

No. 4304

**UNION OF SOUTH AFRICA
and
CANADA**

Agreement for the avoidance of double taxation and the prevention of fiscal evasion in respect of taxes on income. 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 d'impôt sur le revenu. Signé à Ottawa, le 28 septembre 1956

Textes officiels anglais et afrikaans.

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

No. 4304. 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 IN RESPECT OF TAXES ON INCOME. 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 in respect of taxes on income, have agreed as follows :

Article I

- (1) The taxes which are the subject of this Agreement are :
- (a) in the Union of South Africa : The normal tax, super tax and non-resident shareholders' tax imposed by the Government of the Union (hereinafter referred to as "Union tax");
 - (b) in Canada : The income taxes, including surtaxes, imposed by the Government of Canada (hereinafter referred to as "Canadian tax").

(2) This 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 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) "tax" means Union or Canadian tax, as the case may be;
 - (d) "person" includes any body of persons corporate or not corporate;
 - (e) "company" includes any body corporate;
 - (f) "resident of the Union" and "resident of Canada" mean respectively any person who is ordinarily resident in the Union for the purposes of the Union

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

tax and not ordinarily resident in Canada for the purposes of the Canadian tax and any person who is ordinarily resident in Canada for the purposes of the Canadian 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 Canada if its business is managed and controlled in Canada;

- (g) “resident of one of the territories” and “resident of the other territory” mean a person who is a resident of the Union or a person who is a resident of Canada, as the case may be;
- (h) “Union enterprise” and “Canadian 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 Canada; and “enterprise of one of the territories” and “enterprise of the other territory” mean a Union enterprise or a Canadian enterprise, as the case may be;
- (i) “industrial or commercial enterprise” includes an enterprise engaged in mining or farming and “industrial or commercial profits”, includes mining and farming profits but does not include income in the form of royalties, rents (including rent or royalties on cinematograph films), interest, dividends, management charges, remuneration for personal services, or profits from the operation of transport services by air or water;
- (j) “permanent establishment”, when used with respect to an enterprise of one of the territories, means a branch, depot, factory, farm, mine 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.

The use of substantial equipment or machinery within one of the territories at any time in any taxable year by an enterprise of the other territory shall constitute a permanent establishment of such enterprise in the former territory for such taxable year.

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.

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.

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;

- (k) "profits", in relation to Union tax, means "taxable income" as defined under the laws of the Union relating to the taxes which are the subject of this Agreement;
- (l) "Taxation Authorities" means the Commissioner for Inland Revenue or his authorised representative in the case of the Union and the Minister of National Revenue or his authorised representative in the case of Canada.

(2) "Union tax" and "Canadian 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 represent a penalty imposed under the law of either territory relating to those taxes.

(3) 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 taxes which are the subject of this 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 situate therein:

- (a) there shall be attributed to that permanent establishment the commercial or industrial 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 and dealing at arm's length with the enterprise of which it is a permanent establishment, and if, apart from this Agreement, the law of that other territory in respect of the taxes which are the subject of this

Agreement so provides, the profits so attributed shall be deemed to be profits derived from sources in that other territory;

- (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) Profits derived by an enterprise of one of the territories from sales, under contracts concluded in that territory, of goods or merchandise stocked in a warehouse or depot in the other territory for convenience of delivery and not for the purposes of display shall not be attributed to a permanent establishment of the enterprise in that other territory notwithstanding that the offers of purchase have been obtained by an agent of the enterprise in that other territory and transmitted by him to the enterprise for acceptance.

(4) No portion of any profits arising from the sale of goods or merchandise by an enterprise of one of the territories shall be deemed to arise in the other territory by reason of the mere purchase of the goods or merchandise within that other territory.

(5) If the information available to the Taxation Authorities concerned is inadequate to determine the profits to be attributed to the permanent establishment nothing in the preceding paragraphs shall affect the application of the law of either territory in relation to the liability of the permanent establishment to pay tax on an amount determined by the exercise of a discretion or the making of an estimate by the Taxation Authorities of that territory : Provided that such discretion shall be exercised or such estimate shall be made, so far as the information available to the Taxation Authorities permits, in accordance with the principles stated in the preceding paragraphs of this Article.

(6) Where a company which is a resident of one of the territories derives profits from sources within or deemed to be within the other territory, the Government of that other territory shall not impose any form of taxation on dividends declared payable by that company in favour of persons not resident in that other territory nor shall the Government of that other territory impose any tax in the nature of a special tax on non-residents on the profits derived by that company directly as the result of the carrying on of business through a permanent establishment in that other territory.

Article IV

(1) 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 either 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.

(2) Profits included in the profits of an enterprise of one of the territories under paragraph (1) of this Article shall be deemed, if, apart from this Agreement, the law of that other territory in respect of the taxes which are the subject of this Agreement so provide, to be income derived from sources in that territory and shall be taxed accordingly.

(3) If the information available to the Taxation Authorities concerned is inadequate to determine, for the purposes of paragraph (1) of this Article, the profits which might be expected to accrue to an enterprise, nothing in that paragraph shall affect the application of the law of either territory in relation to the liability of that enterprise to pay tax on an amount determined by the exercise of a discretion or the making of an estimate by the Taxation Authorities of that territory: Provided that such discretion shall be exercised or such estimate shall be made, so far as the information available to the Taxation Authorities permits, in accordance with the principles stated in paragraphs (1) and (2) of this Article.

Article V

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

Article VI

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

- (a) he is present within Canada 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.

(2) An individual who is a resident of Canada 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 Canada.

(3) The provisions of this Article shall not apply to the profits or remuneration of persons who are not bona fide employees of a principal: Provided that if that principal is a company, the provisions of this Article shall not apply if the person to whom the profits or remuneration accrued or by whom those profits or remuneration were received is, either directly or indirectly, interested in the management, control and profits of that company.

Article VII

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.

Article VIII

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 IX

(1) Subject to the provisions of the law of Canada regarding the deduction from tax payable in Canada of tax payable in a territory outside Canada, Union tax payable in respect of income from sources within the Union shall be deducted from any Canadian tax payable in respect of that income.

(2) Where Canadian tax is payable in respect of profits derived from sources within Canada 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 affect the general principle hereof) as may be enacted in the Union, shall allow the Canadian 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.

Article X

(1) The Taxation Authorities of the Contracting Governments shall on request exchange such information (being information available under the respective taxation laws of the Contracting Government) 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 taxes which are the subject of this 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 this Agreement. No information shall be exchanged which would disclose any trade secret or trade process.

(2) The Taxation Authorities of the Contracting Governments may consult together as may be necessary for the purpose of carrying out the provisions of this Agreement.

Article XI

(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 Canada as are necessary to give the Agreement the force of law in the Union and Canada 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 June, 1954, and subsequent years;
- (b) in Canada, as respects income taxes, including surtaxes, for the taxation year 1954 and subsequent years.

Article XII

This Agreement shall be deemed to have superseded the Agreement for the avoidance of double taxation on the income derived from shipping and aircraft entered into on the 26th November, 1951,¹ between the Government of the Union and the Government of Canada and that Agreement shall cease to have effect —

- (a) in the Union in respect of income derived from the business of sea or air transport on or after the 1st July, 1953;

¹ United Nations, *Treaty Series*, Vol. 248, p. 107.

- (b) in Canada in respect of income derived from the business of sea or air transport after the taxation year 1953.

Article XIII

(1) This Agreement shall continue in force 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 this Agreement shall cease to be effective —

- (a) in the Union, in respect of any year of assessment beginning on the first day of July in the calendar year next following that in which such notice is given;
- (b) in Canada, as respects income taxes, including surtaxes, for any taxation year ending in or after the calendar year next following that in which such notice is given.

(2) The termination of this Agreement shall not have the effect of reviving any Agreement or arrangement abrogated by this Agreement.

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