

No. 2148

**NETHERLANDS
and
SWEDEN**

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

D. indefinite

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 admi-
nistrative réciproque en matière de droits de succes-
sion. Signée à Stockholm, le 25 avril 1952**

Textes officiels néerlandais et suédois.

Enregistrée par les Pays-Bas le 21 avril 1953.

[TRANSLATION — TRADUCTION]

No. 2148. 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 DEATH DUTIES. 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 death duties,

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

1. The duties which are the subject of this Agreement shall be :

- (a) In Sweden : the succession duty and the estate duty imposed *mortis causa* (*arvsskatt och kvärlatenskapsskatt*);
- (b) In the Netherlands : the succession duty and the duty on transfer of property *mortis causa*.

2. This Agreement shall also apply to all other estate duties imposed *mortis causa* in Sweden or the Netherlands after the signing of this Agreement, whether on the whole estate or on the share accruing to each heir or legatee.

¹ Came into force on 5 February 1953, by the exchange of the instruments of ratification at The Hague, in accordance with article 17.

3. This Agreement shall apply to duties on the estate of persons who at their death were Swedish or Netherlands nationals or Netherlands subjects domiciled in the Netherlands.

4. With respect to the Netherlands this Agreement refers only to the European territory of the Kingdom of the Netherlands.

Article 2

Immovable property (including appurtenances and effects) shall be subject to duty only in the Contracting State in which it is situated.

Article 3

1. Assets employed in a business or liberal profession and attributable to a permanent establishment in one Contracting State shall be subject to duty only in that State.

2. 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 to 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) A person domiciled in one Contracting State shall not be deemed to have a permanent establishment in the other merely because he carries on business dealings in that other State through a *bona fide* broker or commission agent acting in the ordinary course of his business as such;
- (2) The fact that a person domiciled 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 place of business a permanent establishment of that person.

Article 4

1. Assets not dealt with in article 2 or 3 of this Agreement shall be subject to duty only in the State in which the deceased was domiciled at his death.

2. A person shall be deemed to have been domiciled at his death in the place where he then had a permanent residence which he clearly intended to retain.

If at his death the deceased person did not have such a residence in either Contracting State, he shall be deemed to have been domiciled in the State of which he was a national, or, if he was a national of both States, then in the State in which his personal and economic interests were centred.

Article 5

1. Where debts encumber or are secured by property to which article 2 or 3 applies, the State entitled to levy duty on the property shall deduct such debts from the value of the property or from that other property on which it is entitled to levy duty. Other debts shall be deducted from the value of property subject to duty in the State in which the deceased was domiciled at his death.

2. Where debts which under the provisions of paragraph 1 are to be deducted by one of the States exceed the value of all the property subject to duty in that State, the amount of debt in excess shall be deducted from the value of property subject to duty in the other State.

3. Where property is entailed, only debts which encumber it or are secured by it shall be deducted.

Article 6

This Agreement shall not affect any right to tax exemption which has been, or may hereafter be, conferred upon diplomatic or consular officers by virtue of the general rules of international law. Where, owing to such tax exemption, estate duty is not levied in the country where such officers are accredited, the country accrediting them shall be entitled to levy duty.

Article 7

Duties imposed by one Contracting State on the whole estate of a deceased person or on the shares of heirs or legatees, and claims connected therewith, shall not in respect of a national (whether an individual or a corporation) of the other Contracting State be other, higher or more burdensome than the duties and claims connected therewith to which nationals of the former State are or may become liable.

Article 8

1. Where the right to levy duty on the estate of a deceased person who was domiciled in Sweden at his death is shared by the two Contracting States, Sweden may not levy a duty exceeding the difference between the duty payable if the whole estate were taxed in Sweden and that payable if Sweden taxed only that part of the estate subject to duty in the Netherlands.

2. Notwithstanding any other provision of this Agreement, the Netherlands, when assessing duty on the estate of a person who was domiciled in the Netherlands at his death, may include the whole estate in the amount subject to duty but shall deduct from the Netherlands duty the lower of the following amounts :

- (a) The duty levied by Sweden on property which under the provisions of this Agreement is subject to Swedish duty;
- (b) An amount bearing the same proportion to the Netherlands duty as the net value of the property subject to Swedish duty bears to the net value of the whole estate.

Article 9

The competent authorities in both Contracting States shall exchange such information (being information of a kind available to tax 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 duties 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 duties 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 10

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

2. Where application is made for collection of duties, 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 duties. 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 for in this article shall be given only with respect to nationals of the State from which the application is made or to persons or corporations deemed to be domiciled therein.

Article 11

1. In no case shall the provisions of article 9 or 10 of this Agreement be construed so as to impose upon either of the Contracting States 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 legislation 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 12

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 duties, 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 13

If action of the revenue authorities of the Contracting States 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 in which the deceased was domiciled at his death. The claim shall ordinarily be lodged within two years 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 14

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 15

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

Article 16

1. This Agreement may be extended, either in its entirety or with agreed modifications, to non-European territories belonging to the Netherlands imposing duties substantially similar to those referred to in article 1 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 18 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 17

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. This Agreement shall apply in all cases where a person dies, whether testate or intestate, on or after the date on which the Agreement enters into effect.

Article 18

This Agreement shall continue in effect indefinitely, but either of the Contracting States 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 at the end of the calendar year, but shall apply to all cases where the owner or testator has died before the end of the calendar year.

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

DONE at Stockholm, on 25 April 1952, 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 death duties, the undersigned plenipotentiaries have agreed that the following provisions shall form an integral part of that Agreement :

Ad article 2

The State in which the immovable property is situated may, in accordance with the rules of article 2, impose a duty on all interests which under the revenue law of that State are subject to duty in the same manner as immovable property.

Notwithstanding the foregoing, each State shall retain the right to impose in accordance with its revenue law duty on instruments of indebtedness (except

bonds) secured by mortgages of immovable property, and on rights to royalty for the use of immovable property or for the exploitation of a mine or other natural resource.

Ad article 9

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