

CONVENTION WITH THE UNITED STATES OF AMERICA

[*The Convention applies to the estates of persons dying on or after the date of exchange of instruments of ratification as provided by Article XIII, viz. 15 July 1952*⁽¹⁾]

PROCLAMATION

By His Excellency the Right Honourable Gideon Brand van Zyl, a Member of His Majesty's Most Honourable Privy Council, Governor-General of the Union of South Africa

No. 103, 1947

CONVENTION BETWEEN THE GOVERNMENT OF THE UNION OF SOUTH AFRICA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA FOR THE AVOIDANCE OF DOUBLE TAXATION AND FOR ESTABLISHING RULES OF RECIPROCAL ADMINISTRATIVE ASSISTANCE WITH RESPECT TO TAXES ON THE ESTATES OF DECEASED PERSONS

Whereas it is provided by section 36*bis* of the Death Duties Act, 1922 (Act 29 of 1922), as amended by section 12 of Act 33 of 1939, and section 16 of Act 46 of 1945, that—

(1) 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, or to the rendering of reciprocal assistance in the administration of, and in the collection of taxes under, the death duty laws of the Union and of such other country or territory;

(2) 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 that 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 the Government of the Union of South Africa has, under and by virtue of the provisions of subsection (1) of section 36*bis* afore-said entered into an agreement as in that subsection provided with the Government of the United States of America.

Now therefore, under the provisions of subsection (2) of section 36*bis* afore-said, I hereby declare that the arrangements made are as set out in a copy of the said Agreement which appears as a schedule to this Proclamation.

God Save the King

Given under my Hand and the Great Seal of the Union of South Africa at Cape Town this Fourteenth day of April, One thousand Nine-hundred and Forty-seven.

G. BRAND VAN ZYL, Governor-General.

By Command of His Excellency the Governor-General-in-Council:

JAN H. HOFMEYR.

SCHEDULE

CONVENTION BETWEEN THE GOVERNMENT OF THE UNION OF SOUTH AFRICA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA WITH RESPECT TO TAXES ON THE ESTATES OF DECEASED PERSONS

The Government of the Union of South Africa and the Government of the United States of America, desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on the estates of deceased persons, have appointed as their respective Plenipotentiaries:

The Government of the Union of South Africa.—Field Marshal the Right Honourable Jan Christiaan Smuts, Prime Minister and Minister of External Affairs of the Union of South Africa; and

⁽¹⁾ For text of Government Notice of Ratification of Convention and of Supplementary Protocol (Notice 252, 1952) see page 335.

The Government of the United States of America.—General Thomas Holcomb, Envoy Extraordinary and Minister Plenipotentiary of the United States of America;

who, having exhibited their respective full powers, found in good and due form have agreed as follows:

ARTICLE I

(1) The taxes which are the subject of the present Convention are—

- (a) in the United States of America, the federal estate tax; and
- (b) in the Union of South Africa, the estate duty imposed by the Union.

(2) The present convention shall also apply to any other taxes of a substantially similar character imposed by either Contracting Party subsequent to the date of signature of the present Convention.

ARTICLE II

(1) In the present Convention, unless the context otherwise requires—

(a) the term “United States” means the United States of America, and when used in a geographical sense means the States, the Territories of Alaska and of Hawaii, and the District of Columbia;

(b) the term “Union” means the Union of South Africa;

(c) the term “territory”, when used in relation to one or the other Contracting Party, means the United States or the Union, as the context requires;

(d) the term “tax” means the United States Federal estate tax or the estate duty imposed by the Union, as the context requires;

(e) the term “Commissioner for Inland Revenue” means the Commissioner for Inland Revenue of the Union or his duly authorised representative;

(f) the term “Commissioner of Internal Revenue” means the Commissioner of Internal Revenue of the United States or his duly authorised representative;

(g) the term “competent authority” means the Commissioner for Inland Revenue or the Commissioner of Internal Revenue and the duly authorised representatives;

(h) the term “corporation”, when used in relation to the Union shall be regarded as the equivalent of the term “company” as used in the revenue laws of that State.

(2) In the application of the provisions of the present Convention by one of the Contracting Parties, any term not otherwise defined shall, unless the context otherwise requires have the meaning which it has under the laws of that Contracting Party relating to the taxes which are the subject of the present Convention.

ARTICLE III

(1) For the purposes of the present Convention, the question whether a decedent was at the time of his death domiciled in any part of the United States or ordinarily resident in any part of the Union shall be determined in accordance with the laws in force in the United States and the Union respectively.

(2) Where a person was at the time of his death domiciled in any part of the United States or ordinarily resident in any part of the Union, then as regards the United States the situs of any of the following rights and interests, legal or equitable, which for the purposes of tax form part of the estate of such person or pass on his death, shall, for the purposes of the imposition of tax, be determined exclusively in accordance with the following rules, and as regards the Union, tax may be imposed on any of the following rights or interests which are deemed under those rules to be situated in its territory, but shall not be imposed on any of the said rights or interests which are deemed to be situated outside its territory unless such person was at the time of his death ordinarily resident in some part of its territory:

(a) Rights or interests (otherwise than by way of security) in or over immovable property shall be deemed to be situated at the place where such property is located.

(b) Rights or interests (otherwise than by way of security) in or over tangible movable property, other than such property for which specific provision is herein-after made, and in or over bank or currency notes, other forms of currency recognised as legal tender in the place of issue, negotiable bills of exchange and negotiable promissory notes, shall be deemed to be situated at the place where such property, notes, currency or documents are located at the time of death, or, if *in transitu*, at the place of destination.

(c) Debts, secured or unsecured, including securities issued by any government, municipality or public authority and debentures and debenture stock issued by any corporation but excluding the forms of indebtedness for which specific provisions is made herein shall be deemed to be situated in the United States if the decedent was at the time of his death domiciled in some part of the United States, and in the Union if the decedent was at the time of his death ordinarily resident in some part of the Union.

(d) Shares or stock in a corporation (including shares or stock held by a nominee where the beneficial ownership is evidenced by scrip certificates or otherwise) shall be deemed to be situated at the place in or under the laws of which such corporation was created or organised.

(e) Moneys payable under a policy of assurance or insurance on the life of the decedent shall be deemed to be situated in the United States if the decedent was at the time of his death domiciled in some part of the United States, and in the Union if the decedent was at the time of his death ordinarily resident in some part of the Union.

(f) Ships and aircraft and shares thereof shall be deemed to be situated at the place of registration or documentation of the ship or aircraft.

(g) Goodwill as a trade, business or professional asset shall be deemed to be situated at the place where the trade, business or profession to which it pertains is carried on.

(h) Patents, trade marks and designs shall be deemed to be situated at the place where they are registered.

(i) Copyright, franchises, and rights or licences to use any copyrighted material, patent, trade mark or design shall be deemed to be situated at the place where the rights arising therefrom are exercisable.

(j) Rights or causes of action *ex delicto* surviving for the benefit of an estate of a decedent shall be deemed to be situated at the place where such rights or causes of action arose.

(k) Judgment debts shall be deemed to be situated at the place where the judgment is recorded:

Provided that if, apart from this paragraph, tax would be imposed by one Contracting Party on any property, this paragraph shall not apply to such property unless by reason of its application or otherwise, tax is imposed or would but for some specific exemption be imposed thereon by the other Contracting Party.

ARTICLE IV

(1) In determining the amount on which tax is to be computed permitted deductions shall be allowed in accordance with the law in force in the territory in which the tax is imposed.

(2) Where tax is imposed in the United States on the death of a person who is not domiciled in any part of the United States but was ordinarily resident in some part of the Union, or where tax is imposed in the Union on the death of a person who was not ordinarily resident in any part of the Union but was domiciled in some part of the United States, no account shall be taken, in determining the amount or rate of the tax so imposed, of property which is deemed under paragraph (2) of Article III to be situated outside the territory of the Contracting Party imposing such tax: Provided that this paragraph shall not apply as respects tax imposed in the United States in the case of a United States citizen who at the time of his death was ordinarily resident in the Union.

ARTICLE V

(1) Where the United States imposes tax by reason of a decedent's being its national, the United States shall allow against so much of its tax (as otherwise computed) as is attributable to property situated in the Union, a credit (not exceeding the amount of the tax so attributable) equal to so much of the tax imposed in the Union as is attributable to the property; but this paragraph shall not apply in a case to which paragraph 2 (a) or paragraph 3 is applicable.

(2) Where each Contracting Party imposes tax on any property on the death of a person who at the time of his death was—

(a) domiciled in some part of the United States but not ordinarily resident in any part of the Union; or

(b) ordinarily resident in some part of the Union but not domiciled in any part of the United States, the Contracting Party in some part of whose territory such person was so domiciled or ordinarily resident shall allow against so much of its tax (as otherwise computed) as is attributable to that property a credit (not exceeding the amount of the tax so attributable) equal to so much of the tax imposed in the territory of the other Contracting Party as is attributable to such property: Provided that this paragraph shall not apply as respects tax imposed by the United States solely by reason of a decedent's being its national which is attributable to property situated outside the United States.

(3) Where each Contracting Party imposes tax on property on the death of a person who at the time of his death was domiciled in some part of the United States and ordinarily resident in some part of the Union—

(a) in the case of any property which is deemed under paragraph (2) of Article III to be situated in the territory of one only of the Contracting Parties, the other Contracting Party shall allow against so much of its tax (as otherwise computed) as is attributable to that property a credit (not exceeding the amount of the tax so attributable) equal to so much of the tax imposed in the territory of the first mentioned Contracting Party as is attributable to such property;

(b) in the case of any other property each Contracting Party shall allow against so much of its tax (as otherwise computed) as is attributable to the property a credit which bears the same proportion to the amount of its tax so attributable or to the amount of the other Party's tax attributable to the same property, whichever is the less, as the former amount bears to the sum of both amounts.

(4) For the purposes of this Article, the amount of the tax of a Contracting Party attributable to any property shall be ascertained after taking into account any credit, allowance or relief, or any remission or reduction of tax, otherwise than in respect of tax payable in the territory of the other Contracting Party.

(5) The allowance by the Union under this Article of a credit for tax imposed in the United States in respect of any property shall be subject to the condition that no deduction in respect of the tax so imposed shall be made for the purpose of determining the amount of the estate on which tax is chargeable in the Union.

ARTICLE VI

(1) Any claim for a credit or for a refund of tax founded on the provisions of the present Convention shall be made within six years from the date of the death of the decedent in respect of whose estate the claim is made, or, in the case of a reversionary interest where payment of tax is deferred until on or after the date on which the interest falls into possession, within six years from that date.

(2) Any such refund shall be made without payment of interest on the amount so refunded.

ARTICLE VII

With a view to the more effective imposition of the taxes to which the present Convention relates, each of the Contracting Parties undertakes to furnish to the other Contracting Party such information in the matter of taxation, which the competent authority of the former Contracting Party has at his disposal or is in a position to obtain under the laws of that Party, as may be of use to the competent authority of such other Party in the assessment of the taxes to which the present Convention relates and to lend assistance in the service of documents in connection therewith. Such information and correspondence relating to the subject matter of this Article shall be exchanged between the competent authorities of the Contracting Parties in the ordinary course or on request.

ARTICLE VIII

(1) Each Contracting Party undertakes to lend assistance and support in the collection of the taxes to which the present convention relates, together with interest, costs, and additions to the taxes and fines not being of a penal character. The Contracting Party making such collections shall be responsible to the other Contracting Party for the sums thus collected.

(2) In the case of applications for enforcement of taxes, revenue claims of each of the Contracting Parties which have been finally determined shall be accepted for enforcement by the other Contracting Party and collected in the territory of that Party in accordance with the laws applicable to the enforcement and collection of its own taxes.

(3) The application shall be accompanied by such documents as are required by the laws of the Contracting Party making the application to establish that the taxes have been finally determined.

(4) The assistance provided for in this Article shall not be accorded in respect of any citizen or national, or the estate of any citizen or national, of the Contracting Party to which application is made except where such citizen or national or estate is entitled to the allowance of a credit under Article V of the present Convention⁽¹⁾

ARTICLE IX

(1) In the administration of the provisions of the present Convention relating to exchange of information, service of documents, and mutual assistance in collection of taxes, fees and costs incurred in the ordinary course shall be borne by the Contracting Party to which application is made but extraordinary costs incident to special forms of procedure shall be borne by the applying Party.

(2) Documents and other communications or information contained therein, transmitted under the provisions of the present convention by one of the competent authorities to the other shall not be used by the latter except in the performance of his duty in the determination, assessment and collection of the taxes.

ARTICLE X

(1) Such regulations as may be necessary to interpret and carry out the provisions of the present Convention may be prescribed by each of the Contracting Parties. With respect to the provisions of the present Convention relating to exchange of information, service of documents and mutual assistance in the collection of taxes, the competent authorities may, by common agreement, prescribe rules concerning matters of procedure, forms of application and replies thereto, conversion of currency, disposition of amounts collected, minimum amounts subject to collection and related matters.

(2) The competent authorities of the two Contracting Parties may communicate with each other directly for the purpose of giving effect to the provisions of the present Convention.

ARTICLE XI

If any person liable for any of the taxes to which the present Convention relates can show that double taxation has resulted or may result in respect of such taxes he shall be entitled to lodge a claim or protest with the Contracting Party of which he is a citizen or resident, or, if a corporation or other entity, with the Contracting Party in which created or organised. If the claim or protest should be deemed worthy of consideration, the competent authority of such Party may consult with the competent authority of the other Party to determine whether the alleged double taxation exists or may occur and if so whether it may be avoided in accordance with the terms of the present Convention.

ARTICLE XII

The provisions of the present Convention shall not be construed to restrict in any manner any exemption, deduction, credit or other allowance now or hereafter accorded by the laws of one of the Contracting Parties in the determination of the tax imposed by such Contracting Party.

⁽¹⁾ Paragraph (4) of Article VIII was inserted by supplementary protocol published under Proclamation 241, dated 29 September 1950.

ARTICLE XIII

(1) The present Convention shall be ratified and the instruments of ratification shall be exchanged at Washington as soon as possible.

(2) The present Convention shall come into force on the date of exchange of instruments of ratification and shall be effective only as to—

(a) the estates of persons dying on or after such date; and

(b) the estate of any person dying before such date and after the 30th day of June 1944, whose personal representative elects, in such manner as may be prescribed, that the provisions of the present Convention shall be applied to such estate.

ARTICLE XIV

(1) The present Convention shall remain in force for not less than three years after the date of its coming into force.

(2) If not less than six months before the expiration of such period of three years, neither of the Contracting Parties shall have given to the other Contracting Party, through diplomatic channels, written notice of its intention to terminate the present Convention, the Convention shall remain in force after such period of three years until either of the Contracting Parties shall have given written notice of such intention, in which event the present Convention shall not be effective as to the estates of persons dying on or after the date (not being earlier than the 60th day after the date of such notice) specified in such notice, or, if no date is specified, on or after the 60th day after the date of such notice.

In witness whereof the above-mentioned Plenipotentiaries have signed the present Convention and have affixed thereto their seals.

Done at Cape Town, in duplicate, in the English and Afrikaans languages, the Tenth day of April, Nineteen hundred and Forty-seven.

J. C. SMUTS, For the Government of the Union of South Africa.

T. HOLCOMB, For the Government of the United States of America.

GOVERNMENT NOTICE OF RATIFICATION OF CONVENTION
AND OF SUPPLEMENTARY PROTOCOL

No. 252, 1952 *Government Gazette* 4951, dated 31 October 1952
AGREEMENT BETWEEN THE GOVERNMENT OF THE UNION OF
SOUTH AFRICA AND THE GOVERNMENT OF THE UNITED STATES
OF AMERICA FOR THE AVOIDANCE OF DOUBLE TAXATION AND
FOR ESTABLISHING RULES OF RECIPROCAL ADMINISTRATIVE
ASSISTANCE WITH RESPECT TO TAXES ON THE ESTATES OF
DECEASED PERSONS

Under and by virtue of the powers vested in me by subsection (2) of section 36*bis* of the Death Duties Act, 1922 (Act 29 of 1922), as amended by section 12 of Act 33 of 1939 and section 16 of Act 46 of 1945, I do hereby declare that the Convention and Supplementary Protocol concluded between the Government of the Union of South Africa and the Government of the United States of America on 10 April 1947 and 14 July 1950, respectively, and published in the *Government Gazette* under Proclamations 103 of 1947 and 241 of 1950, respectively, were ratified at Washington by the representatives of the two Governments on 15 July 1952, and that simultaneously with such ratification, the Protocol set out in the Schedule to this Proclamation, containing a certain understanding with respect to the afore-said Convention and Supplementary Protocol, was concluded between the two Governments under subsection (1) of the afore-said section 36*bis* of the Death Duties Act, as amended.

God Save the Queen

Given under my Hand and Great Seal at Pretoria on this Sixth day of October, One thousand Nine hundred and Fifty-two.

E. G. JANSEN, Governor-General.

By Command of His Excellency the Governor-General-in-Council:

E. H. LOUW.

SCHEDULE

The undersigned, G. P. Jooste, Ambassador Extraordinary and Plenipotentiary of the Union of South Africa to the United States of America, and Dean Acheson, Secretary of State of the United States of America, being duly authorised thereto by their respective Governments, have met for the purpose of exchanging the instruments of ratification by their respective Governments of the Convention between the Union of South Africa and the United States of America for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on the estates of deceased persons, signed at Cape Town on 10 April 1947, and the Protocol signed at Pretoria on 14 July 1950, supplementing the said Convention, and, the respective instruments of ratification of the Convention and Protocol afore-said having been compared and found to be in due form, the exchange took place this day.

As recited in the ratification on the part of the United States of America, the Senate of the United States of America, in its resolution of 17 September 1951, advising and consenting to the ratification of the Convention and Protocol afore-said, expressed a certain understanding with respect thereto, as follows:

"It is understood that the application of Article VIII of the Convention, as amended by Article I of the Protocol, shall be confined and limited as granting authority to each Contracting Party to collect taxes imposed by the other Party only in the case of the estate of a decedent claiming a credit under Article V of the Convention."

The text of the said understanding was communicated by the Government of the United States of America to the Government of the Union of South Africa. The Government of the Union of South Africa has accepted the said understanding. Accordingly, it is understood by the two Governments that, upon entry into force of the Convention and Protocol afore-said in accordance with their provisions, Article VIII of the Convention, as amended by Article I of the Protocol, shall be applied in accordance with the said understanding.

In witness whereof, the respective Plenipotentiaries have signed the present Protocol of Exchange.

Done in duplicate, in the Afrikaans and English languages, at Washington, this Fifteenth day of July, 1952.

(Signed) G. P. JOOSTE, For the Government of the Union of South Africa.

(Signed) DEAN ACHESON, For the Government of the United States of America.