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STATUTORY INSTRUMENTS

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**1979 No. 576**

**TAXES**

**The Double Taxation Relief (Taxes On Estates of Deceased Persons and On Gifts) (Republic of South Africa) Order 1979**

*Laid before the House of Commons in draft*

*Made - - - - 23rd May 1979*

At the Court at Buckingham Palace, the 23rd day of May, 1979

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of the House of Commons.

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by paragraph 7 of Schedule 7 to the Finance Act 1975, and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as the Double Taxation Relief (Taxes on Estates of Deceased Persons and on Gifts) (Republic of South Africa) Order 1979.
2. It is hereby declared—
  - (a) that the arrangements specified in the Convention set out in the Schedule to this Order have been made with the Government of the Republic of South Africa with a view to affording relief from double taxation in relation to capital transfer tax and taxes of a similar character imposed by the laws of the Republic of South Africa; and
  - (b) it is expedient that these arrangements should have effect.

*N. E. Leigh*  
Clerk of the Privy Council

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## SCHEDULE

“CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON ESTATES OF DECEASED PERSONS AND ON GIFTS

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

Desiring to conclude a new Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on estates of deceased persons and on gifts;

Have agreed as follows:—

### Scope

**ARTICLE 1.** This Convention shall apply to any person who is within the scope of a tax which is the subject of this Convention.

### Taxes covered

**ARTICLE 2.**—(1) The taxes which are the subject of this Convention are:

- (a) in the United Kingdom, the capital transfer tax;
- (b) in South Africa, the estate duty and the donations tax.

(2) This Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Convention in addition to, or in place of, the existing taxes.

### General definitions

**ARTICLE 3.**—(1) In this Convention, unless the context otherwise requires:

- (a) the term “United Kingdom” means Great Britain and Northern Ireland;
- (b) the term “South Africa” means the Republic of South Africa;
- (c) the term “nationals” means :
  - (i) in relation to the United Kingdom, any citizen of the United Kingdom and Colonies, or any British subject not possessing that citizenship or the citizenship of any other Commonwealth country or territory, provided in either case he had the right of abode in the United Kingdom at the time of the death or transfer or other material time;
  - (ii) in relation to South Africa, any citizen of South Africa;
- (d) the term “tax” means :
  - (i) the capital transfer tax imposed in the United Kingdom, or
  - (ii) the estate duty or the donations tax imposed in South Africa, or
  - (iii) any other tax imposed by a Contracting State to which this Convention applies by virtue of the provisions of paragraph (2) of Article 2,

as the context requires;

- (e) the terms “a Contracting State” and “the other Contracting State” mean the United Kingdom or South Africa, as the context requires;

- (f) the term “competent authority” means , in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representative, and in the case of South Africa, the Secretary for Inland Revenue or his authorised representative;
- (g) the term “transfer” includes, in the case of South Africa, a donation and the term “transferor” shall be construed accordingly.

(2) As regards the application of this Convention by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the law of that Contracting State relating to the taxes which are the subject of this Convention.

### **Fiscal domicile**

**ARTICLE 4.**—(1) For the purposes of this Convention an individual was domiciled:

- (a) in the United Kingdom if he was domiciled in the United Kingdom in accordance with the law of the United Kingdom or is treated as so domiciled for the purposes of a tax which is the subject of this Convention;
- (b) in South Africa if he was ordinarily resident in South Africa.

(2) Subject to the provisions of paragraph (4) of this Article, where by reason of the provisions of paragraph (1) of this Article an individual was at any time domiciled in both Contracting States, and

- (a) was a national of the United Kingdom but not of South Africa, and
- (b) had not been resident or ordinarily resident in South Africa in seven or more of the ten income tax years of assessment immediately preceding that time,

then he shall be deemed to be domiciled at that time in the United Kingdom.

(3) Subject to the provisions of paragraph (4) of this Article, where by reason of the provisions of paragraph (1) of this Article an individual was at any time domiciled in both Contracting States, and

- (a) was a national of South Africa but not of the United Kingdom, and
- (b) had not been resident or ordinarily resident in the United Kingdom in seven or more of the ten income tax years of assessment ending with the year of assessment in which that time falls,

then he shall be deemed to be domiciled at that time in South Africa. For the purposes of this paragraph the question whether an individual was resident or ordinarily resident in the United Kingdom shall be determined as for the purposes of income tax, but without regard to any dwelling-house available in the United Kingdom for his use.

(4) An individual shall not, by virtue of paragraph (2) or (3) of this Article, be deemed to be domiciled at any time in a Contracting State if, under the law of that Contracting State other than its law relating to a tax which is the subject of this Convention, he had ceased to be domiciled in that Contracting State more than three years before that time.

(5) Where by reason of the provisions of paragraph (1) of this Article an individual was domiciled in both Contracting States, then, subject to the provisions of paragraphs (2), (3) and (4) of this Article, his status shall be determined as follows:

- (a) he shall be deemed to be domiciled in the Contracting State in which he had a permanent home available to him. If he had a permanent home available to him in both Contracting States, the domicile shall be deemed to be in the Contracting State with which his personal and economic relations were closer (centre of vital interests);
- (b) if the Contracting State in which he had his centre of vital interests cannot be determined, or if he had not a permanent home available to him in either Contracting State, the domicile shall be deemed to be in the Contracting State in which he had an habitual abode;

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- (c) if he had an habitual abode in both Contracting States or in neither of them, the domicile shall be deemed to be in the Contracting State of which he was a national; and
- (d) if he was a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

### **General taxing rights**

**ARTICLE 5.**—(1) Subject to the provisions of Articles 6, 7, 8 and 9 and the following paragraphs of this Article, if the deceased or the transferor was domiciled in one of the Contracting States at the time of the death or transfer, property shall not be taxable in the other Contracting State unless he had been domiciled in the other Contracting State within the ten years immediately preceding the death or transfer.

(2) Paragraph (1) of this Article shall not apply in the United Kingdom to property comprised in a settlement; but, subject to the provisions of Articles 6, 7, 8 and 9, such property shall not be taxable in the United Kingdom if at the time when the settlement was made the settlor was domiciled in South Africa and had not been domiciled in the United Kingdom within the immediately preceding ten years.

(3) If by reason of paragraph (1) of this Article any property would be taxable only in one Contracting State and tax, though chargeable, is not paid (otherwise than as a result of a specific exemption, deduction, credit or allowance) in that Contracting State, tax may be imposed by reference to that property in the other Contracting State notwithstanding that paragraph.

### **Immovable property**

**ARTICLE 6.**—(1) Immovable property may be taxed in the Contracting State in which such property is situated.

(2) The term “immovable property” shall have the meaning which it has under the law of the Contracting State in which the property in question is situated provided always that debts secured by mortgage or otherwise shall not be regarded as immovable property. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

(3) The provisions of paragraphs (1) and (2) of this Article shall also apply to immovable property of an enterprise and to immovable property used for the performance of independent personal services.

### **Business property of a permanent establishment and assets pertaining to a fixed base used for the performance of independent personal services**

**ARTICLE 7.**—(1) Except for assets referred to in Articles 6, 8 and 9, assets forming part of the business property of a permanent establishment of an enterprise may be taxed in the Contracting State in which the permanent establishment is situated.

- (a) (2) (a) For the purposes of this Convention, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
- (b) The term “permanent establishment” includes especially:
  - (i) a place of management;
  - (ii) a branch;

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- (iii) an office;
  - (iv) a factory;
  - (v) a workshop;
  - (vi) a mine, an oil or gas well, a quarry, or any other place of extraction of natural resources; and
  - (vii) a building site or construction or installation project which exists for more than 12 months.
- (c) Notwithstanding the preceding provisions of this paragraph, the term “permanent establishment” shall be deemed not to include:
- (i) the use of facilities solely for the purpose of storage, display, or delivery of goods or merchandise belonging to the enterprise;
  - (ii) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
  - (iii) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
  - (iv) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
  - (v) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character; or
  - (vi) the maintenance of a fixed place of business solely for any combination of activities mentioned in (i) to (v) of this sub-paragraph provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
- (d) Notwithstanding the provisions of sub-paragraphs (a) and (b), where a person —other than an agent of an independent status to whom sub-paragraph (e) applies—is acting on behalf of an enterprise and has, and habitually exercises in a Contracting State, an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in sub-paragraph (c) which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that sub-paragraph.
- (e) An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.
- (f) The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.
- (3) Except for assets described in Article 6, assets pertaining to a fixed base used for the performance of independent personal services may be taxed in the Contracting State in which the fixed base is situated.

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### **Ships and aircraft**

**ARTICLE 8.** Ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

### **Shares, debentures and unit trust holdings**

**ARTICLE 9.** Property consisting of:

- (a) shares, stock, debentures and debentures stock issued by companies incorporated in one of the Contracting States (including any such property falling within the provisions of Article 7), and
- (b) rights of unit holders in any unit trust scheme where the register of unit holders is kept in one of the Contracting States,

may be taxed by that Contracting State.

### **Conflict as to the nature of property**

**ARTICLE 10.**—(1) If the deceased or the transferor was domiciled in one of the Contracting States at the time of death or transfer, and

- (a) by the law of that Contracting State any right or interest is regarded as property not falling within Articles 6, 7, 8 or 9, but
- (b) by the law of the other Contracting State that right is regarded as property falling within those Articles,

then the Article of the Convention under which the property falls shall be determined by the law of the other Contracting State.

(2) If the deceased or the transferor was domiciled in neither Contracting State at the time of the death or transfer, and each Contracting State would regard any property as situated in its territory and in consequence tax would be imposed in both Contracting States, the competent authorities shall determine the *situs* of the property by mutual agreement.

### **Deductions, allowances, etc**

**ARTICLE 11.**—(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) Nothing contained in this Convention shall be construed as obliging either Contracting State to grant to individuals not domiciled in that Contracting State, or to the estates of such individuals, any of the personal allowances, reliefs, and reductions for tax purposes which are granted to individuals so domiciled, or to their estates.

### **Credit provisions**

**ARTICLE 12.**—(1) Where a Contracting State imposes tax in connection with any event by reference to any property which the other Contracting State may tax in accordance with Articles 6, 7, 8 or 9, the former Contracting State shall allow against so much of its tax (as otherwise computed) as is attributable to such property a credit (not exceeding the amount of tax so attributable) equal to so much of the tax imposed in the other Contracting State in connection with the same event as is attributable to such property.

(2) Subject to paragraph (3) of this Article, where a Contracting State imposes tax in connection with any event by reference to any property not referred to in paragraph (1) of this Article and the

deceased or transferor was domiciled in the other Contracting State at the time of the death or transfer, the first-mentioned Contracting State shall allow against so much of its tax (as otherwise computed) as is attributable to such property a credit (not exceeding the amount of tax so attributable) equal to so much of the tax imposed in the other Contracting State in connection with the same event as is attributable to such property.

(3) Where:

- (a) under paragraph (2) of Article 5 the United Kingdom imposes tax in connection with any event by reference to any property which is not referred to in paragraph (1) of this Article and which is comprised in a settlement in which an interest in possession subsists, and
- (b) at the time of the event giving rise to the liability to tax the individual entitled to that interest was domiciled in South Africa,

the United Kingdom shall allow against so much of its tax (as otherwise computed) as is attributable to such property a credit (not exceeding the amount of tax so attributable) equal to so much of the tax imposed in South Africa in connection with the same event as is attributable to such property.

(4) For the purposes of this Article:

- (a) the tax attributable to any property imposed in a Contracting State is tax as reduced by the amount of any credit allowed by that Contracting State in respect of tax attributable to that property imposed in a territory other than a Contracting State;
- (b) tax is imposed in a Contracting State if it is chargeable under the law of that Contracting State and duly paid; and
- (c) where tax is imposed on the death of a transferor by reason of a transfer made within the three years immediately preceding the death, whether in consequence of the inclusion of property affected by the transfer in the transferor's estate or otherwise with respect to the transfer, that tax shall be treated as if it were imposed in connection with that transfer.

### **Time limit**

**ARTICLE 13.** Any claim for a credit or for a repayment of tax founded on the provisions of this Convention shall be made within six years from the date of the event giving rise to a liability to tax or, where later, within one year from the last date on which tax for which credit is given is due. The competent authority of a Contracting State may, in appropriate circumstances, extend this time limit where the final determination or the payment of tax in the other Contracting State is delayed.

### **Non-discrimination**

**ARTICLE 14.—**(1) The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other Contracting State in the same circumstances are or may be subjected.

(2) The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other Contracting State than the taxation levied on enterprises of that other Contracting State carrying on the same activities.

(3) Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.

(4) Nothing contained in this Article shall be construed as restricting the provisions of paragraph (2) of Article 11.

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(5) In this Article the term “taxation” means taxes covered by this Convention.

### **Mutual agreement procedure**

**ARTICLE 15.**—(1) Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic laws of those Contracting States, present his case to the competent authority of either Contracting State.

(2) The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the provisions of this Convention.

(3) The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Convention.

(4) The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

### **Exchange of information**

**ARTICLE 16.**—(1) The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than persons (including a Court or administrative body) concerned with the assessment or collection of, or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of this Convention.

(2) In no case shall the provisions of paragraph (1) of this Article be construed so as to impose on the competent authority of either Contracting State the obligation;

- (a) to carry out administrative measures at variance with the laws or administrative practice prevailing in either Contracting State;
- (b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

### **Diplomatic and consular officials**

**ARTICLE 17.** Nothing in this Convention shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreements.

### **Entry into force**

**ARTICLE 18.**—(1) This Convention shall be subject to ratification in accordance with the applicable procedures of each Contracting State and instruments of ratification shall be exchanged at London as soon as possible.

(2) This Convention shall enter into force immediately after the expiration of 30 days following the date on which the instruments of ratification are exchanged<sup>(1)</sup>, and shall thereupon have effect:

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(1) Instruments of ratification were exchanged on 5 April 1979.



- (a) in the United Kingdom in respect of property by reference to which there is a charge to tax which arises on or after 1 January 1978;
- (b) in South Africa in respect of donations taking effect on or after 1 January 1978 and the estates of persons dying on or after that date.

(3) Subject to the provisions of paragraphs (4) and (5) of this Article, the Convention between the United Kingdom and the Union of South Africa for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Estate Duty signed at London on 14 October 1946 (hereinafter referred to as “the 1946 Convention”), as amended by the Protocol signed at Pretoria on 22 December 1954 (hereinafter referred to as “the 1954 Protocol”) shall cease to have effect in respect of property or estates to which this Convention in accordance with the provisions of paragraph (2) of this Article applies.

(4) Where on a death on or after 1 January 1978 and before the entry into force of this Convention any provision of the 1946 Convention as amended by the 1954 Protocol would have afforded any greater relief than this Convention, that provision shall continue to have effect on that death.

(5) Where on a death after the entry into force of this Convention and before 27 March 1981 any provision of the 1946 Convention as amended by the 1954 Protocol would have afforded any greater relief than this Convention in respect of:

- (a) any gift inter vivos made by the deceased before 27 March 1974, or
- (b) any settled property in which the deceased had a beneficial interest in possession before 27 March 1974 but not at any time thereafter.

that provision shall continue to have effect in the United Kingdom in relation to that gift or settled property.

(6) The 1946 Convention as amended by the 1954 Protocol shall terminate on the last date on which it has effect in accordance with the foregoing provisions of this Article.

## **Termination**

**ARTICLE 19.**—(1) This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate this Convention at any time after five years from the date on which the Convention enters into force provided that at least six months' prior notice has been given through the diplomatic channel. In such event the Convention shall cease to have effect at the end of the period specified in the notice but shall continue to apply in respect of the estate of any person dying before the end of that period and in respect of any event (other than death) occurring before the end of that giving rise to liability to tax under the laws of either Contracting State.

(2) The termination of the present Convention shall not have the effect of reviving any treaty or arrangement abrogated by the present Convention or by treaties previously concluded between the Contracting States.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Convention.

Done in duplicate at Pretoria this thirty-first day of July 1978, in the English and Afrikaans languages, both texts being equally authoritative.

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

*DAVID SCOTT*

For the Government of the Republic of South Africa:

*O.P.F. HORWOOD*

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#### EXPLANATORY NOTE

The Double Taxation Convention with the Republic of South Africa which forms the Schedule to this Order applies to death duties and gift taxes. The taxes covered by the Convention are the United Kingdom capital transfer tax and the South African estate duty and donations tax. The Convention will also apply to any tax of a substantially similar character which may be imposed by either country.

Under the Convention, the country in which the transferor was domiciled can tax property wherever it is situated. The other country can normally tax only specified categories of property, namely immovable property situated in its territory, business property of a permanent establishment or a fixed base in its territory, certain ships and aircraft and shares or debentures of companies incorporated in its territory. The other country may impose tax also if the transferor had been domiciled within any part of its territory within the 10 years immediately preceding the transfer. Where the transferor was domiciled in neither country both countries may tax. There is a special rule for settled property.

Where both countries impose tax, the Convention provides rules for determining which country is to give credit for the other's tax. In general, the country in which the transferor was not domiciled is required to give credit. But the country in which the transferor was domiciled is required to give credit for the other country's tax on the specified categories of property.

Rules are provided for determining a person's domicile for the purposes of the Convention.

There are provisions for resolving conflicts as to the nature of property and for dealing with cases in which tax, though chargeable, is not paid.

There are also provisions for safeguarding nationals of one country against discriminatory taxation in the other country and for the exchange of information and consultation between the taxation authorities of the two countries.

The Convention applies to any person who is within the scope of a tax which is covered by the Convention.

The Convention has effect in the United Kingdom in respect of transfers giving rise to a tax charge on or after 1st January 1978 and in South Africa in respect of donations taking effect and the estates of persons dying on or after 1st January 1978.

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