

No. 377

DENMARK
and
UNITED STATES OF AMERICA

Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income. Signed at Washington, on 6 May 1948; and

Protocol of exchange of instruments of ratification. Signed at Washington, on 1 December 1948

Danish and English official texts communicated by the Permanent Representative of Denmark to the United Nations. The registration took place on 10 February 1949.

DANEMARK
et
ETATS-UNIS D'AMERIQUE

Convention tendant à éviter les doubles impositions et à prévenir la fraude fiscale en matière d'impôts sur le revenu. Signée à Washington, le 6 mai 1948; et

Protocole d'échange des instruments de ratification. Signé à Washington, le 1er décembre 1948

Textes officiels danois et anglais communiqués par le représentant permanent du Danemark auprès de l'Organisation des Nations Unies. L'enregistrement a eu lieu le 10 février 1949.

No. 377. CONVENTION¹ BETWEEN THE GOVERNMENTS OF DENMARK AND OF THE UNITED STATES OF AMERICA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME (WITH PROTOCOL OF EXCHANGE OF INSTRUMENTS OF RATIFICATION). SIGNED AT WASHINGTON, ON 6 MAY 1948

His Majesty the King of Denmark and the President of the United States of America, desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have appointed for that purpose as their respective Plenipotentiaries:

His Majesty the King of Denmark:

Mr. Henrik Kauffmann, Ambassador Extraordinary and Plenipotentiary of Denmark to the United States of America, and

The President of the United States of America:

Mr. George C. Marshall, Secretary of State of the United States of America,

who, having communicated to one another their full powers, found in good and due form, have agreed upon the following Articles:

Article I

(1) The taxes referred to in this Convention are:

(a) In the case of the United States of America:
The Federal income tax, including surtaxes.

(b) In the case of Denmark:
The national income tax, including the war profits tax.
The intercommunal income tax.
The communal income tax.

(2) The present Convention shall also apply to any other taxes of a substantially similar character imposed by either contracting State subsequently to the date of signature of the present Convention.

¹ Came into force on 1 December 1948, upon the exchange of the instruments of ratification at Washington, in accordance with article XXIII.

Article II

(1) As used in this Convention:

(a) The term "United States" means the United States of America, and when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

(b) The term "Denmark" means the Kingdom of Denmark; the provisions of the Convention shall not, however, extend to the Faroec Islands; nor do they apply to Greenland.

(c) The term "permanent establishment" means a branch office, factory, warehouse or other fixed place of business, but does not include the casual and temporary use of merely storage facilities, nor does it include an agency unless the agent has and exercises a general authority to negotiate and conclude contracts on behalf of an enterprise or has a stock of merchandise from which he regularly fills orders on its behalf. An enterprise of one of the contracting States shall not be deemed to have a permanent establishment in the other State merely because it carries on business dealings in such other State through a *bona fide* commission agent, broker or custodian acting in the ordinary course of his business as such. The fact that an enterprise of one of the contracting States maintains in the other State a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute such fixed place of business a permanent establishment of such enterprise. The fact that a corporation of one contracting State has a subsidiary corporation which is a corporation of the other State or which is engaged in trade or business in the other State shall not of itself constitute that subsidiary corporation a permanent establishment of its parent corporation.

(d) The term "enterprise of one of the contracting States" means, as the case may be, "United States enterprise" or "Danish enterprise".

(e) The term "enterprise" includes every form of undertaking whether carried on by an individual, partnership, corporation, or any other entity.

(f) The term "United States enterprise" means an enterprise carried on in the United States of America by a resident of the United States of America or by a United States corporation or other entity; the term "United States corporation or other entity" means a partnership, corporation or other entity created or organized in the United States of America or under the law of the United States of America or of any State or Territory of the United States of America.

(g) The term “Danish enterprise” means an enterprise carried on in Denmark by a resident of Denmark or by a Danish corporation or other entity; the term “Danish corporation or other entity” means a partnership, corporation or other entity created or organized in Denmark or under Danish laws.

(h) The term “competent authorities” means, in the case of the United States the Commissioner of Internal Revenue or his authorized representative; and in the case of Denmark, the Chief of the Taxation Department of the Ministry of Finance (Generaldirektøren for Skattevæsenet) or his authorized representative.

(2) In the application of the provisions of the present Convention by one of the contracting States any term not otherwise defined shall, unless the context otherwise requires, have the meaning which such term has under its own tax laws.

Article III

(1) An enterprise of one of the contracting States shall not be subject to taxation in the other contracting State in respect of its industrial and commercial profits unless it is engaged in trade or business in such other State through a permanent establishment situated therein. If it is so engaged such other State may impose its tax upon the entire income of such enterprise from sources within such other State.

(2) In determining the industrial or commercial profits from sources within the territory of one of the contracting States of an enterprise of the other contracting State, no profits shall be deemed to arise from the mere purchase of goods or merchandise within the territory of the former contracting State by such enterprise.

(3) Where an enterprise of one of the contracting States is engaged in trade or business in the territory of the other contracting State through a permanent establishment situated therein, there shall be attributed to such permanent establishment the industrial or commercial profits which it might be expected to derive if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment and the profits so attributed shall, subject to the law of such other contracting State, be deemed to be income from sources within the territory of such other contracting State.

Article IV

Where an enterprise of one of the contracting States, by reason of its participation in the management or the financial structure of an enterprise of the other contracting State, makes with or imposes on the latter, in their commercial or financial relations, conditions different from those which would be made with an independent enterprise, any profits which would normally have accrued to one of the enterprises but by reason of those conditions have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

Article V

(1) Income which an enterprise of one of the contracting States derives from the operation of ships or aircraft registered in that State shall be exempt from taxation in the other contracting State.

(2) The present Convention shall not be deemed to affect the arrangement between the United States and Denmark providing for relief from double income taxation on shipping profits, effected by exchanges of notes dated May 22, August 9 and 18, October 24, 25 and 28, and December 5 and 6, in the year 1922.

Article VI

(1) Dividends shall be taxable only in the contracting State in which the shareholder is resident or, if the shareholder is a corporation or other entity, in the contracting State in which such corporation or other entity is incorporated or organized.

(2) Each of the contracting States reserves, however, the right to collect and retain the tax which, under its revenue laws, is deductible at the source with respect to such dividends, but the tax shall not exceed 15 percent of the amount of dividends derived from sources within such State by a resident, corporation or other entity of the other State, if the recipient has no permanent establishment in the contracting State from which the dividends are derived.

(3) It is agreed, however, that the rate of dividend tax at the source shall not exceed five percent if the shareholder is a corporation controlling, directly or indirectly, at least 95 percent of the entire voting power in the corporation paying the dividend, and if not more than 25 percent of the gross income of such paying corporation is derived from interest and dividends, other than interest and dividends received from its own subsidiary corporations. Such reduction of the rate to five percent shall not apply if the relationship of the

two corporations has been arranged or is maintained primarily with the intention of securing such reduced rate.

Article VII

Interest on bonds, securities, notes, debentures, or on any other form of indebtedness derived from sources within one of the contracting States by a resident or corporation or other entity of the other contracting State not having a permanent establishment in the former State shall be exempt from tax by such former State.

Article VIII

Royalties and other amounts derived as consideration for the right to use copyrights, patents, designs, secret processes and formulas, trade-marks and other like property (including rentals and like payments in respect of motion picture films) derived from sources within one of the contracting States by a resident or corporation or other entity of the other contracting State not having a permanent establishment in the former State shall be exempt from taxation in such former State.

Article IX

(1) Income from real property (not including interest derived from mortgages and bonds secured by real property) and royalties in respect of the operation of mines, quarries, or other natural resources, shall be taxable only in the contracting State in which such property, mines, quarries, or other natural resources are situated.

(2) A resident or corporation of one of the contracting States deriving any such income from sources within the other contracting State may, for any taxable year, elect to be subject to the tax of such other contracting State, on a net basis, as if such resident or corporation were engaged in trade or business within such other contracting State through a permanent establishment therein during such taxable year.

Article X

(1) Wages, salaries, and similar compensation and pensions paid by one of the contracting States or by any other public authority within that State to individuals residing in the other State shall be taxable only in the former State.

(2) Private pensions and life annuities derived from within one of the contracting States and paid to individuals residing in the other contracting State shall be exempt from taxation in the former State.

(3) The term "life annuities" as used herein means a stated sum payable periodically at stated times during life, or during a specified number of years, under an obligation to make the payments in consideration of a gross sum paid for such obligation.

Article XI

(1) Compensation for labor or personal services, including the practice of the liberal professions, shall be taxable only in the contracting State in which such services are rendered.

(2) The provisions of paragraph (1) are, however, subject to the following exceptions:

(a) A resident of Denmark shall be exempt from United States tax upon compensation for labor or personal services if he is temporarily present in the United States for a period or periods not exceeding a total of ninety days during the taxable year and the compensation received for such services does not exceed \$3,000 in the aggregate. If, however, his compensation is received for labor or personal services performed as an employee of, or under contract with, a resident or corporation or other entity of Denmark, he will be exempt from United States tax if his stay in the United States does not exceed a total of 180 days during the taxable year.

(b) The provisions of paragraph (2) (a) of this Article shall apply, *mutatis mutandis*, to a resident of the United States with respect to compensation for personal services otherwise subject to income tax in Denmark.

(3) The provisions of this Article shall have no application to the income to which Article X (1) relates.

Article XII¹

Gains derived in one of the contracting States from the sale or exchange of capital assets by a resident or corporation or other entity of the other contracting State shall be exempt from taxation in the former State if such resident or

¹ See Protocol of exchange of instruments of ratification, page 77.

corporation or other entity is not engaged in trade or business in such former State.

Article XIII

Students or apprentices, citizens of one of the contracting States, residing in the other contracting State exclusively for purposes of study or for acquiring business experience, shall not be taxable in the latter State in respect of remittances (other than their own income) received by them from abroad for the purposes of their maintenance or studies.

Article XIV

A professor or teacher, a resident of one of the contracting States, who temporarily visits the territory of the other contracting State for the purpose of teaching for a period not exceeding two years at a university, college, school or other educational institution in the other contracting State, shall be exempted in such other contracting State from tax on his remuneration for such teaching for such period.

Article XV

It is agreed that double taxation shall be avoided in the following manner:

(a) The United States in determining the income taxes, including surtaxes, of its citizens, residents or corporations may, regardless of any other provision of this Convention, include in the basis upon which such taxes are imposed all items of income taxable under the revenue laws of the United States as if this convention had not come into effect. The United States shall, however, subject to the provisions of section 131, Internal Revenue Code, deduct from its taxes the amount of Danish taxes specified in Article I of this Convention.

(b) Denmark, in determining its taxes specified in Article I of this Convention, may, regardless of any other provision of this Convention, include in the basis upon which such taxes are imposed all items of income subject to such taxes under the taxation laws of Denmark. Denmark shall, however, deduct from the taxes so calculated the United States tax on income coming within the provisions of Articles III, IX, X (1), XIII and XIV of this Convention and on earned income earned within the United States, but in an amount not exceeding that proportion of the Danish taxes which such income bears to the entire income subject to tax by Denmark. Denmark will also allow as a deduc-

tion from its taxes an amount equal to 15 percent (five percent in the case of dividend covered by Article VI (3)) of the gross amount of dividends (reduced by the United States tax applicable to such dividends) from sources within the United States.

Article XVI

(1) The citizens of one of the contracting States shall not, while resident in the other contracting State, be subjected therein to other or more burdensome taxes than are the citizens of such other contracting State residing in its territory. As used in this paragraph,

(a) the term "citizens" includes all legal persons, partnerships, and associations created or organized under the laws in the respective contracting States, and

(b) the term "taxes" means taxes of every kind or description whether national, Federal, state, provincial or municipal.

(2) It is agreed that section 25, paragraph 5, of the Danish law No. 391 of July 12, 1946, prescribing an addition of 50 percent to the capital increment tax on corporations in cases where more than 50 percent of the entire stock capital is owned by a single shareholder residing outside Denmark, shall not be applicable when the shareholder in question is a resident of the United States or a United States corporation or other entity.

Article XVII

The competent authorities of the contracting States shall exchange such information (being information available under the respective taxation laws of the Contracting States) as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or the administration of statutory provisions against tax avoidance in relation to the taxes which are the subject of the present Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any person other than those concerned with the assessment and collection of the taxes which are the subject of the present Convention. No information shall be exchanged which would disclose any trade secret or trade process.

Article XVIII

(1) The contracting States undertake to lend assistance and support to each other in the collection of the taxes which are the subject of the present Convention, together with interest, costs and additions to the taxes.

(2) In the case of applications for enforcement of taxes, revenue claims of each of the contracting States which have been finally determined may be accepted for enforcement by the other contracting State and may be collected in that State in accordance with the laws applicable to the enforcement and collection of its own taxes.

(3) Any application shall include a certification that under the laws of the State making the application the taxes have been finally determined.

(4) The assistance provided for in this Article shall not be accorded with respect to the citizens, corporations or other entities of the State to which application is made, except as is necessary to insure that the exemption or reduced rate of tax granted under the present convention to such citizens, corporations, or other entities shall not be enjoyed by persons not entitled to such benefits.

Article XIX

The State to which application is made for information or assistance shall comply as soon as possible with the request addressed to it except that such State may refuse to comply with the request for reasons of public policy or if compliance would involve violation of a trade, business, industrial or professional secret or trade process.

Article XX

Where a taxpayer shows proof that the action of the revenue authorities of the contracting States has resulted in double taxation in his case in respect of any of the taxes to which the present Convention relates, he shall be entitled to lodge a claim with the State of which he is a citizen or, if he is not a citizen of either of the contracting States, with the State of which he is a resident, or, if the taxpayer is a corporation or other entity, with the State in which it is created or organized. Should the claim be upheld, the competent authority of such State may come to an agreement with the competent authority of the other State with a view to equitable avoidance of the double taxation in question.

Article XXI

(1) The provisions of this Convention shall not be construed to deny or affect in any manner the right of diplomatic and consular officers to other or additional exemptions now enjoyed or which may hereafter be granted to such officers.

(2) The provisions of the present Convention shall not be construed to restrict in any manner any exemption, deduction, credit or other allowance accorded by the laws of one of the contracting States in the determination of the tax imposed by such State.

(3) Should any difficulty or doubt arise as to the interpretation or application of the present Convention, or its relationship to Conventions between one of the contracting States and any other State, the competent authorities of the contracting States may settle the question by mutual agreement.

Article XXII

The competent authorities of the two contracting States may prescribe regulations necessary to interpret and carry out the provisions of this Convention. With respect to the provisions of this Convention relating to exchange of information and mutual assistance in the collection of taxes, such authorities may, by common agreement, prescribe rules concerning matters of procedure, forms of application and replies thereto, conversion of currency, disposition of amounts collected, minimum amounts subject to collection and related matters.

Article XXIII

(1) The present Convention shall be ratified and the instruments of ratification shall be exchanged at Washington as soon as possible.

(2) Upon the exchange of instruments of ratification, the present Convention shall have effect

(a) in the case of United States tax, for the taxable years beginning on or after the first day of January of the year in which such exchange takes place;

(b) in the case of Danish tax, for the taxable years beginning on or after the first day of April of the year in which such exchange takes place.

(3) The present Convention shall continue effective for a period of five years and indefinitely after that period, but may be terminated by either of the contracting States at the end of the five-year period or at any time there-

after, provided that at least six month's prior notice of termination has been given and, in such event, the present Convention shall cease to be effective

(a) as respects United States tax, for the taxable years beginning on or after the first day of January next following the expiration of the six-month period;

(b) as respects Danish tax, for the taxable years beginning on or after the first day of April next following the expiration of the six-month period.

DONE at Washington, in duplicate, in the Danish and English languages, the two texts having equal authenticity, this 6th day of May, 1948.

For His Majesty the King of Denmark:

(Signed) HENRIK KAUFFMANN

For the President of the United States of America:

(Signed) G. C. MARSHALL

PROTOCOL OF EXCHANGE OF INSTRUMENTS OF RATIFICATION

The undersigned, Henrik Kauffmann, Ambassador Extraordinary and Plenipotentiary of Denmark to the United States of America, and Robert A. Lovett, Acting Secretary of State of the United States of America, duly authorized thereto by their respective Governments, having met for the purpose of exchanging the instruments of ratification by their respective Governments of the convention between Denmark and the United States of America for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed at Washington on May 6, 1948, and the respective instruments of ratification of the convention aforesaid having been carefully compared and found to be in due form, the exchange took place this day.

The ratification by the Government of the United States of America of the convention aforesaid recites in its entirety the reservation contained in the resolution of June 17, 1948, of the Senate of the United States of America advising and consenting to ratification of the convention aforesaid, the text of which reservation was communicated by the Government of the United States of America to the Government of Denmark. The Government of Denmark has accepted the reservation aforesaid. Accordingly, it is the understanding of both Governments that Article XII of the convention aforesaid shall be deemed to be deleted and of no effect.

IN WITNESS WHEREOF, the respective plenipotentiaries have signed the present Protocol of Exchange of Instruments of Ratification.

DONE in duplicate, in the Danish and English languages, at Washington this first day of December, 1948.

For the Royal Danish Government:
(Signed) HENRIK KAUFFMANN

For the Government of the United States of America:
(Signed) ROBERT A. LOVETT