

No. 9655

**UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND
and
SIERRA LEONE**

Agreement amending the Arrangement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (with Arrangement approved on 19 December 1947). Signed at Freetown on 18 March 1968

Authentic text: English.

Registered by the United Kingdom of Great Britain and Northern Ireland on 24 June 1969.

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

Accord amendant l'Arrangement tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu (avec Arrangement approuvé le 19 décembre 1947). Signé à Freetown le 18 mars 1968

Texte authentique: anglais.

Enregistré par le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord le 24 juin 1969.

AGREEMENT¹ AMENDING THE ARRANGEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF SIERRA LEONE FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Sierra Leone,

Desiring to amend the Arrangement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income in force between Her Majesty's Government and the Government of Sierra Leone immediately before 27 April, 1961, ² when Sierra Leone attained fully responsible status and continued in force since that date between the Government of the United Kingdom and the Government of Sierra Leone (hereinafter referred to as "the Arrangement"),

Have agreed as follows :

Article 1

The Arrangement shall be amended—

- (a) by the deletion of paragraph 2 (1) (b);
- (b) by the substitution for the references therein to "the Colony", "Colonial enterprise" and "Colonial tax" of references to "Sierra Leone", "Sierra Leone enterprise" and "Sierra Leone tax" respectively;

(c) by the addition at the end of paragraph 6 of the following new sub-paragraph—

"(3) If the recipient of a dividend is a company which owns 40 per cent. or more of the class of shares in respect of which the dividend is paid then sub-paragraph (1) shall not apply to the dividend to the

¹ Came into force on 16 January 1969, the date when the last of all such things had been done in the two countries as were necessary to give the Agreement the force of law in the United Kingdom and Sierra Leone, respectively, in accordance with article 2 (1).

² See p. 34 of this volume.

extent that it can have been paid only out of the profits which the company paying the dividend earned or other income which it received in a period ending twelve months or more before the relevant date. For the purposes of this sub-paragraph the term "relevant date" means the date on which the beneficial owner of the dividend became the owner of 10 per cent. or more of the class of shares in question. Provided that this sub-paragraph shall not apply if the beneficial owner of the dividend shows that the shares were acquired for *bona fide* commercial reasons and not primarily for the purpose of securing the benefit of this paragraph." ; and

(d) by the substitution for sub-paragraphs (1) and (2) of paragraph (13) of the following new sub-paragraphs—

"(1) Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom (which shall not affect the general principle hereof)—

(a) Sierra Leone tax payable under the laws of Sierra Leone and in accordance with this Arrangement, whether directly or by deduction, on profits or income from sources within Sierra Leone shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits or income by reference to which the Sierra Leone tax is computed. Provided that in the case of a dividend the credit shall only take into account such tax in respect thereof as is additional to any tax payable by the company on the profits out of which the dividend is paid and is ultimately borne by the recipient without reference to any tax so payable.

(b) Where a company which is a resident of Sierra Leone pays a dividend to a company resident in the United Kingdom which controls directly or indirectly at least 10 per cent. of the voting power in the first-mentioned company, the credit shall take into account (in addition to any Sierra Leone tax for which credit may be allowed under (a) of this sub-paragraph) the Sierra Leone tax payable by that first-mentioned company in respect of the profits out of which such dividend is paid.

(2) Subject to the provisions of the law of Sierra Leone regarding the allowance as a credit against Sierra Leone tax of tax payable in a territory outside Sierra Leone (which shall not affect the general principle hereof)—

(a) United Kingdom tax payable under the laws of the United Kingdom and in accordance with this Arrangement, whether directly or by deduction, on profits or income from sources within the United Kingdom shall be allowed as a credit against any Sierra Leone tax computed by reference to the same profits or income by reference to which the United Kingdom tax is computed. Provided that in the case of a dividend the credit shall only take into account such tax in respect thereof as is additional to any tax payable by the company on the profits out of which the dividend is paid and is ultimately borne by the recipient without reference to any tax so payable.

(b) Where a company which is a resident of the United Kingdom pays a dividend to a company resident in Sierra Leone which controls directly or indirectly at least 10 per cent. of the voting power in the first-mentioned company, the credit shall take into account (in addition to any United Kingdom tax for which credit may be allowed under (a) of this sub-paragraph) the United Kingdom tax payable by that first-mentioned company in respect of the profits out of which such dividend is paid."

Article 2

(1) This Agreement shall enter into force when the last of all such things shall have been done in the United Kingdom and Sierra Leone as are necessary to give the Agreement the force of law in the United Kingdom and Sierra Leone respectively.

(2) Upon the entry into force of this Agreement in accordance with paragraph (1) the new sub-paragraph (3) of paragraph 6 of the Arrangement shall have effect immediately and the new sub-paragraphs (1) and (2) of paragraph 13 of the Arrangement shall have effect—

(a) in the United Kingdom :

(i) as respects income tax including surtax, for any year of assessment beginning on or after 6 April, 1968 ; and

(ii) as respects corporation tax, for any financial year beginning on or after 1 April, 1968 ;

(b) in Sierra Leone :

as respects income tax including surtax for any year of assessment beginning on or after 1 April, 1968.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Agreement.

DONE in duplicate at Freetown this 18th day of March, 1968.

For the Government
of the United Kingdom of Great
Britain and Northern Ireland:

S. J. G. FINGLAND

For the Government
of Sierra Leone:

A. T. JUXON-SMITH

ARRANGEMENT BETWEEN HIS MAJESTY'S GOVERNMENT AND THE GOVERNMENT OF
SIERRA LEONE FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION
OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME¹

1. (1) The taxes which are the subject of this Arrangement are—

(a) In the United Kingdom:

The income tax (including sur-tax) and the profits tax (hereinafter referred to as "United Kingdom tax").

(b) In Sierra Leone:

The income tax, the duty on profits charged under the Concessions Ordinance, 1931, the diamond industry profit tax, and the profits tax charged under the Tonkolili Agreement Ordinance, 1937 (hereinafter referred to as "Colonial tax").

(2) This Arrangement shall also apply to any other taxes of a substantially similar character imposed in the United Kingdom or Sierra Leone after this Arrangement has come into force.

2. (1) In this Arrangement, unless the context otherwise requires—

(a) The term "United Kingdom" means Great Britain and Northern Ireland, excluding the Channel Islands and the Isle of Man.

(b) The term "the Colony" means the Colony and Protectorate of Sierra Leone.

(c) The terms "one of the territories" and "the other territory" mean the United Kingdom or the Colony, as the context requires.

(d) The term "tax" means United Kingdom tax or Colonial tax, as the context requires.

(e) The term "person" includes any body of persons, corporate or not corporate.

(f) The term "company" includes any body corporate.

¹ This Arrangement was approved by an Order-in-Council dated on 19 December 1947.

(g) The terms "resident of the United Kingdom" and "resident of the Colony" mean respectively any person who is resident in the United Kingdom for the purposes of United Kingdom tax and not resident in the Colony for the purposes of Colonial tax and any person who is resident in the Colony for the purposes of Colonial tax and not resident in the United Kingdom for the purposes of United Kingdom tax; and a company shall be regarded as resident in the United Kingdom if its business is managed and controlled in the United Kingdom and as resident in the Colony if its business is managed and controlled in the Colony.

(h) The terms "resident of one of the territories" and "resident of the other territory" mean a person who is a resident of the United Kingdom or a person who is a resident of the Colony, as the context requires.

(i) The terms "United Kingdom enterprise" and "Colonial enterprise" mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of the United Kingdom and an industrial or commercial enterprise or undertaking carried on by a resident of the Colony; and the terms "enterprise of one of the territories" and "enterprise of the other territory" mean a United Kingdom enterprise or a Colonial enterprise, as the context requires.

(j) The term "industrial or commercial profits" includes rentals in respect of cinematograph films.

(k) The term "permanent establishment", when used with respect to an enterprise of one of the territories, means a branch, management 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.

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 a resident of 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.

(2) Where under this Arrangement any income is exempt from tax in one of the territories if (with or without other conditions) it is subject to tax in the other territory, and that income is subject to tax in that other territory by reference to the amount thereof which is remitted to or received in that other territory, the exemption to be allowed under this Arrangement in the first-mentioned territory shall apply only to the amount so remitted or received.

(3) In the application of the provisions of this Arrangement by the United Kingdom or the Colony, any term not otherwise defined shall, unless the context

otherwise requires, have the meaning which it has under the laws of the United Kingdom, or, as the case may be, the Colony, relating to the taxes which are the subject of this Arrangement.

3. (1) The industrial or commercial profits of a United Kingdom enterprise shall not be subject to Colonial tax unless the enterprise is engaged in trade or business in the Colony through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by the Colony but only on so much of them as is attributable to that permanent establishment.

(2) The industrial or commercial profits of a Colonial enterprise shall not be subject to United Kingdom tax unless the enterprise is engaged in trade or business in the United Kingdom through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by the United Kingdom, but only on so much of them as is attributable to that permanent establishment: Provided that nothing in this paragraph shall affect any provisions of the law of the United Kingdom regarding the imposition of excess profits tax and profits tax in the case of inter-connected companies.

(3) Where an enterprise of one of the territories is engaged in trade or business in the other territory through a permanent establishment situated therein, there shall be attributed to that permanent establishment the industrial or commercial profits which it might be expected to derive from its activities 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.

(4) No portion of any profits 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 and transportation of the goods or merchandise within that other territory, and the mere purchase and transportation of goods or merchandise outside that other territory shall not prevent the attribution to the permanent establishment of the whole profit arising from the sale of the goods or merchandise through the permanent establishment.

4. 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.

5. Notwithstanding the provisions of paragraphs 3 and 4, profits which a resident of one of the territories derives from operating ships or aircraft shall be exempt from tax in the other territory.

6. (1) Dividends paid by a company resident in one of the territories to a resident of the other territory who is subject to tax in that other territory in respect thereof and not engaged in trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from any tax in that first-mentioned territory which is chargeable on dividends in addition to the tax chargeable in respect of the profits or income of the company.

(2) Where a company which is a resident of one of the territories derives profits or income from sources within the other territory, the Government of that other territory shall not impose any form of taxation on dividends paid by the company to persons not resident in that other territory, or any tax in the nature of an undistributed profits tax on undistributed profits of the company, by reason of the fact that those dividends or undistributed profits represent, in whole or in part, profits or income so derived.

7. (1) Any royalty derived from sources within one of the territories by a resident of the other territory who is subject to tax in that other territory in respect thereof and is not engaged in trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from tax in that first-mentioned territory; but no exemption shall be allowed under this paragraph in respect of so much of any royalty as exceeds an amount which represents a fair and reasonable consideration for the rights for which the royalty is paid.

(2) In this paragraph the term "royalty" means any royalty or other amount paid as consideration for the use of, or for the privilege of using, any copyright, patent, design, secret process or formula, trade-mark, or other like property, but does not include a royalty or other amount paid in respect of the operation of a mine or quarry or of other extraction of natural resources.

8. (1) Remuneration, including pensions, 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 other territory if the individual is not ordinarily resident in that other territory or (where the remuneration is not a pension) is ordinarily resident in that other territory solely for the purpose of rendering those services.

(2) The provisions of this paragraph shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the Governments for purposes of profit.

9. (1) An individual who is a resident of the United Kingdom shall be exempt from Colonial tax on profits or remuneration in respect of personal (including

professional) services performed within the Colony in any year of assessment if—

- (a) he is present within the Colony 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 United Kingdom, and
- (c) the profits or remuneration are subject to United Kingdom tax.

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

- (a) he is present within the United Kingdom 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 Colony, and
- (c) the profits or remuneration are subject to Colonial tax.

(3) The provisions of this paragraph shall not apply to the profits or remuneration of public entertainers such as stage, motion picture or radio artists, musicians and athletes.

10. (1) Any pension (other than a pension paid by the Government of the Colony for services rendered to it in the discharge of governmental functions) and any annuity, derived from sources within the Colony by an individual who is a resident of the United Kingdom and subject to United Kingdom tax in respect thereof, shall be exempt from Colonial tax.

(2) Any pension (other than a pension paid by the Government of the United Kingdom for services rendered to it in the discharge of governmental functions) and any annuity, derived from sources within the United Kingdom by an individual who is a resident of the Colony and subject to Colonial tax in respect thereof, shall be exempt from United Kingdom tax.

(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.

11. 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.

12. 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.

13. (1) Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom, Colonial tax payable, whether directly or by deduction, in respect of income from sources within the Colony shall be allowed as a credit against any United Kingdom tax payable in respect of that income.

(2) Subject to the provisions of the law of the Colony regarding the allowance as a credit against Colonial tax of tax payable in a territory outside the Colony, United Kingdom tax payable, whether directly or by deduction, in respect of income from sources within the United Kingdom shall be allowed as a credit against any Colonial tax payable in respect of that income. Where such income is an ordinary dividend paid by a company resident in the United Kingdom, the credit shall take into account (in addition to any United Kingdom income tax appropriate to the dividend) the United Kingdom profits tax payable by the company in respect of its profits, and where it is a dividend paid on participating preference shares and representing both a dividend at the fixed rate to which the shares are entitled and an additional participation in profits, the profits tax so payable by the company shall likewise be taken into account in so far as the dividend exceeds that fixed rate.

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

14. (1) The taxation authorities of the United Kingdom and the Colony shall exchange such information (being information available under their respective taxation laws) as is necessary for carrying out the provisions of this Arrangement 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 Arrangement. 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 Arrangement. No information shall be exchanged which would disclose any trade secret or trade process.

(2) As used in this paragraph, the term "taxation authorities" means the Commissioners of Inland Revenue or their authorised representative in the case of the United Kingdom and the Commissioner for Income Tax or his authorised representative in the case of the Colony.

15. This Arrangement shall come into force on the date on which the last of all such things shall have been done in the United Kingdom and the Colony as are necessary to give the Arrangement the force of law in the United Kingdom and the Colony respectively, and shall thereupon have effect—

(a) in the United Kingdom, as respects income tax for the year of assessment beginning on the 6th day of April, 1946, and subsequent years ; as respects sur-tax for the year of assessment beginning on the 6th day of April, 1945, and subsequent years ; and as respects profits tax for any chargeable accounting period beginning on or after the first day of January, 1947, and for the unexpired portion of any chargeable accounting period current at that date ;

(b) in the Colony, as respects Colonial tax for the year of assessment beginning on the first day of April, 1946, and subsequent years.

16. This Arrangement shall continue in effect indefinitely but either of the Governments may, on or before the 30th day of September in any calendar year after the year 1947, give notice of termination to the other Government and, in such event, this Arrangement shall cease to be effective—

(a) in the United Kingdom as respects income tax for any year of assessment beginning on or after the 6th day of April in the calendar year next following that in which such notice is given ; as respects sur-tax for any year of assessment beginning on or after the 6th day of April in the calendar year in which such notice is given ; and as respects profits tax for any chargeable accounting period beginning on or after the first day of January in the calendar year next following that in which such notice is given and for the unexpired portion of any chargeable accounting period current at that date ;

(b) in the Colony, as respects Colonial tax for 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.
