No. 111

DENMARK
and
NORWAY

Agreement with Final Protocol, for the prevention of double taxation in the matter of taxes on income and capital. Signed at Copenhagen, on 30 December 1946

Danish and Norwegian official texts communicated by the Permanent Representative of Denmark to the United Nations. The registration took place on 26 September 1947.

DANEMARK
et
NORVEGE

Accord avec protocole final tendant à éviter les doubles impositions en matière d'impôts sur le revenu et la fortune. Signés à Copenhague, le 30 décembre 1946

Textes officiels danois et norvégien communiqués par le représentant permanent du Danemark auprès de l'Organisation des Nations Unies. L'enregistrement a eu lieu le 26 septembre 1947.

TRANSLATION

No. 111. AGREEMENT BETWEEN THE KINGDOM OF DENMARK AND THE KINGDOM OF NORWAY FOR THE PREVENTION OF DOUBLE TAXATION IN THE MATTER OF TAXES ON INCOME AND CAPITAL. SIGNED AT COPENHAGEN, ON 30 DECEMBER 1946

The Kingdom of Denmark and the Kingdom of Norway have decided to conclude an Agreement for the prevention of double taxation in the matter of taxes on income and capital.

For this purpose they have appointed as their plenipotentiaries:

His Majesty the King of Denmark:
His Excellency Niels Carl Gustav Magnus Rasmussen, Minister for Foreign Affairs;

His Majesty the King of Norway:
August W. S. Esmarch, Envoy Extraordinary and Minister Plenipotentiary,

who, having examined their respective full powers and found them in good and due form, have agreed on the following provisions:

Article 1

The present Agreement shall be applicable to nationals of the Kingdom of Denmark and the Kingdom of Norway and to Danish and Norwegian corporate bodies.

Article 2

The Agreement shall be applicable to taxes on income or capital, whether levied on account of the State or of the commune.

In particular the following shall be regarded as taxes on income or capital:

1. Under Danish law:
   (*a*) State tax on income and capital;
   (*b*) Inter-communal tax on income and capital;
   (*c*) Communal tax on income;

(*d*) Taxes and charges levied according to the same principles as any of the taxes specified under (*a*) to (*c*).

2. Under Norwegian law:

(*a*) State tax on income and capital;

(*b*) Extraordinary State tax on capital;

(*c*) Communal tax on income and capital;

(*d*) Taxes and charges levied according to the same principles as any of the taxes specified under (*a*) to (*c*).

Article 3

Unless otherwise provided in the present Agreement, income and capital shall be taxable only in the Contracting State in which the taxpayer is deemed to be domiciled, and, in the case of a corporate body, where its domicile is considered to be situated.

For the purposes of the present Agreement, a taxpayer shall be deemed to be domiciled in one of the States, if he has his actual dwelling there, or should he have no such dwelling in either State, if he permanently resides there. A taxpayer shall be deemed to reside permanently in one of the States when he remains in the territory of that State in circumstances which warrant the presumption he does not intend to stay there merely temporarily.

A taxpayer who has not his actual dwelling, or who does not reside permanently in either of the two States, but who is nevertheless liable to double taxation under the laws of those States shall, for the purposes of the present Agreement, be deemed to be domiciled in the State of which he is a national.

For the purposes of this Agreement, a corporate body shall be deemed to be domiciled in the State in which the management or head administration has its seat. This provision shall not, however, affect the legislation of the two States in respect of the place of taxation of the estate of a deceased person which is under administration.

Article 4

Income from immovable property situated in one of the two States shall be taxable only in that State.

Article 5

Income from commerce, industry, or other occupation or activity for purposes of gain, derived from a permanent business establishment in one of the two States, shall be taxable, unless otherwise provided hereinafter, only in that State. Should there be permanent business establishments in both States, each State shall tax the portion of the income derived from the permanent establishment situated in its territory.

A permanent business establishment shall be regarded as a place at which there are special installations or arrangements for permanent use in the business, such as a place where the undertaking has its management, offices, branches, permanent agencies, factories, workshops, or the like, buying or selling premises, warehouses, mines or the like.

Income from part-ownership of business undertakings shall also be deemed to be income from business, with the exception of income from shares and similar securities.

Income from occupations such as the work of physicians, lawyers, engineers, architects or the like, and from the exercise of scientific, artistic, instructional, educational or similar activities, shall also be deemed to be income from business.

Article 6

Income derived from shipping or air undertakings, the actual seat of management of which is in one of the two States, shall be taxable only in that State.

Article 7

Capital consisting of immovable property in one of the two States, or appurtenances to such property, shall be taxable only in that State.

Capital vested in undertakings referred to in Articles 5 and 6 shall be taxable only in the State which is entitled by the provisions of the said Articles to claim taxation on the income from the said capital.

Article 8

The State in which the taxpayer is deemed to be domiciled may, when assessing the tax, apply the scale of taxation that would have been applicable if

the income and capital which under this Agreement are taxable only in the other State had also been taxable in the former State.

Article 9

If a taxpayer considers he can prove that the measures taken by the fiscal authorities of the Contracting States have resulted in his being subjected to double taxation contrary to the provisions of the present Agreement, objection to such double taxation is to be addressed to the supreme financial authorities of the State of which he is a national. If the objection is deemed to be valid, those authorities shall, where necessary, come to an agreement with the supreme financial authorities of the other State with a view to eliminating such double taxation.

If difficulty or doubt arises in other respects in the interpretation or application of the present Agreement, such doubtful points shall be settled by special negotiations and arrangements between the supreme financial authorities of the respective countries. The latter shall also conclude *ad hoc* agreements with a view to eliminating double taxation in cases which do not directly come under the present Agreement.

Article 10

The present Agreement is not applicable to Spitsbergen, Jan Mayen or the Faroe Islands.

Article 11

The present Agreement shall apply first to taxes paid in Denmark and Norway on the basis of tax assessments for the fiscal year 1946-1947.

Article 12

The present Agreement, done in duplicate in the Danish and Norwegian languages, shall be ratified, on the part of Denmark, by His Majesty the King of Denmark and, on the part of Norway, by His Majesty the King of Norway, and the instruments of ratification shall be exchanged at Oslo as soon as possible.

The Agreement shall come into force as from the exchange of the instruments of ratification and shall remain in force until denounced by one of the Contracting States. Denunciation shall take place at least eight months prior to the expiry of the calendar year.

Where due notice is given, the Agreement shall cease to apply, as far as Denmark is concerned, from 1 April of the following calendar year, and, as far as Norway is concerned, from 1 July of the following calendar year.

IN FAITH WHEREOF, the plenipotentiaries of the two States have signed the Agreement and have thereto affixed theirs seals.

DONE at Copenhagen, in duplicate, 30 December 1946.

(*Signed*) Gustav RASMUSSEN (*Signed*) Aug. ESMARCH

[L. S.] [L. S.]

FINAL PROTOCOL

On signing the Agreement concluded this day between the Kingdom of Denmark and the Kingdom of Norway for the prevention of double taxation in the matter of taxes on income and capital, the undersigned plenipotentiaries have jointly made the following declarations, which shall constitute an integral part of the Agreement:

1. With regard to taxpayers who are not nationals of either of the Contracting States, the supreme financial authorities of those States may in application of the principles of the Agreement come to special agreements in each case with a view to preventing double taxation. In this respect special account may be taken of taxpayers who are nationals of States which have concluded with both the Contracting States agreements for the prevention of double taxation.

2. The list of taxes on income and capital included in Article 2 of the Agreement is not intended to be exhaustive.

Any doubtful points as to what taxes are included in the Agreement shall be settled by agreement between the supreme financial authorities of the two States, which shall, whenever necessary, communicate to each other lists of the taxes on income and capital levied in each State.

3. By "communes" shall be understood in this Agreement communes of both the higher and the lower categories.

4. For the purposes of this Agreement taxes on income and property shall not include increment taxes, turnover taxes, taxes on communications or consumption, special taxes on winnings from lotteries and betting, succession dues and taxes on gifts, and taxes and duties in respect of special privileges and rights.

5. Should tax on inland capital yield in one of the two States be levied in the form of deductions (at source), the provisions of Article 3 shall not exclude the right to effect such deductions. The deduction may not, however, exceed 10 per cent of the capital yield.

6. Should any doubt arise as to the State in which an individual taxpayer may be deemed to be domiciled under Article 3, second paragraph, the question shall be settled by a special agreement between the supreme financial authorities of the two States. In this respect they shall take into consideration in which State the taxpayer's economic interests may be considered to be centred or, if this also cannot be decided, his nationality.

7. In respect of income or capital for which the estate of a deceased person under administration is taxed in one State, participants in the estate in the other State may not be taxed.

8. Reversions and payments in discharge of reversions (including Danish fiefs and estates in tail) shall not come within the provisions of this Agreement but capital vested in them and income derived from them shall be subject to taxation in accordance with the provisions in force in each State. Both States agree in such cases to enter into negotiations through their supreme financial authorities as to the extent to which and the principles on which relief from taxation may be granted to the owners of such entailed estates if they are subject to double taxation.

9. The provisions of Article 4 shall apply to income derived both from the direct administration and use of the immovable property with appurtenances, and to the income from letting or leasing or any other form of using such property.

Income from immovable property shall be deemed under the present Agreement to include income from timber felling on the person's own property or on the property of others and income which he may obtain from the transport of felled timber to the port of exportation and its sale within the country, and

also from the working up of the timber in the country at places other than the permanent business establishment.

10. The provisions of Article 5 shall also apply to income derived from the direct exercise of business and to income from the transfer of the business to others.

11. Profit on alienations of immovable property and appurtenances, and profit on alienations of the business or parts thereof or of objects used in the business, is not covered by the provisions of the present Agreement, but such profits shall be liable to taxation in accordance with the legal provisions in force in each State.

12. A permanent business establishment in one of the Contracting States shall not be deemed to be permanent solely on the ground that an undertaking domiciled in the other State maintains business connexions in the former State through a representative (agent) who, while permanently working for account of the undertaking in the territory of the former State, merely negotiates business as an intermediary, without being authorized to conclude business transactions on behalf of the undertaking, or if the business connexion is maintained through an entirely independent representative. In the latter case, however, each of the States reserves the right to act in accordance with its own laws, in so far as there are goods in commission at the premises of the representative.

13. The supreme financial authorities in the cases provided for in Article 5, first paragraph, second sentence, may conclude a special agreement with a view to the equitable allocation of income from commerce, industry, and other business and from capital invested in such activity.

Wherever the same income or capital is actually liable to taxation in both countries, because occasion has been found to effect revaluation of income or capital in the relationship between a parent company in one State and a subsidiary company in the other State, or because the same income or capital in one State is considered as being tied up to immovable property or a business concern and is considered under Article 3, or on similar grounds, as being income or capital respectively in the other State, the supreme financial authorities may conclude special agreements with a view to effecting a reasonable settlement of the relationship.

14. "Similar securities" in Article 5, third paragraph, shall be understood to mean share certificates held by participants, shareholders or other part owners in corporations with shared or otherwise limited liability, not including, however, ordinary "Kommandit" companies.

If doubts arise as to the interpretation of the expression "similar securities" on account of changes in the legal provisions in either State in respect of companies or other associations for carrying on business, the supreme financial authorities of the two States may conclude a special agreement on the subject.

15. Students who reside in one of the Contracting States solely for purposes of study shall be exempt from taxation by that State in respect of any allowances for their maintenance and studies which they receive from their relatives domiciled and taxable in the other State, or which are derived from scholarships in their own country.

16. In order to remove any doubt, it is hereby declared that the provisions of this Agreement shall not affect the right to benefit by any more extensive exemptions which have been conferred, or which may hereafter be conferred, on diplomatic or consular officials in virtue of the general rules of international law.

Where, owing to such more extensive exemptions, there is no liability to direct taxation in the State to which these officials are sent, the right of taxation shall be reserved to the State appointing them.

The provisions of Article 8 regarding the right to apply a certain higher scale of taxation shall also apply, as regards the diplomatic and consular officials here concerned, to their country of origin.

17. In view of the existing differences between the tax legislation of the two States, it is agreed that, where a person liable to taxation moves from one country to the other, the procedure adopted shall be as follows:

Should a person, in the event of removal from one of the Contracting States to the other, become liable to taxation in both States in respect of income of the kind referred to in Article 3, earned during the same period, and of capital of the kind mentioned in Article 3, it is agreed that the right to tax the income and capital referred to shall rest with the State to which the person has moved, provided such removal occurred before the beginning of the fiscal year applying in the latter State, in respect of which the double taxation in question would occur, but otherwise such right shall belong to the State in which the person concerned was domiciled when the income was acquired.

As regards the commencement and termination of liability to taxation in other respects, the procedure adopted shall be in accordance with the legislation of each of the Contracting States.

18. Each of the States shall be entitled to demand proof, as far as necessary, that double taxation is taking place within the meaning of the present Agreement.

19. The provisions of Article 6 in reference to taxation of shipping and air undertakings supersedes the regulations contained in the Exchange of Notes[1] between the Danish and Norwegian Governments constituting an Agreement for the reciprocal exemption from the taxation of income derived from shipping undertakings of 5 August 1931.

20. Persons liable to taxation, claiming that their tax assessment in Norway for 1946-47 was made contrary to the provisions of the Agreement, may lodge an appeal to have the adjustment corrected with the Chairman of the Assessment Board (Assessment Council) before 1 April 1947.

DONE in Copenhagen, in duplicate, 30 December 1946.

(*Signed*) Gustav RASMUSSEN (*Signed*) Aug. ESMARCH

[1] League of Nations, *Treaty Series*, Volume CXXI, page 9.