

AGREEMENT ENTERED INTO WITH THE HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE AND SWAZILAND

(Applicable to the estates of persons dying on or after 1 August 1944)
No. 204, 1944

PROCLAMATION

By His Excellency the Right Honourable Nicolaas Jacobus de Wet, a Member of His Majesty's Most Honourable Privy Council, Officer Administering the Government of the Union of South Africa

Whereas it is provided by section 36bis⁽¹⁾ of the Death Duties Act, 1922 (Act 29 of 1922)—

(1) that the Governor-General may enter into an agreement with the Government of any other country or territory whereby arrangements are made with such Government with a view to the prevention, mitigation or discontinuance of the levying, under the laws of the Union and of such other country or territory, of death duties in respect of the same property;

(2) that as soon as may be after the conclusion of any such agreement the arrangements thereby made shall be notified by proclamation by the Governor-General in the *Gazette*, whereupon, until such proclamation, is revoked by the Governor-General, the arrangements notified therein shall, so far as they relate to immunity, exemption or relief in respect of Union death duties, have effect as if enacted in this Act, but only if and for so long as such arrangements, so far as they relate to immunity, exemption or relief in respect of death duties levied or leviable in such other country or territory have the effect of law in such country or territory.

And whereas His Majesty's Government in the Union of South Africa has, under and by virtue of the provisions of subsection (1) of section 36bis afore-said, entered into an agreement, as in that subsection provided, with the High Commissioner for Basutoland, the Bechuanaland Protectorate and Swaziland.

Now, therefore, under the provisions of subsection (2) of section 36bis afore-said, I do hereby proclaim and make known that the arrangements specified in the said Agreement, as set out in the Schedule to this Proclamation, have been made.

God Save the King

Given under my Hand and the Great Seal of the Union of South Africa at Pretoria this Sixth day of October, One thousand Nine hundred and Forty-four.
N. J. DE WET, Officer Administering the Government

By Command of His Excellency the Officer Administering the Government-in-Council.

JAN H. HOFMEYR.

SCHEDULE

AGREEMENT BETWEEN THE OFFICER ADMINISTERING THE GOVERNMENT OF THE UNION OF SOUTH AFRICA AND THE HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE AND SWAZILAND FOR THE PREVENTION OF THE LEVYING OF DEATH DUTIES UNDER THE LAWS OF THE UNION OF SOUTH AFRICA AND OF THE TERRITORIES OF BASUTOLAND, THE BECHUANALAND PROTECTORATE AND SWAZILAND IN RESPECT OF THE SAME ASSETS

The Officer Administering the Government of the Union of South Africa (the Union of South Africa hereinafter referred to as "the Union") and the High Commissioner for Basutoland, the Bechuanaland Protectorate and Swaziland (Basutoland, the Bechuanaland Protectorate and Swaziland being hereinafter referred to as "the Territories"), being desirous of concluding an agreement for the prevention of levying of death duties under the laws of the Union and of the Territories in respect of the same assets, have agreed as follows:

ARTICLE 1

The High Commissioner for the Territories undertakes that, so long as the exemption specified in Article 2 hereof remains effective, there shall be exempted from death duties chargeable in the Territories any movable property of any person who, at the date of his death, was ordinarily resident in the Union, if that property was, at that date physically situated in any of the Territories.

⁽¹⁾ See page 28 of the Death Duties Handbook. Also see subsection (2) of section 31, Act 45 of 1955, on page 47 of this Handbook.

ARTICLE 2

The Officer Administering the Government of the Union undertakes that, so long as the exemption specified in Article 1 hereof remains effective, there shall be exempted from death duties chargeable in the Union any movable property of any person who, at the date of his death, was ordinarily resident in any of the Territories, if that property was, at that date, physically situated in the Union.

ARTICLE 3

(1) In the case of any debt which, at the date of death of any deceased person, is secured upon immovable property by bonds registered both in the Union and in any of the Territories—

(a) the High Commissioner for the Territories undertakes that, so long as the exemption specified in paragraph (b) hereof remains effective, there shall be exempted from death duties chargeable in the Territories such amount as bears the same proportion to the total debt so secured as the value of the property or properties situated in the Union and mortgaged in security of such debt bears to the aggregate value of the properties situated in both the Union and any of the Territories and mortgaged in security of such debt;

(b) the Officer Administering the Government of the Union undertakes that, so long as the exemption specified in paragraph (a) hereof remains effective, there shall be exempted from death duties chargeable in the Union such amount as bears the same proportion to the total debt so secured as the value of the property or properties situated in any of the Territories and mortgaged in security of such debt bears to the aggregate value of the properties situated in both the Union and any of the Territories and mortgaged in security of such debt.

(2) The value of the properties for the purpose of determining the proportion of any debt to be exempted from duties in terms of this article shall be the value of such properties at the date of death of the deceased person concerned, calculated in a common standard of currency.

ARTICLE 4

In the case of any debt which, at the date of death of any deceased person, is secured upon immovable property by a bond registered either in the Union or in any of the Territories and is recoverable both in the courts of the Union and the courts of any of the Territories—

(1) the High Commissioner for the Territories undertakes that, so long as the exemption specified in paragraph (2) hereof remains effective, there shall be exempted from death duties chargeable in the Territories any such debt, if the bond by which it is secured is registered in the Union;

(2) the Officer Administering the Government of the Union undertakes that, so long as the exemption specified in paragraph (1) hereof remains effective, there shall be exempted from death duties chargeable in the Union any such debt, if the bond by which it is secured is registered in the Territories.

ARTICLE 5

In the case of any debt recoverable or right of action enforceable, at the date of death of any deceased person, both in the courts of the Union and the courts of any of the Territories (other than a debt secured upon a bond registered either in the Union or any of the Territories, or both in the Union and any of the Territories)—

(1) the High Commissioner for the Territories undertakes that, so long as the exemption specified in paragraph (2) hereof remains effective, there shall be exempted from death duties chargeable in the Territories any such debt or right of action, if the person entitled to recover such debt or enforce such right of action was, at the date of his death, ordinarily resident in the Union;

(2) the Officer Administering the Government of the Union undertakes that, so long as the exemption specified in paragraph (1) hereof remains effective, there shall be exempted from death duties chargeable in the Union any such debt or right of action, if the person entitled to recover such debt or enforce such right of action was, at the date of his death, ordinarily resident in any of the Territories.

ARTICLE 6

The High Commissioner for the Territories undertakes that, so long as the exemption specified in Article 7 hereof remains effective, there shall be exempted from death duties chargeable in the Territories any stocks or shares in any Company carrying on business or having an office or place of business in any of the Territories, if any transfer whereby ownership of such stocks or shares is recorded is required to be registered in any of the Territories, provided such stocks or shares were the property, at the date of his death, of any person who, at that date, was ordinarily resident in the Union.

ARTICLE 7

The Officer Administering the Government of the Union undertakes that, so long as the exemption specified in Article 6 hereof remains effective, there shall be exempted from death duties chargeable in the Union any stocks or shares in any Company carrying on business or having an office or place of business in the Union, if any transfer whereby ownership of such stocks or shares is recorded is required to be registered in the Union, provided such stocks and shares were the property, at the date of his death, of any person who, at that date, was ordinarily resident in any of the Territories.

ARTICLE 8

In the case of any policy of insurance effected upon the life of any person which may be sued upon either in the courts of the Union or the courts of any of the Territories, at the option of the person entitled to sue upon it—

(1) the High Commissioner for the Territories undertakes that, so long as the exemption specified in paragraph (2) hereof remains effective, there shall be exempted from death duties any amount due and receivable under any such policy which was effected upon the life of any person who, at the date of his death, was ordinarily resident in the Union;

(2) the Officer Administering the Government of the Union undertakes that, so long as the exemption specified in paragraph (1) hereof remains effective, there shall be exempted from death duties any amount due and receivable under any such policy which was effected upon the life of any person who, at the date of his death, was ordinarily resident in any of the Territories.

ARTICLE 9

For the purposes of this Agreement the expression "death duties" includes both estate duty and succession duty.

ARTICLE 10

This Agreement shall apply in respect of the estate of every person who dies on or after the First day of August 1944.

ARTICLE 11

This Agreement may be denounced at any time upon six months' notice being given by the one contracting party to the other.

Done at Pretoria in duplicate, in the English and Afrikaans languages, on the First day of August. Nineteen hundred and Forty-four.

WALTER C. HUGGARD, High Commissioner for Basutoland, the Bechuanaland Protectorate and Swaziland.

JAN H. HOFMEYR, On behalf of the Officer Administering the Government of the Union of South Africa.