

GOVERNMENT OF ZAMBIA

STATUTORY INSTRUMENT No. 10 OF 1983

The Income Tax Act
(Laws, Volume XIII, Cap. 668)

**The Double Taxation Relief (Taxes on Income) (Italy)
(Amendment) Order, 1983**

IN EXERCISE of the powers contained in section *seventy-four* of the Income Tax Act, the following Order is hereby made:

1. This Order may be cited as the Double Taxation Relief (Taxes on Income) (Italy) (Amendment) Order, 1983, and shall be read as one with the Double Taxation Relief (Taxes on Income) (Italy) Order, 1974, hereinafter referred to as the principal Order.

Title

S.I. No. 63
of 1974

2. It is hereby declared that the Protocol, the text of which is set out in the Schedule hereto, being an amendment to an Agreement relating to relief from double taxation on income, made between the Government of the Republic of Zambia and the Government of the Republic of Italy, shall have effect in Zambia in accordance with the provisions of section *seventy-four* of the Income Tax Act.

Protocol

Cap. 668

3. The principal Order is amended accordingly.

Amendment
of principal
Order

KENNETH D. KAUNDA,
President

LUSAKA

14th January, 1983
[MF.104/71/10]

SCHEDULE

(*Paragraph 2*)

PROTOCOL AMENDING THE CONVENTION BETWEEN THE REPUBLIC OF ZAMBIA
AND THE REPUBLIC OF ITALY FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON
INCOME, SIGNED AT LUSAKA ON 27TH OCTOBER, 1972

The Government of the Republic of Zambia and the Government of the Republic of Italy, desiring to conclude a Protocol to amend the Convention between the Contracting States for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, signed at Lusaka on 27th October, 1972 (hereinafter referred to as "the Convention");

Have agreed as follows:

*Copies of this Statutory Instrument can be obtained from the Government Printer,
P.O. Box 30136, Lusaka. Price 10n each.*

ARTICLE 1

Paragraph 3 of Article 2 of the Convention shall be deleted and replaced by the following:

" (3) The taxes which are the subject of this Convention are, in particular:

(a) in the case of Zambia—

- (i) the income tax;
 - (ii) the mineral tax;
 - (iii) the personal levy;
 - (iv) the selective employment tax;
- even if they are collected by withholding taxes at the source, (hereinafter referred to as "Zambian tax");

(b) in the case of Italy—

- (i) the personal income tax (imposta sul reddito delle persone fisiche);
 - (ii) the corporate income tax (imposta sul reddito delle persone giuridiche);
 - (iii) the local income tax (imposta locale sui redditi);
- even if they are collected by withholding taxes at the source, (hereinafter referred to as "Italian tax")."

ARTICLE 2

Paragraphs 2 and 3 of Article 22 of the Convention shall be deleted and replaced by the following:

" 2. Where a resident of Italy owns items of income that are taxable in Zambia, Italy may, in determining its income taxes provided in Article 2 of this Convention, include in the basis upon which such taxes are imposed the mentioned items of income, unless express provisions of this Convention otherwise provide.

In that case, Italy shall deduct from the taxes so calculated the income tax paid in Zambia, but the amount of deduction shall not exceed that proportion of Italian tax which the items of income bear to the entire income.

However, no deduction will be granted if the item of income is subjected in Italy to a final withholding tax by request of the recipient of the said income in accordance with the Italian laws.

3. For the purposes of paragraph 2; 'the income tax paid in Zambia' shall be deemed to include any amount which would have been paid as Zambian tax but for an exemption or reduction for the tax granted under the Pioneer Industries (Relief from Income Tax) Act, 1965, or any other Zambian law of similar purpose and effect."

ARTICLE 3

The last sentence of paragraph 3 of Article 24 shall be deleted.

ARTICLE 4

1. This Protocol shall form an integral part of the Convention signed at Lusaka on 27th October, 1972, shall be ratified and the instruments of ratification shall be exchanged at Lusaka as soon as possible.

2. This Protocol shall enter into force on the date of the exchange of instruments of ratification and its provisions shall have effect in respect of income assessable for any taxable period commencing on or after the 1st January, 1974.

3. Claims for refund or credits arising in accordance with this Protocol in respect of any tax payable by residents of either of the Contracting States referring to the periods beginning on or after the 1st January, 1974, and until the entry into force of this Protocol shall be lodged within two years from the date of entry into force of this Protocol or from the date the tax was charged, whichever is later.

charged on the recipient under paragraph (2) or under paragraph (3) (a) (ii) of Article II and credit shall not be allowed in respect of any tax payable by the company on the profits out of which the dividend is paid."

ARTICLE III

This Protocol shall enter into force when the last of all such things shall have been done in the United Kingdom and Zambia as are necessary to give the Protocol the force of law in the United Kingdom and Zambia respectively, and shall thereupon have effect—

(a) in the United Kingdom:

(i) as respects income tax and capital gains tax, for any year of assessment beginning on or after 6 April, 1980; and

(ii) as respects corporation tax for any financial year beginning on or after 1 April, 1980;

(b) in Zambia:

as respects income for any charge year beginning on or after 1 April, 1980.

ARTICLE IV

This Protocol shall remain in force as long as the Convention remains in force.

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

DONE in duplicate at Lusaka this 30th day of April, 1981.

For the Government of the Republic of Zambia:

K. S. MUSOKOTWANE

For the Government of the United Kingdom of Great Britain and Northern Ireland:

J. R. JOHNSON

(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 of income (other than interest or royalties relieved from tax under the provisions of Article 12 or the provisions of Article 13 of this Convention) which, under the law of the Contracting State of which the company paying the dividends is a resident, is treated as a dividend or distribution of a company.

(5) The provisions of paragraphs (1), (2) and (3) of this Article shall not apply if the recipient of the dividends, being a resident of a Contracting State, has in the other Contracting State, of which the company paying the dividends is a resident, a permanent establishment and the holding by virtue of which the dividends are paid is effectively connected with a business carried on through that permanent establishment. In such a case, the provisions of Article 8 shall apply.

(6) If the recipient of a dividend owns 10 per cent or more of the class of shares in respect of which the dividend is paid then the relief from tax provided for in paragraphs (1), (2) and (3) of this Article shall not apply to the dividend to the extent that it can have been paid only out of profits which the company paying the dividend earned or other income which it received in a period ending twelve months or more before the relevant date. For the purposes of this paragraph the term 'relevant date' means the date on which the recipient of the dividend became the owner of 10 per cent or more of the class of shares in question.

Provided that this paragraph shall not apply if the shares were acquired for bona fide commercial reasons and not primarily for the purpose of securing the benefits of this Article.

(7) Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company to persons who are not residents of that other State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other State."

ARTICLE II

Article 23 of the Convention shall be amended:

(a) by the addition of the following new paragraph (1A) immediately after paragraph (1):

"(1A) For the purposes of paragraph (1) of this Article the term 'Zambia tax payable' shall be deemed to include any amount which would have been payable as Zambia tax for any year but for an exemption or reduction of tax granted for that year or any part thereof under—

(a) Sections 19 and 20 of the Pioneer Industries (Relief from Income Tax) Act, Cap. 666, and section 20 (f) of the Industrial Development Act, 1977, so far as they were in force on, and have not been modified since, the date of signature of the Protocol amending this Convention or have been modified only in minor respects so as not to affect their general character; or

(b) any other provision which may subsequently be made granting an exemption or reduction of tax which is agreed by the competent authorities of the Contracting States to be of a substantially similar character, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character.

Provided that relief from United Kingdom tax shall not be given by virtue of this paragraph in respect of income from any source if the income arises in a period starting more than ten years after the exemption from, or reduction of, Zambia tax was first granted in respect of that source."

(b) by the substitution for the proviso to sub-paragraph (2) (a) of the following proviso—"Provided that in the case of a dividend the credit shall take into account only such tax in respect thereof as is

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed the present Protocol.

DONE in duplicate at Lusaka, this 13th day of November, 1980, in the English and Italian languages, each text being equally authentic.

For the Government of the Republic of Zambia:

K. S. MUSOKOTWANE

For the Government of the Republic of Italy:

G. P. CUNEO