

No. 1152

**UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND
and
UNION OF SOUTH AFRICA**

**Agreement for the avoidance of double taxation and the
prevention of fiscal evasion with respect to estate duty.
Signed at London, on 14 October 1946**

Official texts: English and Afrikaans.

*Registered by the United Kingdom of Great Britain and Northern Ireland on
10 April 1951.*

**ROYAUME-UNI DE GRANDE-BRETAGNE
ET D'IRLANDE DU NORD
et
UNION SUD-AFRICAINE**

**Convention tendant à éviter la double imposition et à
prévenir l'évasion fiscale en matière de droits de suc-
cession. Signée à Londres, le 14 octobre 1946**

Textes officiels anglais et afrikaans.

*Enregistrée par le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord le
10 avril 1951.*

No. 1152. AGREEMENT¹ BETWEEN HIS MAJESTY'S GOVERNMENT IN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND HIS MAJESTY'S GOVERNMENT IN THE UNION OF SOUTH AFRICA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO ESTATE DUTY. SIGNED AT LONDON, ON 14 OCTOBER 1946

His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland and His Majesty's Government in the Union of South Africa, desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to estate duty, have agreed as follows :—

Article I

(1) The duties which are the subject of the present Agreement are :—

- (a) In the United Kingdom of Great Britain and Northern Ireland, the estate duty imposed in Great Britain, and
- (b) In the Union of South Africa, the estate duty imposed by the Union.

(2) The present Agreement shall also apply to any other duties of a substantially similar character imposed by either Contracting Government subsequently to the date of signature of the present Agreement or by the Government of any territory to which the present Agreement applies under Article VIII or IX.

Article II

(1) In the present Agreement, unless the context otherwise requires—

- (a) The term " Great Britain " means England, Wales and Scotland, and does not include the Channel Islands or the Isle of Man.
- (b) The term " Union " means the Union of South Africa.

¹ Came into force on 13 February 1947, in accordance with the provisions of article X.

- (c) The term “ territory ”, when used in relation to one or the other Contracting Government, means Great Britain or the Union, as the context requires.
- (d) The term “ duty ” means the estate duty imposed in Great Britain or the estate duty imposed by the Union, as the context requires.

(2) In the application of the provisions of the present Agreement by one of the Contracting Governments, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting Government relating to the duties which are the subject of the present Agreement.

Article III

(1) For the purposes of the present Agreement, the question whether a deceased person was at the time of his death domiciled in any part of Great Britain or ordinarily resident in any part of the Union shall be determined in accordance with the laws in force in Great Britain and the Union respectively.

(2) Where a person was at the time of his death domiciled in any part of Great Britain or ordinarily resident in any part of the Union, then as regards Great Britain the situs of any of the following rights and interests, legal or equitable, which for the purposes of duty form part of the estate of such person or pass on his death, shall, for the purposes of the imposition of duty, be determined exclusively in accordance with the following rules, and as regards the Union duty may be imposed on any of the following rights or interests which are deemed under those rules to be situated in its territory, but shall not be imposed on any of the said rights or interests which are deemed to be situated outside its territory unless such person was at the time of his death ordinarily resident in some part of its territory :

- (a) Rights or interests (otherwise than by way of security) in or over immovable property shall be deemed to be situated at the place where such property is located;
- (b) Rights or interests (otherwise than by way of security) in or over tangible movable property, other than such property for which specific provision is hereinafter made, and in or over bank or currency notes, other forms of currency recognised as legal tender in the place of issue, negotiable bills of exchange and negotiable promissory notes, shall be deemed to be situated at the place where such property, notes, currency or documents are located at the time of death, or, if *in transitu*, at the place of destination;

- (c) Debts, secured or unsecured, including securities issued by any government, municipality or public authority, and debentures and debenture stock issued by any company or corporation, but excluding the forms of indebtedness for which specific provision is made herein, shall be deemed to be situated in Great Britain if the deceased was at the time of his death domiciled in some part of Great Britain, and in the Union if the deceased was at the time of his death ordinarily resident in some part of the Union;
- (d) Shares or stock in a company (including shares or stock held by a nominee where the beneficial ownership is evidenced by scrip certificates or otherwise) shall be deemed to be situated at the place where such company was incorporated;
- (e) Monies payable under a policy of assurance or insurance on the life of the deceased person shall be deemed to be situated in Great Britain if the deceased was at the time of his death domiciled in some part of Great Britain, and in the Union if the deceased was at the time of his death ordinarily resident in some part of the Union;
- (f) Ships and aircraft and shares thereof shall be deemed to be situated at the place of registration of the ship or aircraft;
- (g) Goodwill as a trade, business or professional asset shall be deemed to be situated at the place where the trade, business or profession to which it pertains is carried on;
- (h) Patents, trade marks and designs shall be deemed to be situated at the place where they are registered;
- (i) Copyright, franchises, and rights or licences to use any copyrighted material, patent, trade mark or design shall be deemed to be situated at the place where the rights arising therefrom are exercisable;
- (j) Rights or causes of action *ex delicto* surviving for the benefit of an estate of a deceased person shall be deemed to be situated at the place where such rights or causes of action arose;
- (k) Judgment debts shall be deemed to be situated at the place where the judgment is recorded;

Provided that if, apart from this paragraph, duty would be imposed by one Contracting Government on any property, this paragraph shall not apply to such property unless, by reason of its application or otherwise, duty is imposed or would but for some specific exemption be imposed thereon by the other Contracting Government.

Article IV

(1) In determining the amount on which duty is to be computed, permitted deductions shall be allowed in accordance with the law in force in the territory in which the duty is imposed.

(2) Where duty is imposed in Great Britain on the death of a person who was not domiciled in any part of Great Britain but was ordinarily resident in some part of the Union, or where duty is imposed in the Union on the death of a person who was not ordinarily resident in any part of the Union but was domiciled in some part of Great Britain, no account shall be taken, in determining the amount or rate of the duty so imposed, of property which is deemed under paragraph (2) of Article III to be situated outside the territory of the Contracting Government imposing such duty: provided that this paragraph shall not apply as respects duty imposed in Great Britain in the case of property passing under a disposition governed by the law of Great Britain.

Article V

(1) Where each Contracting Government imposes duty on any property on the death of a person who at the time of his death was:—

- (a) domiciled in some part of Great Britain but not ordinarily resident in any part of the Union, or
- (b) ordinarily resident in some part of the Union but not domiciled in any part of Great Britain,

the Contracting Government in some part of whose territory such person was so domiciled or ordinarily resident shall allow against so much of its duty (as otherwise computed) as is attributable to that property a credit (not exceeding the amount of the duty so attributable) equal to so much of the duty imposed in the territory of the other Contracting Government as is attributable to such property.

(2) Where each Contracting Government imposes duty on property on the death of a person who at the time of his death was domiciled in some part of Great Britain and ordinarily resident in some part of the Union—

- (a) in the case of any property which is deemed under paragraph (2) of Article III to be situated in the territory of one only of the Contracting Governments, the other Contracting Government shall allow against so much of its duty (as otherwise computed) as is attributable to that

property a credit (not exceeding the amount of the duty so attributable) equal to so much of the duty imposed in the territory of the first mentioned Contracting Government as is attributable to such property;

- (b) in the case of any other property each Contracting Government shall allow against so much of its duty (as otherwise computed) as is attributable to the property a credit which bears the same proportion to the amount of its duty so attributable or to the amount of the other Government's duty attributable to the same property, whichever is the less, as the former amount bears to the sum of both amounts.

(3) For the purposes of this Article, the amount of the duty of a Contracting Government attributable to any property shall be ascertained after taking into account any credit, allowance or relief, or any remission or reduction of duty, otherwise than in respect of duty payable in the territory of the other Contracting Government.

(4) The allowance by the Union under this Article of a credit for duty imposed in Great Britain in respect of any property shall be subject to the condition that no deduction in respect of the duty so imposed shall be made for the purpose of determining the amount of the estate on which duty is chargeable in the Union.

Article VI

(1) Any claim for a credit or for a refund of duty founded on the provisions of the present Agreement shall be made within six years from the date of the death of the deceased person in respect of whose estate the claim is made, or, in the case of a reversionary interest where liability for payment of duty is deferred until the date on which the interest falls into possession, within six years from that date.

(2) Any such refund shall be made without payment of interest on the amount so refunded.

Article VII

(1) The taxation authorities of the Contracting Governments shall exchange such information (being information available under the respective taxation laws of the Contracting Governments) as is necessary for carrying out the provisions of the present Agreement or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to

the duties which are the subject of the present Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any person other than those concerned with the assessment and collection of the duties which are the subject of the present Agreement. No information shall be exchanged which would disclose any trade secret or trade process.

(2) As used in this Article, the term "taxation authorities" means, in the case of Great Britain, the Commissioners of Inland Revenue or their authorised representative; in the case of the Union, the Commissioner for Inland Revenue or his authorised representative; in the case of Northern Ireland (to which the present Agreement applies under Article IX) the Minister of Finance or his authorised representative; and, in the case of any territory to which the present Agreement is extended under Article VIII, the competent authority for the administration in such territory of the duties to which the present Agreement applies.

Article VIII

(1) Either of the Contracting Governments may, on the coming into force of the present Agreement or at any time thereafter while it continues in force, by a written notification of extension given to the other Contracting Government, declare its desire that the operation of the present Agreement shall extend, subject to such modification as may be necessary, to all or any of its colonies, overseas territories, protectorates, or territories in respect of which it exercises a mandate or trusteeship, which impose duties substantially similar in character to those which are the subject of the present Agreement. The present Agreement shall, subject to such modifications (if any) as may be specified in the notification, apply to the territory or territories named in such notification as to the estates of persons dying on or after the date or dates specified in the notification (not being less than sixty days from the date of the notification) or, if no date is specified in respect of any such territory, on or after the sixtieth day after the date of such notification, unless, prior to the date on which the Agreement would otherwise become applicable to a particular territory, the Contracting Government to whom notification is given shall have informed the other Contracting Government in writing that it does not accept the notification as to that territory. In the absence of such extension, the present Agreement shall not apply to any such territory.

(2) At any time after the expiration of one year from the entry into force of an extension under paragraph (1) of this Article, either of the Contracting Governments may, by written notice of termination given to the other Contracting Government, terminate the application of the present Agreement to any territory to which it has been extended under paragraph (1), and in that event

the present Agreement shall cease to apply as to the estates of persons dying on or after the date or dates (not being earlier than the sixtieth day after the date of such notice) specified in such notice, or, if no date is specified, on or after the sixtieth day after the date of such notice, to the territory or territories named therein, but without affecting its continued application to Great Britain, the Union or to any other territory to which it has been extended under paragraph (1) hereof.

(3) In the application of the present Agreement in relation to any territory to which it is extended by the United Kingdom or the Union, references to "Great Britain", or, as the case may be, "the Union", or to the territory of one (or of the other) Contracting Government, shall be construed as references to that territory.

(4) The provisions of the preceding paragraphs of this Article shall apply to the Channel Islands and the Isle of Man as if they were colonies of the United Kingdom.

Article IX

The present Agreement shall apply in relation to the estate duty imposed in Northern Ireland as it applies in relation to the estate duty imposed in Great Britain, but shall be separately terminable in respect of Northern Ireland by the same procedure as is laid down in paragraph (2) of Article VIII.

Article X

The present Agreement shall come into force on the date on which the last of all such things shall have been done in the United Kingdom and the Union as are necessary to give the Agreement the force of law in the United Kingdom and the Union respectively, and the Agreement shall be effective only as to the estates of persons dying on or after that date.

Article XI

(1) The present Agreement shall remain in force for not less than three years after the date of its coming into force.

(2) If not less than six months before the expiration of such period of three years neither of the Contracting Governments shall have given to the other Contracting Government written notice of its intention to terminate the present Agreement, the Agreement shall remain in force after such period of three years until either of the Contracting Governments shall have given

written notice of such intention, in which event the present Agreement shall not be effective as to the estates of persons dying on or after the date (not being earlier than the sixtieth day after the date of such notice) specified in such notice, or, if no date is specified, on or after the sixtieth day after the date of such notice.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed the present Agreement and have affixed thereto their seals.

DONE at London, in duplicate, in the English and Afrikaans languages, the fourteenth day of October nineteen hundred and forty-six.

[SEAL] For His Majesty's Government in the United Kingdom
Hugh DALTON

[SEAL] For His Majesty's Government in the Union :
G. Heaton NICHOLLS
