

No. 1924

**BELGIUM
and
LUXEMBOURG**

Additional Protocol to clarify the application of articles 5 and 11 of the Convention, signed at Brussels on 9 March 1931, for the prevention of double taxation as regards direct taxes and to guarantee reciprocal co-operation between the two countries in the collection of such taxes. Signed at Brussels, on 7 February 1952

Official text: French.

Registered by Belgium on 29 October 1952.

**BELGIQUE
et
LUXEMBOURG**

Protocole additionnel en vue de préciser l'application des articles 5 et 11 de la Convention, signée à Bruxelles le 9 mars 1931, ayant pour but d'éviter la double imposition en matière d'impôts directs et de garantir l'assistance réciproque des deux pays pour le recouvrement de ces impôts. Signé à Bruxelles, le 7 février 1952

Texte officiel français.

Enregistré par la Belgique le 29 octobre 1952.

[TRANSLATION — TRADUCTION]

No. 1924. ADDITIONAL PROTOCOL¹ BETWEEN BELGIUM AND THE GRAND DUCHY OF LUXEMBOURG TO CLARIFY THE APPLICATION OF ARTICLES 5 AND 11 OF THE CONVENTION, SIGNED AT BRUSSELS, ON 9 MARCH 1931,² FOR THE PREVENTION OF DOUBLE TAXATION AS REGARDS DIRECT TAXES AND TO GUARANTEE RECIPROCAL CO-OPERATION BETWEEN THE TWO COUNTRIES IN THE COLLECTION OF SUCH TAXES. SIGNED AT BRUSSELS, ON 7 FEBRUARY 1952

I

Article 5 of the Convention between Belgium and the Grand Duchy of Luxembourg for the prevention of double taxation as regards direct taxes and to guarantee reciprocal co-operation between the two countries in the collection of such taxes, signed at Brussels on 9 March 1931,² is drafted as follows :

"In the case of joint stock companies having their headquarters or chief centre of management in the Grand Duchy of Luxembourg and permanently holding at least one-quarter of the joint stock capital of a similar company established in Belgium, the Luxembourg tax shall be reduced to one-quarter in respect of all profits or income accruing and taxed in Belgium, provided always that Belgium accords Belgian companies a reduction to one-quarter of the tax on movable property in respect of income from capital holdings accruing and taxed in the Grand Duchy of Luxembourg."

This provision refers to an inherently variable factor, namely, the relationship between the tax rates applicable in Belgium to income from shares or parts in joint stock companies, depending on whether the income in question is of a foreign or Belgian origin. There is no specific reference to that relationship in Belgian tax laws. It results from the relative level of the rates of the tax on movable property applicable, for each financial year, to the dividends of Belgian companies and to income from foreign shares. These tax rates have frequently varied. At the present time, the tax on movable property in Belgium is levied at the rate of 30 per cent on dividends from Belgian sources and 12 per cent on income from movable property—including income from shares—of foreign

¹ Came into force on 7 February 1952 by signature. This Protocol does not apply to the territories of the Belgian Congo and Ruanda-Urundi.

² League of Nations, *Treaty Series*, Vol. CXXXVII, p. 267.

origin, so that the reduction in favour of the latter category of income is no longer three-quarters, but three-fifths.

In order to ensure that the provision embodied in article 5 of the Convention is applied in accordance with its real intention, it is therefore considered appropriate to adjust it, taking into account the present rates of the tax on movable property, and to supplement the text so as to permit its application in spite of any changes that may be made in the tax on movable property. Consequently, following the negotiations between the competent authorities in both countries and in accordance with the provisions of article 12 of the Convention, it is agreed :

1. To replace the words "to one-quarter" in article 5 of the Convention of 9 March 1931 by the words "to two-fifths" ;

2. To add the following to article 5 :

"In the event of a change in the reduction of the Belgian tax on movable property referred to in the first paragraph of this article, the proportion of Luxembourg tax payable on the profits or income accruing and taxed in Belgium shall correspond to the ratio between the rates of the Belgian tax on movable property applicable to income from shares or parts received by Belgian companies in Luxembourg and Belgian joint stock companies respectively."

Article 5, as so amended, shall be applicable as from 1 January of the year 1949, namely, to income of the financial periods closed after 31 December 1948.

II

Under paragraph 1 of article 11 of the Convention of 9 March 1931, Belgium and the Grand Duchy of Luxembourg undertake, on the basis of reciprocity, to afford each other aid and assistance for the purpose of the collection of the principal, plus interest and costs or fines, of any of the "aforementioned taxes", that is, the taxes enumerated in article 2 of the Convention.

The enumeration in article 2 does not include : for Belgium, the national emergency contribution, a tax which it was decided to levy after the Convention had been placed in force ; for Luxembourg, the communal commercial tax and capital stock tax, likewise instituted after the Convention had been signed.

These taxes are similar to certain others the levying and collection of which are explicitly governed by the Convention. The national emergency contribution levied in Belgium supplements either the land tax, when it applies to income from immovable property, or the occupational tax, when it affects income subject to the latter tax. In the Grand Duchy, the communal commercial tax in fact replaces the communal additional percentages which were included in the tax on income and the supplementary tax on capital before the last war.

Similarly, at the present time, the capital stock tax replaces the supplementary tax on capital in the Grand Duchy.

It would therefore be illogical and contrary to the interests of the two countries to exclude from the scope of the Convention taxes having the characteristics of those which existed when the Convention was concluded.

In order to regularize the situation, following consultations between the competent authorities of the two countries and in accordance with article 12 of the Convention of 9 March 1931, it is agreed :

1. To add to article 2, paragraph 2, of the Convention of 9 March 1931 :

Under *A*.—In respect of Belgium :

(a) After "land tax", the words "the national emergency contribution on income from immovable property" ;

(b) After "occupational tax", the words "the national emergency contribution on occupational income" ;

Under *B*.—In respect of the Grand Duchy of Luxembourg :

In place of "the surtax additional thereto and the supplementary tax on capital", "the communal commercial tax and the capital stock tax".

2. The amendments to article 2, paragraph 2, of the Convention of 9 March 1931 are of an interpretive nature : they shall apply also to the settlement of any questions outstanding on the date of conclusion of the present agreement, including any proceedings for collection which may be undertaken before that date in application of article 11 of the Convention.

DONE at Brussels, in duplicate, on 7 February 1952.

For Belgium :

Paul VAN ZEELAND

For Luxembourg :

Robert ALS