



COLONY AND PROTECTORATE OF KENYA

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**Double Taxation Agreement with the
Union of South Africa**

1958

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THE EAST AFRICAN INCOME TAX (MANAGEMENT)
ACT, 1952

(H.C. Act No. 8 of 1952)

NOTICE OF PROPOSALS FOR DOUBLE TAXATION AGREEMENT
(THE UNION OF SOUTH AFRICA)

THE following is a draft of an Agreement which it is proposed to enter into with the Government of the Union of South Africa for the relief of Double Taxation.

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Union of South Africa, desiring to conclude an agreement for the avoidance of double taxation with respect to taxes on income imposed in the Union of South Africa and in Kenya, Tanganyika, Uganda and Zanzibar, 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, non-resident shareholders' tax and all other taxes on income imposed in the Union (hereinafter referred to as "Union tax");

(b) in Kenya:

The income tax (including surtax) and the personal tax (hereinafter referred to as "Kenya tax");

(c) in Tanganyika:

The income tax (including surtax) and the non-native poll tax or personal tax (hereinafter referred to as "Tanganyika tax");

(d) in Uganda:

The income tax (including surtax) and the non-African poll tax (hereinafter referred to as "Uganda tax");

(e) in Zanzibar:

The income tax (including surtax) (hereinafter referred to as "Zanzibar tax").

2. This Agreement shall also apply to any other taxes of a substantially similar character imposed in the Union of South Africa or the East African territory after this Agreement has come into force.

ARTICLE II

1. In the application of this Agreement between the Union and Kenya the expressions "the East African territory" and "East African tax" shall be construed as meaning respectively Kenya and Kenya tax; in its application between the Union and Tanganyika the said expressions shall be construed as meaning respectively Tanganyika and Tanganyika tax; in its application between the Union and Uganda the said expressions shall be construed as meaning respectively Uganda and Uganda tax; and in its application between the Union and Zanzibar the said expressions shall be construed as meaning respectively Zanzibar and Zanzibar tax.

2. In this Agreement, unless the context otherwise requires—

(a) the term "Union" means the Union of South Africa;

(b) (i) the term "Kenya" means the Colony and Protectorate of Kenya;

(ii) the term "Tanganyika" means the Tanganyika Territory;

(iii) the term "Uganda" means the Protectorate of Uganda;

(iv) the term "Zanzibar" means the Protectorate of Zanzibar;

(v) the term "the East African territories" shall be deemed to mean Kenya, Tanganyika, Uganda and Zanzibar;

(c) the terms "one of the territories" and "the other territory" mean the Union or the East African territory 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 East African territory" and "resident of the Union" mean respectively any person who is resident in the East African territory for the purposes of East African tax and not ordinarily resident in the Union for the purposes of Union tax and any person who is ordinarily resident in the Union for the purposes of Union tax and not resident in the East African territory for the purposes of East African tax; and a company shall be regarded as resident in the East African territory if its business is managed and controlled in the East African territory and as ordinarily resident in the Union if its business is managed and controlled in the Union;

(g) the terms "company of one of the territories" and "company of the other territory" mean a company which is a resident of the East African territory or a company which is a resident of the Union, as the context requires;

(h) the terms "East African enterprise" and "Union enterprise" mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of the East African territory and an industrial or commercial enterprise or undertaking carried on by a resident of the Union; and the terms "enterprise of one of the territories" and "enterprise of the other territory" mean a Union enterprise or an East African enterprise, as the context requires;

(i) the term "industrial or commercial profits" does not include income in the form of rents, royalties, interest, dividends, management charges, remuneration for labour or personal services, or income from the operation of ships or aircraft, and in relation to Union 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, factory 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 of one of the territories has a subsidiary company which is a company 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.

3. The term "tax", as used in paragraph 5 of this Article and in Articles V, VII and X means East African tax or Union tax, as the context requires.

4. The terms "Union tax" and "East African tax", as used in this Agreement, do not include any tax payable in the Union or the East African territory which is 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 the Union or the East African territory relating to those taxes.

5. Where under this Agreement 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 Agreement in the first-mentioned territory shall be determined by reference to the amount so remitted or received.

6. In the application of the provisions of this Agreement by one of the territories any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that territory relating to the taxes which are the subject of this Agreement.

ARTICLE III

1. The industrial or commercial profits of an East African enterprise shall not be subject to any Union tax unless the enterprise is engaged in trade or business in the Union through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by the Union, 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 in the Union regarding the imposition upon the shareholders of a private company of the taxes payable in respect of its income.

2. The industrial or commercial profits of a Union enterprise shall not be subject to East African tax unless the enterprise is engaged in trade or business in the East African territory through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by the East African territory, 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 East African territory regarding the taxation of income from the business of insurance.

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 such permanent establishment the industrial or commercial 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 under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment and the profits so attributed shall be deemed to be income derived from sources in that other territory.

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.

5. 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

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;

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.

ARTICLE V

Notwithstanding the provisions of Articles III and IV profits which the Government or a resident of one of the territories derives from operating ships or aircraft shall be exempt from tax in the other territory.

ARTICLE VI

A resident of the East African territory, whether carrying on business in the Union or not, shall be exempt from Union tax in respect of interest on stocks or securities issued by any Government other than the Government of the Union in respect of which he is subject to East African tax.

ARTICLE VII

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 functions shall be exempt from tax in the other territory if the individual is not ordinarily resident in that other territory or is ordinarily resident in that other 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 other territory, in so far as the remuneration for those services was exempt from tax in the other territory under paragraph (1) of this Article or would have been so exempt if this Agreement had been in force at the time when the remuneration was paid.

3. The provisions of this Article shall not apply to payments in respect of services rendered in connexion with any trade or business carried on by either of the Governments for purposes of profit.

ARTICLE VIII

1. An individual who is a resident of the East African territory 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 the East African territory; and
- (c) the profits or remuneration are subject to East African tax.

2. An individual who is resident of the Union shall be exempt from East African tax on profits or remuneration in respect of personal (including professional) services performed within the East African territory in any year of income if—

- (a) he is present within the East African territory 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; and
- (c) the profits or remuneration are subject to Union tax.

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

ARTICLE IX

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

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

3. The term "life 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.

ARTICLE X

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 XI

1. Subject to the provisions of the law of the East African territory regarding the allowance as a credit against East African tax of tax payable in a territory outside the East African territory, Union tax payable, whether directly or by deduction, in respect of income from sources within the Union shall be allowed as a credit against any East African tax payable in respect of that income. For the purposes of this paragraph, the term "Union tax" includes the undistributed profits tax.

2. Where East African tax is payable (whether directly or by deduction) in respect of income which is derived from sources within the East African territory by a person ordinarily resident in the Union and which is not exempt from East African tax under this Agreement, the Union shall either impose no tax on the income or, subject to such provisions (which shall not affect the general principle hereof) as may be enacted in the Union, shall allow the East African tax as a credit against any Union tax payable in respect of the income. In the case of a person who is resident in both the Union and the East African territory, the credit shall extend to the East African tax payable in respect of income from elsewhere in the East Africa territories.

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 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 the Government or a resident of one of the territories shall be deemed to be performed in that territory.

ARTICLE XII

1. The taxation authorities of the Union and the East African territory shall exchange such information (being information available under their respective taxation laws) as is necessary for carrying out the provisions 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, or the determination of appeals in relation to, the taxes which are the subject of this Agreement. No information shall be exchanged which would disclose any trade secret or trade process.

2. As used in this Article, the term "taxation authorities" means, in the case of the Union, the Commissioner for Inland Revenue or his authorized representative and in the case of the East African territory, the Commissioner of Income Tax or his authorized representative.

ARTICLE XIII

This Agreement shall come into force between the East African territory and the Union on the date on which the last of all such things shall have been done in the East African territory and the Union as are necessary to give the Agreement the force of law in the East African territory and the Union 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 day of June, 1954, and subsequent years;

(b) in the East African territory, in accordance with the relevant one of the following sub-heads:

(i) in Kenya,

as respects income tax (including surtax) for the year of income beginning on the first day of January, 1953, and subsequent years, and as respects personal tax for the year beginning on the first day of January, 1953, and subsequent years;

(ii) in Tanganyika,

as respects income tax (including surtax) for the year of income beginning on the first day of January, 1953, and subsequent years and as respects non-native poll tax or personal tax for the year beginning on the first day of January, 1953, and subsequent years;

(iii) in Uganda,

as respects income tax (including surtax) for the year of income beginning on the first day of January, 1953, and subsequent years, and as respects non-African poll tax for the year beginning on the first day of January, 1953, and subsequent years;

(iv) in Zanzibar,

as respects income tax (including surtax) for the year of income beginning on the first day of January, 1953, and subsequent years.

ARTICLE XIV

1. This Agreement shall continue in effect indefinitely but either of the Governments may, on or before the 30th day of June in any year after the year (insert year of signature), give notice of termination to the other Government and, in such event, this Agreement shall cease to be effective—

(a) in the Union,

as respects profits derived or deemed to have been derived during any year of assessment beginning on or after the first day of July in the calendar year next following that in which such notice is given;

(b) in Kenya,

as respects income tax (including surtax) for any year of income beginning on or after the first day of January in the calendar year next following that in which such notice is given, and as respects personal tax for any year beginning on or after the first day of January in such next following calendar year;

(c) in Tanganyika,

as respects income tax (including surtax) for any year of income beginning on or after the first day of January in the calendar year next following that in which such notice is given, and as respects non-native

poll tax or personal tax for any year beginning on or after the first day of January in such next following calendar year;

(d) in Uganda,

as respects income tax (including surtax) for any year of income beginning on or after the first day of January in the calendar year next following that in which such notice is given, and as respects non-African poll tax for any year beginning on or after the first day of January in such next following calendar year;

(e) in Zanzibar,

as respects income tax (including surtax) for any year of income beginning on or after the first day of January in the calendar year next following that in which such notice is given.

In witness whereof the undersigned, duly authorized thereunto, have signed the present Agreement.

Done at _____, in duplicate, in the English
and Afrikaans languages, on this the _____ day of
_____, nineteen hundred and _____.