No. 33005

NETHERLANDS
and
ZIMBABWE

Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains (with protocol). Signed at Harare on 18 May 1989

Authentic text: English.

Registered by the Netherlands on 31 July 1996.

PAYS-BAS
et
ZIMBABWE

Convention tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur les revenus et les gains en capital (avec protocole). Signée à Harare le 18 mai 1989

Texte authentique : anglais.

Enregistrée par les Pays-Bas le 31 juillet 1996.

CONVENTION[1] BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE REPUBLIC OF ZIMBABWE FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS

The Government of the Kingdom of the Netherlands

and

the Government of the Republic of Zimbabwe,

Desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains,

Have agreed as follows:

CHAPTER I

SCOPE OF THE CONVENTION

Article 1

Personal Scope

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

Article 2

Taxes covered

1. This Convention shall apply to taxes on income and capital gains imposed on behalf of one of the States 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 capital gains all taxes imposed on total income, on total capital gains or on elements of income or of capital gains, as well as taxes on capital appreciation.

3. The existing taxes to which this Convention shall apply are in particular:

a) in the Netherlands:

(i) de inkomstenbelasting (income tax);

(ii) de loonbelasting (wages tax);

[1] Came into force on 21 April 1991 by notification, in accordance with article 29.

(iii) de vennootschapsbelasting (company tax) including the Government share in the net profits of the exploitation of natural resources levied pursuant to the Mijnwet 1810 (the Mining Act of 1810) with respect to concessions issued from 1967, or pursuant to the Mijnwet Continentaal Plat 1965 (the Netherlands Continental Shelf Mining Act of 1965); and
(iv) de dividendbelasting (dividend tax);
(hereinafter referred to as "Netherlands tax");
b) in 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 Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of this Convention in addition to, or in place of, the existing taxes. The competent authorities of the States shall, if necessary, notify each other of any substantial changes which have been made in their respective taxation laws.

CHAPTER II

DEFINITIONS

Article 3

General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:
a) the term "State" means the Netherlands or Zimbabwe, as the context requires; the term "States" means the Netherlands and Zimbabwe;
b) the term "the Netherlands" means the part of the Kingdom of the Netherlands that is situated in Europe including the part of the sea bed and its sub-soil under the North Sea, to the extent that that area in accordance with international law has been or may hereafter be designated under Netherlands laws as an area within which the Netherlands may exercise certain rights with respect to the exploration and exploitation of the natural resources of the sea bed or its sub-soil;
c) the term "Zimbabwe" means the Republic of Zimbabwe;
d) the term "person" includes an individual, a company, an estate, a trust and any other body of persons;
e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
f) the terms "enterprise of one of the States" and "enterprise of the other State" mean respectively an enterprise carried on by a resident of one of the States and an enterprise carried on by a resident of the other State;

g) 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 one of the States, except when the ship or aircraft is operated solely between places in the other State;

h) the term "national" means:

(i) in relation to the Netherlands, any individual possessing the nationality of the Netherlands and any legal person, partnership or association deriving its status as such from the law in force in the Netherlands;

(ii) in relation to Zimbabwe, any citizen of Zimbabwe and any legal person, partnership, association or other entity deriving its status as such from the law in force in Zimbabwe;

i) the term "competent authority" means in the case of the Netherlands the Minister of Finance or his authorised representative and in the case of Zimbabwe the Commissioner of Taxes or his authorised representative.

2. As regards the application of this Convention by one of the States any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which this Convention applies.

Article 4

Fiscal Domicile

1. For the purposes of this Convention, the term "resident of one of the States" 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 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 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 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 Convention, 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; and
f) a mine, an oil or gas well, a quarry or any other place of extraction 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 one of the States 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 one of the States 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 one of the States controls or is controlled by a company which is a resident of the other 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.

CHAPTER III

TAXATION OF INCOME

Article 6

Income from immovable Property

1. Income derived by a resident of one of the States from immovable property (including income from agriculture or forestry) situated in the other 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 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 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 one of the States shall be taxable only in that State unless the enterprise carries on business in the other 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 one of the States carries on business in the other State through a permanent establisment situated therein, there shall in each 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 establisment.

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 incurred for the purposes of the enterprise as a whole, whether in the State in which the permanent establishment is situated or elsewhere.

4. Insofar as it has been customary in one of the States 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 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 Convention, 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 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 State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the State of which the operator of the ship is a resident.

3. For the purposes of this Article, profits derived from the operation in international traffic of ships and aircraft include profits derived from the rental on a full or bareboat basis of ships and aircraft if operated in international traffic if such rental profits are incidental to the profits described in paragraph 1 of this Article.

4. 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

1. Where:

a) an enterprise of one of the States participates directly or indirectly in the management, control or capital of an enterprise of the other State; or

b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the States and an enterprise of the other 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. It is understood, however, that the fact that associated enterprises have concluded arrangements, such as costsharing arrangements or general services agreements, for or based on the allocation of executive, general administrative, technical and commercial expenses, research and development expenses and other similar expenses, is not in itself a condition as meant in the preceding sentence.

2. Where one of the States includes in the profits of an enterprise of that State, and taxes accordingly, profits on which an enterprise of the other State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the States shall if necessary consult each other.

Article 10

Dividends

1. Dividends derived from a company which is a resident of one of the States by a resident of the other State may be taxed in that other State.

2. However, such dividends may also be taxed in the 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 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends;

b) 20 per cent 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.

3. The competent authorities of the States shall by mutual agreement settle the mode of application of paragraph 2 of this Article.

4. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident and also includes any other item which, under the law of the State of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company.

5. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the dividends, being a resident of one of the States, carries on business in the other 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 one of the States derives profits or income from the other 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 one of the States and paid to a resident of the other State may be taxed in that other State.

2. However, such interest may also be taxed in the 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 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2 of this Article, interest arising in one of the States shall be exempt from tax in that State if it is derived by the Government of the other State, a political subdivision or a local authority thereof or any agency or instrumentality of that Government, political subdivision or local authority thereof.

4. Notwithstanding the provisions of paragraph 2 of this Article , interest arising in Zimbabwe and paid to the Nederlandse Financieringsmaatschappij voor Ontwikkelingslanden N.V. (Netherlands Finance Company for Developing Countries), and the Nederlandse Investeringsbank voor Ontwikkelingslanden N.V. (Netherlands In-

vestment Bank for Developing Countries) shall be exempt from Zimbabwean tax.

5. The competent authorities of the States shall by mutual agreement settle the mode of application of paragraphs 2, 3 and 4 of this Article.

6. 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.

7. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the interest, being a resident of one of the States, carries on business in the other 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.

8. Interest shall be deemed to arise in one of the States when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of one of the States or not, has in one of the States 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.

9. 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 debtclaim 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 law of each State, due regard being had to the other provisions of the Convention.

Article 12

Royalties

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

2. However, such royalties may also be taxed in the State in which they arise, and according to the law of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

3. The competent authorities of the States shall by mutual agreement settle the mode of application of paragraph 2 of this Article.

4. 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, as well as payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a technical, managerial or consultancy nature.

5. The provisions of paragraph 1 and 2 of this Article, shall not apply if the beneficial owner of the royalties, being a resident of one of the States, carries on business in the other State in which the royalties 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 or property in respect of which the royalties are paid, are 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 shall be deemed to arise in one of the States when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of one of the States or not, has in one of the States a permanent establishment or a fixed base in connection with which the contract under which the royalties are paid was concluded, and such royalties are borne by such permanent establishment or fixed base, then such royalties 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 royalties, 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 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 State, due regard being had to the other provisions of this Convention.

Article 13

Capital Gains

1. Gains derived by a resident of one of the States from the alienation of immovable property referred to in Article 6 and situated in the other 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 enter-

prise of one of the States has in the other State or of movable property pertaining to a fixed base available to a resident of one of the States in the other 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 State in which the place of effective management of the enterprise is situated. For the purposes of this paragraph the provisions of paragraph 2 of Article 8 shall apply.

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

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

Article 14

Independent personal Services

1. Income derived by a resident of one of the States 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 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, 19 and 20, salaries, wages and other similar remuneration derived by a resident of one of the States in respect of an employment shall be taxable only in that State unless the employment is exercised in the other 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 one of the States in respect of an employment exercised in the other 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 of that State; 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 State in which the place of effective management of the enterprise is situated.

Article 16

Director's Fees

Director's fees or other remuneration derived by a resident of one of the States in his capacity as a member of the board of directors, a "bestuurder" or a "commissaris" of a company which is a resident of the other 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 one of the States as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other 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 State in which the activities of the entertainer or athlete are exercised.

Article 18

Pensions

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration, whether or not of a periodical nature, arising in one of the States and paid to a resident of the other State in consideration of past employment or services may be taxed in the first-mentioned State, and any annuity arising in that State and paid to a resident of the other State may be taxed in the first-mentioned State.

2. Any pension paid out under the provisions of a social security system of one of the States to a resident of the other State may be taxed in the first-mentioned State.

3. 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. a) Remuneration, other than a pension, paid by one of the States or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority may be taxed in that State.

b) However, such remuneration shall be taxable only in the other State if the services are rendered in that State and the individual is a resident of that State who:

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. a) Any pension paid by, or out of funds created by, one of the States or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority may be taxed in that State.

b) However, such pension shall be taxable only in the other State if the individual is a resident of, and a national of, that State and if immediately prior to the cessation of the services to which the pension relates the remuneration therefor was subject to tax in that State whether under paragraph 1 of this Article or otherwise.

c) For the purposes of this paragraph any pension paid out of the Central African Pension Fund and subject to tax under the law of Zimbabwe shall be treated as if it were a pension paid by, or out of funds created by, 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 one of the States or a political subdivision or a local authority thereof.

Article 20

Professors and Teachers

1. Remuneration, which a professor or teacher who is a resident of one of the States, and who is present in the other State for the purpose of teaching or scientific research for a maximum period of two years in a university, college or other establishment for teaching or scientific research in that other State, receives for such teaching or research, shall be taxable only in the first-mentioned State, provided that such remuneration arises from sources outside that other State.

2. This Article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

Article 21

Students

Payments which a student or business apprentice who is or was immediately before visiting one of the States a resident of the other

State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

Article 22

Income not expressly mentioned

1. Items of income of a resident of one of the States, wherever arising, which are not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 of this Article shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of one of the States, carries on business in the other State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income 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.

CHAPTER IV

ELIMINATION OF DOUBLE TAXATION

Article 23

Elimination of double Taxation

1. The Netherlands, when imposing tax on its residents, may include in the basis upon which such taxes are imposed the items of income which, according to the provisions of this Convention, may be taxed in Zimbabwe.

2. However, where a resident of the Netherlands derives items of income according to Article 6, Article 7, paragraph 5 of Article 10, paragraph 7 of Article 11, paragraph 5 of Article 12, paragraphs 1 and 2 of Article 13, Article 14, paragraphs 1 and 3 of Article 15, Article 16, paragraph 2 of Article 18, Article 19 and paragraph 2 of Article 22 of this Convention may be taxed in Zimbabwe and are included in the basis referred to in paragraph 1 of this Article, the Netherlands shall exempt such items of income by allowing a reduction of its tax. This reduction shall be computed in conformity with the provisions of Netherlands law for the avoidance of double taxation. For that purpose the said items of income shall be deemed to be included in the total amount of the items of income which are exempt from Netherlands tax under those provisions.

3. Further, the Netherlands shall allow a deduction from the Netherlands tax so computed for the items of income which according to paragraph 2 of Article 10, paragraph 2 of Article 11, paragraph 2 of Article 12, paragraph 4 of Article 13, Article 17 and paragraph 1 of Article 18 of this Convention may be taxed in Zimbabwe to the extent

that these items are included in the basis referred to in paragraph 1 of this Article. The amount of this deduction shall be equal to the tax paid in Zimbabwe on these items of income, but shall not exceed the amount of the reduction which would be allowed if the items of income so included were the sole items of income which are exempt from Netherlands tax under the provisions of Netherlands law for the avoidance of double taxation.

4. Subject to the provisions of the law of Zimbabwe regarding the allowance as a credit against Zimbabwean tax of tax payable in a territory outside Zimbabwe (which shall not affect the general principle hereof), Netherlands tax payable under the law of the Netherlands and in accordance with the provisions of this Convention, whether directly or by deduction, in respect of taxable income or chargeable gains from sources within the Netherlands 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 Netherlands tax is computed.

5. For the purposes of paragraph 4 of this Article, in determining the taxes on income paid to the Netherlands, the investment premiums and bonuses and desinvestment payments as meant in the Wet Investeringsrekening (the Netherlands Investment Account Law) shall not be taken into account. For the purposes of this paragraph, the taxes referred to in paragraph 3a and 4 of Article 2 shall be considered taxes on income.

6. For the purposes of paragraph 4 of this Article, taxable income and chargeable gains owned by a resident of Zimbabwe which may be taxed in the Netherlands in accordance with the provisions of this Convention shall be deemed to arise from sources within the Netherlands.

CHAPTER V

SPECIAL PROVISIONS

Article 24

Non-Discrimination

1. Nationals of one of the States shall not be subjected in the other 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, also apply to persons who are not residents of one or both of the States.

2. The taxation on a permanent establishment which an enterprise of one of the States has in the other 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. Provided that this para-

graph shall not prevent one of the States from imposing on the profits attributable to a permanent establishment in that State of a company which is a resident of the other State a tax not exceeding 5 per cent of those profits in addition to the tax which would be chargeable on those profits if they were profits of a company which was a resident of the firstmentioned State.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 5 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of one of the States to a resident of the other 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 one of the States to a resident of the other 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 one of the States, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. Nothing contained in this Article shall be construed as obliging either State to grant to individuals not resident in that State any of the personal allowances, reliefs and reductions for tax purposes which are granted to individuals so resident.

6. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Article 25

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the 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 Convention.

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

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

4. The competent authorities of the 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 States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the States concerning taxes covered by this Convention insofar as the taxation thereunder is not contrary to this Convention. The exchange of information is not restricted by Article 1. Any information received by one of the States shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Convention. Such persons or authorities shall use the information only for such purposes.

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

a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other 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 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 Agents and consular Officers

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

2. For the purposes of this Convention an individual, who is a member of a diplomatic or consular mission of one of the States in the other State or in a third State and who is a national of the sending State, shall be deemed to be a resident of the sending State if he is subjected therein to the same obligations in respect of taxes on income as are residents of that State.

3. This Convention shall not apply to international organisations, organs and officials thereof and members of a diplomatic or consular

mission of a third State, being present in one of the States, if they are not subjected therein to the same obligations in respect of taxes on income as are residents of that State.

Article 28

Territorial Extension

1. This Convention may be extended, either in its entirety or with any necessary modifications, to the Netherlands Antilles and/or Aruba, if those countries impose taxes substantially similar in character to those to which this Convention applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed in notes to be exchanged through diplomatic channels.

2. Unless otherwise agreed the termination of this Convention shall not also terminate any extension of this Convention to the Netherlands Antilles and/or Aruba.

CHAPTER VI

FINAL PROVISIONS

Article 29

Entry into Force

This Convention shall enter into force on the thirtieth day after the latter of the dates on which the respective Governments have notified each other in writing that the formalities constitutionally required in their respective States have been complied with, and its provisions shall have effect:

a) in the Netherlands:
(i) in respect of dividend tax, on dividends payable on or after the date of entry into force of this Convention;
(ii) in respect of any other taxes for taxable years and periods beginning on or after 1st January, in the calendar year following that in which the latter of the notifications has been received;
b) in Zimbabwe:
(i) in respect of income tax, branch profits tax and capital gains tax, for any year of assessment beginning on or after 1st April in the calendar year following that in which the latter of the notifications has been received;
(ii) in respect of non-resident shareholders' tax, for dividends distributed on or after the date of entry into force of this Convention;
(iii) in respect of non-residents' tax on interest, for interest paid on or after the date of entry into force of this Convention;
(iv) in respect of non-residents' tax on fees, for fees paid on or after the date of entry into force of this Convention;
(v) in respect of non-residents' tax on royalties, for royalties paid on or after the date of entry into force of this Convention.

Article 30

Termination

This Convention shall remain in force until terminated by one of the Contracting Parties. Either Party may terminate this Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the expiration of a period of five years from the date of its entry into force. In such event this Convention shall cease to have effect:

a) in the Netherlands:

(i) in respect of dividend tax, on dividends payable on or after 1st January in the calendar year next following that in which the notice is given;

(ii) in respect of any other taxes, for any taxable year or period beginning after the end of the calendar year in which the notice is given;

b) in Zimbabwe:

(i) in respect of income tax, branch profits tax and capital gains tax, for any year of assessment beginning on or after 1st April in the calendar year next following that in which the notice is given;

(ii) in respect of non-resident shareholders' tax, non-residents' tax on interest, non-residents' tax on fees and non-residents' tax on royalties from the 1st April in the calendar year next following that in which the notice is given.

IN WITNESS whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Convention.

DONE at Harare this eighteenth day of May, 1989 in duplicate, in the English language.

For the Government
of the Kingdom of the Netherlands:

J. G. W. FABER

For the Government
of the Republic of Zimbabwe:

B. T. CHIDZERO

PROTOCOL

At the moment of signing the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains, this day concluded between the Kingdom of the Netherlands and the Republic of Zimbabwe, the undersigned have agreed that the following provisions shall form an integral part of this Convention.

(1) *Ad Article 7*

a) In respect of paragraphs 1 and 2 of Article 7, where an enterprise of one of the States sells goods or merchandise or carries on business in the other State through a permanent establishment situated therein, the profits of that permanent establishment shall not be determined on the basis of the total amount received by the enterprise, but shall be determined only on the basis of the remuneration which is attributable to the actual activity of the permanent establishment for such sales or business.

b) In the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, when the enterprise has a permanent establishment, the profits of such permanent establishment shall not be determined on the basis of the total amount of the contract, but shall be determined only on the basis of that part of the contract which is effectively carried out by the permanent establishment in the State where the permanent establishment is situated. The profits related to that part of the contract which is carried out by the head office of the enterprise shall be taxable only in the State of which the enterprise is a resident.

(2) *Ad Articles 10, 11 and 12*

Where tax has been levied at source in excess of the amount of tax chargeable under the provisions of Articles 10, 11 or 12, applications for the refund of the excess amount of tax have to be lodged with the competent authority of the State having levied the tax, within a period of three years after the tax has been levied.

(3) *Ad Article 13*

When applying the provisions of Article 13 of this Convention in Zimbabwe, the following shall be taken into account. Where the ownership of any specified asset is transferred from a company, in the course of or in furtherance of a scheme of reconstruction of a group of companies or a merger or other business operation which, in the opinion of the Commissioner of Taxes, is of a similar nature, to another company under the same control, the transferor and the transferee may elect that, notwithstanding the terms of any agreement of sale, the selling price of the asset shall in relation to the transferor be deemed for the purposes of this Convention to be an amount equal to the sum of the deductions allowable to such transferor in respect of such asset in terms of paragraphs a), b), c) and d) of subsection (2) of

section eleven of the Capital Gains Tax Act, 1981, of Zimbabwe, as in force at the date of signature of this Convention at the date of transfer:

Provided that if after the transfer such asset is sold, other than to a company under the same control, the capital gain in the hands of the seller shall be calculated as if the asset had at all times remained in the ownership of the first transferor in respect of whom an election was made in terms of this section.

IN WITNESS whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Protocol.

DONE at Harare this eighteenth day of May, 1989 in duplicate, in the English language.

For the Government
of the Kingdom of the Netherlands:

J. G. W. FABER

For the Government
of the Republic of Zimbabwe:

B. T. CHIDZERO