

No. 5027

**UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND
and
FRANCE**

**Exchange of notes (with annexes) constituting an agreement
concerning exemption from turnover tax on royalties.
Paris, 28 November 1958**

Official texts: English and French.

*Registered by the United Kingdom of Great Britain and Northern Ireland on
4 March 1960.*

**ROYAUME-UNI DE GRANDE-BRETAGNE
ET D'IRLANDE DU NORD
et
FRANCE**

**Échange de notes (avec annexes) constituant un accord
concernant l'exonération des taxes sur le chiffre d'affaires frappant les redevances. Paris, 28 novembre 1958**

Textes officiels anglais et français.

*Enregistré par le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord le
4 mars 1960.*

No. 5027. EXCHANGE OF NOTES
CONSTITUTING AN AGREE-
MENT¹ BETWEEN THE GOV-
ERNMENT OF THE UNITED
KINGDOM OF GREAT
BRITAIN AND NORTHERN
IRELAND AND THE GOVERN-
MENT OF THE FRENCH
REPUBLIC CONCERNING
EXEMPTION FROM TURN-
OVER TAX ON ROYALTIES.
PARIS, 28 NOVEMBER 1958

Nº 5027. ÉCHANGE DE NOTES
CONSTITUANT UN ACCORD¹
ENTRE LE GOUVERNEMENT
DU ROYAUME-UNI DE
GRANDE-BRETAGNE ET D'IR-
LANDE DU NORD ET LE
GOUVERNEMENT DE LA
RÉPUBLIQUE FRANÇAISE
CONCERNANT L'EXONÉRA-
TION DES TAXES SUR LE
CHIFFRE D'AFFAIRES FRAP-
PANT LES REDEVANCES.
PARIS, 28 NOVEMBRE 1958

I

*Her Majesty's Ambassador at Paris to
the French Minister for Foreign Affairs*

I

*L'Ambassadeur de Sa Majesté britan-
nique à Paris au Ministre des affaires
étrangères de France*

Paris, November 28, 1958

Monsieur le Ministre,

With reference to the consultations which have taken place between representatives of the United Kingdom and French Governments concerning the application of Article 2 of the French Finance Act of 10th April, 1954, I have the honour to inform Your Excellency that the Government of the United Kingdom of Great Britain and Northern Ireland, desiring that United Kingdom licensors may in certain cases be relieved from taxation on royalties received from licensees in France, and having regard to the expressed intention of the French Government to extend to United Kingdom licensors the same reliefs from turnover taxes as are at present enjoyed by French interests, are prepared to conclude an Agreement with the Government of the French Republic in the following terms :

1. The taxes referred to in this Agreement are those commonly known as " turnover taxes, " that is to say as far as licensors are concerned : " the tax on the performance of services, transactions tax, and local tax up to 30th June, 1955; the tax on the performance of services as from 1st July, 1955. "

2. The provisions governing the position of United Kingdom licensors shall in general terms be as follows :

¹ Came into force on 28 November 1958 by the exchange of the said notes.

¹ Entré en vigueur le 28 novembre 1958 par l'échange desdites notes.

- (i) The turnover taxes shall not be levied on royalties paid by French licensees to United Kingdom licensors who have the status of "inventor," in the terms laid down by French law and established by the French courts; this exemption applies retrospectively and for the future. Where such taxes on royalties have been paid they shall be refunded by the French authorities within the limits of the three years' period of statutory limitation, reckoned from the payment of taxes, as laid down by the General Code of French Taxes.
- (ii) For United Kingdom licensors who do not satisfy the conditions required by French law to establish "inventor" status, the special rules set out in paragraphs 10 and 11 shall apply, subject to the provisions of paragraph 7 in relation to licensors who satisfy those conditions in respect of some of but not all their inventions.

3. The term "invention" includes the following whether registered or not: patents, trade marks and manufacturing processes, techniques and formulas and copyright.

This agreement does not apply to film rentals. The exemption from turnover tax shall cover not only royalties paid in consideration of the licensing of the right to exploit inventions, but also payments for the whole group of processes necessary to the practical utilisation of the invention, for the protection of the invention, and for such technical assistance as is indispensable to the exploitation of the invention (for instance, the making available of United Kingdom technicians for the supervision of construction, the utilisation of blue-prints, the installation and starting of the invention, the instruction of the licensee, and the supervision of initial manufacture). The exemption shall not cover payments relating to accessory operations such as providing labour, furnishing supplies, and advertising carried out in French territory.

4. The status of inventor shall be determined in accordance with the criteria established by French law and by the findings of the Council of State. It shall therefore be subject to proof, which must be furnished by the United Kingdom licensor, that the invention in question is the result of research carried out by him or by people working under his control and acting on his behalf, under his supervision and direction and for his account. The status of inventor would thus appertain to a United Kingdom licensor who entrusted research to a third person, provided that a prior contract was concluded by the licensor with the third person defining the purpose of the research, and stipulating that the research would be undertaken for his account, regardless of the name under which a patent on account of the invention or inventions resulting from this research may be registered in the United Kingdom.

5. United Kingdom licensors shall nevertheless be entitled to draw the attention of the French tax administration to those cases in which they have acquired, from one or more companies, whether or not British, with whom they have close relations either by reason of capital held in common or with whom they form an economic group, the right to patent an invention. If the associated companies can furnish evidence of their capacity of "inventor," as defined above, the French tax administration will examine in a liberal spirit the possibility of recognising the said capacity of "inventor" in the United Kingdom licensors themselves. While the result of that examination is being awaited, the French tax administration shall be entitled to take all legal steps with a view to the collection of the tax, it being understood that this action can in no way impair the rights held by United Kingdom licensors under French laws and regulations.

6. In the case of a merger of undertakings, carried out either by the creation of a new undertaking, or by the absorption of one or more undertakings by a previously

existing undertaking, through the granting to the shareholders of the undertakings which are absorbed of rights in the capital of the absorbing undertaking and in the case of the reorganisation or transformation of undertakings not involving the creation of any new entity; and in the case of a division of an undertaking or undertakings into smaller entities; the undertaking resulting from these operations shall enjoy, for the inventions included among the assets of the previous undertakings, and to the extent that the new undertakings succeed to the rights of the previous undertakings, the exemptions in respect of these inventions which were enjoyed by the previous undertakings or to which they would have been entitled under the provisions of the present agreement.

7. In the case where a licence granted by a United Kingdom licensor relates both to inventions for which he fulfils the conditions of "inventor" status as defined above and to inventions for which he does not fulfil such conditions, exemption from turnover taxes shall in principle be granted only in respect of royalties relating to those inventions for which he does fulfil the conditions; the necessary division of the total royalty to be carried out by the licensor subject to the right of verification by the French tax authorities. However, if the invention for which the licensor fulfils the conditions of "inventor" status is clearly of preponderant importance in comparison with the other inventions covered by the licence exemption may be claimed for the total royalty.

8. Proof of "inventor" status shall be furnished directly to the French tax authorities by the United Kingdom licensor; such proof shall take the form of a statutory declaration made before a Notary Public in the United Kingdom, declaring that the licence fulfils the conditions necessary to establish "inventor" status as defined above, to which declaration shall be attached copies of such supporting documents (*i.e.*, patents, contracts, &c.) as are referred to in the declaration. The form of statutory declaration to be used in claiming "inventor" status shall be the appropriate form annexed to this note.¹ The French tax authorities may require the production of such further evidence as they deem to be necessary. When requested to do so, the United Kingdom Government shall provide such further information as it may possess or is entitled under United Kingdom Law to procure, provided that such information does not involve the disclosure of industrial or commercial secrets or compromise the security of the United Kingdom.

9. In any case where a United Kingdom licensor fulfilling the conditions of "inventor" status as described in paragraphs 3 to 7 inclusive, has nevertheless already paid tax on the royalties received, or where a French licensee has paid tax acting on such licensor's behalf, such tax shall be refunded by the French tax authorities to the payer, within the limits of the three years' period of statutory limitation, reckoned from payment of the taxes, as laid down by the General Code of French Taxes.

10. The liability to turnover taxes of United Kingdom licensors not meeting the conditions described above for qualifying for "inventor" status, shall be settled as follows :

- (i) In the case of royalties paid before 1st July, 1954, and agreed in the relevant contract at a fixed sum, no claim shall be made by the French authorities for turnover taxes;
- (ii) If it is a question of royalties paid before the 1st July, 1954 which have been calculated on the basis of turnover, the taxes are payable. However, the taxes shall only be

¹ See p. 268 of this volume.

payable—where appropriate—as from the date on which written demands were sent to the United Kingdom licensors or to the accredited representatives in France, in all those cases where the French tax administration has been in a position, in the course of its inspections, to establish that the French licensee has paid royalties to the United Kingdom licensors without having raised the question of whether these taxes were payable. On this point the French administration states that it considers that inspections have normally been made in the case of most French concerns working patents granted by United Kingdom licensors and that the only cases that might still be raised are cases of fraud or evasion in which the person liable to the taxes might be involved.

- (iii) In the case of royalties paid after 1st July, 1954, turnover taxes shall be liable to be paid by United Kingdom licensors under the conditions prescribed by French law.

11. In any of the cases described in paragraph 10 the French authorities shall waive all pains and penalties for non-payment or late payment of taxes, provided that the United Kingdom licensors concerned have regularised their position within six months from the date of this note, and except in cases where deliberately false statements are proved to have been made for the purpose of evading taxation, when the normal processes of law shall apply.

12. The French authorities shall raise no objection to the insertion of provisions in a royalty agreement, whether a new agreement or a revision of an existing agreement, between a United Kingdom licensor and a French licensee, whereby the licensee will himself pay the turnover taxes due upon royalties paid under such an agreement.

13. The tax on the performance of services, paid by the United Kingdom licensors or for their account shall create, in favour of the French licensees, a right to deduction within the framework of the legislation governing the French tax on added value.

14. The United Kingdom licensors shall be allowed to enjoy any more extensive advantage which may be granted by France to French or foreign licensors.

15. The Government of the United Kingdom will use their best endeavours to bring the provisions of this agreement to the notice of the persons concerned.

If the Government of the French Republic are prepared to accept the foregoing proposals, I have the honour to suggest that the present Note together with Your Excellency's reply should constitute an Agreement between the two Governments, which shall enter into force from the day of your reply and remain in effect indefinitely subject to the right of either Government to terminate the Agreement by giving six months' written notice to the other, except in the event of termination being dictated on the part of the French Government by a change in French fiscal legislation; in that case the effective date of the termination of the present Agreement may not be later than the date of entry into force of the new French tax regulations.

I have, &c.

Gladwyn JEBB

ANNEX I

FORM OF STATUTORY DECLARATION FOR USE IN CASES WHERE THE LICENSOR IS A COMPANY
OR FIRM

*Statutory Declaration in support of an Application for Exemption from Payment of " Turn-
over Taxes " on Royalties Paid on the Exploitation of Inventions under Licence in
France*

(To be made before a Notary Public in triplicate)

I, the undersigned of
(name in full)

.....
(private address in full)

DO SOLEMNLY AND SINCERELY DECLARE AS FOLLOWS :

(1) that I am of
(status of declarant in company or firm, e.g., director, partner)

..... of
(name of company or firm)

.....
(address of registered office of company or principal place of business of firm)

and duly acting as the agent of the said company/firm;

(2) that the said company/firm is the owner of the following invention(s) to which
the agreement specified in paragraph 3 of this declaration refers, namely

.....
(details of the relevant invention(s), the purpose(s) for which it is/they are employed and particulars
of any registration which have been made of such invention(s) in France)

(3) that by an agreement dated the day of
19....., the said company/firm granted a licence to
..... to exploit the said invention(s) in
(name of licensees)

France in the following terms

.....
(details of the purpose of the contract, the products to which it relates and the terms on which
royalties are payable)

(4) that the said invention(s) was/were made or developed [in the course of their
employment by persons who at the material time were in the employment of]
.....]
(name of employing company or firm)

or [by persons carrying out research or development work on account of and under the direction and control of

.....
(name of company or firm)

in furtherance of a prior specific contract between that company/firm and

.....]
(name of other party)

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing the same to be true and by virtue of the Statutory Declarations Act, 1835.

ANNEX II

FORM OF STATUTORY DECLARATION FOR USE IN CASES WHERE THE LICENSOR IS AN INDIVIDUAL

Statutory Declaration in support of an Application for Exemption from Payment of " Turn-over Taxes " on Royalties Paid on the Exploitation of Inventions under Licence in France

(To be made before a Notary Public in triplicate)

I, the undersigned of
(name in full)

.....
(address in full)

DO SOLEMNLY AND SINCERELY DECLARE AS FOLLOWS :

(1) that I am the owner of the following invention(s) to which the agreement described below refers, namely

.....
(details of relevant invention(s) and its/their purpose and particulars of any registrations which have been made of such invention(s) in France)

(2) that by agreement dated day of
19 I granted a licence to
(name of licensees in France)

to exploit the said invention(s) in France on the following terms

.....
(details of the purposes of the contract, the products to which it relates and the terms on which royalties are payable)

(3) that the said invention(s) was/were made and/or developed by me, [or during the course of their employment by persons who at the material time were in my employment] [or by persons carrying out research and development work on my account and under my direction and control in furtherance of a prior specific agreement which I made with

.....]
(name of other party)

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing the same to be true by virtue of the Statutory Declarations Act, 1835.

[TRANSLATION — TRADUCTION]

Paris, 28 November 1958

Excellency,

[See note IV]

I have, etc.

Louis JOXE

For the Minister for Foreign Affairs

IV

Her Majesty's Ambassador at Paris to the French Minister for Foreign Affairs *L'Ambassadeur de Sa Majesté britannique à Paris au Ministre des affaires étrangères de France*

Paris, November 28, 1958

Monsieur le Ministre,

I have the honour to acknowledge Your Excellency's letter dated the 28th of November which in translation reads as follows :

“ With reference to the agreement signed to-day to allow United Kingdom licensors to be exempted in certain circumstances from taxes on royalties which they receive from French licensees, I have the honour to inform Your Excellency that the term ‘undertakings’ used in the said agreement translated in the French reply by the word ‘sociétés’ should be understood in the usual meaning of the latter word in French law and cannot, in any case, apply to a licensor who is an individual.

“ Furthermore, I have the honour to suggest that this letter together with Your Excellency's acknowledgement should form an integral part of the present agreement. ”

I have the honour to confirm that the foregoing is acceptable to my Government.

I have, &c.

Gladwyn JEBB

[TRANSLATION — TRADUCTION]

Paris, 28 November 1958

Excellency,

[See note VI]

Accept, etc.

For the Minister for Foreign Affairs:

Louis JOXE

VI

Her Majesty's Ambassador at Paris to the French Minister for Foreign Affairs *L'Ambassadeur de Sa Majesté britannique à Paris au Ministre des affaires étrangères de France*

Paris, November 28, 1958

Monsieur le Ministre,

I have the honour to acknowledge Your Excellency's letter dated the 28th of November which in translation reads as follows :

“ In the course of the negotiations which have resulted in the conclusion of the agreement signed this day to allow United Kingdom licensors to be exempted in certain circumstances from taxes on royalties which they receive from French licensees, the United Kingdom delegation raised the question of the statutory limitation of three years provided for in French fiscal law; this limitation might prevent the refund, by the French administration, of taxes which have been paid by British licensors who, under the terms of this agreement, would have been eligible for exemption from the said taxes.

“ I have the honour to inform Your Excellency that provided the British licensors expressed a reserve on the principle of this liability when they paid the said taxes, the French administration will not raise the statutory limitation as an objection to requests for refund made by the said licensors.

“ Furthermore. I have the honour to suggest that this letter together