

No. 1706

**UNITED STATES OF AMERICA
and
SWITZERLAND**

Convention for the avoidance of double taxation with respect to taxes on income. Signed at Washington, on 24 May 1951

Protocol of exchange of the instruments of ratification of the above-mentioned Convention. Signed at Berne, on 27 September 1951

Official texts of the Convention: English and German.

Official texts of the Protocol: English and French.

Registered by the United States of America on 15 April 1952.

**ÉTATS-UNIS D'AMÉRIQUE
et
SUISSE**

Convention en vue d'éviter les doubles impositions dans le domaine des impôts sur le revenu. Signée à Washington, le 24 mai 1951

Protocole de l'échange des instruments de ratification de la Convention susmentionnée. Signé à Berne, le 27 septembre 1951

Textes officiels de la Convention: anglais et allemand.

Textes officiels du Protocole: anglais et français.

Enregistrés par les États-Unis d'Amérique le 15 avril 1952.

No. 1706. CONVENTION¹ BETWEEN THE UNITED STATES OF AMERICA AND THE SWISS CONFEDERATION FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME. SIGNED AT WASHINGTON, ON 24 MAY 1951

The President of the United States of America and The Swiss Federal Council, desiring to conclude a convention for the avoidance of double taxation with respect to taxes on income, have appointed for that purpose as their respective Plenipotentiaries :

The President of the United States of America :

Dean Acheson, Secretary of State of the United States of America, and

The Swiss Federal Council :

Charles Bruggmann, Envoy Extraordinary and Minister Plenipotentiary of the Swiss Confederation,

who, having communicated to one another their full powers, found in good and due form, have agreed as follows :

Article I

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

(a) In the case of the United States of America : The Federal income taxes, including surtaxes and excess profits taxes.

(b) In the case of The Swiss Confederation : The federal, cantonal and communal taxes on income (total income, earned income, income from property, industrial and commercial profits, etc.).

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

¹ The Convention came into force on 27 September 1951 by the exchange of the instruments of ratification at Berne, in accordance with article XX.

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 means the States, the Territories of Alaska and Hawaii, and the District of Columbia.

(b) The term " Switzerland " means The Swiss Confederation.

(c) The term " permanent establishment " means a branch, office, factory, workshop, 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 habitually 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 commission agent, broker or custodian or other independent agent 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. The maintenance within the territory of one of the contracting States by an enterprise of the other contracting State of a warehouse for convenience of delivery and not for purposes of display shall not of itself constitute a permanent establishment within that territory even though offers of purchase have been obtained by an agent of the enterprise in that territory and transmitted by him to the enterprise for acceptance.

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

(e) The term " United States enterprise " means an industrial or commercial enterprise or undertaking carried on in the United States by a resident (including an individual, fiduciary and partnership) of the United States or by a United States corporation or other entity; the term " United States corporation or other entity " means a corporation or other entity

created or organized under the law of the United States or of any State or Territory of the United States.

(f) The term "Swiss enterprise" means an industrial or commercial enterprise or undertaking carried on in Switzerland by an individual resident in Switzerland or by a Swiss corporation or other entity; the term "Swiss corporation or other entity" means a corporation or institution or foundation having juridical personality, or a partnership (association "en nom collectif" or "en commandite"), or other association without juridical personality, created or organized under Swiss laws.

(g) The term "competent authorities" means, in the case of the United States, the Commissioner of Internal Revenue as authorized by the Secretary of the Treasury; and in the case of Switzerland, the Director of the Federal Tax Administration as authorized by the Federal Department of Finances and Customs.

(h) The term "industrial or commercial profits" includes manufacturing, mercantile, mining, financial and insurance profits, but does not include income in the form of dividends, interest, rents or royalties, or remuneration for personal services: Provided, however, that such excepted items of income shall, subject to the provisions of this Convention, be taxed separately or together with industrial or commercial profits in accordance with the laws of the contracting States.

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

(b) A United States enterprise shall not be subject to taxation by Switzerland in respect of its industrial and commercial profits except as to such profits allocable to its permanent establishment situated in Switzerland.

(2) No account shall be taken in determining the tax in one of the contracting States of the mere purchase of merchandise therein by an enterprise of the other State.

(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.

(4) In the determination of the industrial or commercial profits of the permanent establishment there shall be allowed as deductions all expenses which are reasonably applicable to the permanent establishment, including executive and general administrative expenses so applicable.

(5) The competent authorities of the two contracting States may lay down rules by agreement for the apportionment of industrial and commercial profits.

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

Income which an enterprise of one of the contracting States derives from the operation of ships or aircraft registered in that State shall be taxable only in the State in which such ships or aircraft are registered.

Article VI

(1) The rate of tax imposed by one of the contracting States upon dividends derived from sources within such State by a resident or corporation or other

entity of the other contracting State not having a permanent establishment in the former State shall not exceed 15 percent: Provided, however, that this paragraph shall have no application to Swiss tax in the case of dividends derived from Switzerland by a Swiss citizen (who is not also a citizen of the United States) resident in the United States.

(2) It is agreed, however, that such rate of tax 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.

(3) Switzerland may collect its tax without regard to paragraphs (1) and (2) of this Article but will make refund of the tax so collected in excess of the tax computed at the reduced rates provided in such paragraphs.

Article VII

(1) The rate of tax imposed by one of the contracting States on interest on bonds, securities, notes, debentures or on any other form of indebtedness (including mortgages or bonds secured by real property) derived from sources within such contracting State by a resident or corporation or other entity of the other contracting State not having a permanent establishment in the former State shall not exceed five percent: Provided, however, that this paragraph shall have no application to Swiss tax in the case of interest derived from Switzerland by a Swiss citizen (who is not also a citizen of the United States) resident in the United States.

(2) Switzerland may collect its tax without regard to paragraph (1) of this Article but will make refund of the tax so collected in excess of the tax computed at the reduced rate provided in such paragraph.

Article VIII

Royalties and other amounts derived, as consideration for the right to use copyrights, artistic and scientific works, patents, designs, plans, secret processes and formulae, trade-marks, and other like property and rights (including rentals

and like payments in respect to motion picture films or for the use of industrial, commercial or scientific equipment), 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 (including gains derived from the sale or exchange of such property but not including interest from mortgages or 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 or other entity of one of the contracting States deriving any such income from such property 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 or entity were engaged in trade or business within such other contracting State through a permanent establishment therein during such taxable year.

Article X

(1) An individual resident of Switzerland shall be exempt from United States tax upon compensation for labor or personal services performed in the United States (including the practice of the liberal professions and rendition of services as director) if he is temporarily present in the United States for a period or periods not exceeding a total of 183 days during the taxable year and either of the following conditions is met :

(a) his compensation is received for such labor or personal services performed as an employee of, or under contract with, a resident or corporation or other entity of Switzerland, or

(b) his compensation received for such labor or personal services does not exceed \$10,000.

(2) The provisions of paragraph (1) of this Article shall apply *mutatis mutandis*, to an individual resident of the United States with respect to com-

pensation for such labor or personal services performed in Switzerland.

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

(4)¹ The provisions of paragraph (1) (a) of this Article shall not apply to the compensation, profits, emoluments or other remuneration of public entertainers such as stage, motion picture or radio artists, musicians and athletes.

Article XI

(1) (a) Wages, salaries and similar compensation, and pensions paid by the United States or by the political subdivisions or territories thereof to an individual (other than a Swiss citizen who is not also a citizen of the United States) shall be exempt from Swiss tax.

(b) Wages, salaries and similar compensation and pensions paid by Switzerland or by any agency or instrumentality thereof or by any political subdivisions or other public authorities thereof to an individual (other than a United States citizen who is not also a citizen of Switzerland) shall be exempt from United States tax.

(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 "pensions", as used in this Article, means periodic payments made in consideration for services rendered or by way of compensation for injuries received.

(4) The term "life annuities" as used in this Article, 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 return for adequate and full consideration in money or money's worth.

Article XII

A professor or teacher, a resident of one of the contracting States, who temporarily visits 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.

¹ See p. 260 of this volume, Protocol of the instruments of ratification of 27 September 1951.

Article XIII

A student or apprentice, a resident of one of the contracting States, who temporarily visits the other contracting State exclusively for the purposes of study or for acquiring business or technical experience shall not be taxable in the latter State in respect of remittances received by him from abroad for the purposes of his maintenance or studies.

Article XIV

(1) Dividends and interest paid by a corporation other than a United States domestic corporation shall be exempt from United States tax where the recipient is a nonresident alien as to the United States resident in Switzerland or a Swiss corporation, not having a permanent establishment in the United States.

(2) Dividends and interest paid by a corporation other than a Swiss corporation shall be exempt from Swiss tax where the recipient is a resident or corporation of the United States, not having a permanent establishment in Switzerland.

Article XV

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

(a) The United States in determining its taxes specified in Article I of this Convention in the case 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,¹ as in effect on the date of the entry into force of this Convention, deduct from its taxes the amount of Swiss taxes specified in Article I of this Convention. It is agreed that by virtue of the provisions of subparagraph (b) of this paragraph, Switzerland satisfies the similar credit requirement set forth in section 131 (a) (3), Internal Revenue Code.

(b) Switzerland, in determining its taxes specified in Article I of this Convention in the case of its residents, corporations or other entities,

¹ United States : 26 U.S. Code § 131.

shall exclude from the basis upon which such taxes are imposed such items of income as are dealt with in this Convention, derived from the United States and not exempt from, and not entitled to the reduced rate of, United States tax under this Convention; but in the case of a citizen of the United States resident in Switzerland there shall be excluded all items of income derived from the United States. Switzerland, however, reserves the right to take into account in the determination of the rate of its taxes also the income excluded as provided in this paragraph.

(2) The provisions of this Article shall not be construed to deny the exemptions from United States tax or Swiss tax, as the case may be, granted by Article XI (1) of this Convention.

Article XVI

(1) 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 like 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, business, industrial or professional secret or any trade process.

(2) Each of the contracting States may collect such taxes imposed by the other contracting State as though such taxes were the taxes of the former State as will ensure that the exemption or reduced rate of tax granted under Articles VI, VII, VIII and XI (2) of the present Convention by such other State shall not be enjoyed by persons not entitled to such benefits.

(3) In no case shall the provisions of this Article be construed so as to impose upon either of the contracting States the obligation to carry out administrative measures at variance with the regulations and practice of either contracting State or which would be contrary to its sovereignty, security or public policy or to supply particulars which are not procurable under its own legislation or that of the State making application.

Article XVII

(1) Where a taxpayer shows proof that the action of the tax authorities of the contracting States has resulted, or will result, in double taxation contrary to the provisions of the present Convention, he shall be entitled to present the facts to the State of which he is a citizen or a resident, or, if the taxpayer is a corporation or other entity, to the State in which it is created or organized. Should the taxpayer's claim be deemed worthy of consideration, the competent authority of such State shall undertake to come to an agreement with the competent authority of the other State with a view to equitable avoidance of the double taxation in question.

(2) 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 XVIII

(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 now or hereafter accorded by the laws of one of the contracting States in the determination of the tax imposed by such State.

(3) 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. The term "citizens" as used in this Article includes all legal persons, partnerships and associations created or organized under the laws in force in the respective contracting States. In this Article the word "taxes" means taxes of every kind or description, whether Federal, State, cantonal, municipal or communal.

Article XIX

(1) The competent authorities of the two contracting States may prescribe regulations necessary to carry into effect the present Convention within the respective States.

(2) The competent authorities of the two contracting States may communicate with each other directly for the purpose of giving effect to the provisions of this Convention.

Article XX

(1) The present Convention shall be ratified and the instruments of ratification shall be exchanged at Berne as soon as possible. It shall have effect for the taxable years beginning on or after the first day of January of the year in which such exchange takes place: Provided, however, that if such exchange takes place on or after October 1 of such year, Article VI (except paragraph (2) thereof) and Article VII of the Convention shall have effect only for taxable years beginning on or after the first day of January of the year immediately following the year in which such exchange takes place.

(2) The present Convention shall continue effective for a period of five years beginning with the calendar year in which the exchange of the instruments of ratification takes place 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 thereafter, provided that at least six months' prior notice of termination has been given and, in such event, the present Convention shall cease to be effective for the taxable years beginning on or after the first day of January next following the expiration of the six-month period.

DONE at Washington, in duplicate, in the English and German languages, the two texts having equal authenticity, this 24th day of May, 1951.

For the President of the United States of America :
Dean ACHESON [SEAL]

For the Swiss Federal Council :
Charles BRUGGMANN [SEAL]

PROTOCOL OF EXCHANGE OF THE INSTRUMENTS OF RATIFICATION OF THE CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND THE SWISS CONFEDERATION FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME. SIGNED AT BERNE, ON 27 SEPTEMBER 1951

The undersigned, R. Borden Reams, Chargé d'affaires of the Legation of the United States of America in Berne, and Max Petitpierre, Federal Counselor, Head of the Political Department of the Swiss Confederation, being duly authorized thereto by their respective Governments, have met for the purpose of exchanging the instruments of ratification of the convention between the United States of America and the Swiss Confederation for the avoidance of double taxation with respect to taxes on income, signed at Washington on May 24, 1951. The respective instruments of ratification of the convention aforesaid having been compared and found to be in due form, the exchange took place this day.

As recited in the ratification on the part of the United States of America, the Senate of the United States of America, in its resolution of September 17, 1951, advising and consenting to the ratification of the convention aforesaid, expressed a certain reservation with respect thereto, as follows :

“ The Government of the United States of America does not accept paragraph (4) of Article X of the convention, relating to the profits or remuneration of public entertainers.”

The text of the said reservation was communicated by the Government of the United States of America to the Swiss Federal Council. The Swiss Federal Council has accepted the said reservation. Accordingly, it is understood by the two Governments that the convention aforesaid, upon entry into force in accordance with its provisions, is modified in accordance with the said reservation, so that, in effect, paragraph (4) of Article X of the convention aforesaid is deemed to be deleted.

IN WITNESS WHEREOF, the undersigned have drawn up and signed the present Protocol of Exchange.

DONE in duplicate, in the English and French languages, at Berne this 27th day of September, 1951.

For the Government of the
United States of America :
R. BORDEN REAMS

For the Swiss
Federal Council :
MAX PETITPIERRE
