

No. 3675

**DENMARK
and
CANADA**

Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income. Signed at Ottawa, on 30 September 1955

Official texts: Danish and English.

Registered by Denmark on 29 January 1957.

**DANEMARK
et
CANADA**

Accord tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu. Signé à Ottawa, le 30 septembre 1955

Textes officiels danois et anglais.

Enregistré par le Danemark le 29 janvier 1957.

No. 3675. AGREEMENT¹ BETWEEN DENMARK AND CANADA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME. SIGNED AT OTTAWA, ON 30 SEPTEMBER 1955

The Government of Canada and the Government of the Kingdom of Denmark, desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have appointed for that purpose as their respective Plenipotentiaries :

The Government of Canada:

The Honourable Walter E. Harris, M. P., Minister of Finance ;

The Government of the Kingdom of Denmark :

His Excellency O. Sehested, Envoy Extraordinary and Minister Plenipotentiary of Denmark in Ottawa ;

Who, having exhibited their respective full powers, found in good and due form, have agreed as follows :

Article I

1. The taxes which are subject to this Agreement are :

(a) In Canada : Income taxes, including surtaxes, which are imposed by the Government of Canada (hereinafter referred to as "Canadian tax") ;

(b) In Denmark : National income taxes, the intercommunal income tax, the communal income tax (hereinafter referred to as "Danish tax").

2. This Agreement shall also apply to any other taxes of a substantially similar character imposed by either Contracting Government subsequent to the signing of this Agreement.

Article II

1. In this Agreement, unless the context otherwise requires :

¹ Came into force on 5 September 1956, upon the exchange of the instruments of ratification at Copenhagen, in accordance with article XVII.

(a) The term "Denmark" means the Kingdom of Denmark, excluding the Faroe Islands and Greenland.

(b) The terms "one of the territories" and "the other territory" mean Denmark or Canada, as the context requires.

(c) The term "tax" means Danish tax or Canadian tax, as the context requires.

(d) The term "person" includes any body of persons, corporate or not corporate.

(e) The term "company" includes any body corporate.

(f) The terms "resident of Denmark" and "resident of Canada" mean respectively any person who is resident in Denmark for the purposes of Danish tax and not resident in Canada for the purposes of Canadian tax, and any person who is resident in Canada for the purposes of Canadian tax and not resident in Denmark for the purposes of Danish tax; a company shall be regarded as resident in Denmark if its business is managed and controlled in Denmark and as resident in Canada if its business is managed and controlled in Canada.

(g) The terms "resident of one of the territories" and "resident of the other territory" mean a person who is a resident of Denmark or a person who is a resident of Canada, as the context requires.

(h) The terms "Danish enterprise" and "Canadian enterprise" mean respectively an enterprise or undertaking carried on by a resident of Denmark and an enterprise or undertaking carried on by a resident of Canada; and the terms "enterprise of one of the territories" and "enterprise of the other territory" mean a Danish enterprise or a Canadian enterprise, as the context requires.

(i) The term "permanent establishment" when used with respect to an enterprise of one of the territories, means a branch, office, factory, or other fixed place of business, a mine, quarry or any other place of natural resources subject to exploitation. It also includes a place where building construction is carried on by contract for a period of at least 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 the enterprise or has a stock of merchandise from which he regularly fills orders on its behalf. In this connection:

(i) An enterprise of one of the territories shall not be deemed to have a permanent establishment in the other territory merely because it carries on business

dealings in that other territory through a *bona fide* broker or general commission agent acting in the ordinary course of his business as such ;

- (ii) The fact that an enterprise of one of the territories maintains in the other territory a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute that fixed place of business a permanent establishment of the enterprise ;
- (iii) The fact that a company which is a resident of one of the territories has a subsidiary company which is a resident of the other territory or which carries on a trade or business in that other territory (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary company a permanent establishment of its parent company.

2. In the application of the provisions of the present Agreement by one of the Contracting Governments 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. The profits of a Danish enterprise shall not be subject to Canadian tax unless the enterprise is engaged in trade or business in Canada through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by Canada, but only on so much of them as is attributable to that permanent establishment.

2. The profits of a Canadian enterprise shall not be subject to Danish tax unless the enterprise is engaged in trade or business in Denmark through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by Denmark, but only on so much of them as is attributable to that permanent establishment.

3. Where an enterprise of one of the territories is engaged in trade or business in the other territory through a permanent establishment situated therein, there shall be attributed to such permanent establishment the profits which it might be expected to derive in that other territory 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. No portion of any profits arising to an enterprise of one of the territories shall be attributed to a permanent establishment situated in the other territory by reason of the mere purchase of goods or merchandise within that other territory by the enterprise.

5. Where a company which is a resident of one of the territories derives profits or income from sources within the other territory, the Government of that other territory shall not impose any form of taxation on dividends paid by the company

to persons not resident in that other territory, or any tax in the nature of an undistributed profits tax on undistributed profits of the company, by reason of the fact that those dividends or undistributed profits represent, in whole or in part, profits or income so derived.

6. Paragraphs 1 and 2 of this article shall not be construed as preventing one of the Contracting Parties from imposing a withholding tax on income in the form of dividends, interest, rents or royalties, derived from sources within its territory by a resident of the territory of the other Party if such income is not attributed to a permanent establishment in the territory of the first Party.

Article IV

Where :

(a) an enterprise of one of the territories participates directly or indirectly in the management, control or capital of an enterprise of the other territory, or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the territories and an enterprise of the other territory, and

in either case conditions are made or imposed between the two enterprises, in their commercial or financial relations, which differ from those which would be made between independent enterprises, then any profits which but for those conditions would 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

1. Notwithstanding the provisions of Articles III and IV, profits which a resident of one of the territories derives from operating ships or aircraft shall be exempt from tax in the other territory.

2. The Agreement dated 18th June, 1929¹ between Canada and Denmark providing for the reciprocal exemption from income tax on earnings derived from the operation of ships shall not have effect for any year or period for which the present Agreement has effect.

Article VI

1. The rate of Canadian tax on dividends, interest, rents or royalties derived from sources within Canada by a resident of Denmark shall not exceed 15 per

¹ League of Nations, *Treaty Series*, Vol. XCV, p. 81.

cent. unless such income is attributable to a permanent establishment in Canada maintained by such resident of Denmark.

2. Notwithstanding paragraph 1, the rate of Canadian tax on dividends paid to a company which is a resident of Denmark by a company resident in Canada, more than 50 per cent. of whose shares which have under all circumstances full voting rights are owned by the former company, shall not exceed 5 per cent.

3. The rate of Danish tax on dividends, interest, rents or royalties derived from sources within Denmark by a resident of Canada shall not exceed 15 per cent. unless such income is attributable to a permanent establishment in Denmark maintained by such resident of Canada.

4. Notwithstanding paragraph 3, the rate of Danish tax on dividends paid to a company which is a resident of Canada by a company resident in Denmark, more than 50 per cent. of whose shares which have under all circumstances full voting rights are owned by the former company, shall not exceed 5 per cent.

Article VII

Copyright royalties and other like payments made in respect of the production or reproduction of any literary, dramatic, musical or artistic work (but not including rents or royalties in respect of motion picture films) and derived from sources within one of the territories by a resident of the other territory shall be exempt from tax in that first-mentioned territory.

Article VIII

1. Remuneration (other than pensions) paid by one of the Contracting Governments to any individual for services rendered to that Government in the discharge of governmental functions shall be exempt from tax in the territory of the other Contracting Government if the individual is resident in that territory solely for the purpose of rendering these services.

2. The provisions of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the Contracting Governments for purposes of profit.

Article IX

1. An individual who is a resident of Denmark shall be exempt from Canadian tax on profits or remuneration in respect of personal (including professional) services performed within Canada in any taxation year if :

(a) he is present within Canada for a period or periods not exceeding in the aggregate 183 days during that year, and

(b) the services are performed for or on behalf of a person resident in Denmark.

2. An individual who is a resident of Canada shall be exempt from Danish tax on profits or remuneration in respect of personal (including professional) services performed within Denmark in any year of assessment if:

(a) he is present within Denmark for a period or periods not exceeding in the aggregate 183 days during that year, and

(b) the services are performed for or on behalf of a person resident in Canada.

3. The provisions of this Article shall not apply to the profits or remuneration of public entertainers such as stage, motion picture or radio artists, musicians and athletes.

Article X

1. Any pension or annuity derived from sources within Canada by an individual who is a resident of Denmark shall be exempt from Canadian tax.

2. Any pension or annuity derived from sources within Denmark by an individual who is a resident of Canada shall be exempt from Danish tax.

3. The term "annuity" means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

Article XI

A professor or teacher from one of the territories who receives remuneration for teaching, during a period of temporary residence not exceeding two years, at a university, college, school or other educational institution in the other territory, shall be exempt from tax in that other territory in respect of that remuneration.

Article XII

A student or business apprentice from one of the territories who is receiving full-time education or training in the other territory shall be exempt from tax in that other territory on payments made to him by persons in the first-mentioned territory for the purposes of his maintenance, education or training.

Article XIII

1. Canada agrees to allow as a deduction from Canadian tax on any income derived from sources within Denmark that is subject to tax in Canada the amount of Danish tax payable in respect to that income. Provided that the amount of the

deduction shall not exceed the proportion of the Canadian tax that the income from Denmark that is subject to Danish tax bears to the total income subject to Canadian tax. For the purposes of this paragraph only, the term "Danish tax" shall not include the communal income tax.

2. Denmark agrees to allow as a deduction from Danish tax on any income derived from sources within Canada that is subject to tax in Denmark the amount of Canadian tax payable in respect to that income. Provided that the amount of the deduction shall not exceed the proportion of the Danish tax that the income from Canada that is subject to Canadian tax bears to the total income subject to Danish tax.

3. For the purposes of this Article, profits or remuneration for personal (including professional) services performed in one of the territories shall be deemed to be income from sources within that territory, and the services of an individual whose services are wholly or mainly performed in ships or aircraft operated by a resident of one of the territories shall be deemed to be performed in that territory.

Article XIV

1. The competent authorities of the Contracting Governments will upon request exchange information of a fiscal nature which is available to them, or which they are able to obtain under their own legislation and which would be useful to assure the regular assessment and collection of the taxes referred to in this Agreement, as well as the application with respect to these taxes of the legal provisions relative to the prevention of fiscal fraud.

The information so exchanged shall retain its secret nature and shall not be disclosed to persons other than those charged with assessment and collection of the taxes referred to in this Agreement.

The provisions of this Article shall not in any case be considered as requiring one of the Contracting Governments to disclose to the other Government, either, information other than that which its own fiscal legislation permits it to obtain, or information the furnishing of which would involve the disclosure of industrial, commercial or professional secrets or trade processes.

Neither shall these provisions be considered as imposing on one of the two Contracting Governments the obligation to perform an administrative act which would be contrary to its regulations or practices.

2. The term "competent authorities" means, in the case of Canada, the Minister of National Revenue or his authorized representative; and in the case of Denmark the Minister of Finance or his authorized representative.

Article XV

1. The present Agreement may be extended, either in its entirety or with modifications, to the territories of the Faroe Islands and Greenland if in these territories there are imposed taxes substantially similar in character to those which are the subject of the present Agreement. The extension of the Agreement and the modifications thereto shall be specified and agreed between the Contracting Parties in notes to be exchanged for this purpose.
2. The termination of the present Convention under Article XVIII shall, unless otherwise expressly agreed by both Contracting Parties, terminate the application of the present Convention to any territory to which the Convention has been extended under this Article.

Article XVI

1. Any taxpayer who shows proof that the action of the revenue authorities of the two Contracting Parties has resulted in double taxation with respect to the taxes referred to in this Agreement, may lodge a claim with the state in which he resides. Should the claim be upheld, the competent authority of this state may come to an agreement with the competent authority of the other state with a view to equitable avoidance of the double taxation.
2. The competent authorities of the two Contracting Parties may likewise come to an agreement for the purpose of overcoming double taxation in cases not otherwise provided by this Agreement, as well as in the case where the interpretation or the application of this Agreement gives rise to difficulties or doubts.

Article XVII

1. This Agreement is drafted in the Danish and English languages, the two texts having equal force.
2. The Agreement shall be ratified by the Contracting Parties, and the instruments of ratification shall be exchanged at Copenhagen with the shortest delay.
3. The Agreement shall come into force on the date on which the instruments of ratification are exchanged and shall thereupon have effect :
 - (a) In respect of Canadian tax, for the taxation years beginning on or after the 1st day of January in the calendar year in which the exchange of instruments of ratification takes place ;
 - (b) In respect of Danish tax, for the taxation years beginning on or after the 1st day of April in the calendar year in which the exchange of instruments of ratification takes place.

Article XVIII

This Agreement shall continue in effect indefinitely, but either of the Contracting Governments may on or before the 30th day of June in any calendar year following the calendar year in which the exchange of instruments of ratification takes place, give to the other Contracting Government notice of termination, and in such event this Agreement shall cease to be effective :

(a) In respect of Canadian tax, for the taxation years beginning on or after the 1st day of January in the calendar year next following that in which notice is given ;

(b) In respect of Danish tax, for the taxation years beginning on or after the 1st day of April in the calendar year next following that in which notice is given.

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

DONE at Ottawa, in duplicate, this thirtieth day of September nineteen hundred and fifty-five.

For the Canadian Government :

(Signed) W. E. HARRIS