

No. 1153

**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 taxes on
income. 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 d'impôts sur le
revenu. 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. 1153. 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 TAXES ON INCOME. 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 taxes on income, have agreed as follows :—

Article I

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

(a) In the Union of South Africa :

The normal tax, super tax, non-resident shareholders' tax and undistributed profits tax (hereinafter referred to as " Union Tax ").

(b) In the United Kingdom of Great Britain and Northern Ireland :

The income tax, including surtax (hereinafter referred to as " United Kingdom Tax ").

(2) The present Agreement shall also apply to any other taxes 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 is extended under Article XV.

Article II

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

(a) The term " Union " means the Union of South Africa.

(b) The term " United Kingdom " means Great Britain and Northern Ireland, excluding the Channel Islands and the Isle of Man.

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

- (c) The terms "territory of one of the Contracting Governments" and "territory of the other Contracting Government" mean the Union or the United Kingdom, as the context requires.
- (d) The term "person" includes any body of persons, corporate or not corporate.
- (e) The term "company" includes any body corporate.
- (f) The terms "resident of the United Kingdom" and "resident of the Union" mean respectively any person who is resident in the United Kingdom for the purposes of United Kingdom tax and not ordinarily resident in the Union for the purposes of Union tax and any person who is ordinarily resident in the Union for the purposes of Union tax and not resident in the United Kingdom for the purposes of United Kingdom tax; and a company shall be regarded as resident in the United Kingdom if its business is managed and controlled in the United Kingdom and as ordinarily resident in the Union if its business is managed and controlled in the Union.
- (g) The terms "company of one of the Contracting Governments" and "company of the other Contracting Government" mean a company which is a resident of the United Kingdom or a company which is a resident of the Union, as the context requires.
- (h) The terms "United Kingdom enterprise" and "Union enterprise" mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of the United Kingdom and an industrial or commercial enterprise or undertaking carried on by a resident of the Union; and the terms "enterprise of one of the Contracting Governments" and "enterprise of the other Contracting Government" mean a Union enterprise or a United Kingdom enterprise, as the context requires.
- (i) The term "industrial or commercial profits" does not include income in the form of rents, royalties, interest, dividends, management charges, remuneration for labour or personal services, or income from the operation of ships or aircraft, and in relation to Union tax the term "profits" means income.
- (j) The term "permanent establishment", when used with respect to an enterprise of one of the Contracting Governments, means a branch, management, factory or other fixed place of business, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprise or has a stock of merchandise from which he regularly fills orders on its behalf. An enterprise of one of the Contracting Governments shall not be deemed to have a permanent establishment

in the territory of the other Contracting Government merely because it carries on business dealings in the territory of that other Contracting Government through a *bona fide* broker or general commission agent acting in the ordinary course of his business as such. The fact that an enterprise of one of the Contracting Governments maintains in the territory of the other Contracting Government a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute that fixed place of business a permanent establishment of the enterprise. The fact that a company of one of the Contracting Governments has a subsidiary company which is a company of the other Contracting Government or which is engaged in trade or business in the territory of that other Contracting Government (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary company a permanent establishment of its parent company.

(2) The term " tax ", as used in Articles IX and XII, means United Kingdom tax or Union tax, as the context requires.

(3) 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 taxes which are the subject of the present Agreement.

Article III

(1) The industrial or commercial profits of a United Kingdom enterprise shall not be subject to any of the Union taxes which are the subject of the present Agreement or to the excess profits duty or trade profits special levy chargeable under the law of the Union unless the enterprise is engaged in trade or business in the Union through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by the Union, but only on so much of them as is attributable to that permanent establishment : Provided that nothing in this paragraph shall affect any provisions of the law of the Union regarding the imposition upon the shareholders of a private company of the taxes payable in respect of its income.

(2) The industrial or commercial profits of a Union enterprise shall not be subject to any of the United Kingdom taxes which are the subject of the present Agreement or to the excess profits tax or national defence contribution chargeable under the law of the United Kingdom unless the enterprise is engaged

in trade or business in the United Kingdom through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by the United Kingdom, but only on so much of them as is attributable to that permanent establishment: Provided that nothing in this paragraph shall affect any provisions of the law of the United Kingdom regarding the imposition of excess profits tax and national defence contribution in the case of interconnected companies.

(3) Where an enterprise of one of the Contracting Governments is engaged in trade or business in the territory of the other Contracting Government through a permanent establishment situated therein, there shall be attributed to such permanent establishment the industrial or commercial profits which it might be expected to derive if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.

(4) No portion of any profits arising from the sale of goods or merchandise by an enterprise of one of the Contracting Governments shall be attributed to a permanent establishment situated in the territory of the other Contracting Government by reason of the mere purchase of the goods or merchandise within the territory of that other Contracting Government.

Article IV

Where

- (a) an enterprise of one of the Contracting Governments participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting Government, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the Contracting Governments and an enterprise of the other Contracting Government, and
- (c) in either case, conditions are made or imposed between the two enterprises, in their commercial or financial relations, which differ from those which would be made between independent enterprises,

any profits which would but for those conditions have accrued to one of the enterprises but by reason of those conditions have not so accrued may be included in the profits of that enterprise and taxed accordingly.

Article V

(1) Profits derived by a resident of the Union from operating aircraft registered in the Union or ships whose port of registry is in the Union shall be exempt from United Kingdom tax and from the excess profits tax and national defence contribution chargeable under the law of the United Kingdom.

(2) Profits derived by a resident of the United Kingdom from operating aircraft registered in the United Kingdom or ships whose port of registry is in the United Kingdom shall be exempt from Union tax and from the excess profits duty and trade profits special levy chargeable under the law of the Union.

Article VI

(1) There shall be exempt from the Union non-resident shareholders' tax—

(a) any amount in respect of which the person chargeable with such tax is a company, if the amount so chargeable represents the whole or a portion of the taxable income of a private company which, under the law of the Union relating to the taxation of the income of private companies, is apportionable (either directly or through another private company) to a public company which is a resident of the United Kingdom; and

(b) any dividend paid by a company which is a resident of the United Kingdom.

(2) Dividends paid by a company which is a resident of the Union to persons who are not resident in the United Kingdom shall be exempt from United Kingdom surtax.

Article VII

A company which is a resident of the United Kingdom shall be exempt from Union undistributed profits tax for any year of assessment if at the last day of that year residents of the United Kingdom control, directly or indirectly, more than 50 per cent of the entire voting power in the company.

Article VIII

A resident of the United Kingdom, whether carrying on business in the Union or not, shall be exempt from Union tax in respect of interest on stocks or securities issued by any Government other than the Government of the Union in respect of which he is subject to United Kingdom Tax.

Article IX

(1) Remuneration (other than pensions) paid by one of the Contracting Governments to any individual for services rendered to that Contracting Government in the discharge of governmental functions shall be exempt from tax in the territory of the other Contracting Government if the individual is not ordinarily resident in that territory or is ordinarily resident in that territory solely for the purpose of rendering those services.

(2) Any pension paid by one of the Contracting Governments to any individual for services rendered to that Contracting Government in the discharge of governmental functions shall be exempt from tax in the territory of the other Contracting Government, in so far as the remuneration for those services was exempt from tax in that territory under paragraph (1) of this Article or would have been so exempt if the present Agreement had been in force at the time when the remuneration was paid.

(3) The provisions of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the Contracting Governments for purposes of profit.

Article X

(1) An individual who is a resident of the United Kingdom shall be exempt from Union tax on profits or remuneration in respect of personal (including professional) services performed within the Union in any year of assessment if—

- (a) he is present within the Union for a period or periods not exceeding in the aggregate 183 days during that year, and
- (b) the services are performed for or on behalf of a person resident in the United Kingdom, and
- (c) the profits or remuneration are subject to United Kingdom tax.

(2) An individual who is a resident of the Union shall be exempt from United Kingdom tax on profits or remuneration in respect of personal (including

professional) services performed within the United Kingdom in any year of assessment if—

- (a) he is present within the United Kingdom for a period or periods not exceeding in the aggregate 183 days during that year, and
- (b) the services are performed for or on behalf of a person resident in the Union, and
- (c) the profits or remuneration are subject to Union tax.

(3) The provisions of this Article shall not apply to the profits or remuneration of public entertainers such as stage, motion picture or radio artists, musicians and athletes.

Article XI

(1) Any pension (other than a pension paid by the Government of the Union for services rendered to it in the discharge of governmental functions), and any life annuity, derived from sources within the Union by an individual who is a resident of the United Kingdom and subject to United Kingdom tax in respect thereof, shall be exempt from Union tax.

(2) Any pension (other than a pension paid by the Government of the United Kingdom for services rendered to it in the discharge of governmental functions), and any life annuity, derived from sources within the United Kingdom by an individual who is a resident of the Union and subject to Union tax in respect thereof, shall be exempt from United Kingdom tax.

(3) The term "life annuity" means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in consideration of money paid.

Article XII

The remuneration derived by a professor or teacher who is ordinarily resident in the territory of one of the Contracting Governments, for teaching, during a period of temporary residence not exceeding two years, at a university, college, school or other educational institution in the territory of the other Contracting Government, shall be exempted from tax by that other Contracting Government.

Article XIII

(1) Subject to the provisions of the law of the United Kingdom which apply where tax payable in a territory outside the United Kingdom is to be allowed as a credit against United Kingdom tax—

- (a) Union tax payable in respect of industrial or commercial profits which are not exempt from Union tax under paragraph (1) of Article III,

or in respect of other profits from sources within the Union which fall to be treated for the purposes of United Kingdom tax as profits of a trade, shall be allowed as a credit against any United Kingdom tax payable in respect of those profits; and

- (b) Union tax payable in respect of income which is exempt from Union non-resident shareholders' tax by virtue of paragraph 1 (a) of Article VI shall, in so far as it is attributable to the portion of that income distributed by way of dividend, be allowed as a credit against any United Kingdom tax payable in respect of the dividend.

(2) Where United Kingdom tax is payable (whether directly or by deduction) in respect of income derived from sources within the United Kingdom by a person ordinarily resident in the Union and consisting of—

- (a) industrial or commercial profits which are not exempt from United Kingdom tax under paragraph (2) of Article III, or
- (b) profits from operating ships or aircraft which are not exempt from United Kingdom tax under paragraph (1) of Article V, or
- (c) income distributed by way of dividend to a company resident in the Union by a subsidiary or associated company resident in the United Kingdom,

the Union shall either impose no tax on the profits or dividend or, subject to such provisions (which shall not affect the general principle hereof) as may be enacted in the Union, shall allow the United Kingdom tax as a credit against any Union Tax payable in respect of the profits or dividend.

(3) Where no credit is allowable under paragraph (1) or paragraph (2) in respect of any income subject to both Union tax and United Kingdom tax, such relief from United Kingdom tax shall be allowed in respect of the double taxation as would have been allowable under the law of the United Kingdom if the present Agreement had not been made.

(4) For the purposes of paragraphs (1) and (3) the expression "Union tax" includes any tax which is imposed in any province of the Union on the same basis as Union income tax.

Article XIV

(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 pro-

visions of the present Agreement or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of the present Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes 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 the Union, the Commissioner for Inland Revenue or his authorised representative; in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representative; and, in the case of any territory to which the present Agreement is extended under Article XV, the competent authority for the administration in such territory of the taxes to which the present Agreement applies.

Article XV

(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 taxes 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 on 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 the sixtieth day after the date of the 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, six months after the date of

the notice, to the territory or territories named therein, but without affecting its continued application to the Union, the United Kingdom 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 notification by the United Kingdom or the Union, references to the "United Kingdom" or, as the case may be, the "Union" shall be construed as references to that territory.

(4) The termination in respect of the Union or the United Kingdom of the present Agreement under Article XVIII shall, unless otherwise expressly agreed by both Contracting Governments, terminate the application of the present Agreement to any territory to which the Agreement has been extended by the Union or the United Kingdom.

(5) 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 XVI

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 shall thereupon have effect—

- (a) in the Union, as respects profits derived or deemed to have been derived during the year of assessment ending on the 30th day of June, 1946, and subsequent years;
- (b) in the United Kingdom, as respects income tax for the year of assessment beginning on the 6th day of April, 1946, and subsequent years, and as respects surtax for the year of assessment beginning on the 6th day of April, 1945, and subsequent years.

Article XVII

The present Agreement shall be deemed to have superseded the Agreement for reciprocal exemption of certain agency profits from income tax entered into on the 20th day of July, 1939, between His Majesty's Government in the United Kingdom and His Majesty's Government in the Union, and that Agreement shall cease to have effect—

- (a) in the Union, as respects profits derived or deemed to have been derived during the year of assessment ending on the 30th day of June, 1946, and subsequent years;
- (b) in the United Kingdom, as respects income tax for the year of assessment beginning on the 6th day of April, 1946, and subsequent years, and as respects surtax for the year of assessment beginning on the 6th day of April, 1945, and subsequent years.

Article XVIII

(1) The present Agreement shall continue in effect indefinitely but either of the Contracting Governments may, on or before the 30th day of September in any year after the year 1947, give notice of termination to the other Contracting Government and, in such event, the present Agreement shall cease to be effective—

- (a) in the Union, as respects profits derived or deemed to have been derived during any year of assessment ending on or after the 30th day of June in the calendar year next following that in which such notice is given;
- (b) in the United Kingdom, as respects income tax for any year of assessment beginning on or after the 6th day of April in the calendar year next following that in which such notice is given, and as respects surtax for any year of assessment beginning on or after the 6th day of April in the calendar year in which such notice is given.

(2) The termination of the present Agreement shall not have the effect of reviving any agreement or arrangement abrogated by the present Agreement or by agreements previously concluded between the Contracting Governments.

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, on the fourteenth day of October, nineteen hundred and forty-six.

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

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