

N° 3648.

PAYS-BAS ET SUÈDE

Convention pour éviter les doubles impositions, et protocole final. Signés à Stockholm, le 21 mars 1935.

**THE NETHERLANDS
AND SWEDEN**

Convention for the Avoidance of Double Taxation, and Final Protocol. Signed at Stockholm, March 21st, 1935.

¹ TRADUCTION. — TRANSLATION.

No. 3648. — CONVENTION ² BETWEEN THE NETHERLANDS AND SWEDEN FOR THE AVOIDANCE OF DOUBLE TAXATION. SIGNED AT STOCKHOLM, MARCH 21ST, 1935.

French official text communicated by the Swedish and Netherlands Ministers for Foreign Affairs. The registration of this Convention took place May 1st, 1935.

HIS MAJESTY THE KING OF SWEDEN and HER MAJESTY THE QUEEN OF THE NETHERLANDS being desirous of avoiding double taxation in the matter of taxes on income and capital, have decided to conclude a Convention, and have to that end appointed as their Plenipotentiaries :

HIS MAJESTY THE KING OF SWEDEN :

Monsieur R. J. SANDLER, His Minister for Foreign Affairs ;

HER MAJESTY THE QUEEN OF THE NETHERLANDS :

Baron J. E. H. VAN NAGELL, Her Envoy Extraordinary and Minister Plenipotentiary at Stockholm ;

Who, having communicated their full powers, found in good and due form, have agreed upon the following provisions :

Article 1.

§ 1. Taxpayers having their fiscal domicile in one of the two contracting States and deriving certain income wholly or in part from the other State, or having certain property in the other State, shall be accorded in respect of such income or property the special treatment laid down in the following Articles.

§ 2. For the purposes of the present Convention, the fiscal domicile of natural persons shall be deemed to be the place of their normal residence, that is to say, their permanent home, and the fiscal domicile of companies having separate legal personality shall be deemed to be their effective centre of management, provided always that this stipulation shall not affect the position under Swedish law in regard to the place of taxation of the undivided estate of deceased persons.

Article 2.

§ 1. The purpose of the present Convention is the establishment of regulations relating exclusively to the assessment of taxes on income and capital, and rates in supplement thereof levied for account of the State, provinces or communes.

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

¹ Translated by the Secretariat of the League of Nations, for information.

² The exchange of ratifications took place at Stockholm, April 25th, 1935.

§ 2. The following are the taxes to which the present Convention relates :

A. *In the case of the Netherlands :*

- (1) The Land Tax,
- (2) The Income Tax and the Communal Fund Tax,
- (3) The Tax on Capital and the Defence Tax I,
- (4) The Tax on Dividends and Directors' Fees.

B. *In the case of Sweden :*

- (1) The State Tax on Income and Capital,
- (2) The general Communal Tax,
- (3) The graduated Communal Tax.

Article 3.

Save in so far as otherwise provided in the present Convention, income shall be taxable only in the Contracting State in which the taxpayer's fiscal domicile is situate.

Article 4.

Income derived from immovable property up to the amount of its actual or estimated rentable value, together with all other income from such property which is not covered by Article 5 below, shall be taxable solely in the State in which such property is situate.

Article 5.

§ 1. Income derived from industrial, mining, commercial or agricultural undertakings (other than income derived from international traffic activities of maritime shipping or air navigation undertakings) shall be taxable in the State in which permanent establishments of such undertakings are situate.

§ 2. Where industrial, mining, commercial or agricultural undertakings have permanent establishments in both Contracting States, each State shall tax that part of the income which is derived from the permanent establishments situate in its territory. The competent administrative authorities of the two Contracting States shall lay down rules by agreement for the apportionment of the income concerned.

§ 3. The term " permanent establishments " shall be deemed to mean effective centres of management, branches, factories, workshops, agencies, warehouses, offices, laboratories, premises for purchase or sale, depots or any other fixed installations of a productive character. The fact of an undertaking established in one Contracting State having business relations with the other Contracting State through the intermediary of a *bona fide* agent or company of independent status (broker, commission agent, associated establishment, etc.) shall not be held to mean that the undertaking in question has a permanent establishment in that State.

§ 4. Income derived from business enterprise shall be deemed to include income derived from participation in undertakings, other than income derived from shares or securities of like nature.

Article 6.

Income derived from international traffic activities of maritime shipping or air navigation undertakings shall be taxable only in the State in which the effective centre of management is situate, provided the ships or aircraft concerned have the nationality of the said State.

Article 7.

Income derived from non-commercial professions not covered by Article 8 shall be taxable in that one of the two Contracting States in which the parties concerned have a permanent

establishment for the exercise of their professional activities. Where they have permanent establishments in both States, the treatment for which Article 5 provides shall be applicable.

Article 8.

The salaries of officials and public employees of either Contracting State, whose functions are exercised in the other State, shall be taxable only in the country by which they are paid.

Article 9.

Public pensions shall be taxable in the State in which is situate the Party liable for their payment.

Article 10.

The principles laid down in the foregoing Articles shall apply *mutatis mutandis* to taxes on capital.

Article 11.

The present Convention shall apply, in so far as the Netherlands are concerned, only to the Kingdom in Europe.

Article 12.

§ 1. The present Convention shall be ratified with, in the case of Sweden, the approval of the Riksdag. The instruments of ratification shall be exchanged at Stockholm as soon as possible.

§ 2. The present Convention shall come into force on the first day of the month of May following the date of ratification. It shall apply :

As regards Sweden : to income accruing on or after the date of the entry into force of the Convention, and to capital the taxation of which relates to a period subsequent to that date ;

As regards the Netherlands : so far as concerns the tax to which Article 2, § 2, A (1), relates, to income accruing on or after the date of the entry into force of the Convention ; so far as concerns the taxes to which Article 2, § 2, A (2) and (3), relate, to sums due in respect of the revenue years beginning on or after the said date ; so far as concerns the tax to which Article 2, § 2, A (4), relates, to sums distributed in respect of a financial year ending on or after the said date.

§ 3. The present Convention may cease to apply as from January 1st of each year, if denounced not less than eight months beforehand.

In faith whereof the Plenipotentiaries have signed the present Convention and have thereto affixed their seals.

Done at Stockholm, in duplicate, this 21st day of March, 1935.

(L. S.) (Signed) Rickard SANDLER.

(L. S.) (Signed) E. V. NAGELL.

FINAL PROTOCOL.

At the moment of signing the Convention for the Avoidance of Double Taxation in the Matter of Taxes on Income and Capital concluded this day between Sweden and the Netherlands, the undersigned Plenipotentiaries have agreed on the following provisions, which shall constitute an integral part of the Convention itself.

I. Students of either Contracting State residing in the other Contracting State exclusively for purposes of study shall not be taxable by the latter in respect of remittances received by them for the purpose of their maintenance or studies.

II. When a tax on income from capital is levied in either Contracting State by deduction at the source, such tax shall not come under the present Convention pending the conclusion of a special arrangement in the matter.

III. Royalties in respect of the usufruct of movable property or the operation of mines, quarries or other natural resources shall be taxable in the Contracting State in which such properties, mines, quarries, or other natural resources are situate.

Other royalties shall be taxed in accordance with the provisions of Article 3.

Fees payable at periodic intervals for the use of patents, models or the like shall be treated in the same manner as royalties.

IV. The provisions of Swedish law in regard to the taxation of the undivided estate of deceased persons shall not apply where, under the provisions of the present Convention, the heirs are directly taxable in the Netherlands on the income or capital derived from the estate.

V. Income from movable property shall be deemed to include income from the exploitation of forests, whether on the land of the exploiting party or on land belonging to other parties.

VI. For the purposes of Articles 5 and 6 of the present Convention, the Netherlands Tax on Dividends and Directors' Fees shall be deemed to be a tax on the income of companies operating industrial, mining, commercial or agricultural undertakings.

It is understood that in the application of the said tax double taxation shall be avoided in the following manner :

When a company having its fiscal domicile in the Netherlands is taxed in Sweden on its income, there shall be deducted from the taxable dividend of the company for any given financial year (before computing the tax on the basis of the Law concerning the Taxation of Dividends and Directors' Fees) an amount bearing the same ratio to such dividend as the part of the income taxable in Sweden bears to the total income.

VII. Where an undertaking established in either Contracting State has a predominating share in the management or in the capital of an undertaking established in the other Contracting State, or where both undertakings are owned or controlled by the same interests, with the result that the commercial and financial relations between the two are not what they would be if the two undertakings were independent of one another, any profit or loss which would normally have been shown in the accounts of one undertaking, but have actually been transferred in the manner indicated to the accounts of the other, shall be reinstated in the accounts of the former, and the necessary corrections shall be made as regards the income of the latter.

VIII. Sites of building operations, the completion of which has exceeded, or is estimated to exceed, a period of twelve months, shall be deemed to be permanent establishments within the meaning of the Convention.

IX. In order to avoid any uncertainty in the matter, it is hereby declared that the provisions of Article 8 shall not affect the right to benefit by any more extensive exemptions which have

been conferred, or may hereafter be conferred, on diplomatic or consular officials in virtue of general rules of international law.

Where, as a result of such extended exemptions, such officials are not liable to direct taxation in the State to which they are accredited or appointed, they shall be taxable by the State by which they are accredited or appointed.

X. It is understood that in the case of graduated taxes double taxation shall be avoided in the following manner :

(a) In the case of tax-payers having their fiscal domicile in the Netherlands :

The State of fiscal domicile shall assess the tax on the basis of all the taxable factors, but shall deduct from the amount of the assessment so calculated that part of the tax which under its own law is due in respect of income derived from the other State.

(b) In the case of tax-payers having their fiscal domicile in Sweden :

The State of fiscal domicile in its assessment of the tax may apply the scale of taxation that would have been applicable if the income and capital, which under the present Convention are taxable only in the other State, had formed part of the income and capital taxable in the State of fiscal domicile.

XI. Each State shall be entitled as may be necessary to require proof of the existence of double taxation within the meaning of the present Convention.

XII. Should difficulty or doubt arise as to the interpretation or application of the present Convention, the competent administrative authorities of the two States shall come to an agreement for the settlement of the question.

Done at Stockholm, in duplicate, this 21st day of March, 1935.

(Signed) Rickard SANDLER.

(Signed) E. v. NAGELL.