

No. 4303

**UNION OF SOUTH AFRICA
and
CANADA**

Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to death duties. Signed at Ottawa, on 28 September 1956

Official texts: English and Afrikaans.

Registered by the Union of South Africa on 25 April 1958.

**UNION SUD-AFRICAINE
et
CANADA**

Accord pour éviter les doubles impositions et empêcher la fraude fiscale en matière de droits successoraux. Signé à Ottawa, le 28 septembre 1956

Textes officiels anglais et afrikaans.

Enregistré par l'Union Sud-Africaine le 25 avril 1958.

No. 4303. AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE UNION OF SOUTH AFRICA AND THE GOVERNMENT OF CANADA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO DEATH DUTIES. SIGNED AT OTTAWA, ON 28 SEPTEMBER 1956

The Government of the Union of South Africa and the Government of Canada desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to death duties, have agreed as follows :

Article I

- (1) The duties which are the subject of this Agreement are :
- (a) in the Union of South Africa the estate duty imposed by the Union; and
 - (b) in Canada the succession duty imposed by Canada.
- (2) This Agreement shall also apply to any other duties of a substantially similar character imposed by either Contracting Government subsequent to the date of signature of this Agreement.

Article II

- (1) In this Agreement, unless the context otherwise requires :
- (a) "Union" means the Union of South Africa;
 - (b) "territory" means the Union or Canada as the case may be;
 - (c) "Competent Authority" means, in the case of the Union, the Commissioner for Inland Revenue or his authorised representative; in the case of Canada, the Minister of National Revenue or his authorised representative.
- (2) In the application of the provisions of this 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 this Agreement.

Article III

- (1) Where both Contracting Governments impose duty on the property of any person who at the time of his death was :

¹ Came into force on 22 January 1958, by ratification and proclamation in the official journals of the contracting parties in accordance with article VII. The exchange of the instruments of ratification took place at Pretoria on 11 October 1957.

(a) ordinarily resident in the Union but not domiciled in Canada, or
(b) domiciled in Canada but not ordinarily resident in the Union,
the Contracting Government in whose territory such person was so ordinarily resident or domiciled shall allow against its duty (as calculated under its own legislation) a credit corresponding to the amount of duty imposed by the other Contracting Government and attributed by that other Contracting Government to the property included in the calculation of the duty imposed by both Governments, but the amount of this credit shall not exceed the portion of duty collectible by the Government which is required to give the credit on the same property.

(2) Where both Contracting Governments impose duty on the property of any person who at the time of his death was ordinarily resident in the Union and domiciled in Canada, each contracting Government shall allow against so much of its duty (as otherwise computed) as is attributable to the property included in the calculation of the duty by both Governments a credit which bears the same proportion to the amount of its duty so attributable or to the amount of the other Contracting 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 duty assessed by each of the Contracting Governments with respect to any property shall be calculated after taking into account any credit, allowance or relief, or any remission or reduction of duty, otherwise than in respect of the 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 Canada 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 estate duty is chargeable in the Union.

(5) The laws in force in the Union and in Canada respectively shall determine whether a deceased person was at the time of his death ordinarily resident in any part of the Union or domiciled in any part of Canada.

Article IV

(1) Any claim for a credit or for a refund of duty founded on the provision of this Agreement shall be made, by the executor administering the estate, in a manner prescribed by the competent authority and shall be lodged with the competent authority within six years from the date of death of the deceased person in respect of whose estate the claim is made.

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

Article V

The Competent Authorities shall upon request exchange such information (being information available under the respective taxation laws of the Contracting Governments) as is necessary for carrying out the provisions of this 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 this 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 this Agreement. No information shall be exchanged which would disclose any trade secret or trade process.

Article VI

(1) The Competent Authorities may, by common agreement, prescribe rules concerning matters of procedure, forms of application and replies thereto, conversion of currency and any other matter which may be necessary in relation to the granting of credit or refund, the exchange of information, the prevention of fraud or the administration of statutory provisions against legal avoidance in respect of the duties which are the subject of this Agreement.

(2) The Competent Authorities of the two Contracting Governments may communicate with each other directly for the purpose of giving effect to the provisions of this Agreement.

Article VII

(1) This Agreement shall be ratified and the instruments of ratification shall be exchanged at Pretoria as soon as possible.

(2) This Agreement shall come into force on the date on which the last of all such things shall have been done in the Union and in Canada as are necessary to give the Agreement the force of law in the Union and in Canada respectively and the Agreement shall be effective only as to the estates of persons dying on or after that date.

Article VIII

(1) This 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 this 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 this 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 this Agreement and have affixed thereto their seals.

DONE at Ottawa, in duplicate, in the English and Afrikaans languages, this twenty-eighth day of September, nineteen hundred and fifty-six.

For the Government of the Union of South Africa :
J. S. F. BOTHA

For the Government of Canada :
S. S. GARSON
