



Treaty Series No. 4 (1964)

# Exchange of Notes

between the Government of the  
United Kingdom of Great Britain and Northern Ireland  
and the Government of the Republic of South Africa

extending to South West Africa the Convention  
for the Avoidance of Double Taxation and the  
Prevention of Fiscal Evasion with respect to  
Taxes on Income, signed at Cape Town  
on May 28, 1962

Pretoria, August 8, 1962

[The Agreement entered into force on December 19, 1962]

*Presented to Parliament by the Secretary of State for Foreign Affairs  
by Command of Her Majesty  
January 1964*

LONDON  
HER MAJESTY'S STATIONERY OFFICE  
EIGHTPENCE NET

**EXCHANGE OF NOTES BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA EXTENDING TO SOUTH WEST AFRICA THE CONVENTION FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, SIGNED AT CAPE TOWN ON MAY 28, 1962**

No. 1

*Her Majesty's Ambassador at Pretoria to the South African Minister for Foreign Affairs*

*British Embassy,*

*Pretoria, August 8, 1962.*

Your Excellency,

I have the honour to refer to the Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of South Africa for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed at Cape Town on the 28th May, 1962.<sup>(1)</sup>

I have the honour to propose, upon instructions from Her Majesty's Principal Secretary of State for Foreign Affairs, that, in accordance with the provisions of Article XXIV, the above-mentioned Convention should be extended to the territory of South West Africa in the manner, subject to the modifications, and with effect from the dates, specified in the Annex to the present Note.

If the foregoing proposal is acceptable to the Government of the Republic of South Africa, I have the honour to suggest that the present Note with its Annex, and Your Excellency's reply to that effect should be regarded as constituting an Exchange of Notes as provided for in the first paragraph of Article XXIV of the above-mentioned Convention and as placing on record the agreement reached between the two Governments in this respect.

I avail, &c.

JOHN MAUD.

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<sup>(1)</sup> "Treaty Series No. 72 (1962)", Cmnd. 1879.

## ANNEX

1. The provisions of the Convention between the Government of the Republic 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 signed on the Twenty-eighth day of May, One thousand Nine hundred and Sixty-two, at Cape Town shall apply—

- (a) as if the Contracting Parties were the Government of the United Kingdom and the Administration of the territory of South West Africa;
- (b) as if a reference to South Africa were a reference to the territory of South West Africa, unless the context otherwise requires;
- (c) as if the taxes concerned in the case of the territory of South West Africa were the normal tax, the super tax, the non-resident shareholders' tax, the undistributed profits tax and the diamond profits tax;
- (d) as if—
  - (i) the reference in paragraphs (1) and (3) of Article VI (as read with sub-paragraph (b) above) to dividends paid by a company which is a resident of the territory of South West Africa included a reference to any amount which, under the law of that territory relating to the taxation of the income subject to super tax of private companies, is apportioned out of the income subject to super tax of any private company which is a resident of or carries on business in the territory of South West Africa;
  - (ii) the reference in the said paragraphs to the recipient of the dividend or the company paying the dividend, as the case may be, included a reference, respectively, to the shareholder to whom the amount is apportioned as aforesaid or to the private company out of whose income subject to super tax that amount is so apportioned; and
  - (iii) the provisions of sub-paragraph (a) of paragraph (1) of the said Article applied also to so much of any amount apportioned out of the income subject to super tax of any private company which is a resident of or carries on business in the territory of South West Africa to any company, which is a resident of the Republic of South Africa (hereinafter referred to as "the South African company") and more than 50 per cent of the entire voting power in which is controlled directly or indirectly by a company which is a resident of the United Kingdom, as would have been apportionable to the last mentioned company if the law of the territory of South West Africa relating to the apportionment of the income subject to super tax of private companies had applied to the South African company; and
- (e) as if paragraph (4) of Article XI were omitted.

2. The present extension shall come into force when the last of those measures shall have been taken in the United Kingdom and the territory of South West Africa necessary to give the extension the force of law in those countries<sup>(2)</sup> and shall thereupon have effect—

(a) in the United Kingdom:

- (i) as respects income tax, for any year of assessment beginning on or after 6th April, 1962;
- (ii) as respects surtax, for any year of assessment beginning on or after 6th April, 1961; and
- (iii) as respects profits tax, for any chargeable accounting period beginning on or after 1st January, 1962, and for the unexpired portion of any chargeable accounting period current at that date;

(b) in the territory of South West Africa:

- (i) as respects normal tax, super tax and undistributed profits tax, for any year of assessment ending after 30th June, 1962;
- (ii) as respects non-resident shareholders' tax on dividends declared after 30th June, 1962, where the tax is payable on dividends, and for any year of assessment ending after that date, where the tax is payable on apportioned income; and
- (iii) as respects diamond profits tax, for any year of assessment ending on or after 31st December, 1962.

3. The present extension shall remain in force indefinitely and shall continue to remain in force notwithstanding that the Convention may have been terminated by either the Government of the Republic of South Africa or the Government of the United Kingdom of Great Britain and Northern Ireland in accordance with Article XXVI thereof. Either the Government of the Republic of South Africa or the Government of the United Kingdom of Great Britain and Northern Ireland may, however, on or before 30th June in any calendar year not earlier than the year 1966, give to the other through the diplomatic channel written notice of termination of the present extension, and in such event it shall cease to have effect—

(a) in the United Kingdom:

- (i) as respects income tax, for any year of assessment beginning on or after 6th April in the calendar year next following that in which the notice is given;
- (ii) as respects surtax, for any year of assessment beginning on or after 6th April in the calendar year in which the notice is given; and
- (iii) as respects profits tax, for any chargeable accounting period beginning on or after 1st January in the calendar year next following that in which the notice is given and for the unexpired portion of any chargeable accounting period current at that date;

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<sup>(2)</sup> The extension was brought into force in the United Kingdom by Order in Council of December 19, 1962, and in South Africa by Proclamation No. 80 of 1962 of November 16, 1962, which was published in the Official Gazette of South West Africa on November 27, 1962.

(b) in the territory of South West Africa :

- (i) as respects normal tax, super tax and undistributed profits tax, for any year of assessment ending after 30th June in the calendar year next following that in which the notice is given;
- (ii) as respects non-resident shareholders' tax, on dividends declared after 30th June in the calendar year next following that in which the notice is given, where the tax is payable on dividends, and for any year of assessment ending after that date, where the tax is payable on apportioned income; and
- (iii) as respects diamond profits tax, for any year of assessment ending on or after 31st December in the calendar year next following that in which the notice is given.

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No. 2

*The South African Minister for Foreign Affairs to Her Majesty's  
Ambassador at Pretoria*

Your Excellency,

*Pretoria, August 8, 1962.*

I have the honour to acknowledge receipt of your Note of today's date which reads as follows :

[As in No. 1]

I have the honour to confirm that your Note with its Annex and this Note with identical Annex be regarded as an Exchange of Notes (as provided for in Article XXIV (1) of the Convention, between the Government of the Republic 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, which was signed at Cape Town on the 28th May, 1962) placing on record the agreement between our two Governments that the aforesaid Convention be extended to the territory of South West Africa in the manner, subject to the modifications, and with effect from the dates, specified in the Annex<sup>(3)</sup> to this Note.

Please accept, &c.

ERIC H. LOUW.

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<sup>(3)</sup> The text of this Annex is the same as that on page 3.

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HER MAJESTY'S STATIONERY OFFICE

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