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"DEMYSTIFYING THE PRINCIPLE OF DOUBLE TAXATION IN INTERNATIONAL TAX LAW"

BY

BILLIAT JULAJULAH

(R075433B)

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SUPERVISOR: PROFESSOR LOVEMORE MADHUKU

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DECLARATION

I, **BILLIAT JULAJULAH** do hereby declare that this dissertation is my original work and that it has not been submitted and is not being currently submitted for a degree in any other university. Where information has been obtained from other sources, I verify that has been revealed and acknowledged through complete references.

Signed: ……………………………………..

Date: ………………………………………

The dissertation was submitted for examination with my approval as the University supervisor.

Signed: ……………………………………………..…………
PROFESSOR LOVEMORE MADHUKU

DEDICATIONS

This piece of work is dedicated to my mother, **LETWIN JERRINA MASHERENI JULAJULAH** for the lessons learnt and for showing me the right path of life.

I also dedicate this piece of work to my father, **FANAISI KAPATIKA JULAJULAH** for being a good mentor and parent and for always motivating me and making me realise that I am capable of doing anything should I advert my mind to it.

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11. Value Added Tax Act [Chapter 23:01]
12. NSSA Act [Chapter 17:04]
13. Statutory Instrument 40 of 2016
14. Statutory Instrument 284 of 2020

ABBREVIATIONS

1. BOOT-Build Own Operate Transfer
2. BOT- Build Operate Transfer
3. DTA- Double Taxation Agreement
4. FDI- Foreign Direct Investments
5. MSMES-Micro Enterprise Small Enterprise and Medium Enterprise
6. OECD-Organisation For Economic Cooperation And Development
7. SI- Statutory Instrument
8. UN- United Nations
9. MNCs- Multi National Corporations
10. ROZ- Republic Of Zimbabwe
11. AEOI- Auto Exchange Of Information
12. NSSA- National Social Security Services
13. VAT- Value Added Tax
14. UAE- United Arab Emirates

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1. <u>CHAPTER ONE (1): PROPOSAL</u>

1.1 BACKGROUND AND INTRODUCTION

Double taxation is a tax principle referring to income taxes paid twice on the same source of income. Double taxation may take place in a situation whereby income is levied two times that is from a company and from an individual. Double taxation also occurs in international trade or investment when the same income is taxed in two different countries. Double taxation may mean the imposition of tax on the same income, assets or financial transactions at two different points of time. Double taxation can be economic, which refers to the taxing of shareholder dividends after taxation as corporate earnings.

For instance, the term "*double taxation*" can also refer to the taxation of some income or activity twice. For instance, corporate profits may be taxed first when earned by the corporation (corporation tax) and again when the profits are distributed to shareholders as dividends or other distribution (dividend tax). Thus, corporation pays the corporate tax rate on earnings or profits, then pays dividends from those profits to shareholders who are again taxed on dividends they receive from those earnings. Corporate shareholders often complain that they are being "*double taxed*" because of this system. Double taxation is a tax principle referring to income taxes paid twice on the same source of income.

Circumstances giving rise to double taxation emanates from the fact that international law puts limited sovereignty limits on the States. In this regard, the same income is subjected to be taxed in two or more countries. Thus, under many countries' legal systems, one's income is levied when there is a close personal relationship which exists between the person whose income is taxed and his or her country. This is known as full tax liability. The opposite occurs when the connection is not all that close. It that scenario, only the income earned in that country is subject to taxation and this is known as limited tax liability.

It is submitted that it is possible for a single person to have close personal relationships with two or more countries. For instance, a tax payer's place of residence is a

connecting factor. It is important to note that in other countries, the connecting factors are residence and citizenship. Notwithstanding the way various jurisdictions operate, every method adopted can lead to full tax liability. Practically, it is therefore common that one person may be prone to paying tax in two or more countries. practically. This will have the ultimate result of taxing of the worldwide income in two or even more countries.

For example, a person who stays in German may be subjected to full tax liability in both countries if his or her center of economic interests is Netherlands. The signing of Double Taxation Agreements between German and Netherlands prevents the taxing of the person's entire worldwide income by both countries.

Thus, in an endeavour to alleviate double taxation, countries can enter into Double Taxation Agreements herein after referred to as "DTAs". A typical example is the Double Taxation Agreement concluded by and between Zimbabwe and South Africa in an attempt to avoid of double taxation and prevent financial circumvention with as regards to levies. Thus the Double Taxation Agreement is also known as Statutory Instrument 40 of 2016). It goes without saying that the said Double Taxation Agreement was entered into by the two countries on the 4th of August 2015.

Recently, the Government of Zimbabwe has entered into a Double Taxation Agreement with the United Arab Emirates-UAE and this is also called Statutory Instrument 284 of 2020).

It is submitted that by virtue of their sovereignty, States are capable of levying taxes. However, it is therefore imperative to note that tax sovereignty, is not unlimited per se. It is not every situation which is susceptible to taxation. For taxation to take place, there must either be a personal nexus between the person who is paying tax and the State concerned. In as far as a personal connecting factor is concerned, it is submitted is inadequate that this exists regarding to the taxpayer. Thus the connecting factors for taxpayers often frequently encompass the place of residence or citizenship. For legal persona such as a corporation, the factors to be considered for taxation purposes, usually include but not limited to the place of incorporation or registration and the

place of effective business. Concerning the objective connecting factor, it is adequate sufficient to establish that parts of the transaction or activity involve the taxing Country or that the object of the action has in some a connection with the taxing State.

However, it is important to note that the above position is only applicable at domestic level as at international law practice, there are no crucial limits on the tax sovereignty of States. In some countries, the national can persons or corporations on the basis of the existence of a “genuine link.” This is the case in India. This is only applicable when there is no connection whatsoever between the taxpayer and taxing State that tax cannot be levied whatsoever.

For instance, the country of India uses the “genuine link” criteria. Thus tax can only be levied on an individual or corporation when a “genuine link” exists between the taxpayer and the taxing country. Pursuant to section 9(1)(i) of the Indian Income Tax Act,[1] tax is levied on all income earned outside India which accrues, whether directly or indirectly through or from any business connection in India.

It is submitted that the primary purpose of Double Taxation Agreements is to facilitate the international flow of capital, technology, goods and services (CTGS) by eliminating double taxation of income and other taxes in international transactions through a bilateral (occasionally multi-lateral) resolution of the conflicts.

In an attempt to avoid taxation conflicts among countries, countries enter into Double Taxation Conventions. Apart from observing the rights of oversees employees, the Double Taxation Agreements are also quite fundamental in the sense that the promote foreign investment. Foreign investment might otherwise be impossible individuals and corporations were forced to pay tax twice that is both locally and in their country of fiscal residence. Therefore, Double Taxation Agreements help in the promotion of foreign investment and also lessen the burden of foreign investors thereby providing legal security and certainty to investors.

[1] 1961

More so, apart from preventing double taxation disputes, Double Taxation Agreements can also be an effective tool in the fighting against fraud and tax evasion apart from preventing double taxation disputes.

Some opponents to double taxation relief treaties argue that it is fair to apply taxes to dividends. Without these capital gains taxes in place, wealthy investors could simply live off of tax-free dividends without contributing to the system.

It is also claimed that double taxation places corporations at a big disadvantage in comparison with unincorporated business, influences corporations to use debt financing rather than equity financing (because interest payments can be deducted and dividend payments cannot) and provides incentives for corporations to retain.

This thesis shall thus provide an overview of double taxation in international tax law, an analysis of Double Taxation Agreements within the international taxation framework with particular reference on those signed by and between Zimbabwe and the Contracting countries.

The literature estimates that approximately Three Thousand (3 000) Double Taxation Agreements (DTAs) are in force, which could be a fraction of the number of potential bilateral tax relationships, as there is no centralized, complete and public data base.

Between One thousand (1000) and Two Thousand (2000) of these agreements involve at least one developing country. Most of these were concluded within the last 20 years, while Double Taxation Agreements between advanced economies mostly date from before 1990. Countries in Eastern and Southern Asia have concluded more Double Taxation Agreements than countries in sub- Saharan Africa. Asian countries' treaties grant the source country greater taxing rights than African countries' treaties. Developing countries' Double Taxation Agreements contain lower withholding tax rates on passive income than in the past, but less stringent permanent establishment provisions.

1.2 STATEMENT OF THE PROBLEM

The problem this paper shall address is that the writer has observed that there are Double Taxation Agreements which were instituted as international tax instruments in an endeavor to prevent the taxation of the same income or capital to the same individual or corporation in the same period in two different States. This is quite crucial in the promotion of tax compliance and information sharing at international level.

International businesses are often faced with issues of double taxation. Income may be taxed in the country where it is earned and then taxed again when it is repatriated in the business' home country. In some cases, the total tax rate is so high, it makes international business too expensive to pursue.

Double Taxation Agreements therefore come into play in order to avoid the taxation the same taxpayer's income or income more than twice in two different countries but on the same period. In recent years however, there has been a global debate regarding the usefulness of Double Taxation Agreements. An analysis of Double Taxation Agreements signed between Zimbabwe and other Contracting countries is important for this discussion.

It is submitted that Double Taxation Agreements have far reaching implications on the social, political and economic rights of citizens and the writer shall make reference to Zimbabwe and other jurisdictions.

The writer shall also interrogate the implications of Double Taxation Agreements on socio-economic rights of Zimbabwean citizens of Zimbabwe and more importantly developing countries. Further, some key recommendations for Zimbabwe will suffice.

1.3 RESEARCH QUESTIONS

1.3.1 What is double taxation?

1.3.2 Why is double taxation allowed?

1.3.3 What is the current legal framework on double taxation in Zimbabwe?

1.3.4 What is the legal framework on double taxation in other jurisdictions?

1.3.5 What are the circumstances giving rise to double taxation?

1.3.6 What is full tax liability?

1.3.7 What is limited liability?

1.3.8 Which Double Taxation Agreements were entered into between Zimbabwe and other partners?

1.3.9 What are the effectiveness of the Double Taxation Agreements?

1.3.10 What are the advantages of double taxation to a country?

1.3.11 What are the disadvantages of double taxation to a country?

1.3.12 What are the economic and political implications of Double Taxation Agreements between or among countries?

1.3.13 What are the solutions or recommendations to the problem of double taxation?

1.4 METHODOLOGY

The majority of the research shall be conducted in the law library using books, law review, journals, statutes, Double Taxation Agreements and International Conventions. A comparative approach with other jurisdictions shall be made. Double Taxation Agreements entered into between Zimbabwe and other jurisdiction shall also be made. A qualitative approach shall be used to a greater extent as the writer physically engage with Tax law experts to find out the impacts of double taxation agreements in our country. A number of case laws shall be used in making a comparison between our country and other jurisdictions.

1.5 LITERATURE REVIEW

Various authors have written much literature on the subject of Double Taxation in international tax law. These inter –alia include but not limited to Barthel F, Braun J, Busse M, Fuentes D and Neumayer E. They have mentioned much on the principle of Double Taxation and the treaties entered into by different jurisdictions in order to avoid double taxation of one person or entity arising from the same transaction.

A plethora of conventions have been put in place on this subject matter. However, it has been observed that these authors delved much on the issues surrounding double taxation treaties entered into by various States leaving important aspects of the

effectiveness of those treaties and or agreements entered into by different jurisdictions to curb the issue of double taxation. It is these concepts that the writer intends to address in depth in demystifying the principle of double taxation in international tax law.

1.6 CHAPTER SYNOPSIS

CHAPTER 1

This chapter is a detailed proposal to this dissertation. The chapter is devoted to giving an introduction, history to the topic under discussion, account of the problem, outlining the enquiry, aims and purposes, overview of the writing or current legal framework on the subject, the research methodology as well as a synopsis of the chapters.

CHAPTER 2

The chapter will focus on definition of Double Taxation Agreements (DTAs). Differentiation between corporate tax and dividend tax shall be made. Universality principle, Principle of territoriality, Tax sovereignty of States and Tax liability shall be explained. The chapter will analyse the circumstances under which Double Taxation Agreements occur. The primary purpose and importance of DTAs shall be discussed. The legal framework surrounding the principle of double taxation in Zimbabwe and other jurisdictions shall also be made.

CHAPTER 3

The Chapter shall also focus on the statistics on the number of Taxation Agreements entered into between Zimbabwe and other countries so far. A critical analysis of the taxation agreements entered concluded between Zimbabwe of South Africa under Statutory Instrument 40 of 2016 shall be made. As well as that concluded again between Zimbabwe United Arab Emirates (UAE) Zimbabwe under

(Statutory Instrument 284 of 2020) shall also be made. A comparison between the Double Taxation Agreements entered into by the two countries shall be made.

CHAPTER 4

The chapter shall discuss on the effects and impacts of Double Taxation Agreements on the socio- economic rights of the Zimbabwean citizens of Zimbabwe and other countries. The advantages and disadvantages of Double Taxation Agreements shall be discussed as well. The writer shall also do a critical analysis on the effectiveness of Double Taxation Agreements.

CHAPTER 5

The chapter shall give some recommendations, possible reforms and amendments of the laws of Zimbabwe to give full effect to Double Taxation Agreements shall be put across and conclusion thereof.

2. CHAPTER TWO (2): THE PRINCIPLE OF DOUBLE TAXATION

2.1 Definition of Double Taxation

According to F. Barthel, M. Busse and E. Neumayer[2] double taxation is defined as the imposition of comparable taxes in the least two countries on the same taxpayer with respect to the same subject matter and for identical periods. Double taxation may be defined as tax a principle referring to income taxes paid twice on the same source of income. The term Double Taxation may mean the levying of tax by more than one jurisdiction on the same taxpayer's income (on income taxes), asset (in the case of capital taxes), or financial transaction (in the case of sales taxes). It can occur when income is taxed at both corporate level and personal level. Double taxation also occurs in international trade or investment when the same income is taxed in two different countries. Double Taxation may mean the imposition of taxes on the same income, assets or financial transaction at two different points of time.

The term "double taxation" can also refer to the taxation of some income or activity twice. For instance, corporate profits may be taxed first when earned by the corporation and this is known as "corporate tax" and again when the profits are distributed to shareholder as a dividend or other distribution and this is called "dividend tax."

It is submitted that the better and simpler definition is that double taxation is a principle referring to the taxing of the taxpayer twice by two or more jurisdictions arising from the same income but within the same period.

2.2 Types of Double Taxation

Basically, there are two types of double taxation that is, jurisdictional double taxation and economic double taxation. Jurisdictional taxation is a situation whereby tax is imposed by two or more countries as per their domestic laws in respect of the same transaction, income arises or deemed to arise in their respective jurisdictions whereas economic double taxation occurs when the same transaction, item of income or capital

[2] The Impact of Double Taxation Treaties On Foreign Direct Investment: Evidence From Large Dyadic Panel Data (OECD, 2005) page 2.

is taxed in two or more states but in the hands of different person, double taxation arises.

2.3 Tax Liability

Tax liability may be defined as the total amount of tax debt owed by an individual, corporation, or other entity to a taxing authority such as the Internal Revenue Service(ISR). Tax liability maybe defined as the payment owed by an individual, business or other entity when income is earned and when income is generated by the sale of an investment or other asset. A local or state sales tax may be incurred when goods are purchased. It is therefore possible people to have no income tax liability if their income was below the level that would require them to file tax returns. Income taxes, sales tax, and capital gains tax are all forms of tax liabilities. Thus, both individuals and businesses can lower their tax liabilities by claiming deductions, exemptions and tax credits.

2.4 Principle of Territoriality

The territoriality principle is the term used to connote the principle of levying tax only within the territorial jurisdiction of a sovereign tax authority or country, which is adopted by some countries. Residents are not taxed on any foreign- source income. It imperative to make a discrepancy between the territoriality principle as it articulate in global law and the (economic) territoriality principle in the law of tax.[3]

2.5 Principle of territoriality in international law

It is crucial to note that international law recognises the independence of States. Independence refers to jurisdiction, including economic authority.[4] In this regard, the

[3] M. Lang, “The Marks & Spencer case-the open issues following the ECJ’s final word.”

[4] S. Van Weeghel, “Thoughts on territoriality in relation to Dutch corporate tax reform”, in Liber Amicorum Jacques Malherbe, Bruylant, 2006, 1132.

territorial principle can be regarded as a jurisdiction principle entrenched in international law and it warrants states to tax their citizens and the income connected to their State that is, influence based on state linking between a nation and a legal matter under scrutiny.

It is submitted that the aspect of territoriality[5] refers to whereby a state has discretion to autonomously and absolutely decide within its territory, that is, a state is not susceptible to control since other states and is not either mandated to take into consideration alien features. More so, it is fundamental to differentiate between personal bases of authority and territorial bases of jurisdiction. Suffice to state that in the law applicable worldwide, the territorial bases are quite crucial. These national bases include taxation premised on the dwelling and source. It has to be noted that taxation of residents is, in this regard (that is in international law context, rather than in international tax practice), regarded as expression of territoriality (a resident is taxed regarding the stable link with the territory of the state), even though tax attorneys prefer to call it worldwide taxation as opposed to territorial taxation.[6]

In international tax law, a distinction is commonly made between impartial and personal criteria for apportioning tax authority.[7] These individual criteria include nationality and dwelling. The objective criteria imply to the taxation of income produced or sourced in the State concerned. If tax liability is premised on subjective criteria, it means the taxpayer is normally taxed on its global income whilst tax liability premised on the source principle, as a matter of principle, limited to the income of that is sourced within the state's territoriality.[8] In light of this, the restriction of the tax base merely on income that is sourced in a state's land, either for non-residents only or for both residents and non-residents, that is referred to as the (fiscal) principle

[5] F.A Man, "The doctrine of international jurisdiction revisited after twenty years," 1985, p. 20.
[6] S. Van Weeghel," Thoughts on territoriality in relation to Dutch corporate tax reform", in Liber Amicorum Jacques Malherbe, Bruylant, 2006, 1134.
[7] P. Pistone, "The impact of community law on tax treaties: Issues and solutions, Eucotax series, Kluwer Law International,2002, p.176-179.
[8] P. Pistone, "The impact of community law on tax treaties: Issues and solutions, Eucotax series, Kluwer Law International, 2002, p.177.

of territoriality.[9] The term territoriality is thus used as an antonym to global taxation. It is imperative to take into cognisance that this term is different from the meaning it has in international law framework as described *supra*. Thus, in international law, global taxation is regarded as an expression of territoriality.

2.6 Circumstances under which Double Taxation may arise

The need for the abolition of double taxation of revenue and capital of the same taxpayer by two or more jurisdictions is at the core heart of international taxation. Thus, Double Taxation occurs whereby two or more tax countries levy tax on the same individual or corporation's income or capital twice within the same period. Double Taxation Agreements come into play to close the gap and ensure that the same individual or company's income or capital is only taxed once over a certain period of time. Recently, there has been an argument as to whether or not Double Taxation Agreements are useful or not, in as far as the determination of investor decisions in increasing Foreign Direct Investment (FDI) and expanding the tax base through new investments, elimination of certain forms of double taxation, determination for the calculation of certain profits, provision of certainty of treatment and promotion of international tax compliance and information exchange is concerned.

It is submitted that double taxation often occurs because corporations are considered as separate legal entities from their shareholders. As a result, corporations pay taxes on their annual earnings, just like individuals to shareholders, those dividend payments incur income-tax liabilities for the shareholders who receive them, even though the

[9] P. Pistone, "The impact of community law on tax treaties: Issues and solutions, Eucotax series, Kluwer Law International,2002, p.176.

earnings that provided the cash to pay the dividends were already taxed at the corporate.

2.7 Rationale for Double Taxation Agreements

It is submitted that despite of their criticism, Double Taxation Agreements are very useful in avoiding the taxation of an individual or corporation's income and capital twice by two or more jurisdictions within the same taxing period. Their strength is on the basis that they provide certainty to investors on the taxing rights of Contracting parties. Thus as a result of the Double Taxation Agreements it is possible for the investors to access their tax liabilities that accrue emanating from investing in the source country. It is imperative to note that the socio- economic, political and technological factors do affect Foreign Direct Investment to a larger extent. However, some argue that Double Taxation Agreements do have little influence on the investment decision. Some tax law experts have mixed feelings over this issue and this has culminated into the renegotiation of Double Taxation Agreements especially those signed by and between developed and developing States. It is submitted that the flow of income is highly affected by the differences in the economic levels of the Contracting States. Usually the trend is the flow of income becomes one directional, that means it flows from the developing countries to the developed countries.

This led to a change by the countries from the Organisation For Economic Cooperation And Development commonly known as OECD model. This model's objective is to take away taxing rights from the source country towards the United Nations (UN) model which postulates for a settlement between the source principle and the residence principle. It is submitted that though the UN model tries to strike a balance in the middle of the source principle and the residence principle. It is submitted that the Organisation For Economic Cooperation And Development model is more tilted in support of the source principle.[10]

[10] UN Model, (updated 2011).

2.8 Organisation For Economic Co-operation And Development (OECD)

This is an international organisation with 38 member countries established in 1961 to encourage economic development and global trade[11]. Its objectives are to promote policies that have an impetus of improving the socio- economic status of persons universally and thus promoting the sustainable economic growth. The Organisation For Economic Cooperation And Development creates a platform whereby governments can collaborate to share experience and have remedies to the problem they share in common. Thus, the Organisation For Economic Cooperation And Development helps to build better policies and hence better lives. This as a result of the fact that its main goal is to mold policies that promote prosperity, opportunity and equality for all people regardless of their race.

The OECD provides solutions to the global economy challenges by coming up with sound economic policies, economic use of resources and promotes innovation through science and technological advancements[12].

It is submitted that there are some benefits to the country which are incidental to being a member of the Organisation For Economic Cooperation And Development. By being a member of the OECD, it increases the level of confidence among investors and the global community at large as a result of the fact that members put in place laws,

[11] Dauer, V.,Krever R.(2012), 'Choosing between the Un and OECD Tax Policy Models: An African Case Study.EUI Working Papers, RSCAS 2012/60. Robert Scuman Centre for Advanced Studies, Global Governance Programme, European University Institute. http://cadmus.eui.eu/bistream/handle/1814/24517/RSCAS_2012_60rev.pdf?sequence=3.

[12] EY (2017), 'OECD Council approves 2017 update to OECD Model Tax Convention.' EY Global Tax Alert Library. December 1

regulations, policies and practices to the Organisation For Economic Cooperation And Development standards[13].

Just like an other international organisations, the Organisation For Economic Cooperation And Development has its own flaws, the major one being the restriction of its membership. It can be a vehicle to encourage illicit trade through criminal networks that are intended to ferry illicit goods from country to country. Lack of co-ordination across borders can also permit criminals to escape recognition and implementation.[14]

Notwithstanding the disadvantages of a country being a member of the Organisation For Economic Cooperation And Development highlighted above, it is submitted that the benefits outweigh the disadvantages. It is therefore, recommendation that Zimbabwe should join and become a member of the OECD and enjoy the ancillary benefits thereof.

2.9 Legal framework surrounding the principle of double taxation in Zimbabwe

Generally, the income tax levied on companies and individuals in Zimbabwe is governed by the Income Tax Act[15] among other statutes in as far as revenue earned from sources within Zimbabwe or considered to be within Zimbabwe are concerned. It is crucial to note that Income Tax Act[16] also imposes withholding taxes on many things which inter alia include non- residents' royalties, resident shareholders' dividends' fees, intermediated money transfers, and non- executive directors' fees, and automated financial transaction.

The Income Tax Act[17] also levies presumptive taxes regarding income earned by small to medium enterprises. It is submitted that all duties charged under the Income Tax Act[18] are susceptible to the application of Double Taxation Agreements provisions. Thus

[13] Maria Borga and Monica Sztajerowska, OECD Social Investment Initiative, 2020.
[14] Peter Hakim, Rising Brazil: "The Choice of New Global Power" 2010.
[15] [Chapter 23:06]
[16] [Chapter 23:06]
[17] [Chapter 23:06]
[18] [Chapter 23:06]

the relevant provision which deals with Double Taxation Agreements is section 12 of the income Tax Act.[19]

2.10 Legal System

If regard is had to the field of commercial law, Roman Dutch common law with strains of English law is applicable. It is fundamental to note that taxes are, thus mostly charged under the applicable statutes. In this common tax statues in Zimbabwe include but not limited to the Income Tax Act,[20] Capital Gains Tax Act,[21] Value Added Tax Act,[22] Customs and Excise Act,[23] Stamp Duties Act[24] and Finance Act[25] and taxes levied under these statutes may be subjected to the Provisions of Double Taxation Agreements.

It is therefore imperative to interrogate some of the bodies, corporations and or authorities which charge tax and see how Double Taxation Agreements are applicable to the same.

2.11 Taxation Establishments

It is worth noting that in general, the tax system in Zimbabwe is administered by the Zimbabwe Revenue Authority which is incorporated and established in terms of the provisions of the Revenue Authority Act.[26] The Zimbabwe Revenue Authority as the agent of the State has the obligation of assessing, collecting and enforcement of payment of all tax revenue which the relevant statutes provides that they be paid.

[19] [Chapter 23:06]
[20] [Chapter 23:06]
[21] [Chapter 23;01]
[22] [Chapter 23:12]
[23] [Chapter 23:02]
[24] [Chapter 23:09]
[25] [Chapter 23:04]
[26] [Chapter 23:11]

2.11.1 Business Vehicles

Both residents or non- residents have the capacity to commence their enterprises in Zimbabwe or uphold a business company through an alien entity. Thus, there are a number of forms within which businesses can be carried out in Zimbabwe. These encompass public limited company, private limited company, partnership, company limited by guarantee, sole proprietorship, foreign company, co-operative company, private business corporation and trusts.

2.11.2 Partnerships

A partnership may be defined as a contractual arrangement whereby parties which may be individuals or corporations known as partners co-operate to run a business activity. A partnership is not generally regarded as a separate legal entity for the purposes of tax as a result of the fact that the Income Tax Act,[27] does not include partnerships from the definition of a person. However, the Value Added Tax Act,[28] unlike the Income Tax Act[29] does not exclude a partnership from the definition of a person thus making an exception.

It is fundamental to note that legal personalities consisting of partnerships that is, partners are subject to taxation in respect of their proportionate shares in the income of the partnership under the Income Tax Act[30]. For instance, in the scenario of joint ventures they are also not registered as separate companies. In such a case, they are considered as partnerships and thus the entities working together are prone to taxation regarding their shares in this respect. Notwithstanding that partners are required to submit a joint return in respect of income or losses incurred by the partnership, they

[27] [Chapter 23:06]
[28] [Chapter 23: 12]
[29] [Chapter 23:06]
[30] [Chapter 23:06]

nonetheless still have single liability for income tax. Therefore, Zimbabwean partnerships have no distinct legal façade which is peculiar either generally or in income tax law as fiscal transparent entities.

Thus, the taxable amount under partnerships is only revenue emanating from a source within Zimbabwe. For income to qualify to be taken as origination from a source within Zimbabwe, it is trite that partnerships have to render their services within the Zimbabwe. In terms of section 12 of the Income Tax Act,[31] in a case whereby partners do not render services outside Zimbabwe, income for the non- resident partners is also considered to be from a source within the country. Thus, the geographical place from which payment originating is not relevant for the reason of identifying the source of income. The income is deemed to be from a source within Zimbabwe in the case whereby income is earned from services provided outside of Zimbabwe if regard is had to section 12 of the Income Tax Act.[32]

2.11.3 Companies

Companies in Zimbabwe are registered in terms of the Companies And Business Entities Act.[33] It is submitted that for the purposes of taxation of its own income, a company is regarded as a separate legal entity. However, the companies are under an obligation to comply with the requirement of withholding of tax on dividends due to shareholders. Thus, for shareholders, double taxation occurs when tax is levied two times firstly on the income generated by the company and secondly on the declared dividend. In spite of bearing this double taxation burden, shareholders cannot bear the company losses and same cannot be transferred to them. In an attempt to avoid the shareholders from being charged tax twice, the issue of Double Taxation Agreements come into play.

2.11.4 Private Business Corporation

[31] [Chapter 23:06]
[32] [Chapter 23:06]
[33] [Chapter 24:31]

In Zimbabwe, the Private Business Corporation (PBC) is registered at the Companies Registry in terms of the Companies And Other Businesses Entities Act.[34] In terms of the Income Tax Act,[35] just like companies, Private Business Corporation are regarded as distinct legal entities which are liable to their own tax liability in the same manner companies do. It is crucial to note one person can register and run a Public Business Corporation.

2.11.5 Micro- enterprises, Small enterprises or Medium enterprises(MSMEs)

These business are registered in terms of the Small and Medium enterprises Act[36] and maybe small companies, Public Business Corporations or sole traders. It is submitted these businesses are generally exempted from paying tax. However, an exception only arises in a situation whereby they fail to keep proper books of accounts and in such a case, they are required to pay presumptive tax. In a case where they comply and keep books of accounts, they are thus considered to be tax submissive and should pay income tax. Thus, examples enterprises under this category inter alia include transport operators, hair salon operators, small scale miners among other small businesses are that at are legally mandated to pay tax.

2.11.6 Co-operatives

It is imperative note that in our jurisdiction, co-operatives are registered in terms of the Co-operative Societies Act.[37] It is trite that members of the co-operative may be either a Zimbabwean citizen or a foreigner who is ordinarily resident in Zimbabwe. This requirement disqualifies foreigners from registering co-operatives. Just like companies, co-operatives are not exempted from paying tax.

[34] [Chapter 24:12]
[35] [Chapter 23:04]
[36] [Chapter 24:12]
[37] [Chapter 24:05]

2.11.7 Trusts

Generally, a trust is formed through a Trust Deed which is registered with the Deeds Registry office. A trust may thus be defined as a legal arrangement by which one person known as a Trustee is to administer property on behalf of the Founder for the benefit of a beneficiary. It is submitted that it is not a requirement that a trust should be registered with the Deeds Registry. Trusts are thus registered with the Deeds Registries as a matter of practice and precedents. The issue of taxation applies when Trusts are taxed prior to the sharing of the income among the beneficiaries.

2.11.8 Foreign Corporations

In terms of the Income Tax Act,[38] foreign corporations are liable for income tax in Zimbabwe. Double Taxation Agreement is applicable in this case as regards to the taxation of the alien corporation in its home country. It is imperative to note that the provisions of a Double Taxation Treaty, is superior to the Zimbabwean statutes or national legislation. Thus, it is a requirement for the foreign corporation to have a permanent establishment in the country to enable Zimbabwean Tax Treaties to impose local tax on it. The establishment is under an obligation to be registered to enable it to be levied tax by the Zimbabwe Revenue Authority for it to be treated as a taxable entity for taxation purposes.

2.11.9 Equity financing

Equity financing is the process of raising capital through the sale of shares.[39] In the Zimbabwean context, equity financing may be defined as the sharing of shares for which subscribers pay in cash or cash equivalents. The balance in the company's "issued share capital" account is increased by the allotment of shares.[40]

[38] [Chapter 23:04]
[39] www. investopedia.com
[40] Hearson,M.(2018), 'When do developing Countries negotiate away their corporate tax base?

2.11.9.1 Share Premiums

In a situation where companies issue shares at a price of their equivalent value, the excess appears in the share premium account instead of the distributed share capital account. Share premium may be used in paying up undistributed shares for sharing to members, employees, directors or to a trustee of such person, as fully paid bonus shares[41]. An enterprise may also apply its share premium account in writing off initial expenses of the company or expenses of, or commission paid or deduction on any issue of shares or debentures of the corporation.

Capital gains tax is charged for any sales of shares above their equivalent value and for determinations of tax valuation, the Revenue Authority is empowered and has the discretion to determine the fair market price.

2.11.9.2 Bonus issues

It is possible for a Zimbabwean company other than a public corporation to make allocations of its paid-up capital to non-resident shareholders without incurring tax. These bonuses shares are only issued out of undistributed proceeds. Generally, scrip dividends are exempt from stamp duty and dealing charges and this means that the company can keep cash within the business. The term scrip dividend implies that investors are given the option to receive additional shares instead of a cash dividend. Contrarily, in our jurisdiction and especially under the Income Tax Act [42]where shares are distributed in a scrip disbursement arrangement, they are prone to taxation. Bonus issues from undistributed profits are however not subject to taxation.

Journal of International development. UNU-WIDER, 30,233-255. http://onlinelibrary.wiley.com/doi/pdf/10.1002/jid.3351.

[41] Hong ,S.(2017), 'Tax Treaties and Foreign Direct Investment.' A network Approach. Work Paper NTA, National Tax Association. http://www.ntanet.org/wp.content/uploads/proceedings/2016/012-hong-tax-treaties-foreign-paper.pdf.

[42] [Chapter 23:04]

2.11.9.3 Debt Financing

This is whereby a company borrows money to be reimbursed or paid back at a future date together with interest. Debt Financing could be in form of a secured or unsecured loan. Thus, a firm takes a loan mainly for two reasons that is either to finance a working capital or for an acquisition of either a movable or immovable property.

2.11.9.4 Withholding tax implications

In Zimbabwe, in as far as borrowing and repaying the principal amounts are concerned, companies are not liable for any tax. However, where interest is paid by a financial establishment to a resident taxpayer, a withholding tax of 15% is levied on such interest. In the case of inbound loans provided by non- residents no tax is payable on interest.

2.11.9.5 Thin Capitalisation

It is submitted that a thinly capitalized entity is one whose assets are funded by a high level of debt and relatively little equity. In terms of the Income Tax Act,[43] there are thin capitalisation rules that are applicable to debt funding. These rules limit the deductibility of interest paid or payable by a company resident in Zimbabwe to non-resident shareholders where the ratio of interest- bearing debt to equity exceeds 3 as to 1. Should the debt exceed this ratio, there will be a balanced denial of the interest deduction and any payment of interest that is prone to restraint under these rules deemed to be a payment of a dividend for the purposes of withholding tax requirements.

2.11.9.6 Capital Gains

[43] [Chapter 23:04]

In Zimbabwe, the levying of capital gains tax is governed by the Capital Gains Tax Act.[44] Capital gains refers to tax charged on gains upon the sale or considered disposal of a identified asset from a source within Zimbabwe. Specified assets are defined as rights to property registered in terms of certain specified statutes and for instance in the Deeds Registries Act[45], immovable property situate in Zimbabwe or any marketable security. Thus, merchantable securities are bonds capable of being sold in a share market exchange, shares debentures, stock or any right possessed as a result of a person's contribution in any unit trust.

It is submitted that non- residents are taxed on gains emanating from disposal of specified assets from a source within Zimbabwe. Gains on immovable property are determined on the location of the property, while gains on other specified assets are determined on the residency of the person that is disposing of the property. Non-residents may, however, be exempted under double- taxation treaties.

2.11.9.7 Taxable income

It is submitted that taxable income is calculated by adding up all sources of income, excluding non-taxable items, and subtracting credits and deductions. A taxpayer is subject to pay tax on taxable income from carrying out of his or her business. Thus, taxable income is calculated by adding up all sources of income, excluding non-taxable items, and subtracting credits and deductions[46].

2.11.9.8 Deductions

[44] [chapter 23:01]
[45] [Chapter 20:05]
[46] Egger,P.Loretz,S.,Pfaffmayr,M.,Winner,H. (2006), 'Corporate Taxation and Multinational Activity.CESifo Working Paper No.1773.
http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.599.3413&rep=rep1&type=pdf

Generally, a taxpayer is allowed by law to deduct his or her current expenses in computing business income. By and large, capital expenses are not subject to deductions. In this case, any spending not suffered for determination of trade is a disallowable spending. However, the Income Tax Act,[47] provides for capital allowances for scrapping, special initial and wear and tear. Capital allowances are the tax law equivalent of depreciation. In the circumstances, interest incurred for the purpose of earning income from a business or property subject to the thin capitalisation is also deductible.

2.11.9.9 Income tax reporting

An annual income tax return, is required to be filed by both Zimbabwean resident companies and non- resident companies that does business in the country are required to file an annual income tax return. Where partnerships are applicable, they are under an obligation to file a joint tax return showing the joint return of income of partners and supported by accounts necessary to show the financial position of the partnership. Partners receiving income from other sources are under an obligation in addition to submission of the return of that income, a joint return.

2.11.9.10 Withholding tax on passive income

It is crucial to note that payments in respect of remittances, royalties, dividends, management and administrative fees made by resident of Zimbabwe to a non-resident are taxable at the rate of 15%. However, this rate may be low under the different Double Taxation Treaties. Thus, Double Taxation Agreements play a very important role in avoiding the double taxation as well as reducing the tax rates.

2.11.9.11 Withholding tax on services fees

[47] [chapter 23:04]

In the case of any person making payment to a non- resident of Zimbabwe relating to services done in Zimbabwe, the tax payer must subtract and hold back 15% of the gross payment on account of income tax. The withholding tax so deducted has a time frame within which it has to be remitted to the Zimbabwe Revenue Authority and to be specific, it must be submitted to the Zimbabwe Revenue Authority within ten (10) days of payment of fees or any further period approved by the Commissioner. Failure to withhold and remit same has a sanction attached to it and thus attracts a 100% penalty and interest of 10% on the tax due.

2.11.9.12 Pay As You Earn (PAYE)

Workers whose income is above the zero rate tax bracket are levied ***"Pay As You Earn"*** by the government through their employers for onward submission or remittal to the relevant Revenue Authority. It is submitted that failure to do so, attracts a penalty of 100% and interest on the tax due of 10% per annum. Tax is calculated on the sliding scale proved in the Finance Act.[48] Further, an additional AIDS levy of 3% of total Pay As You Earn due should also be withheld by the employers.

2.11.9.13 National Social Security Authority (NSSA) Contributions

These are social security payments made by both employers and employees in terms of the National Social Security Act.[49] The employer deducts 3.5% of the worker's insurable earnings. The employer also contributes a further 3.5 % of pensionable earnings to make a total of 7%. Thus, membership to the NSSA scheme is compulsory. In the case of **NYAMBIRAI V NSSA & ANOR**[50], the Supreme Court of Zimbabwe was called upon to

[48] [Chapter 23:04]
[49] [Chapter 17:04]
[50] 1995 (2) ZLR 1 (S)

declare the compulsory contribution to the **NATIONAL SOCIAL SECURITY AUTHORITY** hereinafter referred to as **"NSSA" unconstitutional.**

The court was urged to find that the contributions were not ***"reasonably justifiable"* in the democratic** society. Clearly the Constitution allowed the courts to assess whether or not the action or a thing was ***"reasonably justifiable in a democratic society."*** It is submitted that submitted that the question was therefore justifiable in the circumstances. The court accepted that it had jurisdiction to determine the question. The government argued that in this case the compulsory contributions were necessary as a form of national security. Further, the social security scheme benefited a very large number of persons who had historically been excluded from social security coverage. It was further government's contention that in providing the social security, the government was following the tradition of many other countries. The Minister's Opposing Affidavit had an Annexure attached thereto showing social security schemes operating in 163 countries throughout the World. That list indeed showed that Zimbabwe was among the countries covering the list coverage. The Supreme Court dismissed the application.

It is imperative to note that the Supreme Court accepted the government's position on the basis that the national authorities were in principle better placed than judicial to appreciate what is in the public needs. In implementing social and economic policies, a government will assess as to whether a particular service or program it intends to establish will promote the interest of the public and the courts will have to respect that. The courts will not intrude but allow a wide margin of appreciation unless they are convinced that the assessment is manifestly without reasonable foundation. The Minister emphasised and maintained the fact that it is in the public interest that is the assessment which the court should respect. The Court ultimately ruled that the compulsory contribution to NSSA was constitutional.

2.11.9.14 Value Added Tax

This is tax which is levied in terms of the Value Added Tax.[51] It is submitted that Value Added Tax hereinafter referred to as “VAT” is a consumption based tax levied on the supply of taxable goods and services. Value Added Tax is levied on transactions rather than directly on income or profit. In Zimbabwe, the VAT standard rate is currently 14.5% but certain goods are zero-rated which means a VAT rate of 0% is charged and other goods are specially relieved from payment of VAT. Thus, zero-rated goods include exports of goods from Zimbabwe to an address in an export country and certain basic foodstuffs such as sugar. Supplies like financial services, provision of electricity for domestic use, provision of piped water for domestic use and rates charged by local authorities are exempt from the payment of VAT.

2.12 Interpretation of Double Taxation Treaties

In the Australian case of **BYWATER INVESTMENT LTD V COMMISSIONER OF TAXATION**[52]**, HUA WANG BANK BERHAD V COMMISSIONERS OF TAXATION,**[53] the Australian high Court had an occasion to deal with the dispute of whether or not certain companies where resident of Australia for the purposes of determining the tax they were liable to pay. The majority resolved this issue by applying the Australian domestic law. It is crucial to note that in a separate but concurring judgment, Gordon J, also discussed the interpretation and application of the relevant double taxation treaty. This discussion analyses Gordon J’s judgment to extract guidance from for the south African Courts to apply on the interpretation of double taxation treaties.

The South African Courts have always find the Gordon J’s judgment “instructive” when dealing with the interpretation of the “place of effective management” concept in both domestic law and double taxation treaties. In his judgement Gordon J, favours the goal of common interpretation. From Gordon J’s judgment, and the judgment in **KROK V**

[51] [Chapter 23:12]

[52] S134/2016
[53] S135/2016

COMMISSIONER, SOUTH AFRICAN REVENUE SERVICE,[54] it is clear that the positions both in South Africa and Australia are similar in that the courts were bound by the principles of articles 31 and 32[55] when interpreting double taxation treaties. More so, the Gordon's judgment is important as it states that the domestic principles of interpretation should not be used in the interpretation of double taxation treaties.

Recent South African cases have suggested that there are no differences between the South African Domestic principles of interpretation and those contained in Articles 31 and 32[56]. Although, there are many similarities between the two, it is submitted that the rules are however, not exactly the same.

2.13 CONCLUSION

It is submitted that there is no universal definition for the term Double Taxation. However, what can be envisaged from all the authors who attempted to define it such as F. Barthel is that Double Taxation implies to the imposition of tax to the tax payer on the same income arising within the same period in two or more jurisdictions. Thus both developing and developed countries have been seen entering Double Taxation Agreements in a bid to avoid the consequences of Double Taxation. There is also some legal framework which have been put in place by many countries to regulate and govern the operation of Double Taxation Treaties.

3. CHAPTER THREE (3): AN ANLYSIS OF THE DOUBLE TAXATION AGREEMENT ENTERED INTO BETWEEN ZIMBABWE AND SOUTH AFRICA VIS- A- VIS THE DOUBLE TAXATION AGREEMENT ENTERED INTO BETWEEN ZIMBABWE AND UNITED ARAB EMIRATES-UAE

[54] 2015 (6) SA 317 (SCA); [2015] 4 All SA 131 (SCA)
[55] Vienna Convention on the Law of treaties
[56] Vienna Convention on the Law of treaties

3.1 STATISTICS

As of date, Zimbabwe has signed (nineteen) 19 Double Taxation Agreements with both developed and developing countries, the first of which having been signed between Zimbabwe and Switzerland in 1961. In recent years, Zimbabwe signed two more Double Taxation Agreements with Zambia and China on 29 November 2012 and 1 December 2015 respectively. It goes without saying that Zimbabwe also signed a Double Taxation Agreements with south Africa on the 4th August 2015 and it replaced the old and archaic Double Taxation Agreement concluded by the two countries in 1965. This was an important and commendable move towards aligning the Double Taxation Agreements with the current national and global economic developments and also reclaiming the lost taxing rights on the basis of the resident based treaties, which dominate the agreements signed by Zimbabwe.

Recently, in 2018, the government of Zimbabwe signed a Double Taxation Agreement with the government of the United Arab Emirates (UAE). It has emerged that Double Taxation Agreements are used as a tool by multinational corporations (MNCs) across tax jurisdictions for tax avoidance through tax planning schemes, tax evasion, treaty shopping and round tripping resulting in "double non-taxation." Notwithstanding the argument regarding the effectiveness of Double Taxation Agreements, the number of Double Taxation Agreements signed by the Republic of Zimbabwe with both developed and developing countries as at stands at 19 as of June 2018. In our country, most tax treaties signed relate to income tax, non-resident tax on fees, interests and royalties. Furthermore, it is submitted that all the Double Taxation Agreements signed by Zimbabwe limit the rate of tax on technical fees to 10% or less.

FIGURE 1:

TOTAL NUMBER OF DOUBLE TAXATION AGREEMENTS CONCLUDED BETWEEN ZIMBABWE AND OTHER CONTRACING STATES TO DATE.

	Contracting State	Type Of Agreement	Date of Signature
1.	Switzerland	Income and Capital	30 May 1961
2.	South Africa	Income and Capital	10 June 1965
3.	United Kingdom	Income and Capital	19 October 1982
4.	Germany	Income and Capital	22 April 1988
5.	Bulgaria	Income and Capital	12 October 1988
6.	Norway	Income and Capital	9 March 1989
7.	Sweden	Income and Capital	10 March 1989
8.	Netherlands	Income and Capital	18 May 1989
9.	Mauritius	Income and Capital	6 March 1992
10.	Canada	Income and Capital	16 April 1992
11	Poland	Income and Capital	9 July 1993
12.	France	Income and Capital	15 December 1993
13.	Malaysia	Income and Capital	28 April 1994
14.	Serbia	Income and Capital	19 October 1996
15.	Botswana	Income and Capital	16 June 2004
16.	Zambia	Income and Capital	29 November 2012
17.	South Africa	Income and Capital	4 August 2015
18.	China	Income and Capital	1 December 2015
19.	United Arab Emirates	Income and Capital	16 June 2018

3.2 DOUBLE TAXATION AGREEMENT CONCLUDED BETWEEN THE REPUBLIC OF ZIMBABWE AND THE REPUBLIC OF SOUTH AFRICA (STATUTORY INSTRUMENT 40 OF 2016)

It is worth mentioning that on the 4th of August 2015, the Republic of Zimbabwe concluded a Double Taxation Agreement with the Republic of South Africa.[57] (Proclamation 3 of 2016.)

[57] SI 40 of 2016

It is submitted that in terms of section 91 of the Income Tax Act,[58] the President is empowered to enter into agreements with the government of any country or territory with the object of 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.

The main objective of the two Contracting States in entering this Agreement, is for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income as more fully appears on the Preamble of the Agreement. Thus, the writer shall take a brief journey in analysing the Articles of this agreement and also give a critical evaluation of whether or not the Double Taxation Agreement entered into by the two (2) Contracting States has achieved its intended purpose or not.

3.2.1 Article 1

Persons Covered

It is submitted that this Agreement is applicable to such persons who are residents of both or one of the Contracting States.

3.2.2 Article 2

Taxes Covered

The Agreement is also applicable to taxes on income imposed on behalf of a Contraction State or of its political subdivisions, notwithstanding the manner in which they are levied.

It is crucial to note that every tax levied on total income, or on elements of income including taxes on gains from the alienation of movable or immovable property shall be regarded as taxes on income for the purposes of taxation.

[58] [Chapter 23:06]

It is submitted that this Agreement shall apply the existing taxes between the two countries which have entered this agreement and these are:

In the circumstance of South Africa, the existing taxes encompasses the normal tax, the dividend tax, the withholding tax on royalties, the tax on foreign performers and sportspersons and the withholding tax on interest hereinafter referred to as "South African tax")

In the Zimbabwean context, the existing taxes consists of the income tax, the non-resident shareholders' tax, the non- residents' tax on fees, the non- residents' tax on royalties, the capital gains tax; and the residents' tax on interest

It is interesting to note that this Agreement is not only limited to the existing taxes between the two Contracting States, but shall also be applicable to any related taxes that are levied after the date of signing of the Promise. The taxes charged post the date of this Agreement shall be used on top of the existing taxes or in substitution of the same. It is a requirement in terms of this Article, for the relevant establishments of the Contracting countries to communicate advise each other of any important changes that have been made regarding the laws of taxation of their countries.

3.2.3 Article 3

General Definitions

In order to avoid ambiguities in the interpretation of the provisions of this Agreement, this article deals with definitions of some certain terms as follows;

> (a) the term "South Africa" means the Republic of South Africa and, when used in a geographical sense, includes the territorial sea thereof as well as any area outside the territorial sea, including the continental shelf, which has been or may hereafter be designated, under the laws of South Africa and in accordance with international law as an area within which South Africa may exercise sovereign rights of jurisdiction whereas the term "Zimbabwe" means the Republic of Zimbabwe.

(b) the term “a Contracting State” and “the other Contracting State” mean South Africa or Zimbabwe, as the context requires and the term “business” includes the performance of professional services and of other activities of an independent character.

(c) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes whilst the term “competent authority” means in the South African context, the Commissioner for the South Africa Revenue Service or an authorised representative of the Commissioner; and in Zimbabwean context, the Commissioner General of the Zimbabwe Revenue Authority or an authorised representative for the Commissioner General.

(d) the term “enterprise” applies to the carrying on of any business whereas 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 Contacting State and an enterprise carried on by a resident of the other Contracting State;

(e) the term “international traffic” means any transport by ship, aircraft, or road or rail transport vehicle operated by an enterprise of a Contracting State, except when the ship, aircraft, or road or rail transport vehicle is operated solely between places in the other Contracting State;

(f) the term “national” in relation to a Contracting State means either any individual possessing the nationality of that Contracting State and or any legal person or association deriving its status as such from the laws in force in that Contracting State. On the other hand, the term “person” includes an individual, an estate, a trust, a company and any other body of persons that is treated as an entity for tax purposes.

In relation to the applicability and interpretation of the provisions of this Treaty at all material times any term which is not defined in this agreement shall the meaning which it has always has under the laws of that country unless it has a contextual meaning. It has to be noted that the meaning the term has under any relevant tax laws shall take precedents than the meaning the term is given under the laws of that country.

3.2.4 Article 4

Resident

The term "resident of a Contracting State" applies to any person who is liable to pay tax under the law of his or her country and by virtue of that person's domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term does not however include any person who is liable to tax in that State in respect only of income from sources therein.

In a scenario whereby a person is a resident of both Contracting countries, then that individual's status shall be determined in the following manner:

> (a) the individual shall be deemed to be a resident solely of the State in which a permanent home is available to the individual. Should the permanent home which is available to an individual is in both Countries, the individual shall be deemed to be a resident solely of the State with which the individual's personal and economic relations are closer. This is called center of vital interest.
>
> (b) if the State in which the center of vital interests is situated cannot be determined, or if the individual has no a permanent home available in either State, the individual shall be deemed and considered to be a resident solely of the State in which the individual has a habitual abode;
>
> (c) if the individual has a habitual abode in both States or in neither of them, the individual shall be regarded to be a resident solely of the State of which the individual is a national.
>
> (d) in the case of a person being a national of both States or of neither of them, the competent authorities of the Contacting States shall settle the question by mutual agreement.

Regarding a person who resides in both Contracting countries, the relevant authorities of the countries in agreement shall try to govern by mutual agreement, the Contracting State of which such person shall be regarded to be a resident for the purposes of the Agreement, having regard to its place of effective management, the place where it is registered or otherwise constituted and any other relevant factors.

Should such an agreement be absent, the person concerned shall not be entitled to any relief or exemption from tax provided by this Agreement except to the degree and in such way as may be agreed upon by the applicable authorities of the Contracting countries.

3.2.5 Article 5

Permanent establishment

The term “permanent establishment” is defined under paragraph 1 of this Article as a place of trade through which the business of a creativity is absolutely or partially executed.

The term “permanent establishment” shall include particularly a place of administration, division, office, workshop, warehouse in relation to a person providing storage facilities for others, mine, oil, gas well, quarry or any other place extraction of natural resources and an installation or structure used for the probe of natural resources.

In any case, the term “permanent establishment” under paragraph 3 of this Article is expanded in broad terms and shall be deemed to include:

(a) a structure site, a construction, assembly or installation project or any supervisory activity in connection with such site or project, but only if such site, project or activity continues for a period of more than six months.

(b) the supplying of services, including consultancy services, by an enterprise through employees or other personnel engaged by an enterprise for such purposes, but only where activities of that nature remain for the same or a connected project within a Contracting State for a period or periods exceeding

in the aggregate 183 days within any twelve- month period commencing or ending in the year of assessment concerned.

(c) the performance of professional services or other activities of an independent character by an individual but only where those services or activities continue within a Contracting State for a period or periods exceeding in the aggregate 183 days within a twelve- month period commencing or ending in the year of assessment concerned.

It is imperative to note that an establishment shall not be considered as to have a permanent establishment in a Contracting country merely because it carries on business in that State through, a general commission agent, broker or any other agent of an autonomous status, provided those such persons are acting in the ordinary course of their business.

Notwithstanding the provisions of Article, an insurance enterprise of a Contracting State shall except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom the provisions of this Article applies.

Notwithstanding 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 order.

3.2.6 Article 6

Income Immovable Property

For the purposes of taxation, income derived by an individual residing in the Contracting country from immovable property including income from agriculture or forestry situated in the other Contracting country may be charged in that other country.

The term “immovable property” shall for the purposes of this Agreement, shall comprise property ancillary to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law with respect to 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. Important to note also is that ships and aircraft shall not be considered as immovable property.

3.2.7 Article 7

Business Profits

It is submitted that the incomes of an establishment of a Contracting country shall be taxed only in that country unless the company operates its business in the other Contracting country through a permanent establishment situated therein. In the event of an enterprise doing business as aforesaid, the profits of the enterprise may be levied in the other state but not so much of them as is attributable to that permanent establishment.

The proceeds to be accredited to the permanent establishment shall be determined by the same method year by year unless there is reasonable ground for not doing so.

In case 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.

3.2.8 Article 8

International Transport

It is fundamental to note that proceeds of an establishment of a Contracting country from the operation of ships, aircraft, or road or rail transport vehicles in global traffic shall be payable only in that country. The proceeds from the operation of ships, aircraft, or road or rail transport vehicles in international traffic shall include profits derived from the rental on a bare boat basis of ships or aircraft used in international

traffic, profits derived from the use of rental of containers and profits derived from the rental of road or rail transport vehicles.

3.2.9 Article 9

Associated Enterprises

In the event of an establishment of a Contracting country participating either directly or indirectly in the management, control or capital of an enterprise of the other Contracting country or the same persons participating again either directly or indirectly, in the administration, governing or investment of an establishment of a Contracting State, and in either case conditions are made or enforced between the two enterprises in their commercial or financial dealings which differ from those which would be made between autonomous enterprises, then any profits 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 accordingly taxed.

Conversely, where a Contracting country includes in the profits of an establishment of that State and taxes accordingly, profits on which an establishment 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 enterprise, then that other State, if it not contesting that the modification made by the first- mentioned State is justified both in principle and as regards the amount shall make relevant adjustment to the amount of tax charged therein on those profits.

In the making decisions of such adjustment, a consideration of the provisions of this Agreement shall be made and the relevant authorities of the Contracting States shall consult each other.

3.2.10 Article 10

Dividends

It is worth noting that the term "dividends" as used in this Article means revenue from shares or other rights partaking in profits as well as revenue from other corporate rights which is exposed to the same taxation handling as income from shares by the laws of the Contracting country of which the company making the sharing is a resident.

It is submitted that dividends which are rewarded by a corporation which is a resident of a Contracting country to a resident of the other Contracting State may be levied in the that other State. Such dividends may however be prone to tax in the Contracting country whereby the company paying the dividends is a resident and in terms of the laws of that State.

However, if the beneficial owner of the dividends is a resident of the other Contacting country, the tax charged shall not exceed five percent of the gross amount of the dividends if the beneficial owner is a corporation which holds directly at least twenty-five percent of the capital of the company which will be paying the dividends and ten percent of the gross amount of the dividends in all other cases.

The State may shall not charge any tax on the dividends paid by the company whereby that company is a resident of the Contracting State getting profits or income from the other Contracting country.

3.2.11 Article 11

<u>Interest</u>

It is submitted that the definition of "interest" is so board under this Article, and it is defined as 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 the government securities and income from bonds or debentures, including premiums and prices attaching to such securities, bonds or debentures.

The interest which emanates in a Contracting country and paid to an individual who resides in the other Contracting State is subject to taxation in that other State.

However, such interest may be levied in the Contracting State in which it arises, and in terms of the applicable laws of that country.

In a scenario whereby the beneficial owner of the interest is a resident of the other State, the interest which is charged shall not exceed five percent of the gross amount of the interest. This serves the resident of the other State from being taxed twice.

Notwithstanding the above, interest emanating in a Contracting State shall be relieved from being taxed in that State when the taxpayer of the interest is the Government of that Contracting country, political subdivision or local authority, the interest is paid to the Government of the other Contracting State, political subdivision or local authority, where interest is paid by the Central Bank of the Contracting State or to the Central Bank of the other Contracting State, where the interest is paid to an institution or body which is entirely owned either directly or indirectly by the other Contracting State, political subdivision or local authority, and where the interest emanates from any debt instrument listed on a **recognised** stock exchange.

3.2.12 Article 12

<u>Royalties</u>

It goes without saying that the term “royalties” in this Article is defined as payments acknowledged as a result for the use of, or the right to use, any copy right, patent, trade mark, design, model, plan, secret formula, process, information concerning industrial, commercial or scientific experience.

Just like interest, royalties which arises in a Contracting country and then remitted to the other Contracting State’s resident may be susceptible to tax in that other country. The aforesaid royalties may however be levied in the Contracting country in which they arise and tandem with the laws of that country.

The tax levied on royalties shall not be above ten percent of the total amount of royalties if the beneficial owner of the royalties is a resident of the other Contracting State. This is quite important as it more tax being paid by the beneficial owner of

royalties who resides in the other Contracting country. Hence reducing risk of that person from being taxed twice.

It is submitted that the above shall however inapplicable in a situation whereby the person who tends to benefit from the royalties is a resident of the Contracting country and does business in the Contracting State in which the royalties emanate. These royalties may emanate as a result of a permanent establishment situated therein and the right or property in respect of which royalties are paid is thus connected with such permanent establishment

It has to be noted that royalties shall be considered to arise in a Contracting State, in a situation whereby the taxpayer is the resident of the State. Contrarily, where the payer of the royalties, notwithstanding that the person resides in the Contracting state or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the royalties was incurred, and such royalties are also incurred by such permanent establishment, it therefore means that the royalties at stake shall be considered to arise in the State in which the permanent establishment is situated.

3.2.13 Article 13

Technical Fees

The starting point is that the term "technical fees" is defined in this Article as payments made to any person, other than to a worker of the person making the payments, as a result of the services rendered by that person which may be of an administrative, technical, managerial or consultancy nature.

Technical fees are levied in the same way interest, royalties arising in a Contracting State and paid to the resident of that other State are taxed. The similarity here is that technical fees are also levied in that other country.

Similarly, such technical fees may also be taxed in the Contracting country in which they emanate and in line with the applicable law of that Contracting country. Just like what happens on interest and royalties, in the case which involves the beneficial owner

of the technical fees is a resident of the other Contracting State, the tax which is charged shall not exceed again five percent of the gross amount of the technical fees.

The only exception arises whereby the beneficial owner of the technical fees being a resident of a Contracting State and carries on business in the other Contracting State in which the technical fees arise, through a permanent establishment located therein and the technical fees are effectively connected with such permanent establishment.

It is imperative to note that technical fees shall be considered to arise in a Contracting State when the payer resides in that State. However, where the person paying the technical fees, notwithstanding that the person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the technical fees was incurred, and such technical fees are incurred by the permanent establishment, then such technical fees shall be considered to arise in the State in which the permanent enterprise is located.

3.2.14 Article 14

Capital Gains

Unlike the other Articles, this Article does not even endeavour to define the term "capital gains". Hence, it leaves the term to be defined by the applicable statutes of the Contracting States. It is therefore necessary to interrogate as to which gains are taxed and which one is not.

In terms of this Article, gains resulting from the person who resides in a Contracting State from the alienation of immovable property and located in the other Contracting State, or from the alienation of shares in a company the assets of which consist directly or indirectly mainly of such property may be levied in that other State.

In addition, gains derived by a resident of a Contracting country from the alienation of ships, aircraft or rail or road transport vehicles operated in international traffic or movable property regarding to the operation of such aircraft, rail, or road transport shall be taxable only in that State.

Thus, gains from the alienation of any property other than that referred ***supra*** will be levied only in the Contracting State of which the alienator resides.

3.2.15 Article 15

Income from employment

The income and other similar remuneration derived by a person who resides in a Contracting State as a result of an employment, shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is executed, the remuneration derived therefrom may be levied in that other State.

The reward derived by a resident of a Contracting State in regarding an employment carried out in the other Contracting State shall be levied only in the first-mentioned State in the event that the recipient is present in the other State for a period of not more than 183 days in any twelve-month period commencing or ending in the year of assessment, the remuneration which is either paid by or on behalf of an employer who is not a resident of the other State and the remuneration is not incurred by a permanent establishment which the employer has in the other State.

Pertaining to the remuneration derived in respect of an employment executed aboard a ship, aircraft, or road or rail transport the vehicle of which is operated in international traffic by an enterprise of a Contracting State shall be liable to be levied only in that State.

3.2.16 Article 16

Directors' fees

The directors' fees, like any other money earned, are also subject to taxation. Other related payments as well as directors' fees derived by a resident of a Contracting country in the person concerned in his or her capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be levied in that other State.

3.2.17 Article 17

Entertainers and Sportspersons

It is submitted that the income earned by a resident of a Contracting country as an artist from his or her personal activities executed in the other Contracting State may be levied in that other State. The Article lists the examples of such entertainers which include but not limited to theatre, motion picture, radio, television artiste, musician or sportsperson.

In an instance where income arising as a result of individual actions exercised by a performer or a contestant in their capacities, the same shall not accumulate to the performer or contestant but to another person. Such an income may be levied in the Contracting State in which the activities of the entertainer or sportsperson are executed.

3.2.18 Article 18

Pensions and Annuities

It is important to note that the term "annuity" is defined in this Article to mean a stated amount of money payable occasionally at stated times throughout life or during a stated or ascertainable period of time under a duty to make the payments in return for sufficient and full contemplation in money or money's worth.

Thus, annuities and other similar payments for the past employment and pensions arising in a Contracting country and paid the person who resided in the other Contracting country may be levied in the first- stated country.

3.2.19 Article 19

Government Service

An individual earning salaries, wages and other related payments from a Contracting State as a result of that individual rendering services to the State, subdivision or authority shall be subject to tax only in that State.

The same shall only be taxable only in the other Contracting State provided that the services are rendered in that State and also that an individual is a resident of that State

is a nationality of that State and who happens not to become a resident of that State mainly for the purpose of services rendering.

3.2.20 Article 20

Students, Apprentices and Business Trainees

Interesting to note is the fact that a learner, trainee or business trainee who resides in a Contracting State especially for the purpose of the student, apprentice or business trainee's education or training and who is, or immediately before being there was a resident of the other Contracting State shall be excused from paying tax in the first-stated State for the purposes of the student, apprentice or business trainee's maintenance, education or training.

3.2.21 Article 21

Other Income

A Contracting State's resident income not mentioned in this Agreement will be levied only in that country. The income mentioned to in this Article, refers to income from immovable property.

3.2.22 Article 22

Elimination of Double Taxation

In terms of this Article, there are basically two way of eliminating double taxation by the Contracting States and these are as follows:

> (a) Subject to the applicable South African tax laws, regarding the deduction from tax payable in South Africa, Zimbabwean tax paid by the residents of South Africa in relating to income taxable in Zimbabwe shall be deducted from the taxes due according to South African fiscal law. It is crucial to note that such

deductions should not exceed an amount which bears to the total South African tax payable the same ratio as the income concerned bears to the total income.

(b) Subject to the Zimbabwean tax laws, regarding the allowance as a credit against Zimbabwean tax of the tax payable in a territory outside Zimbabwe, the south African tax payable in respect of taxable income or chargeable gains from sources within South Africa shall be allowed as credit against any Zimbabwean tax calculated by referring to the same taxable income or chargeable gains by reference to which the South African tax is calculated.

3.2.23 Article 23

Non- Discrimination

The residents of a Contracting country should not be susceptible to taxation requirements which are more stringent than the taxation requirements of the other State whose circumstances are the same as those of the Contracting country.

The taxation on a permanent establishment which a company of a Contracting State has in the other Contracting State shall less favourably taxed in that other country than the taxation charged on an enterprise of the other State doing same activities.

3.2.24 Article 24

Mutual Agreement Procedure

In a case where the activities of both or one of the Contracting country will result or will likely to end in a person taxed contrary to the provisions of this Agreement, the affected person may refer his case to the other relevant authority of the Contracting State where he or she resides in for adjudication purposes.

Upon receiving the complaint, the competent authority shall endeavour to determine the matter by mutual consent with the relevant authority of the other Contracting state with the objective to avoid taxation which is against this Agreement. Whatever consensus reached by the two Contracting States shall be implemented in a manner which overrides the time limits of the Contracting States.

The two Contracting States when dealing with such matters, they have discretion to consult should they face some difficulties in an endeavour to eliminate double taxation.

The Contracting States during the process may through the Commission exchange communications and views. The Commission consists of representatives of the relevant authorities from the Contracting States.

It is submitted that this provision brings fairness in the way persons from the two Contracting States are taxed and helps to resolve matters when disputes arise hence reducing double taxation of person from the Contracting States.

3.2.25 Article 25

Exchange of Information

It is imperative to note that this provision allows the relevant authorities of the Contracting countries to exchange materials and evidence which is crucial for the administration and execution of the local laws of the contracting states regarding different taxes imposed on behalf of the Contracting States.

Whenever information has been demanded by a Contracting country in a manner which is in accordance with the provisions of this Article, the other Contracting country shall try its level best to furnish such information even if the information may not be necessary to the other State for tax purposes. The Contracting State is not allowed to whatsoever refuse to supply information which is requested by the other Contracting State on the basis that the same is confidential.

3.2.26 Article 26

Assistance in the Collection of Taxes

It is trite that the Contracting States are under an obligation to help each with regards to the collection of revenue claims.

In this Article, the term “revenue claim” is defined as an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of

their political subdivisions or local authorities, in so far as the taxation is not contrary to this Agreement or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

When a person in a Contracting country owes revenue claim to his or her State and avoids paying it, the competent authority of that State shall be involved in requesting that person to pay it and same shall be demanded by the other State in accordance with applicable enforcement laws.

When that revenue claim has been collected after the involvement of the competing authority, such revenue shall not be affected by the time limits applicable in the collection of revenue claims.

Further, the proceeding carried out by the competent authorities which relates to the existence, validity or amount of the revenue claim of a Contracting country shall not be brought before the Courts or administrative bodies of the other Contracting State.

3.2.27 Article 27

Members of Diplomatic Mission and Consular Posts

Neither this treaty nor the general rules of international law or under the provisions of special arrangements shall whatsoever affect the economic freedoms of members of diplomatic missions or consular posts.

It is submitted that because of the fiscal privileges the members of the diplomatic missions and consular have, their revenue is not subject to taxation.

3.2.28 Article 28

Entry into Force

The Contracting countries are required to advise each other in writing through their relevant protocols of the completion of the processes and compliance with the law for bringing into force of this treaty. Thus, the treaty shall become enforceable on the date of notifying each other by the Contracting States.

This Agreement superseded the Double Taxation Agreement entered into by between the South Africa and the then Southern Rhodesia on the 10th of June 1965 at Cape Town in relation to any tax for the period the agreement was in force.

3.2.29 Article 29

Termination

This Agreement shall be terminated by either party after the expiration of five (5) years. It is submitted that the duration of this agreement was quite shorter considering the fact that there is need for the two Contracting States to have adequate time so as to implement the provisions of the treaty.

3.3 DOUBLE TAXATION AGREEMENT BETWEEN ZIMBABWE AND UNITED ARAB EMIRATES –UAE (STATUTORY INSTRUMENT 284 OF 2020).

The Republic of Zimbabwe (hereinafter referred to as ROZ) has recently concluded an agreement with the United Arab Emirates the treaty of which is also known as Statutory Instrument 284 of 2020, which was published on 4th December 2020. The treaty, signed on the 16th June 2018, which is the first of its kind between the two countries.

The other purpose for the Contracting States to enter into this treaty was for the development of the economic relations between the two countries as well as to enhance their corporation in the tax matters.

The main intention of the treaty was to enter into an agreement for the eradication of Double Taxation regarding to taxes on income. It is submitted that the agreement does not promote tax evasion or avoidance. However, it can be argued that the double taxation agreements entered into by the various States are a typical example of tax planning.

3.3.1 Article 1

Persons Covered

The treaty applies to individuals who are either residents of both or one of the Contracting States.[59]

3.3.2 Article 2

Taxes Covered

The treaty deals with United Arab Emirates and Zimbabwean tax laws.

3.3.3 Article 3

Income from Hydrocarbons

It provides that notwithstanding any other provision of the treaty, there is absolutely nothing which shall affect the rights of both Contracting States or their local bodies in as far as the application of their indigenous laws, rules and regulations ancillary to the taxation of income and profits derived from hydrocarbons and its associated activities situated in the territory of the respective Contracting State, is concerned[60].

3.3.4 Article 4

General Definitions

[59] Article 1 of SI 284 of 2020.
[60] Article 3 of SI 284 of 2020.

This article generally deals with the definition of terms.[61]

3.3.5 Article 5

Resident

The term "resident of a Contracting State" means in the case of the United Arab Emirates a United Arab Emirates national or a person who is under the applicable law of the United Arab Emirates, is regarded as a resident of the United Arab Emirates. It may also mean any person other than an individual that is registered or otherwise recognised as such under the laws of the United Arab Emirates or any political subdivision, local government or local authority thereof.[62]

In the case of the Republic of Zimbabwe, the term "resident of a Contracting State" may mean any person who under the applicable law of Zimbabwe is prone to taxation by virtue of residing in Zimbabwe or carrying on business in Zimbabwe. It has to be noted that this term excludes any person liable to tax in Zimbabwe as a result only of income from sources located therein.

In a scenario whereby by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined in the manner that he or she shall be deemed to be a resident only of the Contracting State in which he has a permanent home available to him if he or she has a permanent home available to him in both Contracting States, he or shall be deemed to be a resident only of the Contracting State with which his personal and economic relations are closer and this is known as center of vital interests.

[61] Article 4 of SI 284 of 2020.
[62] Article 5 of SI 284 of 2020.

3.3.6 Article 6

Permanent Establishment

The treaty includes the provision that a permanent establishment will be deemed constituted when an enterprise furnishes services in a Contracting State through employees or other engaged personnel for the same or connected project for a period or periods aggregating more than six (6) months.

3.3.7 Article 7

Income from Immovable Property

Income earned by a resident of a Contracting country from immovable property (including income from agriculture or forestry) situated in the other Contracting country may be taxed in the other country. The terms **"immovable property"** shall derive its meaning from the national laws of the Contracting country in which the property in question is located. The term shall in any case include property incidental to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general laws respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right of work, mineral deposits, sources and other natural resources.

It is crucial to note the definition of immovable property shall not include that ships and aircraft. The provision of paragraph 1 of this Article shall apply to income earned from the direct use, letting, or use in any other term of immovable property.

The provision of paragraphs 1 and 3 of this Article shall also apply to income from immovable property of an establishment and to income from immovable property used for the performance of independent personal services.

However, paragraphs 1 and 4 are not applicable if the beneficial owner of the income is that State itself or local authorities, political subdivision, local government or their financial institutions.

3.3.8 Article 8

Business Profits

Under this Article, the profits of an establishment of a Contracting State shall not be liable to tax only in the Contracting State unless the enterprise carries on business in the other Contracting State through a permanent establishment located in that other Contracting State. Should the enterprise does business or has previously done business in that manner, the returns of an establishment may be taxed in the other Contracting State but only so much of them as is attributable to that permanent establishment, sales in that other State of goods or merchandise of that same or similar kind as those sold through that permanent establishment and other business activities executed on that other State of the same or similar genus as those effected through that permanent establishment.

It is submitted that this Article includes a limited force of attraction provision whereby taxing rights are granted to a Contracting country on profits attributable to the sale of goods or merchandise or other business activities carried on in that other country by a resident of the other country if the same or similar goods or merchandise or business activities are also sold or carried out by a permanent establishment maintained by that resident in that other country.

Subject to the provisions of paragraph 3, where a company of one of the contracting countries does business in the other country through a permanent establishment located therein, there shall in each contracting country 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 absolutely autonomously with the company of which it is a permanent establishment.

In an endeavor to determine the returns of an enterprise, there shall be allowed as deductions those deductible expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere taking into cognizance any relevant law or regulations in the connecting Contracting State.

However, only deductions made towards reimbursement of actual expenses are allowed. These deductions maybe by the permanent establishment to the headquarters or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or except in the case of banking enterprise or any of its other offices.

It is submitted that no profits shall be accredited to an enterprise by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise. Whilst it is common in a Contracting State to determine the profits to be accredited to an enterprise on the basis of an apportionment of the total profits of the enterprise to its various parts, there is nothing in paragraph 2 which shall prevent that Contracting State from determining the profits to levied by such an apportionment in terms of precedents.

It is imperative to note that the method of apportionment adopted shall be in tandem with the principles contained herein. The profits to be accredited to an enterprise shall be determined by the same methodology each and every year unless there is good and sufficient reason to depart from that method. The provisions of this Article shall not

affect other articles of this Agreement separately dealing with issues where profits include item of income or gains.

3.3.9 Article 9

Shipping and Air Transport

The relief for double taxation under this Article is emanating from the fact that profits of an enterprise of a country under this agreement from the operations of ships or aircraft in international traffic even if occasionally, in international traffic shall be taxable only in the contracting country in which the place of actual administration of the enterprise is located notwithstanding the provisions of Article 7 of this Agreement.

Suffice to state that in the event that the place of actual administration of a shipping enterprise is aboard a ship, or a boat, then it shall be regarded to be situated in the Contracting country in which the home harbor of the ship or boat is situated, or, if there is no such home barber, in the Contracting country of which the operator of the ship or boat is a resident.

3.3.10 Article 10

Associated Enterprise

In the event of a company of one of the contracting countries contributing directly or indirectly in the administration, control of capital of the country of the other contracting country or where the same persons take part e directly or indirectly in the administration, control or capital of an enterprise of the contracting country and a company of the other country and in either case conditions which are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprise, then any profits

which would but by reason of those conditions, have not so accumulated, may be included in the profits of that company and ultimately taxed.

In a scenario where a one of the countries under this treaty includes in the profits of a company of within its country and taxes accordingly profits on which the company of the other contracting country has been charged to tax in that other contracting company and the profits so included are profits which would have accrued to the enterprise of the first mentioned contracting country if the conditions made between the two enterprises had been those which would have been made between independent companies, then that other Contracting country shall make an suitable modification to the amount of the profits liable to tax.

It is submitted that in determining such adjustment, due regard shall be had to the other provisions of this Agreement and the Competent Authorities of the Contracting Stats shall if necessary consult each other.

3.3.11 Article 11

Dividends

Important to note is the fact that dividends paid by a company which is resides in the Contracting State shall be levied only in that other Contracting State. However, such dividends may also be taxed in the Contacting 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 Contracting State, the tax so charged shall not exceed five (5) percent of the gross amount of the dividends.

The term "dividends" as can be discerned from this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt claims, participating in profits, as well as income from other company rights which is liable to the same taxation.

It is crucial to note that no remedy whatsoever shall be available under this Article in the event that the major objective or one of the major objectives 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.

3.3.12 Article 12

Interest

Here Double taxation is remedied in the sense that the interest emanating in a Contracting State and paid to an individual who resides in the other Contracting State shall be levied only in that other Contracting State. The definition of interest in this article is so broad and it may also mean 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 securities, government securities and income from bonds or debentures, including premiums and prices attaching to such securities, bonds or debentures, as well as income which is susceptible to the same taxation action as income from money lent by the taxation laws of the Contracting State in which the income arises.

Withholding Tax Rates

Dividends – 5%

Interest - 0%

Royalties – 9%

Fees for technical services (managerial, technical, or consultancy)- 6%.

Limitation on Benefits

The treaty relief provided under Articles 11 (Dividends), 12 (Interest), and 13 (Royalties) will apply in the event that the purpose of any individual concerned with the creation or assignment of the shares, debt- claims or other rights in respect of which the income is paid was to benefit from those Articles by means of that creation or assignment. The limitation is included in each of the Articles.

3.3.13 Article 13

Royalties

The term "royalties" as it is defined in this Article means payments of any manner received as a ca result for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and works on films, tapes or other means of reproduction for use in connection with television or radio broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information(expertise) concerning industrial, commercial or scientific experience.

However, such royalties may also be taxed in the contracting State where it arises and according to the laws of the State, but if the beneficial owner of the royalties is resident of the other Contracting State, the tax charged shall not exceed nine (9) percent of the gross amount of the royalties.

In this case, royalties shall be considered to arise in a Contracting State when the tax payer resides in that Contracting State. In a situation whereby the individual paying the royalties whether he is a resident of the Contracting State or not, has in a Contracting State a permanent establishment or a fixed base which links him or her with which the liability to pay the royalties, and such royalties are borne by such a permanent establishment or fixed base, then such royalties shall be regarded to arise in the Contracting State in which the permanent establishment or fixed base is located.

Important to note also is that there shall be no relief available under this Article in the event that it was the purpose of any individual concerned with the creation or assignment of the shares or other rights in respect of which the royalties are paid to take benefit of this Article by means of that creation or assignment.

3.3.14 Article 14

Fees for Technical Services

Under this Article, the term "fees for technical services" refers to any payment made as a result of the managerial, technical or consultancy services rendered. An exception arises if only when the payment is made to the worker of the person making the payment, for teaching in an educational institution or for teaching by an educational institution or for teaching by an educational institution or by an individual for services for the personal use of an individual.

3.3.15 Article 15

Capital Gains

Article 15 (Capital Gains) provides that the following capital gains derived by an individual who resides in one Contracting country may be taxed by the other country.

(a) Gains from alienation of immovable property situated in other State;
(b) Gains from the alienation of movable property forming part of the business property of a permanent establishment in the other State.

Article 15 also provides that the provisions of the article shall not apply in the event that the income is coming from is the State itself, local government, local authority or their financial institution, in which case such income shall be subject to tax in the State of residence.

It is crucial to note that unlike most treaties, the UAE-Zimbabwe treaty does not include the explicit provision that gains from the alienation of other property by a resident of a Contracting State may only be taxed by that State.

3.3.16 Article 16

Independent Personal Services

It is trite that income earned by an individual who resides in a Contracting State as a result of professional services or other activities of an independent character rendered shall be levied only in that contracting State. The only exception when such income may also be taxed in the other contracting State are the following circumstances:

> (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities and such a scenario only so much of the income is as is attributable to that fixed base may be taxed in that other Contracting State.
>
> (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate one hundred and eighty- three (183) days in a twelve (12) month period commencing or ending in the fiscal year concerned. In this instance, only so much of the income as is derived in that other Contracting State during the aforesaid period or periods may be taxed in that other Contracting State.

3.3.17 Article 17

Income from employment

The incomes, earned by a resident of a Contracting State either in form of salaries or wages as a result of an employment rendered shall be levied only in that Contracting State subject to the provisions of Articles 17, 18 and 19 of this Agreement. The only exception is whereby the employment is exercised in the other Contracting State.

Notwithstanding of the above, reward derived by a resident of a Contracting State shall be levied only in the first mentioned Contracting country provided the conditions below are satisfied:

(a) The recipient is present in the other contacting State for a period or periods not exceeding in the aggregate one hundred and eighty- three (183) days in a twelve (12) month period commencing or ending in the fiscal year concerned.

(b) The remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting State.

It is crucial to note that remuneration earned as a result of an employment carried out aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State shall be subjected to taxation only in the Contracting country in which the place of effective management of the enterprise is located.

Suffice to state that a person who is a national of a Contracting State and also an employee of a company of that Contracting State the main business of which comprises the operation of aircraft in international traffic and who gets remuneration as a result of obligations performed in the other Contracting State shall be levied only in that other Contracting State on reward earned from his employment with that company.

3.3.18 Article 18

Directors' fees

The directors' fees and other ancillary payments earned by a resident of a Contracting country in his capacity as a member of the board of directors or other similar organ of a company, which is a resident of the other Contracting country, may be levied in the first- mentioned Contracting country.

3.3.19 Article 19

Artists and Sportsman

Income earned by an individual who resides in a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his individual doings exercised in the other Contracting State may be taxed in the other Contracting State irrespective the provisions of Article 16 of this Agreement.

In a scenario whereby income as a consequence of personal activities executed by an entertainer or a sportsman in his or her capacity as such accumulates not to the entertainer or sportsman himself or herself, but to another person, that income may, irrespective of the provisions of Article 16 be taxed in the Contracting State in which the works of the entertainer or sportsman are executed.

The above shall be inapplicable to income earned by entertainers or sportsmen who are residents of a Contracting State from personal activities as such executed in the other Contracting State if their visit to that other Contracting State is considerably buttressed from the public funds of the first mentioned Contracting country, including those of any political subdivision, a local authority or statutory body thereof.

3.3.20 Article 20

Pensions and Annuities

Paragraph 2 of this Article defines the terms “pensions and other similar remuneration” as intermittent payments made after retirement as a consequence of previous employment or as compensation for injuries received in connection with previous employment, and whereas, the term “annuity” means a stated sum payable to an individual from time to time at stated times during life, or during a specified or ascertainable period of time, under an duty to make the payments in return for adequate and full consideration in monetary value.

3.3.21 Article 21

Government Service

The payments which inter alia include salaries and wages other similar remuneration shall be taxable only in other Contracting State or a political subdivision or a local authority thereof to an individual as a consequence of services rendered to that Contracting State or subdivision or authority shall be taxable only in that Contracting State.

However, such payments shall be taxable only in the other Contracting Sate if the services are rendered in that Contracting State and the individual is a resident of that Contracting State and has satisfied that he or she is a national of that Contracting State and did not become a resident of that Contracting State by virtue of rendering services.

In the same vein, any pension paid, or out of funds created by, a Contracting State or political subdivision or a local authority thereof to an individual as a result of services

rendered to that Contracting State or subdivision or authority shall be subjected to taxation only in that Contracting State.

Further, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that Contracting State. Thus, the provisions of Articles 16,17,18, 19 and 20 shall apply to payments such as salaries and wages and other similar remuneration and to pensions consequent to the services rendered in connection with a business carried on by a Contracting State or political subdivision or a local authority thereof.

3.3.22 Article 22

Teachers and Researchers

In a case whereby an individual an individual who is or was immediately before visiting a Contracting State and who as a result of the invitation of the Government of the first-mentioned Contracting State or of a university, college, school, museum, or other cultural institutions in the first-mentioned Contracting State or under an official programme of cultural exchange is present in that Contracting State for a period not exceeding three(3) consecutive years for the purpose of teaching giving lectures or carrying out research at such institution may be taxed in the contracting State where the individual is a resident.

If the study is carried out contrary to public interest but primary for the personal benefit of a specified individual or individuals, then the above shall not apply to income form such a research.

3.3.23 Article 23

Students and Trainees

Payments from a student or business trainee who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned Contracting State only for the purpose of his education or training receives for the purposes of his maintenance, education or training shall not be levied in that Contracting State, provided that such payments emanate from sources outside that Contracting State.

In the same vein, income derived by students from universities or other technical or higher education institutions wo are employed in the other Contracting State for a period not exceeding one (1) year, shall be exempt paying tax in that other Contracting State provided such services are directly in connection with his studies or training or necessary for his maintenance and to the extent that the remuneration does not exceed the sum of Ten Thousand United States in a period of a year.

3.3.24 Article 24

Other Income

It is important to note that income of a resident of a Contracting country, regardless of where it is coming from and which is not covered in this Agreement shall only be subjected to tax only in the Contracting country.

Irrespective of the above provision, objects of income of a resident of a Contracting country not covered with in the foregoing Articles of this Agreement and also arising in the other Contracting country may also be levied in that other country.

3.3.5 Article 25

Elimination of Double Taxation

Paragraphs (a) and (b) of this Article deal with the ways in which Double Taxation may be eliminated in both countries that is the Republic of Zimbabwe and in the United Arab Emirates (UAE).

Republic of Zimbabwe

Where a Zimbabwean resident earns income which in terms of the provisions of this Agreement, may be taxed in the United Arab Emirates. In such a case, the Republic of Zimbabwe shall permit a deduction from the tax on the income of the resident an amount equal to the income tax paid in the United Arab Emirates.

United Arab Emirates

In the scenario whereby a resident of the United Arab Emirates earns income which is prove to taxation if regard is had to the provisions of this Agreement, may be taxed in the Republic of Zimbabwe, the United Arab Emirates shall permit as a deduction from the tax on the income of that resident an amount equal to the income tax paid in Zimbabwe. However, such deduction shall not exceed that part of the income tax as calculated before the deduction is given, which is attributable to the income which is susceptible to taxation in Zimbabwe.

In case where in terms of the provisions of this Agreement, income earned or owned by a resident of a Contracting State is exempted from tax in that State such State may however, in calculating the amount of tax on the remaining income of that resident take into account the relieved income.

3.3.26 Article 26

Mutual Agreement Procedure

It states that where a person considers that the actions of one or both of the Contracting States ends or will end him in taxation not in tandem with the terms of this Agreement, he may, notwithstanding the remedies provided by the domestic laws of those Contracting States, present his case to the Competent Authority of the Contracting State of which he is a resident or, if this case comes under paragraph 1 of Article 27, to that of the Contracting State of which he is a national. The case shall be presented within three (3) years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.

The relevant Authority shall attempt, 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 consent with the relevant Authority of the other State, with a view to the avoidance of taxation which is not in line with the agreement. Regardless of any time limits in the domestic law of the Contracting State, any agreement reached shall thus implemented.

In the event of the dispute arising regarding the interpretation of this Agreement, the Competent Authorities shall do their level best to resolve such an issue by mutual agreement. It is crucial to note that the Competent Authorities have also been given the prerogative to consult for the avoidance of double taxation in cases not provided for in this treaty.

For the reason of reaching a consensus in the elimination of double taxation, the relevant Authorities of the Contracting States may communicate with each other directly. If it is considered necessary and seems suitable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a joint commission consisting of representatives of the relevant Authorities of the Contracting States.

3.3.27 Article 27

Exchange of Information

Information between the Competing Authorities of the Contracting countries shall be exchanged by the said Authorities if it appears relevant to them for the purposes of carrying out and implementing the provisions of this Agreement. The information may also be exchanged by the Competent Authorities for the purposes of the management or execution of the domestic laws of the Contracting States regarding taxes dealt with in this Agreement imposed on behalf of a Contracting State, or of their political subdivisions or local authorities, in so far as the taxation thereunder is not contrary to this Agreement.

The information received in this regard, by a Contracting State, shall be treated as secret in the same manner as information obtained under the domestic laws of that Contracting State. The only exception is that such information shall only be divulged to individuals or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the administration of appeals in relation to, the taxes covered by this Agreement. Such individuals or authorities shall use the information only for such purposes. Further, the information may be disclosed in public court proceedings or as a result of a court order. It is submitted that this exception for the disclosing of information in a competent public court was done to ensure the proper administration of justice in case of a dispute arising between the two States.

Notwithstanding the above, it is imperative to note that the Contracting State is not imposed an obligation on it to execute administrative measures which are against with the laws and managerial practice of that or of the other Contracting State and to furnish information which is not obtainable under the laws or in the normal course of the management of that or the other Contracting State.

Further, the Contracting State is also not under an obligation to furnish information which would divulge any trade, business, industrial, commercial or professional secret or trade process or information, the divulgence of which would be against public policy.

In the event of information having been demanded by a Contracting State in line with this Article, the other Contracting State is obliged to employ its information gathering measures to ensure that it obtains the demanded information irrespective of the fact that the information may not be needed by the other State for its own tax reasons.

However, these exceptions are not a passport to the Contracting State to refuse to furnish information merely because it has no domestic interest in such information.

More so, the limitations explained above shall not be used by the Contracting State to refuse to furnish information solely because the information so requested is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

3.3.28 Article 28

Non- Discrimination

No residents of a contracting State shall be discriminated and shall not be prone to any draconian taxation laws which the residents of the other contracting State are not subjected to.

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 the other State carrying on the same activities. This provision shall however not have interpreted as mandating a Contracting State to grant to residents of the other Contracting State any personal allowances,

reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

There is nothing in this Agreement that will hinder a Contracting State from granting exemption from tax or reduction to its own national companies in accordance to its domestic laws and regulations. In this Article, the term "taxation" means taxes of every kind and description which are the subject of this Agreement.

3.3.29 Article 29

Income from Government and Investment Institutions

It is submitted that any income earned by a Contracting State, its administrative-territorial subdivisions or political subdivisions, local governments, local authorities thereof, or their financial institutions and holding companies, development funds and authorities arising from the sources in the other Contracting State shall be liable to taxation only in State of residence without prejudice to Article 3 of this Agreement.

Moreover, income arising from charitable organisations and pensions funds owned by a Contracting State political subdivision, local authorities or local governments thereof shall be subject to taxation only at the State of residence.

3.3.30 Article 30

Miscellaneous Rules

The provisions of this Agreement shall not be interpreted to limit in any way any exclusion, exemption, deduction, credit, or other allowances now or hereafter accorded:

(a) by the laws of a Contracting State in the determination of the tax levied by the
contracting State, or

(b) by any other special arrangement on taxation between the Contracting States or between one of the Contracting States and residents of the other Contracting State.

3.3.31 Article 31

Members of Diplomatic Missions and Consular Posts

The economic freedoms of members of diplomatic missions or consular posts or employees of international organisations under the general rules of international law or under the provisions of special agreements shall not be affected by the provisions of this Double Taxation Agreement.

3.3.32 Article 32

Entry into Force

In terms of Article, each of the Contracting States is under an obligation to notify each other in writing the completion of its constitutional procedures for the entry into force of this Agreement. This Agreement shall enter into force on the date of receipt of the latter of these notifications and its provisions shall thereupon have effect in both Contracting States.

(a) As regards to taxes withheld at source, for amounts paid or credited on or after the first day of January of the year next following that in which the notice of termination is given; or

(b) Regarding other taxes, for taxable periods beginning on or after the first day of January of the year in which this Agreement is signed.

3.3.33 Article 33

Duration and Termination

It is important to note that this Agreement shall be valid for a period of ten (10) years and thereafter for a similar past period or periods unless either Contracting States notifies the other in writing at least six (6) months before the expiry of the initial or any subsequent period, of its intention to terminate this Agreement. In such event, this Agreement shall stop to be enforced in both Contracting States:

(a) As regards to taxes withheld at source, for amounts paid or credited on or after the first day of January of the year next following that in which the notice of termination is given; or

(b) Regarding other taxes, for taxable periods beginning on or after the first day of January of the year next following that in which the notice of termination is given.

It is submitted that both countries apply the credit method for the elimination of double taxation.

FIGURE 2

COMPARISON BETWEEN DOUBLE TAXATION AGREEMENT ENTERED INTO BETWEEN ZIMBABWE AND SOUTH AFRICA (SI 40 of 2016) AND THE DOUBLE TAXATION AGREEMENT CONCLUDED BETWEEN ZIMBABWE AND UNITED ARAB EMIRATES (UAE) (SI 284 of 2020).

	SI 40 of 2016	SI 284 of 2020
Purpose		
1.	Avoidance of Double Taxation and prevention of running away from paying taxes on income.	Avoidance of Double Taxation and prevention running away from paying taxes on income
Applicability		
2.	Applicable to persons who are residents of both or one of the Contracting States	Applicable to persons who are residents of both or one of the Contracting States
Taxes Covered		
3.	Applicable to taxes on income imposed on behalf of a Contracting States or its political subdivisions	Applicable to taxes on income imposed on behalf of a Contracting States or its political subdivisions
Definitions		
4.	Covered under Article 3	Covered under Article 4
Resident		
5.	A blanket definition of the term "resident of the Contracting State" is given	A definition of the term "resident of the Contracting State" is given separately in the context of UAE and Zimbabwe

Transport		
6	**Article 8 deals with tax levied on international transport as a whole**	**Article 9 deals with tax levied specifically on shipping and air transport.**
Dividends		
7.	**Dividends paid by a company which is a resident of a Contracting country to a resident of the other Contracting country may be taxed in that other State. Taxation on dividends is thus optional.**	**Dividends paid by a company which is a resident of a Contracting country to a resident of the other Contracting State shall be taxed only in that other Contracting country. Suffice to state that taxation on dividends is compulsory.**
Interests		
8.	**Interests arising in a Contracting State and is paid to a resident of the other Contracting State may be taxed in that other State. Taxing of interest is optional.**	**Interests arising in a Contracting State and is paid to a resident of the other Contracting State shall be taxable only in that other Contracting State. Taxing of interest is compulsory.**
Royalties		
9.	**Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State. Taxing of royalties is optional.**	**Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State. Taxing of royalties is optional.**
Capital Gains		
10.	**Gains derived by a resident of a Contracting State from the alienation of immovable property**	**Gains derived by a resident of a Contracting State from the alienation of immovable property situated in the**

	situated in the other Contracting State or from the alienation of shares in a company the assets of which consists directly or indirectly principally of such property, may be taxed in that other State.	other Contracting State may be taxable only in that other Contracting State.
Directors' Fees		
11.	Directors' fees and other similar payments earned by a resident of a Contracting State in that person's 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.	Similarly, Directors' fees and other similar payments earned by a resident of a Contracting State in his capacity as a member of the Board of Directors or other similar organ of a company which is a resident of the other Contracting State may be taxed in the first-mentioned State.
Annuities		
12.	Article 18 states that pensions and other similar remuneration for past employment and annuities arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the first-mentioned state. Payment of tax on pensions and annuities is optional.	Article 20 states that pensions and other similar remuneration and annuities paid to an individual who is a resident of a Contracting State in consideration of past employment shall be taxable only in that Contracting State. Payment of tax on pensions and annuities is compulsory.
Duration		
13.	The Double Taxation Agreement had a duration of five years.	The Double Taxation Agreement has a duration of ten years.

3.4 CONCLUSION

There are more similarities than the differences in the Double Taxation treaty concluded between Zimbabwe and South Africa on one hand and Zimbabwe and United Arab Emirates on the other hand. It is quite commendable that Zimbabwe has so far entered into Double Taxation Agreements with nineteen (19) other Contracting States. This has an impact of preventing the double taxation of tax payers' income by two jurisdictions within the same period and it encourages foreign direct investment and boosts the investors' confidence.

CHAPTER 4

4.1 IMPACTS OF DOUBLE TAXATION AGREEMENTS TO ZIMBABWE

Double Taxation Agreements have a negative effect to the economy of the country through loosing revenue in the sense that taxing rights will be surrendered to the resident countries of multinationals investing in Zimbabwe. As a result, the foreign investors will pay less in Zimbabwe, a similar amount of tax that will be enjoyed by the resident country, which does not have any economic activity- taking place. In view of the fact that all Double Taxation Agreements signed by Zimbabwe offer reduced rates of withholding taxes on dividends, interest, royalties and technical fees, Zimbabwe tend to loose revenue of the same magnitude determined by the different rates agreed in each bilateral treaty.

Notwithstanding the negative effects of Double Taxation Agreements alluded above, it is crucial to note that Double Taxation Agreements also have positive effects to the country. This is so since the government offers investment incentives within Double Taxation Agreements and a case in point is the limiting of the rate of tax on technical fees to 10% or less and the levying of the 7.5% or less of the gross amount of royalties in the case of China which is far less than the 10% determined under the OECD Model.

The incurred costs can only pay off if Zimbabwe were to receive more Foreign Direct Investment(FDI) in return and maximize on the economies of scale .[63] As a result, the government will transfer the tax burden from the MNCs to the general citizenry by levying indirect taxes such as Value Added Tax. In 2016, Value Added Tax (on imports and local sales combined) contributed about 29% to total tax, ahead of individual tax (23%) (Zimbabwe Revenue Authority, 2016), thereby increasing the vulnerability of citizens to poverty[64].

In light of the fact that Zimbabwe has bilateral tax treaties with tax havens like Switzerland, Mauritius and Netherlands, the country is susceptible to treaty shopping, round tripping and aggressive tax planning by multinational corporations. Consequently, the multi-national companies will pay little or no taxes in Zimbabwe and sometimes no tax payment is made in both contracting states resulting in what is commonly known as double non taxation, (OECD). The tax havens are also suspicious of the secrecy, which violates the article on exchange of information. For instance, Switzerland insists on exchange of information upon request against the global call to end tax evasion and avoidance through automatic exchange of information.

It is submitted that the fact that negotiations, ratification and implementation of DTAs are done in secrecy in Zimbabwe, it excludes other key stakeholders, particularly the

[63] (Neumayer, 2007).

[64] United Nations, UN(2012), 'United Nations Model Double Taxation Convention between Developed and Developing Countries.' 2011 Update. Nwesletter of Financing for Development/Department of Economic and Social Affairs, No 2012/2.

ordinary citizens from engaging. This has major ramifications on the outcome of the negotiations that are in most cases unfavorable for Zimbabwe. Information in the promotion of exchange of information between Zimbabwe and the partner countries is treated confidential and is only disclosed to persons or authorities concerned such as the courts and administrative bodies upon request. This is in violation of the new global standard on Automatic Exchange of Information (AEOI) which provides for the exchange of non- resident financial account information with the tax authorities in the account holder's country of residence.
It is contended that this is also contrary to the provisions section 62(1) of the constitution of Zimbabwe[65] which categorically states in very clear and unambiguous terms that that every Zimbabwean or permanent resident, including juristic persons and the Zimbabwean media, has the right of access to any information held by the State or by any institution or agency of government at every level, in so far as the information is required in the interests of public accountability. Thus, such lack of transparency and accountability is a breeding ground for corruption which has the potential to facilitate tax evasion, thereby further perpetuating illicit financial flows.[66]

The loss of tax revenue impeded efforts to improve infrastructure, fight poverty and inequality and ultimately ensuring sustainable development in its three dimensions that is economic, social and environmental.[67]

4.2 **Advantages of Double Taxation Agreements**

Double Taxation Agreements are quite crucial as they assist in ensuring that trust worth taxpayers are not subjected to paying tax twice in two different countries at the same period. By virtue of offering tax exemptions and the same time lowering tax rates thereby luring investors. The cross country investments are also promoted through

[65] Amendment(No.20) 2013.
http://www.un.org/esa/ffd/wp-content/uploads/2014/08/2012_2HldNewsletter.pdf
[66] (ECA, 2013).
[67] (UN,2015).

Double Taxation Agreements without and ambiguities and absurdities.[68]Investors would have been discouraged in the event that corporations were coerced to pay tax locally and also in their country of residence. Thus, Double Taxation Treaties lessens the tax burdens of the foreign investors and at the same time provide legal security to the investors[69].

It is submitted that there is transparency and honest in as far as investment is concerned when two countries enter into a Double Taxation Treaty. This will enhance trading at a global level. Double Taxation Agreements as are also quite crucial in that they are international tax treaties that have an advantage of lowering administrative costs of taxation in the sense that they provide tax information exchange.

There is always legal certainty in Double Taxation Agreements since there the rules and regulations of the taxation of international income are spelt out. In a way, it promotes and encourages foreign investors to invest in developing countries as a result of the fact that there is tax certainty.

The incorporation of provisions in the agreement which are not draconian, tend to benefit genuine and bona fide residents of the two contracting countries which enter into a Double Taxation Agreement.

The danger by foreign investors of depending on contradicting national tax rules is minimised since the taxation of international income will be dealt with under the rules of Double Taxation Agreements.[70]

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[68] International Monetary Fund, IMF (2014), 'Spill-overs in International Corporate Taxation.' IMF Policy Paper. Washington DC:IMF http://www.imf.org/external/np/pp/eng/2014/050914.pdf.

[69] Poulsen L.N.S.(2014), 'Bounded rationality and the diffusion of modern investment treaties.' International Studies Quarterly.58(1),1-14 . http://discovery,ucl.ac.uk/1471862/1Diffusion%20of%20modern%20investment%20treaties.pdf.

[70] Millimet, D. , Kumas, A. (2007) ,' Reassessing the Effects of Bilateral Tax Treaties on US FDI Activity.http://faculty.smu.edu/millimet/pdf/tt.pdf.

4.3 Disadvantages of Double Taxation Agreements

Although countries which would have entered into Double Taxation Agreements benefit from tax relief, it can be argued that the relationship between the two contracting countries can be complicated as a consequent of the fact that the two different countries have different tax rates.[71]

More so, Double Taxation Agreements usually disadvantage the poor countries in that instead of the income being taxed twice both at individual and corporate level, with the signing of Double Taxation Treaties by the two contracting countries, what it means is that income will now be only be taxed once. The has a negative impetus on the economy as it discourages productivity.[72]

4.4 CONCLUSION

It is submitted that there are more to positive than negative effects of Double Taxation Agreements. Double Taxation Agreements prevent fiscal evasion regarding to taxes on income between the Contracting States. They further develop the economic relations between the Contracting States and enhances their co-operation in tax matters. However, some scholars who do not support the concept of double Taxation Agreements have postulated that it is fair to apply taxes to dividends rather than avoiding them. Without the taxes in place, it means that investors could simply live off tax-free dividends without contributing to the system[73].

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[71] Paolini, D. Pistone, P.,Pulina, G.,Zagler, M.(2016), 'Tax treaties with developing countries and the allocation of taxing rights.' European Journal of Law and Economics. 42(3), p.383-404. http://link-springer-com.ezproxy.sussex.ac.uk/article/10.1007/s10657-014-9465-9.

[72] Murthy, B. , Bhasin, N. (2005), 'The impact of bilateral treaties.' A multi- country analysis of FDI inflows into India. The Journal of International Trade & Economic Development. An International and Comparative Review. 24(6). p.751-766. http://doi.org/10.1080/09638199.2014.960442.

[73] Lang,M.Owens,J.(2014), 'The Role of Tax Treaties in Facilitating Development and Protecting the Tax Base.' WU International Taxation Research Paper Series, 2014/03. http://epub.wu.ac.at/4094/.

CHAPTER 5

5.1 POLICY RECOMMENDATIONS

It is respectfully recommended that the Zimbabwean government should renegotiate Double Taxation Agreements with partner countries to ensure that the country retains more taxing rights (as a source country) over corporates doing business in its jurisdiction. This will enable the country to collect a fair share of tax whilst committing to eliminating double taxation of income and capital.

As a recommendation, Zimbabwe should also step up efforts to eradicate illicit financial flows perpetrated by multi-national countries that abuse the double taxation agreements through treaty shopping by enforcing anti- avoidance provisions especially towards aggressive tax planning structures in tandem with the current transfer-pricing framework introduced into the Zimbabwe tax law on the 1st of January 2016. In as far as negotiation, ratification and implementation of Double Taxation Agreements are concerned, the government should make information available to enable stakeholders to inject their input. This is in the latter and spirit of section 62(1) of the Constitution.[74]

In the same vein, civil society should take responsibility to raise awareness on the implications of Double Taxation Agreements to the social and economic development and build the capacity of members of parliament to analyse and debate Double Taxation Agreements before approval which is consistent with the Public Finance Management Act.[75] Ultimately, the Zimbabwean government should take an initiative to influence other African member states to develop hybrid models at regional and continental levels and conclude the current efforts to enforce the COMESA and the SADC model conventions.

5.2 CONCLUSION

Although it has been demonstrated above that Zimbabwe has entered into many Double Taxation Agreements with various Contracting States, there are some aspects which we

[74] (Amendment(No.20) 2013.
[75] [Chapter 22:19].

are lacking as a country with respect to Double Taxation Agreements. Double Taxation is affected by the socio-economic and political factors in the country which have an impact on the economic development of the State. It is therefore recommended that there is need to raise awareness on the implications of Double Taxation Agreements.

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