DEATH DUTIES

1955 No. 424

The Double Taxation Relief (Estate Duty) (South Africa) Order, 1955

Made - - - - 17th March, 1955

At the Court at Buckingham Palace, the 17th day of March, 1955

Present,

The Queen's Most Excellent Majesty in Council

Whereas it is provided by subsection (1) of section fifty-four of the Finance (No. 2) Act, 1945(a), that if Her Majesty by Order in Council declares that arrangements specified in the Order have been made with the Government of any territory outside the United Kingdom with a view to affording relief from double taxation in relation to estate duty payable under the laws of the United Kingdom and any duty of a similar character imposed under the laws of that territory, and that it is expedient that those arrangements should have effect, the arrangements shall have effect to the extent specified in that subsection:

And Whereas under certain other provisions of Part V of the said Act certain other consequences ensue on the making of any such Order:

And Whereas His late Majesty King George VI, in pursuance of the Regency Acts, 1937 and 1943(b), was pleased, by Letters Patent dated the 24th day of January, 1947, to delegate and grant unto His Royal Highness The Duke of Gloucester, Her Royal Highness The Princess Royal and Viscount Lascelles, or any two of them, as Counsellors of State, full power and authority during the period of His late Majesty's absence from the United Kingdom to summon and hold on His late Majesty's behalf His Privy Council and to signify thereat His late Majesty's approval of any matter or thing to which His late Majesty's approval in Council was required:

And Whereas His Royal Highness The Duke of Gloucester and Her Royal Highness The Princess Royal, being authorized thereto by the said Letters Patent, and in exercise of the powers conferred by subsection (1) of the said section fifty-four and of all other powers enabling His late Majesty in that behalf, by the Double Taxation Relief (Estate Duty) (South Africa) Order, 1947(c), in Council declared that the arrangements specified in the Agreement set out in the Schedule to that Order had been made with His late Majesty's Government in the Union of South Africa with a view to affording relief from double taxation in relation to estate duty payable under the laws of the United Kingdom and duty of a similar character imposed under the laws of South Africa, and that it was expedient that those arrangements should have effect:

(a) 9 & 10 Geo. 6. c. 13.
(b) 1 Edw. 8 & 1 Geo. 6. c. 16 and 6 & 7 Geo. 6. c. 42.
(c) S.R. & O. 1947/314 (Rev. V, p. 697: 1947 I, p. 485).

And Whereas the further arrangements set out in the Schedule hereto have been agreed with the Government of the Union of South Africa with a view to affording such relief as aforesaid by way of variation of the arrangements set out by the Schedule to the said Order:

And Whereas it is expedient that the said further arrangements should have effect:

And Whereas a draft of this Order was laid before the Commons House of Parliament in accordance with the provisions of subsection (2) of section fifty-six of the Finance (No. 2) Act, 1945, and an Address has been presented to Her Majesty by that House praying that an Order may be made in the terms of this Order:

Now, therefore, Her Majesty, in exercise of the powers conferred on Her by subsection (1) of the said section fifty-four 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 (Estate Duty) (South Africa) Order, 1955.

2. It is hereby declared—

(*a*) that the arrangements specified in the Agreement set out in the Schedule to this Order have been made with the Government of the Union of South Africa with a view to affording relief from double taxation in relation to estate duty payable under the laws of the United Kingdom and any duty of a similar character imposed by the laws of the Union of South Africa varying the arrangements set out in the Schedule to the Double Taxation Relief (Estate Duty) (South Africa) Order, 1947; and

(*b*) that it is expedient that those arrangements should have effect.

W. G. Agnew.

SCHEDULE

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM AND THE GOVERNMENT OF THE UNION OF SOUTH AFRICA AMENDING THE AGREEMENT OF THE FOURTEENTH DAY OF OCTOBER, NINETEEN HUNDRED AND FORTY-SIX, REGARDING ESTATE DUTY.

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Union of South Africa, desiring to amend the Agreement dated the fourteenth day of October nineteen hundred and forty-six for the avoidance of double taxation and the prevention of fiscal evasion with respect to estate duty have agreed as follows:—

ARTICLE I

In this Agreement the expression "the principal Agreement" means the agreement between the Contracting Governments dated the fourteenth day of October nineteen hundred and forty-six for the avoidance of double taxation and the prevention of fiscal evasion with respect to estate duty, and other expressions have the same meaning as in the principal Agreement.

ARTICLE II

Neither Contracting Government shall impose duty by virtue of the principal Agreement on any property on which it would not impose duty apart from that Agreement, and accordingly there shall be substituted for the proviso to paragraph (2) of Article III of the principal Agreement the following proviso:—

"Provided that this paragraph shall not apply to any property unless either—

(i) apart from this paragraph duty would be imposed on the property by both of the Contracting Governments; or

(ii) apart from this paragraph duty would be imposed on the property by one Contracting Government and would, but for some specific exemption, also be imposed thereon by the other Contracting Government;

and in any case where, apart from this paragraph, duty would be imposed on the property by one only of the Contracting Governments this paragraph shall not apply if, by reason of its application, duty would be imposed by the other Contracting Government."

ARTICLE III

This Agreement shall apply to the estate duty imposed in Northern Ireland as it applies to the estate duty imposed in Great Britain.

ARTICLE IV

This 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 the Union as are necessary to give the Agreement the force of law in the United Kingdom and the Union respectively, and shall have effect in relation to the estates of persons dying on or after the first day of January nineteen hundred and fifty-two.

ARTICLE V

This Agreement shall remain in force so long as the principal Agreement remains in force and shall terminate when the principal Agreement terminates.

In witness whereof the undersigned, being duly authorised, have signed the present Agreement.

Done at Pretoria, in duplicate, in the English and Afrikaans languages, the twenty-second day of December nineteen hundred and fifty-four.

(L.S.) *J. H. Le Rougetel,*
For the Government of the United Kingdom.

(L.S.) *Eric H. Louw,*
For the Government of the Union of South Africa.

EXPLANATORY NOTE

(This Note is not part of the Order, but is intended to indicate its general purport.)

Article III of the Agreement between the United Kingdom and the Union of South Africa, which is scheduled to the Double Taxation Relief (Estate Duty) (South Africa) Order, 1947, laid down a code of rules for determining the situs of property which may pass for estate duty purposes on the death of a person who dies domiciled in Great Britain or ordinarily resident in the Union. The amending Agreement of 22nd December, 1954, provides that the code of rules shall not be applied where the effect of applying it would be to bring within either country's charge to duty property which, apart from the code, would be outside the charge of the country in question.

The amending Agreement applies to the estate duty (separate from British estate duty) which is imposed in Northern Ireland.

The amending Agreement is effective as regards the estates of persons dying on or after 1st January, 1952.