



Treaty Series No. 94 (1968)

**Agreement**  
supplementary to and 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**

Zomba, 2 April 1968

[The Agreement entered into force on 13 September 1968]

*Presented to Parliament  
by the Secretary of State for Foreign and Commonwealth Affairs  
by Command of Her Majesty  
November 1968*

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**AGREEMENT**  
**SUPPLEMENTARY TO AND 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**

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,<sup>(1)</sup> (hereinafter referred to as "the 1955 Agreement") which continued with effect from the dissolution of the Federation of Rhodesia and Nyasaland on 1 January, 1964, in force, subject to certain modifications, between the Government of the United Kingdom and the Government of Nyasaland and from 6 July, 1964,<sup>(2)</sup> 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,

Have agreed as follows:

**ARTICLE 1**

The 1955 Agreement shall be amended—

(a) by the addition at the end of Article VI of the following new paragraph—

"(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 paid then 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 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 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

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(1) Schedule to S.I. 1956 No. 619.

(2) Schedule to S.I. 1964 No. 1401.

(b) by the substitution for paragraphs (1) and (2) of Article XIII of the following two new 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) Malawi tax payable under the laws of Malawi and in accordance with this Agreement, whether directly or by deduction, on profits or income from sources within Malawi 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 Malawi 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 Malawi 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 Malawi tax for which credit may be allowed under sub-paragraph (a)) the Malawi 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 Malawi regarding the allowance as a credit against Malawi tax of tax payable in a territory outside Malawi (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 Agreement, whether directly or by deduction, on profits or income from sources within the United Kingdom shall be allowed as a credit against any Malawi 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) If Malawi tax is payable in respect of a dividend paid by a company which is a resident of the United Kingdom to a company resident in Malawi 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 sub-paragraph (a)) 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<sup>(3)</sup> when the last of all such things shall have been done in the United Kingdom<sup>(4)</sup> and Malawi<sup>(5)</sup> as are necessary to give the Agreement the force of law in the United Kingdom and Malawi respectively.

(2) Upon the entry into force of this Agreement in accordance with paragraph (1) the new paragraph (3) of Article VI of the 1955 Agreement shall have effect immediately and the new paragraphs (1) and (2) of Article XIII thereof shall have effect—

(a) in the United Kingdom:

(i) as respects income tax and 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 Malawi: as respects income tax, 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 Zomba this Second day of April 1968

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

T. S. TULL.

JOHN TEMBO.

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<sup>(3)</sup> 13 September, 1968.

<sup>(4)</sup> Schedule to S.I. 1968 No. 1101.

<sup>(5)</sup> Government Notice No. 164, Relief from Double Taxation (United Kingdom) Order, 1968. Malawi Government Gazette Supplement, 13 September, 1968.