

ÉTATS-UNIS D'AMÉRIQUE  
ET GRANDE-BRETAGNE  
ET IRLANDE DU NORD

Echange de notes comportant un arrangement relatif à l'exemption réciproque de la double imposition en ce qui concerne les bénéfices réalisés dans les affaires d'armement maritime. Washington, les 11 août, 18 et 26 novembre 1924, 15 janvier, 13 février et 16 mars 1925.

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UNITED STATES OF AMERICA  
AND GREAT BRITAIN  
AND NORTHERN IRELAND

Exchange of Notes constituting an Arrangement for the reciprocal Exemption of Shipping Profits from Income Tax. Washington, August 11, November 18 and 26, 1924; January 15, February 13 and March 16, 1925.

No. 2639. — EXCHANGE OF NOTES BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND HIS MAJESTY'S GOVERNMENT IN THE UNITED KINGDOM, CONSTITUTING AN ARRANGEMENT FOR THE RECIPROCAL EXEMPTION OF SHIPPING PROFITS FROM INCOME TAX. WASHINGTON, AUGUST 11, NOVEMBER 18 AND NOVEMBER 26, 1924; JANUARY 15, FEBRUARY 13 AND MARCH 16, 1925.

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*Texte officiel anglais communiqué par le Secrétaire d'Etat aux Affaires étrangères de Sa Majesté en Grande-Bretagne. L'enregistrement de cet échange de notes a eu lieu le 14 mars 1931. Cet échange de notes a été transmis au Secrétariat par le « Department of State » du Gouvernement des Etats-Unis d'Amérique, le 29 octobre 1930.*

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I.

August 11, 1924.

EXCELLENCY,

Referring to the Embassy's note No. 138 of February 11, 1924, and to previous correspondence relating to a proposed arrangement between the Internal Revenue authorities of the United States and Great Britain with a view to granting relief from double income taxation in cases where the profits arising from the business of shipping are chargeable to both British income tax and to income tax payable in the United States, I have the honour to inform you of the receipt of a letter on the subject from the Secretary of the Treasury.

It appears therefrom that Section 213 (b) (8) of the Revenue Act of 1921 which has been re-enacted as Section 213 (b) (8) of the Revenue Act of 1924 exempts from tax so much of the income of a non-resident alien or foreign corporation as is derived from the operation of a ship or ships documented under the laws of a foreign country if that foreign country in turn exempts from tax so much of the income of a citizen of the United States non-resident in such country and of a corporation organized in the United States as is derived from the operation of a ship or ships documented under the laws of the United States. The question of the exemption from tax of income derived from the operation of British vessels has, as the Embassy has observed, previously been discussed by officials of the Treasury Department with Sir Percy Thompson, Deputy Chairman of the British Board of Inland Revenue, who came to the United States for that purpose. I am informed that these discussions proved fruitless because Sir Percy Thompson did not feel at liberty to recede from the British position that the taxability of a corporation as a resident of the United

<sup>1</sup> TRADUCTION. — TRANSLATION.

N<sup>o</sup> 2639. — ÉCHANGE DE NOTES ENTRE LE GOUVERNEMENT DES ÉTATS-UNIS D'AMÉRIQUE ET LE GOUVERNEMENT DE SA MAJESTÉ DANS LE ROYAUME-UNI, COMPORTANT UN ARRANGEMENT RELATIF A L'EXEMPTION RÉCIPROQUE DE LA DOUBLE IMPOSITION EN CE QUI CONCERNE LES BÉNÉFICES RÉALISÉS DANS LES AFFAIRES D'ARMEMENT MARITIME. WASHINGTON, LES 11 AOÛT, 18 ET 26 NOVEMBRE 1924, 15 JANVIER, 13 FÉVRIER ET 16 MARS 1925.

*English official text communicated by His Majesty's Secretary of State for Foreign Affairs in Great Britain. The registration of this Exchange of Notes took place March 14, 1931. This Exchange of Notes was transmitted to the Secretariat by the Department of State of the Government of the United States of America, October 29, 1930.*

## I.

WASHINGTON, le 11 août 1924.

MONSIEUR L'AMBASSADEUR,

Me référant à la note n<sup>o</sup> 138 de l'Ambassade en date du 11 février 1924 ainsi qu'à la correspondance antérieure concernant un projet d'arrangement entre les administrations des Recettes intérieures des Etats-Unis et de la Grande-Bretagne, ayant pour objet de soustraire à une double imposition les bénéfices du commerce maritime, lorsque ceux-ci sont assujettis à l'impôt sur le revenu à la fois en Grande-Bretagne et aux Etats-Unis, j'ai l'honneur de vous faire connaître qu'une lettre a été reçue à ce sujet du Secrétaire au Trésor.

Il ressort de cette lettre que l'article 213 b) 8<sup>o</sup> du Revenue Act de 1921, remis en vigueur par l'article 213 b) 8<sup>o</sup> du Revenue Act de 1924, exempte d'impôt la fraction du revenu de personnes ou de sociétés étrangères ne résidant pas dans le pays qui provient de l'exploitation d'un navire ou de navires munis de papiers de bord conformes aux lois d'un pays étranger lorsque, de son côté, ce pays étranger exempte d'impôt la fraction du revenu de citoyens des Etats-Unis ne résidant pas dans ce pays et de sociétés constituées aux Etats-Unis qui provient de l'exploitation d'un navire ou de navires munis de papiers de bord conformes aux lois des Etats-Unis. La question de l'exemption de l'impôt sur les revenus provenant de l'exploitation de navires britanniques, ainsi que l'Ambassade en a fait l'observation, a été examinée précédemment par des fonctionnaires du Département du Trésor avec Sir Percy Thompson, vice-président du Board of Inland Revenue britannique, venu aux Etats-Unis à cet effet. J'ai appris que cet examen était resté infructueux, du fait que Sir Percy Thompson n'avait pas jugé pouvoir abandonner l'attitude adoptée par la

<sup>1</sup> Traduit par le Secrétariat de la Société des Nations, à titre d'information.

<sup>1</sup> Translated by the Secretariat of the League of Nations, for information.

Kingdom should depend not upon the place of incorporation but upon the place "where its real business is carried on and that is carried on where the control and management of the company abide". (*American Thread Company v. Joyce*, 6 T. C. 163, 164.)

The navigation laws of the United States require that a corporation owning a vessel of the United States be a corporation organized in the United States and that its president and managing directors be citizens of the United States, but there is no requirement that the president and managing directors be residents of this country. It was conceivable therefore that the president and managing directors might reside in the United Kingdom, hold their meetings there, and there exercise control of the corporation. In such a case the corporation would, under British law, have been deemed a resident of the United Kingdom and as such subject to tax upon all its income. It is equally clear, however, that such a corporation would be a corporation organized in the United States and deriving income from the operation of a ship or ships documented under the laws of the United States, and would as such be entitled to exemption from British tax upon income derived from the operation of vessels of the United States, if the exemption offered by Great Britain were to be deemed equivalent to that offered under American law.

It is understood that the proposal which the British Government now makes in its suggested draft of a Declaration in Council does not require that the American corporation shall operate its business outside the United Kingdom in order to be entitled to exemption from British income tax. The British Government proposes, according to the understanding of the Secretary of the Treasury, to exempt from British income tax (including super-tax) "any profits accruing from the business of shipping carried on with ships documented under the laws of the United States to a citizen of the United States resident outside the United Kingdom or to a corporation organized in the United States". Upon the explicit understanding that the American corporation is thus exempted regardless of whether it does business in the United Kingdom or has an office or place of business therein or whether directors' meetings are held in the United Kingdom and the control of the corporation is there exercised, the Secretary of the Treasury is of the opinion that the offer communicated in the Embassy's note of February 11, 1924, satisfies the requirements of Section 213 (b) (8) of the Revenue Act of 1924, so far as the United Kingdom is concerned.

The Secretary of the Treasury asks that I make clear the fact that the Treasury Department intends to construe Section 213 (b) (8) of the Revenue Act of 1924 as not affording exemption to British subjects or others resident in the British dominions, colonies, dependencies, or possessions, or to corporations organized under and existing by virtue of the laws of the British dominions, colonies, dependencies, or possessions, unless the laws of such dominions, colonies, dependencies, or possessions grant an equivalent exemption to citizens of the United States and to corporations organized in the United States. The exemption from tax of income derived from the operation of ships of British registry will be confined to individuals resident in the United Kingdom, other than citizens of the United States, and to corporations organized under and existing by virtue of the laws of the United Kingdom.

Accept, Excellency, the renewed assurances of my highest consideration.

(Signed) Joseph C. GREW.  
*Acting Secretary.*

His Excellency  
The Right Honourable  
Sir Esme Howard, G.C.M.C., K.C.B., C.V.O.,  
Ambassador of Great Britain.

## II.

BRITISH EMBASSY.

No. 1106.

WASHINGTON D. C., *November 18, 1924.*

SIR,

With reference to your note of August 11, relating to a proposed arrangement between the Internal Revenue authorities of Great Britain and the United States with the object of granting relief from double taxation in cases where the profits accruing from the transaction of shipping business are subjected to both British and United States income taxes, I am instructed to inform you that the Board of Inland Revenue of my Government agree with the conditions and limitations specified in the note.

My Government have accordingly promulgated an Order in Council dated November 7, 1924, taking effect from that date so far as Great Britain is concerned, and I expect to be able to transmit to you a copy of the Order at an early date.

I am to add that the Irish Free State in common with the other British Dominions is not to be considered as affected by this measure.

I have, etc.

*(Signed)* Esme HOWARD.

The Honourable

Charles E. Hughes,  
Secretary of State of the United States,  
Washington, D. C.

## III.

BRITISH EMBASSY.

No. 1148.

WASHINGTON, D. C. *November 26, 1924.*

SIR,

With reference to my Note of November 18, I now have the honour to transmit herewith for your information copy of an Order of His Majesty the King in Council, dated November 7, 1924, and taking effect from that date, regarding the arrangement with your Government for the reciprocal exemption of shipping profits from income tax.

I have the honour to be, etc.

*(Signed)* Esme HOWARD.

The Honourable

Charles E. Hughes,  
Secretary of State of the United States,  
Washington, D. C.

## IV.

EXCELLENCY,

*January 15, 1925.*

I have the honour to refer to your note No. 1148 dated November 26, 1924, enclosing a copy of an Order of His Majesty the King in Council, dated November 7, 1924, regarding the arrangement with your Government for the reciprocal exemption of shipping profits from income tax.

The appropriate authorities of this Government have been giving consideration to the matter and feel that some uncertainty exists with regard to the provision in the third paragraph of the Order in Council to the effect that the exemption shall be deemed to take effect on May 1, 1923, whereas your note transmitting the Order in Council dated November 7, 1924, states that it will take effect "from that date".

I shall be grateful if you will be so good as to furnish me a statement regarding the exact date from which exemption is granted to American citizens or corporations under British laws in order that the exemption of British subjects or corporations under the laws of the United States may be made effective from the same date.

Accept, Excellency, the renewed assurances of my highest consideration.

(Signed) Charles E. HUGHES.

His Excellency  
The Right Honourable  
Sir Esme Howard, G.C.M.G., K.C.B., C.V.O.,  
Ambassador of Great Britain.

V.

BRITISH EMBASSY.

No. 159.

WASHINGTON D. C., February 13, 1925.

SIR :

I have the honour to refer to your note of January 15, concerning the arrangement with my Government for the reciprocal exemption of shipping profits from income tax and to inform you in reply to the enquiry contained in the last paragraph, that the date from which exemption from British Income Tax (including super-tax) is granted in respect of shipping profits of American citizens or corporations under British laws is May 1, 1923. I venture to request that instructions may be issued without delay by the appropriate authorities of your Government whereby the British interests concerned may benefit by this arrangement from the date above mentioned.

I have the honour to be, etc.

(Signed) Esme HOWARD.

The Honourable  
Charles E. Hughes,  
Secretary of State of the United States,  
Washington, D. C.

VI.

March 16, 1925.

EXCELLENCY :

I have the honour to refer to your note No. 159 dated February 13, 1925, concerning the arrangement for the reciprocal exemption of shipping profits from income tax and to state that a communication has now been received from the appropriate authority of this Government in which it is stated that careful consideration has been given to the Order in Council dated November 7, 1924, and to the statements contained in your note above mentioned, and that it has been decided that Great Britain satisfies the equivalent exemption provisions of Section 213 (b) (8) of the Revenue

Act of 1921. Reference is also made to the Act of Congress approved June 2, 1924, known as the Revenue Act of 1924, which contains the provisions relating to taxation for 1924 and subsequent years. The provisions of Section 213 (b) (8) of the Revenue Act of 1924 are identical in terms with the corresponding section of the Revenue Act of 1921. It is therefore held that Great Britain satisfies the equivalent exemption provisions of Section 213 (b) (8) of the Revenue Act of 1924.

It has also been determined that the exemption from Federal tax under this holding shall be deemed to be effective from May 1, 1923, the date stipulated by your Government as the date from which the exemption applies under British laws to the income of American citizens not resident in the United Kingdom and corporations organized in the United States, derived from the operation of ships documented under the laws of the United States.

Reference is also made to the last paragraph of Mr. Grew's note dated August 11, 1924, setting forth the construction to be placed upon Section 213 (b) (8). In the last paragraph of your note No. 1106 dated November 18, 1924, you stated that "the Irish Free State in common with the other British Dominions" was not to be considered as affected by the Order in Council. Accordingly the exemption from Federal taxation in the United States will be applied on the basis of this understanding.

Accept, Excellency, the renewed assurances of my highest consideration.

(Signed) Frank B. KELLOGG.

His Excellency

The Right Honourable

Sir Esme Howard, G.C.M.G., K.C.B., C.V.O.,  
Ambassador of Great Britain.