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MALAWI



Treaty Series No. 97 (1979)

Supplementary Agreement

amending the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Malawi for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, as amended by the Agreement signed at Zomba on 2 April 1968

Lilongwe, 10 February 1978

[The Supplementary Agreement entered into force on 14 March 1979]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
November 1979*

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**SUPPLEMENTARY AGREEMENT
AMENDING THE AGREEMENT BETWEEN THE GOVERNMENT
OF THE UNITED KINGDOM OF GREAT BRITAIN AND
NORTHERN IRELAND AND THE GOVERNMENT OF THE
REPUBLIC OF MALAWI FOR THE AVOIDANCE OF
DOUBLE TAXATION AND THE PREVENTION OF
FISCAL EVASION WITH RESPECT TO TAXES
ON INCOME, AS AMENDED BY THE AGREEMENT
SIGNED AT ZOMBA ON 2 APRIL 1968**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Malawi;

Desiring to amend the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the former Federation of Rhodesia and Nyasaland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed at London on 25 November 1955,⁽¹⁾ which continued in force, with effect from the dissolution of the Federation of Rhodesia and Nyasaland on 1 January 1964, subject to certain modifications, between the Government of the United Kingdom and the Government of Nyasaland and from 6 July 1964,⁽²⁾ when Nyasaland attained Independence under the name of Malawi, between the Government of the United Kingdom and the Government of Malawi and from 1 July 1966, when Malawi became a Republic, between the Government of the United Kingdom and the Government of the Republic of Malawi, as amended by the Agreement signed at Zomba on 2 April 1968⁽³⁾ (hereinafter referred to as "the Agreement");

Have agreed as follows :

ARTICLE I

The Agreement shall be amended by the deletion of Article VI and the substitution of the following :

" ARTICLE VI

- (1) (a) Dividends paid by a company which is a resident of the United Kingdom to a resident of Malawi may be taxed in Malawi.
- (b) Where a resident of Malawi is entitled to a tax credit in respect of such a dividend under paragraph (2) of this Article tax may also be charged in the United Kingdom and according to the laws of the United Kingdom, on the aggregate of the amount or value of that dividend and the amount of that tax credit at a rate not exceeding 15 per cent.
- (c) Except as aforesaid, dividends paid by a company which is a resident of the United Kingdom to a resident of Malawi who is subject to tax in Malawi on them shall be exempt from any tax in the United Kingdom which is chargeable on dividends.

⁽¹⁾ Schedule to S.I. 1956 No. 619.

⁽²⁾ Schedule to S.I. 1964 No. 1401.

⁽³⁾ Treaty Series No. 94 (1968) Cmnd. 3802.

(2) A resident of Malawi who receives dividends from a company which is a resident of the United Kingdom shall, subject to the provisions of paragraph (3) of this Article and provided he is subject to tax in Malawi on the dividends, be entitled to the tax credit in respect thereof to which an individual resident in the United Kingdom would have been entitled had he received those dividends, and to the payment of any excess of that tax credit over his liability to United Kingdom tax.

(3) The provisions of paragraph (2) of this Article shall not apply where the recipient of the dividend is a company which either alone or together with one or more associated companies controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividend. For the purposes of this paragraph two companies shall be deemed to be associated if one is controlled directly or indirectly by the other, or both are controlled directly or indirectly by a third company.

(4) Dividends paid by a company which is a resident of Malawi to a resident of the United Kingdom may be taxed in the United Kingdom. If the recipient of the dividends is subject to tax in the United Kingdom in respect thereof they shall be exempt from any tax in Malawi which is chargeable on dividends in addition to the tax chargeable in respect of the profits or income of the company.

(5) The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights assimilated to income from shares by the taxation law of the territory of which the company making the distribution is a resident and also includes any other item (other than interest relieved from tax under the provisions of Article VII of this Agreement) which, under the law of the territory of which the company paying the dividend is resident, is treated as a dividend or distribution of a company.

(6) 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 paid then paragraphs (1) and (2) or, as the case may be, paragraph (4) of this Article 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 paragraph the term "relevant date" means the date on which the recipient of the dividend became the owner of 10 per cent or more of the class of shares in question. Provided that this paragraph shall not apply if the recipient 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 Article.

(7) The provisions of paragraphs (1) and (2) or, as the case may be, paragraph (4) of this Article shall not apply if the recipient of the dividends, being a resident of one of the territories, has in the other territory, of which the company paying the dividends is a resident, a permanent establishment and the holding by virtue of which the dividends are paid is effectively connected with the business carried on through such permanent establishment. In such a case, the provisions of Article III shall apply.

(8) 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."

ARTICLE 2

The Agreement shall be amended by the deletion of Article XI and the substitution of the following:

"ARTICLE XI

The remuneration derived by a professor or teacher who is ordinarily resident in one of the territories, for teaching, at a university, college, school or other educational institution in the other territory during a period of temporary residence not exceeding two years from the date of his first arrival in that other territory for the purpose of teaching, shall be exempt from tax in that territory if such remuneration is subject to tax in the first-mentioned territory."

ARTICLE 3

This Supplementary Agreement shall enter into force when the last of all such things shall have been done in the United Kingdom and Malawi as are necessary to give the Supplementary Agreement the force of law in the United Kingdom and Malawi respectively,⁽¹⁾ and shall thereupon have effect:

- (a) in respect of Article 1, in relation to dividends paid on or after 6 April 1973; and
- (b) in respect of Article 2:
 - (i) in relation to United Kingdom income tax, for any year of assessment beginning on or after 6 April 1976;
 - (ii) in relation to Malawi income tax, for any year of assessment beginning on or after 1 April 1976.

In witness whereof the undersigned, duly authorised thereto, have signed this Supplementary Agreement.

Done in duplicate at Lilongwe this 10th day of February 1978.

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

MICHAEL SCOTT

For the Government of the Republic of Malawi:

D. T. MATENJE

⁽¹⁾ The Supplementary Agreement entered into force on 14 March 1978.