No. 9127

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
and
MALAYSIA

Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (with annex). Signed at Kuala Lumpur, on 17 July 1967

Official text : English.

Registered by the United Kingdom of Great Britain and Northern Ireland on 4 June 1968.

ROYAUME-UNI DE GRANDE-BRETAGNE ET D'IRLANDE DU NORD
et
MALAISIE

Convention tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu (avec annexe). Signée à Kuala-Lumpur, le 17 juillet 1967

Texte officiel anglais.

Enregistrée par le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord le 4 juin 1968.

No. 9127. AGREEMENT[1] BETWEEN THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME. SIGNED AT KUALA LUMPUR, ON 17 JULY 1967

Whereas on 30 August, 1963, the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federation of Malaya concluded an Agreement[2] for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;

And whereas on 16 September, 1963 (hereinafter called "Malaysia Day"), Malaysia was formed;

Now, therefore, the Government of Malaysia and the Government of the United Kingdom of Great Britain and Northern Ireland have agreed as follows:

Article 1

(1) The said Agreement of 30 August, 1963, between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federation of Malaya, which appears as the Annex to this Agreement, subject to the modifications provided by Article 2 of the present Agreement, shall be deemed to have had effect from and after Malaysia Day in relation to those territories which have been comprised in Malaysia since 9 August, 1965, and shall continue to have effect in relation to those territories and in the said Agreement as so modified the term "Federation of Malaya" or "Federation" shall wherever the context admits be construed as referring to the said territories.

(2) The said Agreement of 30 August, 1963, may, subject to and in accordance with Article XXII thereof, be extended to any territory for whose international relations Malaysia is responsible.

[1] Came into force on 21 December 1967, the date upon which the last of all such things was done in both countries as were necessary to give the Agreement the force of law in Malaysia and the United Kingdom of Great Britain and Northern Ireland, respectively, in accordance with article 3.

[2] The text of this Agreement is published for reference purposes on p. 352 of this volume.

Article 2

(1) The modifications of the said Agreement of 30 August, 1963, which are referred to in Article 1 of this Agreement, are specified in the succeeding paragraphs of this Article.

(2) For paragraph (1) of Article I of the said Agreement the following shall be substituted:

"(1) The taxes which are the subject of the present Agreement are:

(*a*) in those territories comprised immediately before Malaysia Day in the Federation of Malaya (and hereinafter referred to as 'Federation tax'):

the income tax (including the tin profits tax);

(*b*) in Sabah (and hereinafter referred to as 'Federation tax') the income tax;

(*c*) in Sarawak (and hereinafter referred to as 'Federation tax'): the salaries tax, the corporation profits tax, the business profits tax and the interest tax;

(*d*) in the United Kingdom of Great Britain and Northern Ireland (and hereinafter referred to as 'United Kingdom tax'):

the income tax (including surtax), the profits tax, the corporation tax and the capital gains tax."

(3) At the end of Article VII there shall be added the following paragraphs:

"(6) Subject to the provisions of paragraph (4A) of Article VIII of this Agreement the term 'dividends' in the case of the United Kingdom includes any item which under the law of the United Kingdom is treated as a distribution of a company except that this term does not include any redeemable share capital or security issued by a company in respect of shares in the company otherwise than wholly for new consideration, or such part of any redeemable share capital or security so issued as is not properly referable to new consideration.

(7) 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 neither paragraph (1) nor paragraph (2) shall 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 Article."

(4) In Article VIII there shall be inserted after paragraph (4) a new paragraph as follows:

"(4A) Royalties paid by a company which is a resident of the United Kingdom to a resident of the Federation shall not be treated as a distribution of that company. The preceding sentence shall not apply to royalties paid to a company where :

(*a*) the same persons participate directly or indirectly in the management or control of the company paying the royalties and the company deriving the royalties, and

(*b*) more than 50 per cent. of the voting power in the company deriving the royalties is controlled directly or indirectly by a person or persons resident in the United Kingdom."

(5) For paragraphs (2) and (3) of Article XVIII of the said Agreement the following shall be substituted:

"(2) (*a*) Subject to the provisions of the laws of the Federation regarding the allowance as a credit against Federation tax of tax payable in any country other than the Federation and subject to sub-paragraph (*c*) of this paragraph, United Kingdom tax payable, whether directly or by deduction, in respect of income from sources within the United Kingdom shall be allowed as a credit against Federation tax payable in respect of that income.

(*b*) Where such income is an ordinary dividend paid before 6 April, 1966, by a company which is a resident of the United Kingdom, the credit shall take into account (in addition to any United Kingdom income tax appropriate to the dividend) the United Kingdom profits tax payable in respect of its profits by the company paying the dividend; and where it is a dividend paid on participating preference shares and representing both a dividend at the fixed rate to which the shares are entitled and an additional participation in profits, the United Kingdom profits tax so payable by the company shall likewise be taken into account in so far as the dividend exceeds that fixed rate.

(*c*) Where such income is a dividend paid after 5 April, 1966, by a company which is a resident of the United Kingdom, the credit shall not take into account United Kingdom tax which is not chargeable specifically on the dividend but is tax (whether deducted from the dividend or not) chargeable in respect of the profits or income of the company paying the dividend. Where, however, the dividend is paid to a company which is a resident of the Federation and which controls directly or indirectly not less than 10 per cent. of the voting power in the United Kingdom company, the credit shall take into account (in addition to any United Kingdom income tax chargeable specifically on the dividend) the United Kingdom tax payable in respect of its profits by the company paying the dividend.

(3) (*a*) Subject to the provisions of the laws of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom and subject to sub-paragraph (*c*) of this paragraph, Federation tax payable, whether directly or by deduction, in respect of income from sources within the Federation shall be allowed as a credit against the United Kingdom tax payable in respect of that income.

(*b*) Where such income is an ordinary dividend paid before 6 April, 1966, by a company which is a resident of the Federation, the credit shall take into account (in addition to any Federation tax appropriate to the dividend) Federation tax payable by the company in respect of its profits; and where it is a dividend paid on participating preference shares and representing both a dividend at the fixed rate to which the shares are entitled and an additional participation in profits, Federation tax so payable by the company shall likewise be taken into account in so far as the dividend exceeds that fixed rate.

(*c*) Where such income is a dividend paid after 5 April, 1966, by a company which is a resident of the Federation, the credit shall not take into account Federation tax which is not chargeable specifically on the dividend but is tax (whether deducted from the dividend or not) chargeable in respect of the profits or income of the company paying the dividend. Where, however, the dividend is paid to a company which is resident in the United Kingdom and which controls directly or indirectly not less than 10 per cent. of the voting power in the Federation company the credit shall take into account (in addition to any Federation tax appropriate to the dividend) Federation tax payable in respect of its profits by the company paying the dividend."