

No. 3595

**UNION OF SOUTH AFRICA
and
FEDERATION OF RHODESIA
AND NYASALAND**

Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (with exchange of notes). Signed at Cape Town, on 22 May 1956

Official texts of the Agreement: English and Afrikaans.

Official text of the exchange of notes: English.

Registered by the Union of South Africa on 29 November 1956.

**UNION SUD-AFRICAINE
et
FÉDÉRATION DE LA RHODÉSIE
ET DU NYASSALAND**

Accord tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu (avec échange de notes). Signé au Cap, le 22 mai 1956

Textes officiels de l'Accord: anglais et afrikaans.

Texte officiel de l'échange de notes: anglais.

Enregistré par l'Union Sud-Africaine le 29 novembre 1956.

No. 3595. AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE UNION OF SOUTH AFRICA AND THE GOVERNMENT OF THE FEDERATION OF RHODESIA AND NYASALAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME. SIGNED AT CAPE TOWN, ON 22 MAY 1956

The Government of the Union of South Africa and the Government of the Federation of Rhodesia and Nyasaland desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion in respect of 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 and supertax (hereinafter referred to as " Union tax ");

(b) in the Federation of Rhodesia and Nyasaland : The Federal income tax and supertax (hereinafter referred to as " Federal 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.

Article II

1. In this Agreement unless the context otherwise requires :

(a) " Union " means the Union of South Africa;

(b) " the Federation " means the Federation of Rhodesia and Nyasaland;

(c) " one of the territories " and " the other territory " mean the Union of South Africa or the Federation of Rhodesia and Nyasaland as the case may be;

(d) " tax " means Union or Federal tax, as the case may be;

(e) " person " includes any body of persons, corporate or not corporate;

¹ Came into force on 31 August 1956, in accordance with article XIV.

(f) "company" includes any body corporate;

(g) "resident of the Union" and "resident of the Federation" mean respectively any person who is ordinarily resident in the Union for the purposes of the Union tax and not ordinarily resident in the Federation for the purposes of the Federal tax and any person who is ordinarily resident in the Federation for the purposes of the Federal tax and not ordinarily resident in the Union for the purposes of the Union tax; and a company shall be regarded as ordinarily resident in the Union if its business is managed and controlled in the Union and ordinarily resident in the Federation if its business is managed and controlled in the Federation;

(h) "company of one of the territories" and "company of the other territory" mean a company which is a resident of the Union or a company which is a resident of the Federation, as the case may be;

(i) "Union enterprise" and "Federal enterprise" mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of the Union and an industrial or commercial enterprise or undertaking carried on by a resident of the Federation; and "enterprise of one of the territories" and "enterprise of the other territory" mean a Union enterprise or a Federal enterprise, as the context requires;

(j) "industrial or commercial enterprise or undertaking" includes an enterprise or undertaking engaged in mining, agricultural or pastoral activities or in the business of banking, insurance or dealing in investments, and "industrial or commercial profits" includes profits from such activities or business but does not include income in the form of dividends, interest, rents, royalties (including rent or royalties of cinematograph films), management charges, remuneration for personal services or profits from the operation of transport services;

(k) "permanent establishment" when used with respect to an enterprise of one of the territories means a branch, depot, management, factory, farm, mine, quarry or other fixed place of business including any place of natural resources subject to exploitation and a place where construction work or the installation of plant or machinery is carried on but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of the enterprise or has a stock of merchandise from which he regularly fills orders on its behalf.

In this connection :

- (i) An enterprise of one of the territories shall not be deemed to have a permanent establishment in the other territory merely because it carries on

business dealings in that other territory through a *bona fide* broker or general commission agent acting in the ordinary course of his business as such.

- (ii) The fact that an enterprise of one of the territories maintains in the other territory 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.
- (iii) The fact that a company which is resident in one of the territories has a subsidiary company which is a resident of the other territory or which is engaged in trade or business in that other territory (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary company a permanent establishment of its parent company;

(l) "profits" means "taxable income" as defined under the laws of the Contracting Governments relating to the taxes which are the subject of this Agreement;

(m) "taxation authorities" means the Commissioner for Inland Revenue or his authorised representative in the case of the Union and the Commissioner of Taxes or his authorised representative in the case of the Federation.

2. "Union tax" and "Federal tax" do not include any sum payable in respect of any default or omission in relation to the taxes which are the subject of this Agreement or which represents a penalty imposed under the law of either territory relating to those taxes.

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 and commercial profits of an enterprise in one of the territories shall not be subject to tax in the other territory unless the enterprise is engaged in trade or business in the other territory through a permanent establishment in that other territory. If it is so engaged tax may be imposed on those profits by the other territory but only on so much of them as is attributable to that permanent establishment.

2. Where an enterprise of one of the territories is engaged in trade or business in the other territory through a permanent establishment situated therein :

- (a) There shall be attributed to that permanent establishment the industrial

or commercial profits which it might be expected to derive in that other territory 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;

(b) Subject to the provisions of sub-paragraph (a) no profits derived from sources outside that other territory shall be attributed to that permanent establishment.

3. No portion of any profit arising from the sale of goods or merchandise by an enterprise of one of the territories shall be attributed to a permanent establishment situated in the other territory by reason of the mere purchase of the goods or merchandise within that other territory.

4. This article shall not apply in any case in which its application would have the result that income, which but for such application would be subject to tax in one of the territories, would not be subject to tax in either territory.

Article IV

Where :

(a) an enterprise of one of the territories participates directly or indirectly in the management, control or capital of an enterprise of the other territory; or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the territories and an enterprise of the other territory; 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, then any profits which would but for those conditions have accrued to one of the enterprises but by reason of those conditions have not so accrued may be included in the profits of that enterprise and taxed accordingly.

Article V

Profits derived by the Government of or by a resident of one of the territories from operating transport services in the other territory shall be exempt from tax in that other territory.

Article VI

Any royalty, rent (including rent or royalties of cinematograph films) or other consideration received by or accrued to a resident of one of the territories by virtue of the use in the other territory of, or the grant of permission to use in that other territory any patent, design, trade mark, copyright, secret process,

formula or any other property of a similar nature shall be exempt from tax in that first-mentioned territory if such royalty, rent or other consideration is subject to tax in the other territory.

Article VII

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 annuity, derived or deemed to have been derived from sources within the Union by an individual who is a resident of the Federation, shall be exempt from Union tax to the extent that it is included in income for Federal tax purposes.

2. Any pension (other than a pension paid by the Government of the Federation for services rendered to it in the discharge of governmental functions) and any annuity, derived or deemed to have been derived from sources within the Federation by an individual who is a resident of the Union, shall be exempt from Federal tax to the extent that it is included in income for Union tax purposes.

3. The term "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 VIII

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, if immediately prior to the cessation of those services the remuneration therefor was exempt from tax in that territory, whether under paragraph 1 of this Article or otherwise, or would have been exempt under that paragraph if the present Agreement had been in force at the time 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.

4. For the purposes of this Article the term "Contracting Government" where it applies to the Government of the Federation of Rhodesia and Nyasaland includes the Governments of the Territories constituting the Federation.

Article IX

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

- (a) he is present within the Federation 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.

2. An individual who is a resident of the Federation 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 on behalf of a person resident in the Federation; and
- (c) the profits or remuneration are subject to Federal 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 X

The remuneration derived by a professor or teacher who is ordinarily resident in one of the territories, for teaching, during a period of temporary residence not exceeding two years, at a university, college, school or other educational institution in the other territory, shall be exempt from tax in that other territory if such remuneration is subject to tax in such first-mentioned territory.

Article XI

A student or business apprentice from one of the territories who is receiving full-time education or training in the other territory shall be exempt from tax in that other territory on payments made to him by persons in the first-mentioned territory for the purposes of his maintenance, education or training.

Article XII

1. Subject to the provisions of the law in the Federation regarding the allowance of a credit against Federal tax of tax payable in the Union, Union tax payable in respect of profits from sources within the Union shall be allowed as a credit against any Federal tax payable in respect of such profits.

2. Where Federal tax is payable in respect of profits derived from sources within the Federation by a person ordinarily resident in the Union, the Union shall either impose no tax on such profits or, subject to such provisions (which shall not effect the general principle hereof) as may be enacted in the Union, shall allow the Federal tax as a credit against any Union tax payable in respect of such profits.

3. For the purposes of this Article profits or remuneration for personal (including professional) services performed in one of the territories shall be deemed to be profits from sources within that territory, and the services of an individual whose services are wholly or mainly performed in aircraft or other transport vehicles operated by a resident of one of the territories shall be deemed to be performed in that territory.

4. Where interest is derived by any person from a person (hereinafter referred to as the debtor) who is ordinarily resident in one of the territories and the interest would, but for the provisions of this paragraph, be subject to tax in both territories, that interest shall be subject to tax only in the territory in which the debtor is ordinarily resident : Provided that if the debtor is ordinarily resident in both territories, the interest shall be subject to tax only in the territory in which that interest is allowable as a deduction in the determination of the debtor's taxable income.

Article XIII

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 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.

Article XIV

The present Agreement shall come into force on the date on which the last of all such things shall have been done in both territories as are necessary to give the Agreement the force of law in each territory and shall thereupon have effect :

(a) in the Union, in respect of assessments for the year of assessment ended on the thirtieth day of June, 1954, and subsequent years;

(b) in the Federation, in respect of assessments for the year of assessment ended on the thirty-first day of March, 1954, and subsequent years.

Article XV

The present Agreement shall continue in effect indefinitely, but either of the Contracting Governments may, on or before the thirtieth day of September in any calendar year after the year 1956, 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, in respect of any year of assessment beginning on or after the first day of July in the calendar year next following that in which such notice is given;

(b) in the Federation, in respect of any year of assessment beginning on or after the first day of April in the calendar year next following that in which such notice is given.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being authorised thereto by their respective Governments, have signed this Agreement and have affixed thereto their seals.

DONE in duplicate in the English and Afrikaans languages, at Capetown this 22nd day of May, 1956.

For the Government of the Union of South Africa :

Eric H. LOUW

For the Government of the Federation of Rhodesia
and Nyasaland :

A. D. CHATAWAY

EXCHANGE OF NOTES

I

DEPARTMENT OF EXTERNAL AFFAIRS
CAPE TOWN

41/1/37

22nd May, 1956

Sir,

It being the desire of our respective Governments to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, I have the honour to signify the intention of the Union Government to regard the agreement concluded on 19th May, 1952, between the Government of the Union of South Africa and the Government of the Colony of Southern Rhodesia as terminated except :

- (a) as regards the Union of South Africa in respect of assessments for the year of assessment ended on 30th June, 1953, and previous years of assessment, and
- (b) as regards the Colony of Southern Rhodesia, in respect of assessments for the year of assessment ended on 31st March, 1953, and previous years of assessment.

I suggest that this note and your confirmatory reply in the same terms be regarded as constituting an agreement between our respective Governments on the subject.

I have the honour to be, Sir,
Your obedient Servant,

(Signed) Eric H. Louw
Minister of External Affairs

A. D. Chataway Esq., O.B.E.
High Commissioner for the Federation
of Rhodesia and Nyasaland
Cape Town

II

OFFICE OF THE HIGH COMMISSIONER FOR THE FEDERATION OF
RHODESIA AND NYASALAND
CAPE TOWN

22nd May, 1956

Sir,

I have the honour to acknowledge the receipt of your letter No. 41/1/37 of today's date, reading as follows :

[See note I]

I have the honour to confirm that the proposal in your letter as quoted above is acceptable to the Government of the Federation of Rhodesia and Nyasaland and that your letter and this reply shall be regarded as constituting an Agreement between our two Governments in this matter.

I have the honour to be, Sir,
Your obedient Servant,

(Signed) A. D. CHATAWAY
High Commissioner

The Hon. E. H. Louw, M.P.
Minister of External Affairs
Cape Town