

AGREEMENT WITH SWEDEN

(Applicable to the Estates of Persons Dying on or after 17 August 1962)  
No. 113, 1961

PROCLAMATION

\*AGREEMENT BETWEEN THE GOVERNMENT OF THE UNION OF SOUTH AFRICA AND THE ROYAL GOVERNMENT OF SWEDEN FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO DEATH DUTIES

Under and by virtue of the powers vested in me by subsection (2) of section 26 of the Estate Duty Act, 1955 (Act 45 of 1955), I do hereby declare that the Agreement set out in the Schedule to this Proclamation has been entered into between the Government of the Union of South Africa and the Royal Government of Sweden under subsection (1) of the said section.

Given under my Hand and the Seal of the Republic of South Africa at Pretoria on this Seventh day of September, One thousand Nine hundred and Sixty-one.

C. R. SWART, State President.

By Order of the State President-in-Council:

T. E. DÖNGES.

SCHEDULE

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNION OF SOUTH AFRICA AND THE ROYAL GOVERNMENT OF SWEDEN FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO DEATH DUTIES

The Government of the Union of South Africa and the Royal Government of Sweden, desiring to conclude an agreement for the avoidance of double taxation with respect to death duties, have agreed as follows:

ARTICLE I

This Agreement refers to death duties applicable to the estates of persons who at the time of their death were residents of the Union of South Africa or of Sweden.

ARTICLE II

- (1) The duties which are the subject of this Agreement are—
- (a) in the Union of South Africa the estate duty; and
  - (b) in Sweden the succession duty.

(2) This Agreement shall also apply to any other duties of a substantially similar character imposed in the Union of South Africa or in Sweden subsequent to the date of signature of this Agreement.

ARTICLE III

- (1) In this Agreement, unless the context otherwise requires—
- (a) "competent authority" means, in the case of the Union, the Commissioner for Inland Revenue or his authorised representative; in the case of Sweden, the Minister of Finance or his authorised representative;
  - (b) "territory" means the Union or Sweden as the case may be;
  - (c) "Union" means the Union of South Africa.

(2) In the application of the provisions of this Agreement by one of the Contracting Governments, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting Government relating to the duties which are the subject of this Agreement.

\*Note.—The Agreement contained in the above Proclamation was signed on 29 May 1961, i.e. prior to the date of the establishment of the Republic of South Africa. In terms of Article XIV of the Agreement, the date of exchange of instruments of ratification

ARTICLE IV

- (1) Immovable property situated in one of the territories shall be subject to duty only in that territory.
- (2) Immovable property shall include accessories thereto as well as usufructs over and other like interests in immovable property.
- (3) Rights to royalties for the use of immovable property, or for the operation of a mine or other place of natural resources, shall be subject to duty only in the territory in which such immovable property, mine or place is situated.

ARTICLE V

- (1) Assets employed in a business or liberal profession or in any agricultural or forestry enterprise and attributable to a permanent establishment in one of the territories shall be subject to duty only in that territory.
- (2) A permanent establishment shall be regarded as a place at which there are special installations or at which special arrangements have been made for the permanent use of such place for business, professional, agricultural or forestry purposes, such as a place where the undertaking has its management, an office, a branch, a factory, a workshop, a farm, a forest or a mine or other place of natural resources.

ARTICLE VI

Shares in a joint stock company incorporated under the laws of one of the territories shall be subject to duty only in the territory in which the company is incorporated.

ARTICLE VII

- (1) Assets not dealt with in Articles IV, V and VI shall be subject to duty only in the territory in which the deceased person was domiciled at the time of his death.
- (2) For the purposes of this Agreement a deceased person shall be deemed to have been domiciled in Sweden if at the time of his death he was resident in Sweden in terms of the laws of that Territory and to have been domiciled in the Union if at the time of his death he was ordinarily resident in the Union in terms of the laws of that territory.
- (3) If any doubt arises as to the territory in which a deceased person shall be deemed to have been domiciled as afore-said, or if such person is deemed to have been domiciled in both territories, the question of domicile shall be settled by arrangement between the competent authorities. In this respect they shall take into consideration in which territory the deceased's personal and economic interests may be considered to have been centred, or, if this cannot be decided, his nationality.
- (4) If the deceased person was neither ordinarily resident in the Union nor resident in Sweden at the time of his death, he shall be deemed to have been domiciled in the territory of which he was a national. If the deceased person was a national of both territories, the question as to where he shall be deemed to have been domiciled shall be settled by arrangement between the competent authorities.

ARTICLE VIII

- (1) Where debts encumber a deceased person's assets to which Article IV, V or VI refers, or are secured by such assets, the territory having the right to levy duty on the said assets shall deduct such debts from those assets or from other assets on which the said territory has the right to levy duty. Debts other than those afore-said shall be deducted from assets subject to duty in the territory in which the deceased person was domiciled at the time of his death.
- (2) Where debts which under the provisions of the preceding paragraph are to be deducted by one of the territories exceed the value of all the assets on which the said territory has the right to levy duty, the excess shall be deducted from assets subject to duty in the other territory.
- (3) In the case of entailed property, however, only debts which encumber or are secured by such property shall be deducted.

ARTICLE IX

If the estate of a deceased person is subject to duty partly in one of the territories and partly in the other territory, each territory may take the value of

ARTICLE X

This Agreement shall not affect any right to exemption from duty which has been, or may hereafter be, conferred on diplomatic or consular officers by virtue of the general rules of international law. Where, owing to such exemption, assets are not subject to duty in the territory to which such officers are accredited, the territory accrediting them shall have the right to levy duty on those assets.

ARTICLE XI

(1) If it can be shown that action taken by the revenue authorities of the two territories results in taxation contrary to the principles of this Agreement, any person aggrieved by such taxation shall be entitled to lodge a claim with the competent authority of the territory in which the deceased person is deemed under this Agreement to have been domiciled at the time of his death. A claim as afore-said shall be lodged within two years after the final result of the action referred to above became known to the aggrieved person. If the claim is upheld, the competent authority of the lastmentioned territory shall take the necessary action to eliminate the taxation in question.

(2) Any refund based on the provisions of this Agreement shall be made without payment of interest on the amount refunded.

ARTICLE XII

The competent authorities shall upon request exchange such information (being information available under the respective taxation laws of the territories) as is necessary for carrying out the provisions of this Agreement or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to the duties which are the subject of this Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those (including courts) concerned with the assessment and collection of the duties which are the subject of this agreement. No information shall be exchanged which would disclose any trade secret or trade process.

ARTICLE XIII

(1) The competent authorities may, by common agreement, prescribe rules concerning matters of procedure, forms of application and replies thereto and any other matter which may be necessary to the application of this Agreement.

(2) The competent authorities of the two territories may communicate with each other directly for the purpose of giving effect to the provisions of this Agreement.

ARTICLE XIV

(1) This Agreement shall be ratified by the Contracting Governments. Ratification by His Majesty the King of Sweden shall be subject to the consent of the Riksdag.

(2) The instruments of ratification shall be exchanged as soon as possible.

(3) This Agreement shall come into force on the date of exchange of instruments of ratification and shall be effective only in respect of the estates of persons dying on or after that date.

ARTICLE XV

This Agreement shall continue in effect indefinitely but either of the Contracting Governments may, on or before the 30th day of June in any year, not earlier than the calendar year 1965, give to the other Contracting Government written notice of termination. Where due notice is given, the Agreement shall cease to be effective at the end of the calendar year in which the notice is given, but shall continue to apply in respect of the estate of any person dying before the end of that year.

In witness whereof the undersigned, duly authorised thereto, have signed this Agreement and have affixed thereto their seals.

Done at Stockholm, in duplicate, in the English, Afrikaans and Swedish languages, the texts being equally authentic, this 29th day of May, One thousand Nine hundred and Sixty-one.

(Signed) A. M. HAMILTON.

No. 1475

14 September 1962

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THE ROYAL GOVERNMENT OF SWEDEN FOR THE AVOIDANCE OF  
DOUBLE TAXATION WITH RESPECT TO DEATH DUTIES

It is hereby notified for general information that the last of the formalities required to give the Agreement referred to in Proclamation 113 of 1961 as published in *Government Gazette* 102 of 27 October 1961, the force of law in South Africa and Sweden respectively, was completed on 17 August 1962, on which date the instruments of ratification relating to the Agreement were exchanged by the representatives of the two Governments.

The Agreement accordingly came into force on that date in terms of Article XIV thereof and became effective in respect of the estates of persons dying on or after that date.