

No. 1688

**NETHERLANDS
and
SWITZERLAND**

Agreement (with final protocol) for the avoidance of double taxation and the prevention of fiscal evasion with respect to death duties. Signed at The Hague, on 12 November 1951

Official texts: French and Dutch.

Registered by the Netherlands on 2 April 1952.

**PAYS-BAS
et
SUISSE**

Convention (avec protocole final) en vue d'éviter les doubles impositions dans le domaine des impôts sur les successions. Signée à La Haye, le 12 novembre 1951

Textes officiels français et néerlandais.

Enregistrée par les Pays-Bas le 2 avril 1952.

[TRANSLATION — TRADUCTION]

N^o 1688. AGREEMENT¹ BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE SWISS CONFEDERATION FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO DEATH DUTIES. SIGNED AT THE HAGUE, ON 12 NOVEMBER 1951

Her Majesty the Queen of the Netherlands of the one part, and the Swiss Federal Council of the other part,

Desiring still further to avoid the double taxation with respect of succession duties,

Have agreed to conclude a Convention for this purpose,

And have appointed as their Plenipotentiaries :

Her Majesty the Queen of the Netherlands

M. D. U. STIKKER, Her Minister for Foreign Affairs,

The Swiss Federal Council

M. D. SECRÉTAN, Envoy Extraordinary and Minister Plenipotentiary of Switzerland at The Hague,

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

Article 1

(1) It is the purpose of this Agreement to safeguard against the double taxation which might, on the death of a national of either of the two States who was last domiciled in the Netherlands or in Switzerland, result from the simultaneous levying of Netherlands and Swiss succession duties.

(2) For the purposes of this Agreement the expression " succession duties " shall be taken to mean the duties which, under Swiss or Netherlands legislation, are levied *mortis causa* on the whole or on part of the estate or on the portions thereof which accrue to the heirs.

(3) This Agreement shall apply in particular :

a. in respect of Switzerland

to the duties levied by cantons, districts, circles (*cercles*) and communes in Switzerland on the portions of the estate which accrue to the heirs or on the whole estate;

¹ Came into force on 9 January 1952 by the exchange of the instruments of ratification at Berne, in accordance with the provisions of article 8 of the Convention.

b. in respect of the Kingdom of the Netherlands to the succession duty (*recht van successie*) and to the duty on the transfer of property (*recht van overgang*) *mortis causa*.

(4) The Agreement shall likewise apply to any duties of the same or similar nature which may in the future be added to or supersede the duties referred to in the preceding paragraph. It shall also apply to duties levied in the form of additional taxes (*centimes additionnels*).

(5) So far as the Kingdom of the Netherlands is concerned, this Agreement shall only be applicable to territory in Europe; however, this stipulation shall be without prejudice to the provision contained in article 6.

Article 2

(1) Real property (including property accessory thereto, and livestock or equipment used in agriculture or forestry) shall not be liable to succession duties except in the State in which such property is situated. Paragraphs 2 and 4 of article 3, and paragraph 2 of the Final Protocol *ad* article 3, of the Convention concluded this day between the two High Contracting Parties for the avoidance of double taxation with respect to taxes on income and property,¹ shall apply *mutatis mutandis*.

(2) Any personal property which is invested in any commercial, industrial or handicraft undertaking whatsoever shall not be liable to succession duties except in the State in which the undertaking has a permanent establishment. Article 4 of the Convention concluded this day between the two High Contracting Parties for the avoidance of double taxation with respect to taxes on income and property, and the provisions in the Final Protocol to the said Convention which relate to the said article, shall apply *mutatis mutandis*.

(3) Any personal property which is invested in permanent installations and which is used in the exercise of a liberal profession in either of the two States shall not be liable to succession duties except in the State in which the installations are situated.

Article 3

(1) Any part of a deceased person's estate that is not covered by the terms of article 2, including all claims whatsoever secured by real property, shall not be liable to succession duties except in the State in which the deceased was last domiciled.

(2) For the purpose of defining domicile, the provisions of paragraphs 2 and 3 of article 2 of the Convention concluded this day between the two High Contracting Parties for the avoidance of double taxation with respect to taxes on income and property, shall apply.

¹ See p. 179 of this volume.

Article 4

(1) This Agreement shall not affect the right of diplomatic and consular officers to additional exemptions which may be enjoyed by such officers under the general rules of international law. In so far as, by virtue of such additional exemptions, the State to which he is accredited does not levy duty on the property passing to the officer or to a member of his family, or on the property which he or a member of his family leaves on death, the right to levy duty thereon shall be reserved to the State by which he is accredited, as if these persons were resident in the said State.

(2) The nationals (whether natural persons or bodies corporate) of one of the two States may not be required by the other State to pay taxes or duties other or higher than those paid by its own nationals in similar circumstances.

(3) The provisions of this Agreement shall not restrict the benefits accorded to taxpayers under the legislation of either of the two States.

Article 5

(1) The competent administrative authorities of the two States may consult with each other with a view to eliminating double taxation with respect to the duties referred to in article 1 in cases not covered by this Agreement and in cases where the interpretation or application of this Agreement gives rise to difficulties or doubt.

(2) In addition, paragraph 1 of article 11 and the provision *ad* article 11 of the Final Protocol of the Convention concluded this day between the High Contracting Parties for the avoidance of double taxation with respect to taxes on income and property shall apply *mutatis mutandis*.

Article 6

So far as the extension of this Agreement to other territories is concerned, article 12 of the Convention concluded this day between the two High Contracting Parties for the avoidance of double taxation with respect to taxes on income and property shall apply *mutatis mutandis*.

Article 7

(1) This Agreement shall apply to all cases in which death occurs after the Agreement has entered into force.

(2) If this Agreement is denounced, in due form, with effect from the end of a calendar year, it shall cease to be applicable to any case in which death occurs after the expiry of that year.

Article 8

(1) This Agreement shall be ratified and the instruments of ratification shall be exchanged at Berne as soon as possible.

(2) The Agreement shall enter into force on the date of the exchange of instruments of ratification; it may be denounced by either of the two High Contracting Parties, subject to not less than six months notice, with effect from the end of a calendar year.

IN WITNESS WHEREOF the above-mentioned plenipotentiaries have signed this Agreement and affixed their seals thereto.

DONE in duplicate at The Hague, on 12 November 1951, in the Dutch and French languages, both texts being equally authentic.

(Signed) STIKKER

(Signed) D. SECRÉTAN

FINAL PROTOCOL

On proceeding to sign the Agreement concluded this day between the Kingdom of the Netherlands and the Swiss Confederation for the avoidance of double taxation with respect to succession duties, the undersigned plenipotentiaries have agreed to the following declarations which shall form an integral part of the Agreement :

Ad article 1

The competent administrative authorities of the two States shall notify each other, at the end of each year, of any amendments which may have been made in their fiscal legislations. They shall consult with each other to remove any doubts which may arise in connexion with the duties to which this Agreement is to be applied.

Ad articles 2 and 3

(1) This Agreement shall not limit the right of Switzerland to assess the succession duties payable on the parts of an estate which are taxable exclusively by Switzerland at the rate which would be applicable if the entire estate, or all the portions thereof accruing to the heirs, were taxable in Switzerland.

(2) If the deceased was last domiciled in the Netherlands, the Netherlands shall retain the right to assess the entire estate for succession duties (whether the property is situated in Netherlands or in Swiss territory) but shall deduct from the duty so assessed the lower of the two following amounts :

a. the sum of the duties and taxes levied by Switzerland on property in Swiss territory which is taxable under this Agreement; or

b. that part of the duties and taxes assessed by the Netherlands which corresponds to the ratio between the net amount of the property taxable in Switzerland and the net aggregate of the taxable property of the deceased.

Ad article 3

(1) Notwithstanding the provisions of article 3 (2) of this Agreement, the State of which the deceased was a national at the time of his death may levy succession duty as if the deceased had at that time also been domiciled in that State, provided that the deceased actually had a domicile in that State in the course of the ten years preceding his death and provided that he was a national of that State at the time when he gave up his domicile there; in such a case that part of the duty which this State would not have levied if the deceased had not been a national of the said State at the time of giving up his domicile or at the time of his death, shall be deducted from the duty which is payable in the other State by reason of his domicile there.

(2) The provisions of paragraph (1) shall not be applicable in the case of any person who, at the time of his death, was a national of both States.

DONE in duplicate at The Hague, on 12 November 1951, in the Dutch and French languages, both texts being equally authentic.

(Signed) STIKKER

(Signed) D. SECRÉTAN