

No. 5450

**UNION OF SOUTH AFRICA
and
UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND**

Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income imposed in the Union of South Africa and in Basutoland. Signed at Cape Town, on 18 June 1959

Official texts : English and Afrikaans.

Registered by the Union of South Africa on 14 November 1960.

**UNION SUD-AFRICAINE
et
ROYAUME-UNI DE GRANDE-BRETAGNE
ET D'IRLANDE DU NORD**

Convention tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu exigés en Union sud-africaine et au Bassoutoland. Signée au Cap, le 18 juin 1959

Textes officiels anglais et afrikaans.

Enregistrée par l'Union sud-africaine le 14 novembre 1960.

No. 5450. AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE UNION OF SOUTH AFRICA AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME IMPOSED IN THE UNION OF SOUTH AFRICA AND IN BASUTOLAND. SIGNED AT CAPE TOWN, ON 18 JUNE 1959

The Government of the Union of South Africa and the Government of Great Britain and Northern Ireland, desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income imposed in the Union of South Africa and in Basutoland, 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 super tax (hereinafter referred to as Union tax).
- (b) In Basutoland : The normal tax and super tax (hereinafter referred to as Basutoland tax).

(2) The present Agreement shall also apply to any other taxes of a substantially similar character imposed in the Union of South Africa or Basutoland subsequent to the date of signature of the present Agreement.

Article II

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

- (a) the term "Union" means the Union of South Africa ;
- (b) the terms "territory of one of the Governments" and "territory of the other Government" mean the Union or Basutoland as the context requires ;
- (c) the term "tax" means Union tax or Basutoland tax, as the context requires ;

¹ Came into force on 13 November 1959, in accordance with the provisions of article XIII.

(d) the term "person" includes any body of persons, corporate or not corporate ;

(e) the term "company" means any body corporate ;

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

(g) the term "resident of one of the territories" means a person who is a resident of the Union or a person who is a resident of Basutoland, as the case may be ;

(h) the terms "company of one of the Governments" and "company of the other Government" mean a company which is a resident of the Union or a company which is a resident of Basutoland, as the context requires ;

(i) the terms "Union enterprise" and "Basutoland 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 Basutoland, and the terms "enterprise of one of the Governments" and "enterprise of the other Government" mean a Union enterprise or a Basutoland enterprise, as the context requires ;

(j) the term "permanant establishment" when used with respect to an enterprise of one of the Governments means a branch, management, factory, or other fixed place of business, a mine, quarry or any other place of natural resources subject to exploitation. It also includes 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 Governments shall not be deemed to have a permanent establishment in the territory of the other Government merely because it carries on business dealings in the territory of that other Government 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 Governments maintains in the territory of the other 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 ;

(iii) the fact that a company of one of the Governments has a subsidiary company which is a company of the other Government or which is engaged in trade or business in the territory of that other Government (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary company a permanent establishment of its parent company ;

(k) the term "industrial or commercial profits" includes mining, farming and agency profits but does not include income in the form of royalties, rents (including royalties or rents on cinematograph films), interest, dividends, management charges, remuneration for personal services or profits from the operation of transport services ;

(l) the term "profits" means "taxable income" as defined under the laws of the Union and Basutoland relating to the taxes which are the subject of this Agreement ;

(m) the term "taxation authorities" means the Commissioner for Inland Revenue or his authorised representative in the case of the Union and the Collector of Income Tax or his authorised representative in the case of Basutoland.

(2) In the application of the provisions of the present Agreement by one of the Governments, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Government relating to the taxes which are the subject of the present Agreement.

(3) The terms "Union tax" and "Basutoland 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.

(4) References in Articles II to XII inclusive to a Government shall, in regard to Basutoland, be construed as references to the Government of Basutoland.

Article III

(1) The industrial or commercial profits of an enterprise of one of the Governments shall not be subject to tax in the territory of the other Government 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 Governments is engaged in trade or business in the territory of the other 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.

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

(4) Profits derived by an enterprise of one of the Governments from sales, under contracts concluded in the territory of that Government, of goods or merchandise stocked in a warehouse or depot in the other territory for convenience of delivery and not for 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 territory and transmitted by him to the enterprise for acceptance.

(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.

Article IV

(1) Where—

- (a) an enterprise of one of the Governments participates directly or indirectly in the management, control or capital of an enterprise of the other Government, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the Governments and an enterprise of the other 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,

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 Governments under paragraph (1) of this Article shall be deemed, if, apart from this Agreement, the law of that Government in respect of the taxes which are the subject of this Agreement so provides, to be income derived from sources in the territory of that Government and shall be taxed accordingly.

(3) If the information available to the taxation authorities concerned is inadequate to determine, for the purpose 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 or a resident of one of the territories from operating transport services shall be exempt from tax in the other territory.

Article VI

Any royalty, rent (including royalties or rent 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 the first-mentioned territory if such royalty, rent or other consideration is subject to tax in the other territory.

Article VII

(1) Income of whatever nature derived from real property within the territory of one of the Governments by a resident of the territory of the other Government shall be exempt from tax in the last-mentioned territory.

(2) Any royalty or other amount paid in respect of the operation of a mine or quarry or of any other extraction of natural resources within the territory of one of the Governments to a resident of the other territory shall be exempt from tax in the last-mentioned territory.

Article VIII

(1) Remuneration (other than pensions) paid by the Government of one of the territories to any individual for services rendered to that Government in the discharge

of governmental function shall be exempt from tax in the territory of the other 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 the Government of one of the territories to any individual for services rendered to that Government in the discharge of governmental functions shall be exempt from tax in the territory of the other 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 remuneration was paid.

Article IX

(1) A student or business apprentice from the territory of one of the Governments who is receiving full-time education or training in the territory of the other Government 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.

(2) A student at a university, college or other establishment for higher education in the territory of one of the Governments who for a period or periods not exceeding in the aggregate 183 days during the year of assessment is employed in the territory of the other Government in order to obtain a practical training required for his studies shall be exempt from tax in that other territory on so much of his remuneration as does not exceed £250.

Article X

(1) Where Union tax is payable in respect of profits derived from sources within the Union by a person ordinarily resident in Basutoland, Basutoland 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 Basutoland, shall allow the Union tax as a credit against any Basutoland tax payable in respect of such profits.

(2) Where Basutoland tax is payable in respect of profits derived from sources within Basutoland 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 Basutoland tax as a credit against any Union tax payable in respect of such profits.

Article XI

(1) The taxation authorities of the Governments shall on request exchange such information (being information available under the respective taxation laws of the 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.

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

Article XII

Any taxpayer who shows that the action of the taxation authorities of the two Governments has resulted in double taxation with respect to the taxes referred to in this Agreement, may lodge a claim with the taxation authority of the territory in which he resides. Should the claim be upheld, the taxation authority of that territory may come to an agreement with the taxation authority of the other territory with a view to avoidance of the double taxation.

Article XIII

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 Basutoland as are necessary to give the Agreement the force of law in the Union and in Basutoland respectively, and shall thereupon have effect in respect of assessments for the year beginning on the first day of July, 1956 and subsequent years.

Article XIV

The present Agreement shall continue in effect indefinitely but either of the Contracting Governments may, on or before the 30th day of June in any calendar year after the year 1958, give notice of termination to the other Contracting Government and, in such event, the present Agreement shall cease to be effective 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.

IN WITNESS WHEREOF the undersigned being duly authorised by their respective Governments have signed the present Agreement.

DONE at Cape Town in duplicate, in the English and Afrikaans languages, the texts being equally authentic, on the eighteenth day of June, 1959.

For the Government of the Union of South Africa :

(Signed) Eric H. Louw

For the Government of Great Britain and Northern Ireland :

(Signed) John MAUD