

No. 9783

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

Agreement amending the Arrangement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of Lesotho for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income. Signed at Maseru on 3 July 1968

Authentic text: English.

Registered by the United Kingdom of Great Britain and Northern Ireland on 8 August 1969.

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

Accord modifiant l'Arrangement entre le Gouvernement du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord et le Gouvernement du Royaume du Lesotho tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu. Signé à Maseru le 3 juillet 1968

Texte authentique : anglais.

Enregistré par le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord le 8 août 1969.

AGREEMENT¹ AMENDING THE ARRANGEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE KINGDOM OF LESOTHO FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME²

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

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 Basutoland immediately before 4 October 1966,² when Basutoland was established as an independent kingdom under the name of Lesotho, and continued in force since that date between the Government of the United Kingdom and the Government of the Kingdom of Lesotho (hereinafter referred to as "the Arrangement").

Have agreed as follows:

Article 1

The Arrangement shall be amended—

(a) by the substitution for the references therein to "Basutoland", "Basutoland enterprise" and "Basutoland tax" of references to "Lesotho", "Lesotho enterprise" and "Lesotho tax" respectively;

(b) by the addition at the end of paragraph 6 of the following new subparagraph—

"(3) If the recipient of a dividend is a company which owns 10 per cent or more of the class of shares in respect of which the dividend is

¹ Came into force on 28 March 1969, the date when the last of all such things were done in the United Kingdom of Great Britain and Northern Ireland and of Lesotho as were necessary to give the Agreement the force of law in each of the two countries, in accordance with article 2, paragraph 1.

² See p. 188 of this volume where the said Arrangement is published for information.

paid then sub-paragraph (1) shall not apply to the dividend to the extent that it can have been paid only out of 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

(c) by the substitution for sub-paragraphs (1) and (2) of paragraph 14 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) Lesotho tax payable under the laws of Lesotho and in accordance with this Arrangement, whether directly or by deduction, on profits or income from sources within Lesotho 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 Lesotho 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 Lesotho 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 Lesotho tax for which credit may be allowed under (a) of this sub-paragraph) the Lesotho tax payable by that first-mentioned company in respect of the profits out of which such dividend is paid.

“(2) If Lesotho tax is payable, whether directly or by deduction, in respect of income derived from sources within the United Kingdom,

then, subject to the provisions of the law of Lesotho regarding the allowance as a credit against Lesotho tax of tax payable in a territory outside Lesotho (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 Lesotho 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 which is resident in Lesotho 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 Lesotho as are necessary to give the Agreement the force of law in the United Kingdom and Lesotho 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 and the new sub-paragraphs (1) and (2) of paragraph 14 thereof shall have effect immediately.

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

DONE in duplicate at Maseru this third day of July 1968.

For the Government
of the United Kingdom of Great
Britain and Northern Ireland:
M. F. CHAPMAN

For the Government
of the Kingdom of Lesotho:
P. N. PEETE

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

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 Basutoland:

The normal tax and the super tax (hereinafter referred to as "Basutoland tax").

(2) This Arrangement shall also apply to any other taxes of a substantially similar character imposed in the United Kingdom or Basutoland 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 terms "one of the territories" and "the other territory" mean the United Kingdom or Basutoland, as the context requires.

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

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

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

(f) The terms "resident of the United Kingdom" and "resident of Basutoland" mean respectively any person who is resident in the United Kingdom for the purposes of United Kingdom tax and not resident in Basutoland for the purposes of Basutoland tax and any person who is resident in Basutoland for the purposes of Basutoland 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 Basutoland if its business is managed and controlled in Basutoland.

(g) 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 Basutoland, as the context requires.

(h) The terms “United Kingdom enterprise” and “Basutoland 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 Basutoland; and the terms “enterprise of one of the territories” and “enterprise of the other territory” mean a United Kingdom enterprise or a Basutoland enterprise, as the context requires.

(i) The term “industrial or commercial profits” does not include income in the form of rents, royalties (other than rents or royalties in respect of motion picture films), interest, dividends, management charges and remuneration for labour or personal services, and in relation to Basutoland tax the term “profits” means income.

(j) 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 Basutoland, 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, Basutoland, 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 Basutoland tax unless the enterprise is engaged in trade or business in Basutoland through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by Basutoland, but only on so much of them as is attributed to that permanent establishment.

(2) The industrial or commercial profits of a Basutoland 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.

(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 of the goods or merchandise within that other territory.

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 Basutoland tax on profits or remuneration in respect of personal (including professional) services performed within Basutoland in any year of assessment if:

(a) he is present within Basutoland 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 Basutoland 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 Basutoland, and

(c) the profits or remuneration are subject to Basutoland 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 Basutoland for services rendered to it in the discharge of governmental functions) and any annuity, derived from sources within Basutoland by an individual who is a resident of the United Kingdom and subject to United Kingdom tax in respect thereof, shall be exempt from Basutoland 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 Basutoland and subject to Basutoland 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. Subject to the provisions of paragraph 3 (3) of this Arrangement, a resident of the United Kingdom, whether carrying on business in Basutoland or not, shall be exempt from Basutoland tax in respect of any income received or accruing from any country outside Basutoland in respect of which he is subject to United Kingdom tax.

14. (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, Basutoland tax payable, whether directly or by deduction, in respect of income from sources within Basutoland shall be allowed as a credit against any United Kingdom tax payable in respect of that income. Where such income is an ordinary dividend paid by a company resident in Basutoland the credit shall take into account the Basutoland tax payable in respect of its profits by the company paying the dividend, 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 Basutoland tax so payable by the company shall likewise be taken into account in so far as the dividend exceeds that fixed rate.

(2) If Basutoland tax is payable, whether directly or by deduction, in respect of income derived from sources within the United Kingdom, then, subject to such provisions (which shall not affect the general principle hereof) as may be enacted in Basutoland, the United Kingdom tax payable in respect of that income shall be allowed as a credit against any Basutoland 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.

(4) Where Basutoland income tax is payable for a year for which this Arrangement has effect in respect of any income in respect of which United Kingdom income tax is payable for a year prior to the year beginning on the 6th April, 1949, then:

- (a) in the case of a person resident in Basutoland, the Basutoland income tax shall, for the purposes of sub-paragraph (2) of this paragraph, be deemed to be reduced by the amount of any relief allowable in respect thereof under the provisions of Section 27 of the United Kingdom Finance Act, 1920; and
- (b) in the case of a person resident in the United Kingdom, the provisions of Section 63 of the Basutoland Income Tax (Consolidation) Proclamation, 1939, shall apply for the purposes of the allowance of relief from Basutoland tax.

15. (1) The taxation authorities of the United Kingdom and Basutoland 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 Collector of Income Tax or his authorised representative in the case of Basutoland.

16. 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 Basutoland as are

necessary to give the Arrangement the force of law in the United Kingdom and Basutoland respectively, and shall thereupon have effect:

(a) in the United Kingdom:

as respects income tax, for any year of assessment beginning on or after the 6th April, 1949; as respects sur-tax, for any year of assessment beginning on or after the 6th April, 1948; and as respects profits tax, in respect of the following profits:

- (i) profits arising in any chargeable accounting period beginning on or after the 1st April, 1949;
- (ii) profits attributable to so much of any chargeable accounting period falling partly before and partly after that date as falls after that date;
- (iii) profits not so arising or attributable by reference to which income tax is, or out for the present Arrangement would be, chargeable for any year of assessment beginning on or after the 6th April, 1949;

(b) in Basutoland:

as respects the normal tax and the super tax in respect of the year of assessment ending on the 30th day of June, 1949, and subsequent years.

17. 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 1950, give notice of termination to the other Government and, in that 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 April in the calendar year next following that in which the notice is given; as respects sur-tax, for any year of assessment beginning on or after the 6th April in the calendar year in which the notice is given; and as respects profits tax, in respect of the following profits:

- (i) profits arising in any chargeable accounting period beginning on or after the 1st April in the calendar year next following that in which the notice is given;
- (ii) profits attributable to so much of any chargeable accounting period falling partly before and partly after that date as falls after that date;
- (iii) profits not so arising or attributable by reference to which income tax is chargeable for any year of assessment beginning on or after the 6th April in that next following calendar year;

(b) in Basutoland:

as respect the normal tax and the super tax in respect of any year of assessment ending on or after the 30th day of June in the calendar year next following that in which such notice is given.