

No. 3567

**NETHERLANDS
and
FINLAND**

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 Helsinki, on 29 March 1954

Official texts: Dutch and Finnish.

Registered by the Netherlands on 18 October 1956.

**PAYS-BAS
et
FINLANDE**

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 Helsinki, le 29 mars 1954

Textes officiels néerlandais et finnois.

Enregistrée par les Pays-Bas le 18 octobre 1956.

[TRANSLATION — TRADUCTION]

No. 3567. AGREEMENT¹ BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE REPUBLIC OF FINLAND 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 HELSINKI, ON 29 MARCH 1954

Her Majesty the Queen of the Netherlands and the President of the Republic of Finland,

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 decided to conclude an agreement to that purpose and have appointed as their plenipotentiaries :

Het Majesty the Queen of the Netherlands :

Her Chargé d'affaires ad interim at Helsinki, Mr. Carel G. Verdonck Huffnagel;

The President of the Republic of Finland :

The Minister of Foreign Affairs, Mr. Ralf Törngren,

Who, having examined each other's full powers, found in good and due form, have agreed on the following provisions :

Article 1

(1) This Agreement shall apply to taxes on income and property payable to the State or to provinces, communes or other political subdivisions, including levies on capital or on capital increment and taxes in the form of supplements.

(2) The taxes which are the subject of this Agreement are :

In the case of the Netherlands :

- (a) The income tax;
- (b) The wages tax;
- (c) The company tax;
- (d) The dividends tax;

¹ Came into force on 23 December 1955, by the exchange of the instruments of ratification at Helsinki, in accordance with article 29.

- (e) The tax on fees of directors and managers of companies;
- (f) The tax on capital (hereinafter referred to as "Netherlands tax").

In the case of Finland :

- (a) Income and property tax;
- (b) Communal tax on income;
- (c) Church tithes (hereinafter referred to as "Finnish tax").

(3) This Agreement shall also apply to every other tax of a substantially similar nature imposed in one of the two States subsequently to the date of signature of this Agreement.

(4) If the tax legislation of either State is amended in any important respect, the competent authority of that State shall bring the amendment to the notice of the competent authority of the other State so that such changes may be introduced into this Agreement, or such interpretation or application given to the Agreement as may be considered necessary.

Article 2

(1) For the purposes of this Agreement :

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

(b) The terms "resident of the Netherlands" and "resident of Finland" mean :

With reference to individuals, respectively any individual who is resident in the Netherlands for the purposes of Netherlands tax and any individual who is resident in Finland for the purposes of Finnish tax; and

With reference to bodies corporate, respectively any body corporate established under Netherlands law and any body corporate established under Finnish law, or, in the case of bodies corporate not so established, any body corporate the business of which is managed and controlled respectively in the Netherlands or in Finland.

If an individual can be deemed to be a resident of both States, he shall be regarded for the purpose of this Agreement as a resident of the State with which he has the stronger personal and economic ties. If his place of residence cannot be determined in accordance with the above rule, the individual shall be regarded as a resident of the State of which he is a national. If he is a national of both States or of neither State, the competent authorities shall come to an agreement on each individual case;

(c) The term "body corporate" means any company, association or other organization or entity under fiscal law;

(d) The term “ Netherlands undertaking ” means any industrial, commercial, financial or mining undertaking, including any transport undertaking, carried on by a resident of the Netherlands; the term “ Finnish undertaking ” means any industrial, commercial, financial or mining undertaking, including any transport undertaking, carried on by a resident of Finland; and the terms “ undertaking of one of the States ” and “ undertaking of the other State ” mean a Netherlands undertaking or a Finnish undertaking, as the context requires;

(e) The term “ permanent establishment ” means a management, branch, factory, office, workshop, sales premises or other fixed business establishment, a mine, a quarry or any other place where natural resources are worked. The term also includes any place where in pursuance of a contract construction is being carried out for a period of not less than one year, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such undertaking or has a stock of merchandise from which he regularly fills orders on behalf of the undertaking.

In this connexion :

- (i) An undertaking of one of the States shall not be deemed to have a permanent establishment in the other State merely because it carries on business dealings in that other State through a *bona fide* broker or general commission agent acting in the normal course of his business as such;
- (ii) The fact that an undertaking of one of the States maintains a fixed business establishment in the other State exclusively for the purchase of goods or merchandise shall not of itself constitute such fixed business establishment a permanent establishment of the undertaking;
- (iii) The fact that a body corporate which is a resident of one of the States has a subsidiary company which is a resident of the other State or which carries on its business in that other State (whether through a permanent establishment or otherwise) shall not of itself constitute the subsidiary company a permanent establishment of its parent company;

(f) The term “ competent authority ” means, in the case of the Netherlands, the *Directeur Generaal voor Fiscale Zaken* (Director-General of Fiscal Affairs), and in the case of Finland, the Director of the Taxation Division of the Ministry of Finance;

(g) The term “ State ” means the Netherlands or the Republic of Finland, and the term “ States ” the Netherlands and the Republic of Finland.

(2) In the application of the provisions of this Agreement by either State any term not defined in the Agreement shall, unless the context otherwise

requires, have the meaning applicable to such term under the laws of that State relating to the taxes which are the subject of this Agreement.

Article 3

(1) Except as otherwise provided in this Agreement, income and property shall be subject to tax only in the State in which the taxpayer is deemed to be resident.

(2) The undivided estate of a deceased person shall be deemed to be situated in the State in which the deceased person is deemed to have been resident at the time of his death.

Article 4

(1) Income derived by a resident of one of the States from immovable property situated in the other State shall be taxable in the latter State if and in so far as such income is not already taxable in that State by virtue of article 5 or article 11 of this Agreement.

(2) For the purposes of paragraph (1) of this article, the term "income derived from immovable property" includes:

(a) Royalties in respect of the operation of a mine or quarry or of any other extraction of a natural resource;

(b) Interest on mortgages or on any other form of indebtedness secured by immovable property;

(c) Capital gains derived from the sale or exchange of immovable property; but this term does not include interest on bonds.

Article 5

(1) Profits derived from industry, commerce, finance, mining or transport by an undertaking of one of the States shall not be subject to tax in the other State unless the undertaking carries on business in the other State through a permanent establishment situated therein. If it carries on business as aforesaid, the other State may tax such profits, but only so much of them as is attributable to that permanent establishment.

Capital gains derived from the sale or exchange of a business or part of a business shall be deemed to be profits derived from industry, commerce, finance, mining or transport.

(2) If an undertaking of one of the States carries on business in the other State through a permanent establishment situated therein, there shall be attributed to that permanent establishment the profits derived from industry, commerce, finance, mining or transport which it might be expected to obtain in that other State if it were an independent undertaking engaged in the same or similar

activities under the same or similar conditions and dealing at arm's length with the undertaking of which it is a permanent establishment.

(3) If an undertaking of one of the States derives profits, under contracts concluded in that State, from sales of goods or merchandise stocked in a warehouse in the other State for convenience of delivery and not for display, such profits shall not be attributed to a permanent establishment of the undertaking in that other State.

(4) No portion of the profits accruing to an undertaking of one of the States shall be attributed to a permanent establishment situated in the other State by reason of the mere purchase of goods or merchandise in that other State by the undertaking.

(5) The competent authorities of the States may by agreement make rules for the apportionment of profits derived from industry, commerce, finance, mining or transport.

Article 6

Where :

- (a) An undertaking of one of the States participates directly or indirectly in the management, control or capital of an undertaking of the other State, or
- (b) The same persons participate directly or indirectly in the management, control or capital of an undertaking of one of the States and of an undertaking of the other State,

And in either case, conditions are made or imposed between the two undertakings in their commercial or financial relations which differ from those which would have been made between independent undertakings, then any profits which would but for these conditions have accrued to one of the undertakings but by reason of those conditions have not so accrued may be included in the profits of such undertaking and taxed accordingly.

Article 7

Notwithstanding the provisions of article 5, profits derived by a resident of one of the States from the operation of ships or aircraft shall be exempt from taxation in the other State.

Article 8

(1) Dividends paid by a body corporate which is a resident of the Netherlands to a resident of Finland shall be exempt from Netherlands tax unless the dividends are attributable to a permanent establishment in the Netherlands.

(2) Finnish tax on dividends paid by a body corporate which is a resident of Finland to a resident of the Netherlands shall not exceed 10 per cent unless the dividends are attributable to a permanent establishment in Finland; provided that

if the resident of the Netherlands is a body corporate which controls, directly or indirectly, not less than 50 per cent of the entire voting rights of the body corporate paying the dividends, the dividends shall be exempt from Finnish tax unless they are attributable to a permanent establishment in Finland.

Article 9

(1) Interest derived from sources in one of the States by a resident of the other State shall be exempt from tax in the former State, unless such interest is attributable to a permanent establishment in that State.

(2) For the purposes of this article, the term " interest " includes interest on bonds, notes, debentures or any other form of indebtedness but does not include interest of the kind referred to in article 4, paragraph (2), sub-paragraph (b), of this Agreement.

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

Article 10

(1) Royalties derived from sources in one of the States by a resident of the other State shall be exempt from tax in the former State, unless such royalties are attributable to a permanent establishment in that State.

(2) For the purposes of this article, the term " royalty " means any royalty or sum paid in consideration of the use of or of the right to the use of a copyright, patent, design, secret process or formula, trade mark or other analogous property, and of the use of industrial, commercial or scientific equipment, and any royalty or sum paid in respect of the right to reproduce or copy any literary, dramatic or musical work or work of art, but the term does not include royalties of the kind referred to in article 4, paragraph (2), of this Agreement.

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

(4) A lump sum derived from sources in one of the States through the sale of patent rights by a resident of the other State shall be exempt from tax in the former State unless such sale has been effected through a permanent establishment in that State.

Article 11

A resident of one of the States shall not be subject to tax in respect of income derived from a liberal profession in the other State unless he maintains a permanent establishment in the latter State for the exercise of such profession. In such case, only so much of the income as is attributable to the permanent establishment shall be subject to tax in the latter State.

Article 12

Remuneration for labour or for personal services, not constituting a liberal profession, performed in one of the States by a resident of the other State shall be taxable in the former State except as otherwise provided in articles 13 to 16 inclusive of this Agreement.

Article 13

Subject to the provisions of article 16 of this Agreement, a resident of one of the States shall be exempt from tax in the other State in respect of remuneration for labour or for personal services not constituting a liberal profession, performed in the other State, if :

- (a) He is present in the latter State for a period or periods not exceeding in the aggregate 183 days in the tax year, and
- (b) The labour or services are performed for or on behalf of an individual or body corporate not a resident of the latter State.

Article 14

Remuneration for labour or personal services wholly or mainly performed in ships or aircraft having the nationality of one of the States shall be taxable only in that State.

Article 15

A professor or other teacher who is a resident of one of the States and temporarily visits the other State for a period not exceeding two years for the purpose of teaching at a university, college, school or other educational establishment shall be exempt from tax in the other State in respect of the remuneration received for such teaching.

Article 16

(1) Wages, salaries and similar remuneration, and pensions and life annuities, paid either directly by one of the States or the political subdivisions thereof or from funds and foundations created by one of the States or the political subdivisions thereof to a resident of the other State shall be exempt from tax in the latter State.

The provisions of this paragraph shall not apply to payments in respect of services performed in connexion with a business carried on by one of the States in the other State for purposes of profit.

(2) Private pensions and private life annuities derived from sources in one of the States and paid to residents of the other State shall be exempt from tax in the former State.

(3) The term “pensions” as used in this article means periodic payments made in respect of services rendered, or as compensation for injuries sustained, or in respect of old age or disability.

(4) The term “life annuities” as used in this article means a fixed sum payable periodically at fixed times for life or for a specified number of years in virtue of an obligation, so far as private life annuities are concerned, to make the payments in return for adequate and full consideration in money or money's worth.

Article 17

Students and persons undergoing training for business who are present in one of the States exclusively for purposes of study or training or in order to acquire business or technical experience shall be exempt in that State from tax on remittances from the other State for the purposes of their maintenance, education or training.

Article 18

With regard to the taxes on property referred to in article 1 of this Agreement, the principles laid down in articles 4, 5, 6, 7 and 11 of this Agreement shall apply in so far as the property consists of immovable property as referred to in article 4, paragraph (1), of this Agreement or of mortgages or any other form of indebtedness (except bonds) secured by immovable property, or is employed in an undertaking or in the exercise of a liberal profession. All other property shall be subject to tax only in the State of which the taxpayer is a resident.

Article 19

(1) Where under the provisions of this Agreement a resident of the Netherlands is exempt from or entitled to a reduction of Finnish tax, a similar exemption or reduction shall apply to the undivided estates of deceased persons in so far as one or more of the beneficiaries is a resident of the Netherlands.

(2) For the purposes of article 20, paragraph (1), of this Agreement, Finnish tax on the undivided estate of a deceased person shall, in so far as the income or property falls to a beneficiary who is a resident of the Netherlands, be regarded as tax on the income or property of such beneficiary.

Article 20

(1) Notwithstanding any other provision of this Agreement, the Netherlands may in levying tax on residents of the Netherlands include in the basis upon which such taxes are levied all items of income or property. So far as may be in accordance with the provisions of Netherlands law, the Netherlands shall allow a deduction from Netherlands tax in respect of income or items of property which under the foregoing provisions of this Agreement are subject to Finnish tax.

(2) Notwithstanding any other provision of this Agreement, Finland may in levying tax on residents of Finland calculate the rate as if the income or property included such income or items of property as under this Agreement are taxable only in the Netherlands.

Article 21

The competent authorities of the States shall exchange such information (being information which the tax authorities have in proper order at their disposal) as may be necessary to the execution of the provisions of this Agreement or to prevent fraud or to the execution of statutory provisions against evasion of the law in respect of the taxes which are the subject of this Agreement. Any information so exchanged shall be treated as confidential and shall not be disclosed to persons other than those responsible for the assessment and collection of the taxes which are the subject of this Agreement. No information as aforesaid shall be exchanged if it would divulge any trade, business, industrial or professional secret or a trade or business process.

Article 22

(1) In no case shall the provisions of article 21 of the Agreement be so construed as to impose upon either State the obligation :

- (a) To adopt administrative measures at variance with the regulations and practice of either State;
- (b) To supply particulars which are not obtainable under its own legislation or that of the requesting State.

(2) The State to which a request for information is directed shall comply with such request as soon as possible. Nevertheless, the State concerned may decline to comply with the request for reasons of public policy. In such case, it shall as soon as possible accordingly inform the State making the request.

Article 23

If a national of one of the States, or a body corporate which is a resident of that State, or an individual who is a resident of that State and who does not have

the nationality of one of the States, submits a complaint to the competent authority of that State concerning an actual or anticipated tax assessment at variance with the provisions of this Agreement, that authority shall, if the complaint is considered to be justified, communicate with the competent authority of the other State so that the matter may be settled if necessary on the basis of the provisions of article 27 of this Agreement.

Article 24

(1) The nationals of one of the States shall not be subjected in the other State to any tax mentioned in article 1 of this Agreement or to any obligation connected therewith in so far as such tax or obligation is other, higher or more burdensome than the tax or the obligations connected therewith to which the nationals of the latter State are or may be subjected.

(2) The undertakings of one of the States shall not be subjected in the other State, in respect of profits or property attributable to their permanent establishments, to any tax mentioned in article 1 of this Agreement or to any obligation connected therewith in so far as such tax or obligation is other, higher or more burdensome than the tax or the obligations connected therewith to which undertakings of that other State are or may be subjected.

(3) An individual or body corporate resident in one of the States shall not be subjected in the other State to any property tax which is other, higher or more burdensome than the property tax to which an individual or body corporate resident in that other State is or may be subjected.

(4) Nothing in paragraph (1) or (2) of this article shall be construed as obliging one of the States to grant to nationals of the other State who are not residents of the former State the same personal allowances, abatements and deductions for tax purposes as are granted to the nationals of that State.

(5) For the purposes of this article, the term "nationals" means :

(a) With respect to the Netherlands :

1. All Netherlanders;
2. All Netherlands nationals resident in the Netherlands; and
3. All Netherlands bodies corporate;

(b) With respect to Finland :

All Finnish nationals and all Finnish bodies corporate.

Article 25

Nothing in this Agreement shall be construed as limiting in any way whatsoever any exemption, deduction, abatement or other relief granted under the laws of one of the States in respect of the taxes levied by that State.

Article 26

The competent authorities of each State may make regulations necessary for giving effect to the provisions of this Agreement.

Article 27

In the event of any difficulty or doubt arising concerning the interpretation or application of this Agreement, the competent authorities of the States shall endeavour to settle the matter by mutual consultation.

Article 28

(1) This Agreement may be extended, either unamended or with agreed amendments, to any of the Netherlands Oversea Territories if such Territory levies taxes substantially similar in nature to the taxes mentioned in article 1 of this Agreement. The two States shall mutually agree to such extension by means of an exchange of notes, in which they shall specify the date on which the extension shall take effect and any amendments and conditions (including conditions relating to termination) subject to which the Agreement shall apply.

(2) Unless otherwise expressly agreed by both States, the termination of this Agreement under article 30 in respect of the Netherlands or Finland shall result in the termination of the Agreement in respect of any Territory to which the Agreement has been extended in virtue of this article.

Article 29

(1) This Agreement shall be ratified as regards the Netherlands by Her Majesty the Queen of the Netherlands and as regards Finland by the President of the Republic. The instruments of ratification shall be exchanged at Helsinki as soon as possible.

(2) Upon the exchange of the instruments of ratification, this Agreement shall have effect :

(a) In the Netherlands :

In respect of income and property taxes for all tax years beginning after 31 December 1951 ;

In respect of the company tax for all taxable accounting years beginning after 31 December 1951 and for the unexpired portion of any taxable accounting year current at that date ;

In respect of dividends tax on dividends which become payable after 31 December 1951 ;

In respect of other taxes on income deducted at source during the calendar year 1952 and subsequent years ;

(b) In Finland :

In respect of income and property taxes assessed on or after 1 January 1953 upon income or property for the year 1952 or later.

Article 30

This Agreement shall continue in effect for an indefinite period, but either of the States may, on or before 30 June of any calendar year not earlier than the year 1957, give written notice of termination to the other State through the diplomatic channel, and in such event this Agreement shall cease to have effect :

(a) In the Netherlands :

In respect of income and property taxes for all tax years beginning after the end of the calendar year in which the notice is given ;

In respect of the company tax for all taxable accounting years beginning after the end of the calendar year in which the notice is given, and for the unexpired portion of any accounting year current at the end of that year ; and

In respect of all other taxes for all calendar years following the year in which the notice is given ;

(b) In Finland :

In respect of taxes levied in respect of the calendar year next following the year in which the notice is given.

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

DONE in duplicate at Helsinki on 29 March 1954 in the Netherlands and Finnish languages, both texts being equally authentic.

For the Netherlands :
VERDONCK

For Finland :
Ralf TÖRNGREN

PROTOCOL

On signing the Agreement concluded this day between the Kingdom of the Netherlands and the Republic of Finland for the avoidance of double taxation and the establishment of rules of reciprocal administrative assistance with respect to taxes on income and property, the undersigned plenipotentiaries have agreed that the following provision shall constitute an integral part of the Agreement.

Ad Article 21

The obligation to exchange information shall not apply to information obtained from banks or equivalent institutions.

DONE in duplicate at Helsinki on 29 March 1954 in the Netherlands and Finnish languages, both texts being equally authentic.

For the Netherlands :

VERDONCK

For Finland :

Ralf TÖRNGREN