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COLONY AND PROTECTORATE OF KENYA

SESSIONAL PAPER

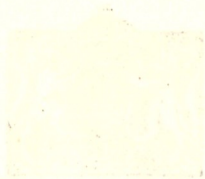
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Double Taxation Agreement with Canada

1956

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THE EAST AFRICAN INCOME TAX (MANAGEMENT)
ACT, 1952

(H.C. Act No. 3 of 1952)

NOTICE OF PROPOSALS FOR DOUBLE TAXATION AGREEMENT
(CANADA)

THE following is a draft of an agreement which it is proposed to enter into with Canada for the relief of Double Taxation. The Agreement will be made by extending to Kenya the provisions of the Double Taxation Agreement between the United Kingdom and Canada, which is reproduced below. The Agreement will be extended subject to the modifications contained in the Notification set out thereafter, which Her Majesty's Government will give to the Government of Canada and which will bring the Agreement into effect.

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM AND THE GOVERNMENT OF CANADA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME.

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Canada, desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:—

Article I

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

(a) In Canada:

The income taxes, including sur-taxes, and excess profits tax imposed by Canada (hereinafter referred to as "Canadian tax").

(b) In the United Kingdom:

The income tax (including sur-tax), the excess profits tax and the national defence contribution (hereinafter referred to as "United Kingdom tax").

(2) The present Agreement shall also apply to any other taxes of a substantially similar character imposed by either Contracting Government subsequently to the date of signature of the present Agreement or by the Government of any territory to which the present Agreement is extended under Article XV.

Article II

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

(a) The term "United Kingdom" means Great Britain and Northern Ireland, excluding the Channel Islands and the Isle of Man.

(b) The terms "one of the territories" and "the other territory" mean the United Kingdom or Canada, as the context requires.

(c) The term "tax" means United Kingdom tax or Canadian tax, as the context requires.

(d) The term "person" includes any body of persons, corporate or not corporate.

(e) The term "company" includes any body corporate.

(f) The terms "resident of the United Kingdom" and "resident of Canada" mean respectively any person who is resident in the United Kingdom for the purposes of United Kingdom tax and not resident in Canada for the purposes of Canadian tax and any person who is resident in Canada for the purposes of Canadian tax and not resident in the United Kingdom for the purposes of United Kingdom tax; and a company shall be regarded as

resident in the United Kingdom if its business is managed and controlled in the United Kingdom and as resident in Canada if its business is managed and controlled in Canada.

(g) The terms "resident of one of the territories" and "resident of the other territory" mean a person who is a resident of the United Kingdom or a person who is a resident of Canada, as the context requires.

(h) The terms "United Kingdom enterprise" and "Canadian enterprise" mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of the United Kingdom and an industrial or commercial enterprise or undertaking carried on by a resident of Canada; and the terms "enterprise of one of the territories" and "enterprise of the other territory" mean a United Kingdom enterprise or a Canadian enterprise, as the context requires.

(i) The term "permanent establishment", when used with respect to an enterprise of one of the territories, means a branch or other fixed place of business, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprise or has a stock of merchandise from which he regularly fills orders on its behalf.

An enterprise of one of the territories shall not be deemed to have a permanent establishment in the other territory merely because it carries on business dealings in that other territory through a bona fide broker or general commission agent acting in the ordinary course of his business as such.

The fact that an enterprise of one of the territories maintains in the other territory a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute that fixed place of business a permanent establishment of the enterprise.

The fact that a company which is a resident of one of the territories has a subsidiary company which is a resident of the other territory or which is engaged in trade or business in that other territory (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary company a permanent establishment of its parent company.

(2) The term "industrial or commercial profits", as used in the present Agreement, does not include income in the form of dividends, interest, rents or royalties, management charges, or remuneration for labour or personal services.

(3) In the application of the provisions of the present 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 taxes which are the subject of the present Agreement.

Article III

(1) The industrial or commercial profits of a United Kingdom enterprise shall not be subject to Canadian tax unless the enterprise is engaged in trade or business in Canada through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by Canada, but only on so much of them as is attributable to that permanent establishment.

(2) The industrial or commercial profits of a Canadian enterprise shall not be subject to United Kingdom tax unless the enterprise is engaged in trade or business in the United Kingdom

through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by the United Kingdom, but only on so much of them as is attributable to that permanent establishment: Provided that nothing in this paragraph shall affect any provisions of the law of the United Kingdom regarding the imposition of excess profits tax and national defence contribution in the case of inter-connected companies.

(3) Where an enterprise of one of the territories is engaged in trade or business in the other territory through a permanent establishment situated therein, there shall be attributed to such permanent establishment the industrial or commercial profits which it might be expected to derive if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.

(4) No portion of any profits arising from the sale of goods or merchandise by an enterprise of one of the territories shall be deemed to arise in the other territory by reason of the mere purchase of the goods or merchandise within that other territory.

(5) Where a company which is a resident of one of the territories derives profits or income from sources within the other territory, the Government of that other territory shall not impose any form of taxation on dividends paid by the company to persons not resident in that other territory, or any tax in the nature of an undistributed profits tax on undistributed profits of the company, by reason of the fact that those dividends or undistributed profits represent, in whole or in part, profits or income so derived.

Article IV

Where—

- (a) an enterprise of one of the territories participates directly or indirectly in the management, control or capital of an enterprise of the other territory, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the territories and an enterprise of the other territory, and
- (c) in either case conditions are made or imposed between the two enterprises, in their commercial or financial relations, which differ from those which would be made between independent enterprises,

then any profits which would but for those conditions have accrued to one of the enterprises but by reason of those conditions have not so accrued may be included in the profits of that enterprise and taxed accordingly.

Article V

Notwithstanding the provisions of Articles III and IV, profits which a resident of one of the territories derives from operating ships or aircraft shall be exempt from tax in the other territory.

Article VI

(1) The rate of Canadian tax on income (other than earned income) derived from sources within Canada by a resident of the United Kingdom who is subject to United Kingdom tax in respect thereof and not engaged in trade or business in Canada through a permanent establishment situated therein, shall not exceed 15 per cent.

(2) Notwithstanding the provisions of the foregoing paragraph, dividends paid to a company which is a resident of the United Kingdom by a Canadian company, all of whose shares (less directors' qualifying shares) which have under all circumstances full voting rights are beneficially owned by the former company, shall be exempt from Canadian tax:

Provided that exemption shall not be allowed if ordinarily more than one-quarter of the gross income of the Canadian company is derived from interest and dividends other than interest and dividends from any wholly-owned subsidiary company.

(3) Income (other than earned income) derived from sources within the United Kingdom by an individual who is a resident of Canada, subject to Canadian tax in respect of the income, and not engaged in trade or business in the United Kingdom through a permanent establishment situated therein, shall be exempt from United Kingdom sur-tax.

Article VII

Copyright royalties and other like payments made in respect of the production or reproduction of any literary, dramatic, musical or artistic work (but not including rents or royalties in respect of motion picture films) and derived from sources within one of the territories by a resident of the other territory who is liable to tax in that other territory in respect thereof and not engaged in trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from tax in that first-mentioned territory.

Article VIII

(1) Remuneration (other than pensions) paid by one of the Contracting Governments to any individual for services rendered to that Contracting Government in the discharge of governmental functions shall be exempt from tax in the territory of the other Contracting Government if the individual is not ordinarily resident in that territory or is ordinarily resident in that territory solely for the purpose of rendering those services.

(2) Any pension paid by one of the Contracting Governments to any individual for services rendered to that Contracting Government in the discharge of governmental functions shall be exempt from tax in the territory of the other Contracting Government, if immediately prior to the cessation of those services the remuneration therefor was exempt from tax in that territory, whether under paragraph (1) of this Article or otherwise, or would have been exempt under that paragraph if the present Agreement had been in force at the time when the remuneration was paid.

(3) The provisions of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the Contracting Governments for purposes of profit.

Article IX

(1) An individual who is a resident of the United Kingdom shall be exempt from Canadian tax on profits or remunerations in respect of personal (including professional) services performed within Canada in any taxation year if—

- (a) he is present within Canada for a period or periods not exceeding in the aggregate 183 days during that year, and
- (b) the services are performed for or on behalf of a person resident in the United Kingdom, and
- (c) the profits or remunerations are subject to United Kingdom tax.

(2) An individual who is a resident of Canada shall be exempt from United Kingdom tax on profits or remuneration in respect of personal (including professional) services performed within the United Kingdom in any year of assessment if—

- (a) he is present within the United Kingdom for a period or periods not exceeding in the aggregate 183 days during that year, and

- (b) the services are performed for or on behalf of a person resident in Canada, and
 (c) the profits or remuneration are subject to Canadian tax.

(3) The provisions of this Article shall not apply to the profits or remuneration of public entertainers such as stage, motion picture or radio artists, musicians and athletes.

Article X

(1) Any pension (other than a pension paid by the Government of Canada for services rendered to it in the discharge of governmental functions) and any annuity, derived from sources within Canada by an individual who is a resident of the United Kingdom and subject to United Kingdom tax in respect thereof, shall be exempt from Canadian tax.

(2) Any pension (other than a pension paid by the Government of the United Kingdom for services rendered to it in the discharge of governmental functions) and any annuity, derived from sources within the United Kingdom by an individual who is a resident of Canada and subject to Canadian tax in respect thereof, shall be exempt from United Kingdom tax.

(3) The term "annuity" means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in consideration of money paid.

Article XI

A professor or teacher from one of the territories who receives remuneration for teaching, during a period of temporary residence not exceeding two years, at a university, college, school or other educational institution in the other territory, shall be exempt from tax in that other territory in respect of that remuneration.

Article XII

A student or business apprentice from one of the territories who is receiving full-time education or training in the other territory shall be exempt from tax in that other territory on payments made to him by persons in the first-mentioned territory for the purposes of his maintenance, education or training.

Article XIII

(1) Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom, Canadian tax payable in respect of income from sources within Canada shall be allowed as a credit against any United Kingdom tax payable in respect of that income. Where such income is an ordinary dividend paid by a Canadian debtor, the credit shall take into account (in addition to any Canadian income tax chargeable directly or by deduction in respect of the dividend) the Canadian income tax payable in respect of its profits by the company paying the dividend, and where it is dividend paid on participating preference shares and representing both a dividend at a fixed rate to which the shares are entitled and an additional participation in profits, the Canadian income tax so payable by the company shall likewise be taken into account in so far as the dividend exceeds that fixed rate.

(2) For the purposes of the foregoing paragraph and of the aforesaid provisions of the law of the United Kingdom, so much of the tax chargeable under the law of Canada relating to excess profits tax as is chargeable otherwise than by reference to excess profits shall be treated as income tax and not as excess profits tax.

(3) Subject to the provisions of the law of Canada regarding the deduction from tax payable in Canada of tax paid in a territory outside Canada, United Kingdom tax payable in respect of income from sources within the United Kingdom shall be

deducted from any Canadian tax payable in respect of that income. Where such income is an ordinary dividend paid by a company resident in the United Kingdom, the deduction shall take into account (in addition to any United Kingdom income tax appropriate to the dividend) the United Kingdom national defence contribution 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, the national defence contribution so payable by the company shall likewise be taken into account in so far as the dividend exceeds that fixed rate.

(4) For the purposes of this Article, profits or remuneration for personal (including professional) services performed in one of the territories shall be deemed to be income from sources within that territory, and the services of an individual whose services are wholly or mainly performed in ships or aircraft operated by a resident of one of the territories shall be deemed to be performed in that territory.

Article XIV

(1) The taxation authorities of the Contracting Governments shall exchange such information (being information available under the respective taxation laws of the Contracting Governments) as is necessary for carrying out the provisions of the present Agreement 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 the present Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of the present Agreement. No information shall be exchanged which would disclose any trade secret or trade process.

(2) The taxation authorities of the Contracting Governments may consult together as may be necessary for the purpose of carrying out the provisions of the present Agreement and, in particular, the provisions of Articles III and IV.

(3) As used in this Article, the term "taxation authorities" means, in the case of Canada, the Minister of National Revenue or his authorized representative; in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorized representative; and, in the case of any territory to which the present Agreement is extended under Article XV, the competent authority for the administration in such territory of the taxes to which the present Agreement applies.

Article XV

(1) Either of the Contracting Governments may, on the coming into force of the present Agreement or at any time thereafter while it continues in force, by a written notification of extension given to the other Contracting Government, declare its desire that the operation of the present Agreement shall extend, subject to such modification as may be necessary, to all or any of its colonies, overseas territories, protectorates, or territories in respect of which it exercises a mandate or trusteeship, which impose taxes substantially similar in character to those which are the subject of the present Agreement. The present Agreement shall, subject to such modifications (if any) as may be specified in the notification, apply to the territory or territories named in such notification on the date or dates specified in the notification (not being less than sixty days from the date of the notification) or, if no date is specified in respect of any such territory, on the sixtieth day after the date of the notification, unless, prior to the date on which the Agreement would otherwise become applicable to a particular territory, the Contracting Government to whom notification is given shall have informed

the other Contracting Government in writing that it does not accept the notification as to that territory. In the absence of such extension, the present Agreement shall not apply to any such territory.

(2) At any time after the expiration of one year from the entry into force of an extension under paragraph (1) of this Article, either of the Contracting Governments may, by written notice of termination given to the other Contracting Government, terminate the application of the present Agreement to any territory to which it has been extended under paragraph (1), and in that event the present Agreement shall cease to apply, six months after the date of the notice, to the territory or territories named therein, but without affecting its continued application to Canada, the United Kingdom or to any other territory to which it has been extended under paragraph (1) hereof.

(3) In the application of the present Agreement in relation to any territory to which it is extended by notification by the United Kingdom or Canada, references to the "United Kingdom" or, as the case may be, "Canada" shall be construed as references to that territory.

(4) The termination in respect of Canada or the United Kingdom of the present Agreement under Article XVIII shall, unless otherwise expressly agreed by both Contracting Governments, terminate the application of the present Agreement to any territory to which the Agreement has been extended by Canada or the United Kingdom.

(5) The provisions of the preceding paragraphs of this Article shall apply to the Channel Islands and the Isle of Man as if they were colonies of the United Kingdom.

Article XVI

The present Agreement shall come into force on the date on which the last of all such things shall have been done in the United Kingdom and Canada as are necessary to give the Agreement the force of law in the United Kingdom and Canada respectively, and shall thereupon have effect—

(a) in Canada as respects income taxes, including sur-taxes, for the taxation year 1946 and subsequent years, and as respects excess profits tax for any fiscal period beginning on or after the first day of January, 1946, and for the unexpired portion of any fiscal period current at that date;

(b) in the United Kingdom, as respects income tax for the year of assessment beginning on the 6th day of April, 1946, and subsequent years; as respects sur-tax for the year of assessment beginning on the 6th day of April, 1945, and subsequent years; and as respects excess profits tax and national defence contribution for any chargeable accounting period beginning on or after the first day of January, 1946, and for the unexpired portion of any chargeable accounting period current at that date.

Article XVII

The present Agreement shall be deemed to have superseded the Agreements made on the 8th day of May, 1930, and the 3rd day of October, 1935, between the Government of the United Kingdom and the Government of Canada for reciprocal exemption from income tax in certain cases of profits accruing from the business of shipping and profits or gains accruing through an agency respectively, and those Agreements shall cease to have effect—

(a) in Canada, for the taxation year 1946 and subsequent years;

(b) in the United Kingdom, as respects income tax for the year of assessment beginning on the 6th day of April, 1946, and subsequent years, and as respects sur-tax for the year of assessment beginning on the 6th day of April, 1945, and subsequent years.

Article XVIII

(1) The present Agreement shall continue in effect indefinitely but either of the Contracting Governments may, on or before the 30th day of June in any calendar year after the year 1947, give notice of termination to the other Contracting Government and, in such event, the present Agreement shall cease to be effective—

(a) in Canada, as respects income taxes, including sur-taxes, for any taxation year ending in or after the calendar year next following that in which such notice is given, and as respects excess profits tax for any fiscal period beginning on or after the first day of January in the calendar year next following that in which such notice is given and for the unexpired portion of any fiscal period current at that date;

(b) in the United Kingdom, as respects income tax for any year of assessment beginning on or after the 6th day of April in the calendar year next following that in which such notice is given; as respects sur-tax for any year of assessment beginning on or after the 6th day of April in the calendar year in which such notice is given; and as respects excess profits tax or national defence contribution for any chargeable accounting period beginning on or after the first day of January in the calendar year next following that in which such notice is given and for the unexpired portion of any chargeable accounting period current at that date.

(2) The termination of the present Agreement shall not have the effect of reviving any agreement or arrangement abrogated by the present Agreement or by agreements previously concluded between the Contracting Governments.

DRAFT NOTIFICATION

SIR,

I have the honour to inform you that my Government, in accordance with Article XV of the Agreement between the Government of the United Kingdom and the Government of Canada for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, dated 5th June, 1946, has instructed me to give notice of its desire that the Agreement shall extend to certain colonial territories, the Governments of which have been consulted and have expressed their wish for the extension. The names of the territories and the taxes concerned are listed in the Appendix hereto.

2. The extension, it is suggested, shall have effect in Canada as respects income taxes, including sur-taxes, for the taxation year 1954 and subsequent years, and, in the territories, as respects the taxes listed opposite their names in the Appendix hereto, for the year of income 1953 and subsequent years.

3. In relation to the territories listed in the Appendix, the Agreement will require modification as follows:—

(a) In Article II the following words shall be inserted at the end of sub-paragraph (c) of paragraph (1): "but shall not include any tax which is payable in respect of any default or omission in relation to the taxes to which this Agreement as extended applies or which represents a penalty imposed under the law of the territory concerned relating to those taxes."

(b) At the end of paragraph (1) of Article III shall be inserted the words: "Provided that nothing in this Article shall affect any provisions of the law of either of the territories regarding the taxation of income from the business of insurance."

(c) At the end of paragraph (3) of Article III the full stop shall be deleted and the following words added:

" . . . and the profits so attributed shall be deemed to be income derived from sources in that other territory".

(d) Article XI shall be deleted.

(e) Article XIII, paragraph (3), shall apply in such a way that where a person is treated as resident both in Canada and in one of the following territories, i.e. Kenya, Tanganyika, Uganda and Zanzibar, the credit shall extend to the tax charged by that territory on income arising from sources in any of the other three.

(f) In Article XIV the words "or for the prevention of fraud or the administration of statutory provisions against legal avoidance" shall be deleted.

4. It is proposed that this notification and the Canadian Government's written acceptance shall be regarded as putting on record the agreement of the two Governments that the

double taxation agreement as modified shall apply to the territories named on the sixtieth day after the date below.

5. Subject to the concurrence of the Canadian Government, notice of the extension of the Agreement to the Territories named in the Appendix would be published in the London *Gazette* and it is assumed that the Canadian Government would wish to arrange for notice to be published in the Canada *Gazette*.

I have the honour to be, Sir,
Your obedient servant,

APPENDIX

Territory.—Taxes to which the Agreement is to apply in the territory.

Kenya.—The income tax (including sur-tax) and the personal tax.

Tanganyika.—The income tax (including sur-tax) and the non-native poll tax.

Uganda.—The income tax (including sur-tax) and the non-native poll tax.

Zanzibar.—The income tax (including sur-tax).

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