

Proclamation 8 of 2016

**PROCLAMATION**

by

HIS EXCELLENCY THE HONOURABLE ROBERT GABRIEL MUGABE, G.C.Z.M., President of Zimbabwe and Commander-in-Chief of the Defence Forces of Zimbabwe.

WHEREAS, it is provided for by section 91 of the Income Tax Act [Chapter 23:06], that the President may enter into agreements with the government of any other country or territory with a view to the prevention, mitigation or discontinuance of the levying, under the said Act and the laws of such other country or territory, of taxes in respect of the same income, or the rendering of reciprocal assistance in the administration of, and in the collection of, taxes under the said Act and taxes on the income levied under the laws of such other country or territory;

AND WHEREAS, it is provided by the said section that, as soon as may be after the conclusion of such agreement, the terms thereof shall be notified by the President by proclamation in the *Gazette*;

AND WHEREAS, the said agreement was concluded with the Government of the Republic of China on the 1st day of December, 2015:

NOW, THEREFORE, under and by virtue of the powers vested in the President as aforesaid, I do hereby proclaim, declare and make known that the agreement thereby made is the agreement contained in the Schedule.

Given under my hand and the Public Seal of Zimbabwe at Harare this 17th day of March in the year of Our Lord two thousand and sixteen.

R. G. MUGABE,  
President.

By Command of the President.

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SCHEDULE

**AGREEMENT  
BETWEEN  
THE GOVERNMENT OF THE REPUBLIC OF ZIMBABWE  
AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF  
CHINA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE  
PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES  
ON INCOME**

The Government of the Republic of Zimbabwe and the Government of the People's Republic of China,

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (hereinafter referred to as "the Agreement");

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 imposed on behalf of a Contracting State or of its local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, 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 the Agreement shall apply are in particular:
  - (a) in China,
    - (i) the individual income tax;
    - (ii) the enterprise income tax;(hereinafter referred to as "Chinese tax");
  - (b) in Zimbabwe:
    - (i) the income tax;
    - (ii) the non-resident shareholders' tax;

- (iii) the non-residents' tax on fees;
  - (iv) the non-residents' tax on royalties;
  - (v) the capital gains tax, and
  - (vi) the residents' tax on interest;
- (hereinafter referred to as "Zimbabwean tax").

4. The Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws within a reasonable period of time after such changes.

### Article 3

#### GENERAL DEFINITIONS

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

- (a) the term "China" means the People's Republic of China; when used in geographical sense, means all the territory of the People's Republic of China, including its land territory, internal waters, territorial sea and the air space above them, in which the Chinese laws relating to taxation apply, and any area beyond its territorial sea, within which the People's Republic of China has sovereign rights or jurisdiction in accordance with international law and its internal law;
- (b) the term "Zimbabwe" means the Republic of Zimbabwe;
- (c) the terms "a Contracting State" and "the other Contracting State" mean China or Zimbabwe as the context requires;
- (d) the term "tax" means Chinese tax or Zimbabwean tax as the context requires;
- (e) the term "person" includes an individual, an estate, a trust, a company and any other body of persons;
- (f) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (g) the term "enterprise" applies to the carrying on of any business;
- (h) 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;
- (i) the term "national" means:

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- (i) any individual possessing the nationality of a Contracting State;
  - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
  - (j) the term "business" includes the performance of professional services and of other activities of an independent character;
  - (k) the term "international traffic" means any transport by a ship, a boat, an aircraft, or a road or rail transport vehicle operated by an enterprise of a Contracting State except when the ship, boat, aircraft or road or rail transport vehicle is operated solely between places in the other Contracting State;
  - (l) the term "competent authority" means:
    - (i) in the case of China, the State Administration of Taxation or its authorised representative, and
    - (ii) in the case of Zimbabwe, Commissioner General of the Zimbabwe Revenue Authority or his authorised representative.
2. As regards the application of the 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 Contracting State concerning the taxes to which the Agreement applies.

### Article 4

#### RESIDENT

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 or her domicile, residence, place of incorporation, place of effective management or any other criterion of a similar nature. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his or her status shall be determined as follows:
  - (a) he or she shall be deemed to be a resident of the State in which he or her has a permanent home available to him or her; if he or she has a permanent home available to him or her in both States, he or she shall be deemed to be a resident of the State with which his or her personal and economic relations are closer (centre of vital interests);
  - (b) if the State in which he or she has his or her centre of vital interests cannot be determined, or if he or she has not a permanent home available to him or her in either State, he or she shall be deemed to be a resident of the State in which he or her has an habitual abode;

- (c) if he or she has an habitual abode in both States or in neither of them, he or she shall be deemed to be a resident of the State of which he or she is a national;
  - (d) if he or she 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, a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only 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, and
  - (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
3. The term "permanent establishment" also encompasses—
  - (a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than twelve months;
  - (b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue within a Contracting State for a period or periods aggregating more than six months within any twelve-month period.
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;

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- (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), 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, where a person—other than an agent of an independent status to whom paragraph 6 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, 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 of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he or she will not be considered an agent of an independent status within the meaning of this paragraph.

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other 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 and aircrafts shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise.

#### 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, 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 business of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary. The method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles 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.

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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 of an enterprise of a Contracting State from the operation or rental of ships, boats, aircrafts, or rail or road transport vehicles in international traffic and the rental of containers and related equipment which is incidental to the operation of ships, boats, aircraft, rail or road transport vehicles in 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 or boat, then it shall be deemed to be situated in the Contracting State in which the home harbor of the ship or boat is situated, or, if there is no such home harbor, in the Contracting State of which the operator of the ship or boat is a resident.

3. The provisions of paragraph 1 of this Article shall also apply 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 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.



2. Where a Contracting State includes in the profits of an enterprise of that State—and taxes accordingly—profits on which an enterprise of the other Contracting 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 to the other provisions of this Agreement and the competent authorities of the Contracting States shall, if necessary, consult each other).

#### Article 10

#### DIVIDENDS

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

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

- (a) two point five per cent (2.5%) of the gross amount of the dividends if the beneficial owner is a company which controls directly or indirectly at least 25 per cent of the company paying the dividends;
- (b) seven point five per cent (7.5%) of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term “dividends” as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights 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.

4. The provisions of paragraphs 1 and 2 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, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

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5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, 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 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 such other State.

6. The provisions of this Article shall not apply if it was the main purpose or one of the purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.

### 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 laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed seven point five per cent (7.5%) 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, interest arising in a Contracting State and derived by the Government of the other Contracting State, a local authority and the Central Bank thereof or any financial institution wholly owned by the Government of that other State, or by any other resident of that other State with respect to debt-claims indirectly financed by the Government of that other State, a local authority, and the Central Bank thereof or any financial institution wholly owned by the Government of that other State, shall be exempt from tax in the first-mentioned State.

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. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business