

No. 2147

NETHERLANDS
and
SWEDEN

Agreement (with protocol) for the avoidance of double taxation and the establishment of rules of reciprocal administrative assistance with respect to taxes on income and property. Signed at Stockholm, on 25 April 1952

D. inafmte

Official texts: Dutch and Swedish.

Registered by the Netherlands on 21 April 1953.

PAYS-BAS
et
SUÈDE

Convention (avec protocole) tendant à éviter la double imposition et à établir des règles d'assistance administrative réciproque en matière d'impôts sur le revenu et sur la fortune. Signée à Stockholm, le 25 avril 1952

Textes officiels néerlandais et suédois.

Enregistrée par les Pays-Bas le 21 avril 1953.

[TRANSLATION — TRADUCTION]

No. 2147. AGREEMENT¹ BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE KINGDOM OF SWEDEN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE ESTABLISHMENT OF RULES OF RECIPROCAL ADMINISTRATIVE ASSISTANCE WITH RESPECT TO TAXES ON INCOME AND PROPERTY. SIGNED AT STOCKHOLM, ON 25 APRIL 1952

Her Majesty the Queen of the Netherlands and His Majesty the King of Sweden,

Desiring to avoid so far as possible double taxation and to establish rules of reciprocal administrative assistance with respect to taxes on income and property,

Have resolved to conclude an agreement for this purpose,
And have appointed as their plenipotentiaries :

Her Majesty the Queen of the Netherlands :

Mr. W. A. A. M. Daniels, Her Envoy Extraordinary and Minister Plenipotentiary at Stockholm;

His Majesty the King of Sweden :

His Excellency Östen Undén, His Minister of Foreign Affairs;

Who, having communicated to each other their full powers, found in good and due form, have agreed as follows :

Article 1

This Agreement shall apply to individuals and corporations domiciled in Sweden or in the Netherlands.

Article 2

1. This Agreement shall apply only to taxes levied on income and capital by the State or a province, commune or other State or communal body, including initial taxes on capital and on capital increment and supplementary taxes.

¹ Came into force on 5 February 1953, by the exchange of the instruments of ratification at The Hague, in accordance with article 33.

2. The taxes which are the subject of this Agreement shall be :

In the case of Sweden :

- (a) State income tax, including coupon tax;
 - (b) State capital tax;
 - (c) Communal income tax
- (these are referred to hereinafter as " Swedish tax ").

In the case of the Netherlands :

- (a) Income tax;
 - (b) Tax on wages;
 - (c) Company tax;
 - (d) Dividend tax;
 - (e) Tax on directors' salaries;
 - (f) Capital tax
- (these taxes are referred to hereinafter as " Netherlands tax ").

3. This Agreement shall also apply to all other taxes of a substantially similar character imposed by either Contracting State after the signature of this Agreement.

4. If any appreciable change takes place in the revenue law of either Contracting State, the competent authorities of that State shall inform the competent authorities of the other State of the change, with a view to bringing about the necessary amendment of this Agreement or the making of rules for its application.

Article 3

1. In this Agreement :

(a) The term " Netherlands " means only the Kingdom of the Netherlands in Europe.

(b) The terms " person domiciled in Sweden " and " person domiciled in the Netherlands " mean :

Respecting individuals, any individual domiciled in Sweden for the purposes of Swedish tax, and any individual domiciled in the Netherlands for the purposes of Netherlands tax;

Respecting companies, any company incorporated under Swedish law or any company incorporated under Netherlands law, and respecting companies not incorporated under Swedish or Netherlands law, any company managed and controlled respectively in Sweden or in the Netherlands.

Where an individual may be deemed to be domiciled in both Contracting States, he shall for the purposes of this Agreement be deemed to be domiciled in the State with which he has the closer personal and economic ties. If the question of where an individual shall be deemed to be domiciled cannot be settled under this rule, he shall be deemed to be domiciled in the State of which he is a national. If he is a national of both States or of neither, the competent authorities shall come to an agreement in each particular case.

(c) The term "company" includes a joint stock company, association or other organization or corporation.

(d) The term "Swedish enterprise" means a business enterprise carried on by a person domiciled in Sweden; the term "Netherlands enterprise" means a business enterprise carried on by a person domiciled in the Netherlands; and the terms "enterprise in one Contracting State" and "enterprise in the other Contracting State" mean a Swedish enterprise or a Netherlands enterprise as the context requires.

(e) The term "competent authority" means the Swedish Minister of Finance or his plenipotentiary, or the Netherlands Minister of Finance or his plenipotentiary.

2. In the application of the provisions of this Agreement by either Contracting State, any term not defined in this Agreement shall, unless the context otherwise requires, have the meaning which that term has under the laws of that Contracting State relating to the taxes which are the subject of this Agreement.

Article 4

1. In the absence of any provision to the contrary in this Agreement, income and capital shall be taxed only in the Contracting State in which the taxpayer is deemed to be domiciled.

2. The undivided estate of a deceased person shall be deemed to be domiciled in the State in which the deceased was deemed to have been domiciled at his death.

Article 5

1. Income from immovable property (including gains derived from the sale or exchange of immovable property) shall be taxed only in the State where the property is situated.

2. Royalties derived from the use of immovable property shall be treated for purposes of taxation as income from immovable property.

3. Royalties derived from the working of mines or other natural resources not constituting immovable property shall be taxed only in the State where the mines or natural resources are situated.

Article 6

1. An enterprise of one Contracting State shall not be subject to taxation by the other Contracting State in respect of its business profits unless it carries on business in the other Contracting State through a permanent establishment situated therein. If it does so, tax may be imposed by the other Contracting State on those profits, but only on the portion of them attributable to that permanent establishment.

Gains derived from the sale or exchange of an enterprise or part of an enterprise shall be deemed to be income from the enterprise or part thereof.

2. Where an enterprise of one Contracting State carries on business in the other Contracting State through a permanent business establishment situated therein, there shall be attributed to that permanent establishment the business income which it might be expected to derive in the other State 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.

3. The term " permanent establishment " means a place where an enterprise has its head office, a branch, factory, office, workshop, selling premises or other fixed place of business, or a mine or other natural resource which is exploited. The term also includes a place where building construction is carried on by contract for a period of at least one year, but not an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of the enterprise, or has a stock of merchandise from which he regularly fills orders on its behalf. In this connexion :

- (1) An enterprise in one Contracting State shall not be deemed to have a permanent establishment in that State merely because it carries on business dealings there through a *bona fide* broker or commission agent acting in the ordinary course of his business as such;
- (2) The fact that an enterprise in one Contracting State has a fixed place of business in the other exclusively for the purchase of merchandise shall not of itself constitute that fixed place of business a permanent establishment of the enterprise;

(3) The fact that a company deemed to be domiciled in one Contracting State has a subsidiary company deemed to be domiciled in the other Contracting State or carrying on business in the other Contracting State (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary company a permanent establishment of its parent company.

4. No portion of the income earned by an enterprise in one Contracting State shall be attributed to a permanent establishment in the other by reason of the mere purchase of goods or merchandise within that other State by the enterprise.

5. The competent authorities of the Contracting States may lay down rules by agreement for the apportionment of business profits.

Article 7

Where :

(a) An enterprise in one Contracting State participates directly or indirectly in the management, control, or capital of an enterprise in the other Contracting State, or

(b) The same persons participate directly or indirectly in the management, control or capital of an enterprise in one Contracting State and an enterprise in the other Contracting State, then,

If conditions are made or imposed between the two enterprises in their commercial or other economic relations which are different from those which would have been made between two independent enterprises, any profits which would but for those conditions 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. The necessary consequential changes shall be made in computing the income of the other enterprise.

Article 8

Income derived from international shipping or air services shall, if the vessels or aircraft have the nationality of that State, be taxed only in the State where the actual seat of management is situated.

Article 9

1. Dividends paid by a company domiciled in the Netherlands to a person domiciled in Sweden shall be exempt from Netherlands tax unless the dividends are attributable to a permanent establishment in the Netherlands.

2. Swedish tax on dividends paid by a company deemed to be domiciled in Sweden to a person domiciled in the Netherlands shall not exceed 10 per cent unless the dividends are attributable to a permanent establishment in Sweden; provided that where the dividends are paid to a company deemed to be domiciled in the Netherlands controlling, directly or indirectly, not less than 50 per cent of the entire voting power of the company paying the dividends, the dividends shall be exempt from Swedish tax unless attributable to a permanent establishment in Sweden.

3. Where the dividends are paid to a joint stock company controlling, directly or indirectly, not less than 50 per cent of the entire voting power of the company paying the dividends, the dividends shall be exempt from tax within the State where the recipient of the dividends is deemed to be domiciled, but only so far as under the law of that State they would have been exempt from tax if both companies had been domiciled in that State.

Article 10

1. Interest derived from a source within one Contracting State by a person domiciled in the other Contracting State shall be exempt from tax in the former State unless attributable to a establishment in that State.

2. In this article the term “ interest ” included interest on bonds, securities, notes, debentures, and any other form of indebtedness.

3. Where any interest exceeds a fair and reasonable consideration in respect of the indebtedness for which it is paid, the exemption provided by this article shall apply only to so much of the interest as represents such fair and reasonable consideration.

Article 11

1. Any royalty derived from a source within one Contracting State by a person domiciled in the other Contracting State shall be exempt from tax in the former State.

2. In this article the term “ royalty ” means any royalty or other amount paid as a consideration for the use of, or for the privilege of using, any copyright, patent, design, secret process or formula, trade-mark or other like property, but does not include any royalty of the kind mentioned in article 5

3. Where any royalty exceeds a fair and reasonable consideration in respect of the rights for which it is paid, the exemption provided by this article shall apply only to so much of the royalty as represents such fair and reasonable consideration.

4. Any capital sum derived from a source within one Contracting State from the sale of patent rights by a person domiciled in the other Contracting State shall be exempt from tax in the former State.

Article 12

In the absence of any provision to the contrary in the following articles, income derived from services performed or a liberal profession exercised in one Contracting State by a person domiciled in the other shall be taxed only in the State where the services are performed or the liberal profession exercised.

Article 13

Income from services wholly or mainly performed on board a vessel or aircraft having the nationality of one Contracting State shall be taxed only in that State.

Article 14

1. A person domiciled in Sweden shall be exempt from Netherlands tax on income from services performed in the Netherlands, provided that :

- (a) He is present within the Netherlands for a period or periods not exceeding a total of 183 days during the taxable year, and
- (b) The work is done for or on behalf of a resident of Sweden.

2. A person domiciled in the Netherlands shall be exempt from Swedish tax on income from services performed in Sweden, provided that :

- (a) He is present within Sweden for a period or periods not exceeding a total of 183 days during the taxable year, and
- (b) The work is done for or on behalf of a resident of the Netherlands.

Article 15

Income from the exercise of a liberal profession by a person domiciled in one Contracting State shall be taxed only in the other Contracting State if derived from a permanent establishment in that other State.

Article 16

The provisions of articles 14 and 15 shall not apply to the income of public entertainers such as theatre, motion picture or radio artists, musicians, athletes, etc.

Article 17

Remuneration of a director, member of management or other office of a company deemed to be domiciled in one Contracting State shall be taxable in that State.

Article 18

1. Wages, salaries and similar compensation, and pensions and life annuities, paid either directly by or from funds or institutions created by one Contracting State to a national of that State shall be exempt from tax in the other State. This rule shall also apply to payments made by or from funds or institutions created by other State or communal bodies.

The provisions of this paragraph shall not apply to payments constituting remuneration for services performed in connexion with profit-making activities carried on by one Contracting State within the other.

2. A private pension or life annuity derived from a source within one Contracting State and paid to a person domiciled in the other shall be exempt from tax in the first State.

3. The term "pensions" as used in this article means periodic payments made as compensation for services rendered or 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 19

A professor or teacher domiciled in one of the Contracting States who resides temporarily in the other Contracting State for a period not exceeding two years for the purpose of teaching at a university or college shall be exempt in the other State from tax on his remuneration therefor.

Article 20

A student or apprentice sojourning in one Contracting State exclusively for the purpose of study or training shall be exempt from taxation in that State

on payments made to him from the other Contracting State for his maintenance, education or training.

Article 21

As to the capital taxes mentioned in article 2 of this Agreement, the principles laid down in articles 5, 6, 7, 8 and 15 shall apply in so far as the capital consists of immovable property or is employed in a business, or in an enterprise operating ships or aircraft, or in a liberal profession. All other kinds of capital shall be taxable in accordance with the rules laid down in article 4, paragraph 1.

Article 22

1. Where under the provisions of this Agreement a person domiciled in the Netherlands is exempt or entitled to relief from Swedish tax, similar exemption or relief shall be applied to the undivided estates of deceased persons in so far as one or more of the beneficiaries are domiciled in the Netherlands.

2. In accordance with article 23, paragraph 2 of this Agreement, Swedish tax on the undivided estate of a deceased person, in so far as the income accrues to a beneficiary domiciled in the Netherlands, shall be deemed to be a tax on the income of that beneficiary.

Article 23

1. Notwithstanding any other provision of this Agreement, Sweden may assess a person domiciled in Sweden to tax on the basis which would be applicable if income or capital taxable according to this Agreement only in the Netherlands were included in the taxable income or capital.

2. Notwithstanding any other provision of this Agreement, the Netherlands may include in the basis of assessment to tax of a person domiciled in the Netherlands all his income and capital. As far as may be in accordance with the provisions of Netherlands law, the Netherlands agrees to allow a deduction from Netherlands tax with respect to income or capital which under the foregoing provisions of this Agreement is liable to Swedish tax.

Article 24

The competent authorities in both Contracting States shall exchange such information (being information of a kind available to revenue authorities in the ordinary course of their administration) as is necessary for carrying out the

provisions of this Agreement, or preventing fraud, or giving effect to existing provisions of law against evasion of the taxes which are the subject of this Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any person other than those bound to assess or collect the taxes which are the subject of this Agreement. No information as aforesaid shall be exchanged which would disclose any trade, business, industrial or professional secret or trade process.

Article 25

1. The Contracting States undertake to lend support and administrative assistance to each other in the collection of the taxes which are the subject of this Agreement, together with interest, costs and additions to the taxes and nonpenal fines.

2. Where application is made for collection of taxes, revenue claims from one Contracting State enforceable in that State shall be accepted for enforcement by the other Contracting State and collected in that State in accordance with the law governing the enforcement and collection of its own taxes. Such claims shall not enjoy priority in that State. The State to which application is made shall not be required to enforce executory measures for which there is no provision in the law of the State making the application.

3. Any application shall be accompanied by documents establishing that under the law of the State making the application the claim is enforceable as provided in paragraph 2 of this article.

4. The administrative assistance provided in this article shall be given only with respect to nationals of the State from which the application is made or to persons or companies deemed to be domiciled therein.

Article 26

1. In no case shall the provisions of article 24 or 25 be construed so as to impose upon either Contracting State the obligation :

- (a) To carry out administrative measures at variance with the regulations or practice of either Contracting State, or
- (b) To supply particulars not procurable under its own law or that of the State making the application.

2. The State to which application is made for information or assistance shall comply therewith as soon as possible, but may refuse to comply for reasons of public policy, in which case it shall forthwith inform the State making the application.

Article 27

Where action of the revenue authorities of the Contracting State has resulted or will result in double taxation contrary to the provisions of this Agreement, the taxpayer shall be entitled to lodge a claim with the State of which he is a national or, if he is not a national of either Contracting State, with the State in which he is domiciled. The claim shall ordinarily be lodged within one year after the end of the calendar year during which the taxpayer received notice of the double taxation. If the claim is upheld, the competent authority of the State shall take steps to reach agreement with the competent authority of the other State with a view to avoiding the double taxation.

Article 28

1. With regard to the taxes mentioned in article 2 of this Agreement the nationals of either Contracting State shall not be subjected in the other Contracting State to any taxation or any claim connected therewith which is other, higher or more burdensome than the taxation and connected claims to which nationals of the other State are or may be subjected.

2. With regard to the taxes mentioned in article 2 of this Agreement enterprises of either Contracting State shall not be subjected in the other Contracting State, in respect of income attributable to their permanent establishments in the other Contracting State, to any taxation which is other, higher or more burdensome than the taxation to which enterprises of the other State are or may be subjected in respect of the like income.

3. An individual or corporation deemed to be domiciled in either Contracting State shall not be subjected in the other State to any tax on capital which is other, higher or more burdensome than the tax on capital to which an individual or corporation domiciled in the other State is or may be subjected.

4. Nothing in paragraph 1 or 2 of this article shall be construed as obliging one Contracting State to grant to nationals of the other Contracting State not domiciled in the territory of the former Contracting State the same personal allowances, release and reductions for tax purposes as are granted to its own nationals.

5. In this article the term "national" means :

- (a) In relation to Sweden, all Swedish nationals and corporations;
- (b) In relation to the Netherlands :
 - (1) all Netherlands nationals;
 - (2) all Netherlands subjects domiciled in Netherlands;
 - (3) all Netherlands corporations.

Article 29

The provisions of this Agreement shall not be construed to restrict in any manner any exemption, deduction, or other allowance accorded by the laws of either Contracting State in the determination of its taxes.

Article 30

If any difficulty or doubt arises in the interpretation or application of this Agreement, the competent authorities in the Contracting States shall consult together in order to settle the question by mutual agreement.

Article 31

1. The competent authorities of each Contracting State shall, in accordance with its practice, make regulations necessary to carry out the provisions of this Agreement.

2. With respect to the provisions of this Agreement relating to exchange of information and reciprocal administrative assistance in the collection of taxes, the competent 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 for the collection of which application may be made, and related matters.

3. The competent authorities of the Contracting States may communicate with each other directly for the purpose of giving effect to the provisions of this Agreement.

Article 32

1. This Agreement may be extended, either in its entirety or with agreed modifications, to non-European territories belonging to the Netherlands imposing taxes substantially similar to those referred to in article 2 hereof. Any such extension shall take effect from such date and be subject to such modifications and conditions (including conditions as to termination) as may be specified and agreed between the Contracting States in notes to be exchanged for this purpose.

2. The termination of this Agreement under article 34 in respect of Sweden or the Netherlands shall, unless otherwise expressly agreed by both Contracting States, terminate its application to any territory to which it has been extended under this article.

Article 33

1. This Agreement shall be ratified by the High Contracting Parties. The ratification of His Majesty the King of Sweden shall be subject to the approval of the Riksdag. The instruments of ratification shall be exchanged at The Hague as soon as possible. Subject to paragraph 2 of this article, this Agreement shall enter into effect on the date of the exchange of instruments of ratification.

2. Upon exchange of instruments of ratification this Agreement shall have effect —

(a) In Sweden :

As respects income and capital taxes payable on assessments made in or after the calendar year beginning on 1 January 1952;

As respects coupon tax on dividends payable on or after 1 January 1951.

(b) In the Netherlands :

As respects income and capital taxes for any taxable year beginning after 31 December 1950;

As respects the company tax for any chargeable accounting period beginning after 31 December 1950, and for the unexpired portion of any chargeable accounting period current at that date;

As respects tax on dividends payable after 31 December 1950;

As respects other taxes on income collected at source for the current year 1951 and following years.

3. The Agreement between the Kingdom of Sweden and the Kingdom of the Netherlands for the prevention of double taxation signed on 21 March 1935¹ in Stockholm shall be terminated as soon as the provisions of this Agreement come into force under paragraph 2 of this article.

Article 34

This Agreement shall continue in effect indefinitely but either Contracting State may, on or before 30 June in any calendar year not earlier than 1956, give to the other Contracting State through diplomatic channels written notice of termination, and in such event, this Agreement shall cease to be effective :

(a) In Sweden :

As respects income or capital taxes payable on assessments made after the end of the calendar year next following that in which the notice is given;

¹ League of Nations, *Treaty Series*, Vol. CLVIII, p. 451.

As respects coupon tax on dividends payable on 1 January of the calendar year next following that in which the notice is given.

(b) In the Netherlands :

As respects income and capital taxes for any taxable year beginning after the end of the calendar year in which the notice is given;

As respects the company tax for any chargeable accounting period beginning after the end of the calendar year in which the notice is given, and for the unexpired portion of any chargeable accounting period current at the end of that year;

As respects any other taxes for any calendar year following that in which the notice is given.

IN WITNESS WHEREOF the aforesaid Plenipotentiaries have signed this Agreement and have affixed thereto their seals.

DONE at Stockholm on 25 April in duplicate in Swedish and Dutch, both texts being equally authentic.

Östen UNDÉN
Willem DANIELS

PROTOCOL

On signing the Agreement concluded this day between the Kingdom of Sweden and the Kingdom of the Netherlands for the avoidance of double taxation and the establishment of rules of reciprocal administrative assistance with respect to income and capital taxes, the undersigned Plenipotentiaries have agreed that the following provisions shall form an integral part of that Agreement.

Ad article 2

This Agreement shall not apply to the special tax levied in Sweden on commercial travellers and public entertainers (special privileges and interests duty) under the decree of 23 October 1908.

In agreeing to this provision it was assumed that, if Sweden grants nationals of a third State relief or exemption from this special tax on commercial travellers, corresponding relief or exemption shall be given to Netherlands nationals.

Ad article 5

The term " income from immovable property " does not include interest on mortgages or bonds secured by the property.

Ad articles 5, 6 and 21

Capital gains on appurtenances and effects of an agricultural holding which have been sold or exchanged with the holding shall be taxable only in the State where the holding is situated, notwithstanding that these gains derived from the sale or exchange of the holding are taxable in Sweden under article 5, paragraph 1, and in the Netherlands under article 6, paragraph 1.

If an agricultural holding is subject to capital tax in one Contracting State, its appurtenances and effects also shall be subject to capital tax in that State. This provision may be denounced separately, and in such case shall cease to have effect at the end of the calendar year in which notice is given.

Ad article 17

The provisions of article 17 shall not take effect in either Contracting State before the Swedish tax law is amended to provide that a recipient domiciled abroad may be taxed in Sweden on income of the kind referred to in article 17 earned in Sweden.

Ad article 24

The obligation to supply information does not refer to information received from banks or similar financial establishments.

DONE at Stockholm, on 25 April 1952, in duplicate in Swedish and Dutch, both texts being equally authentic.

Östen UNDÉN
Willem DANIELS