

(b) Subject to the existing provisions of the law of Canada regarding the determination of the exempt surplus of a foreign affiliate and to any subsequent modification of those provisions—which shall not affect the general principle hereof—for the purpose of computing Canadian tax, a company resident in Canada shall be allowed to deduct in computing its taxable income any dividend received by it out of the exempt surplus of a foreign affiliate resident in Kenya.

2. In the case of Kenya, double taxation shall be avoided as follows:

Subject to the provisions of the law of Kenya regarding the allowances as a credit to a resident of Kenya against Kenyan tax of tax payable in a territory outside Kenya, tax payable under the laws of Canada, whether directly or by deduction, in respect of profits, income or gains, from sources within Canada shall be allowed as a credit against any Kenyan tax payable in respect of such profits, income or gains, provided that such credit shall not exceed the Kenyan tax, computed before allowing any such credit, which is appropriate to the income derived from Canada.

3. For the purposes of paragraph 1(a), tax payable in Kenya by a resident of Canada

(a) in respect of profits attributable to a trade or business carried on by it in Kenya;

shall be deemed to include any amount which would have been payable as Kenyan tax for any year but for an exemption from, or reduction of, tax granted for that year or any part thereof under—

(b) any of the following provisions, that is to say:

(i) paragraph 24 of the Second Schedule to the Income Tax Act, 1973;

(ii) paragraph 2(b) of the Third Schedule to the Income Tax Act, 1973;

so far as they were in force on, and have not been modified since, the date of signature of this Agreement, or have been modified only in minor respects so as not to affect their general character; and except to the extent that any of the said provisions has the effect of exempting or relieving a source of income for a period in excess of ten years;

(c) any other provision which may subsequently be made granting an exemption or reduction of tax which is agreed by the competent authorities of the Contracting States to be of a substantially similar character, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character.

4. Where a resident of Kenya is exempt from tax in Kenya in respect of income derived from Canada, then Kenya may, in calculating tax on the remaining income of that person, apply the rate of tax which would have been applicable if the income exempted from tax had not been so exempted.