublik Deutschland:
For the Federal Republic of Germany:
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