

No. 5901

**DENMARK
and
FRANCE**

Exchange of notes (with annex) constituting an agreement concerning exemption from tax on royalties in respect of the utilization in France of Danish inventions. Paris, 3 August and 17 September 1959

Official text: French.

Registered by Denmark on 5 October 1961.

**DANEMARK
et
FRANCE**

Échange de notes (avec annexe) constituant un accord concernant l'exonération de taxes sur les redevances pour l'exploitation d'inventions danoises en France. Paris, 3 août et 17 septembre 1959

Texte officiel français.

Enregistré par le Danemark le 5 octobre 1961.

[TRANSLATION — TRADUCTION]

No. 5901. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN DENMARK AND FRANCE CONCERNING EXEMPTION FROM TAX ON ROYALTIES IN RESPECT OF THE UTILIZATION IN FRANCE OF DANISH INVENTIONS. PARIS, 3 AUGUST AND 17 SEPTEMBER 1959

I

MINISTRY OF FOREIGN AFFAIRS

Paris, 3 August 1959

Your Excellency,

The application of turnover taxes to royalties paid by French individuals or bodies corporate to Danish licensors of patents has given rise to a number of difficulties.

The taxes in question are at present levied on such licensors regardless of whether they are themselves the inventors of the licensed patents or are merely the holders thereof through acquisition of ownership from third parties.

It is a fact, however, that French licensors of the right to use patents are exempt from the said taxes in all cases where they can claim inventor status, since they are not performing commercial transactions.

Danish individuals and bodies corporate granting the right to exploit in France patents or processes which they have invented have asked to be subjected to the same system as French nationals granting such right.

The Danish Government has suggested in this connexion that proof of inventor status should take the form of the production by the licensor or assignor of a declaration certified correct by the Federation of Danish Industries, 18 H. C. Andersens Boulevard, Copenhagen V.

I have the honour to inform you that the French Government is prepared to accept this method of furnishing proof and accordingly considers it possible to determine the position of Danish licensors, with respect to the turnover taxes levied in France, on the basis of the following proposals :

¹ Came into force on 17 September 1959 by the exchange of the said notes.

1. In respect of royalties received in return for the grant of licences to exploit inventions in France, Danish licensors shall be subjected to the same system as French licensors. The turnover taxes (tax on services, transactions tax and local tax up to 30 June 1955 ; tax on services as from 1 July 1955) shall not therefore be levied on royalties accruing to Danish enterprises which grant licences for the use of "inventions" in France and which can claim inventor status in respect thereof. It is agreed that the term "inventions" includes the following whether registered or not : patents, copyright, trade marks, manufacturing processes and formulae (know-how).

2. The exemption from turnover tax shall cover not only royalties paid in consideration of the right to exploit the aforesaid inventions (paragraph 1) but also payments for the whole group of processes necessary to the practical utilization of the invention (know-how), for the protection of the invention and for such technical assistance as is indispensable to the exploitation of the invention (for example, providing the French licensee with technicians on the staff of the Danish licensor to put the invention into operation ; supervision of the assembly of the installations needed to put the invention into operation, and the use of blue-prints ; instruction of the licensee ; and the supervision of initial manufacture). The exemption shall not, on the other hand, apply to payments relating to accessory operations, such as providing labour, furnishing supplies and advertising, carried out in French territory.

3. (a) The status of inventor shall be determined in accordance with the criteria established by French tax legislation and by the practice of the Conseil d'État ; it shall therefore be subject to the production by the Danish licensor (individual or body corporate) of proof, as prescribed in paragraph 5 below, that the invention in question is the result of research carried out by him or by technicians working exclusively for his account, under his control, according to his instructions and at his sole expense. The status of inventor will thus be accorded to a Danish enterprise which entrusted research to a third party (for example a university, research institute or research company), on condition that a prior contract was concluded by the Danish enterprise with the third party defining the purpose of the research and stipulating that the research would be undertaken for its account, that it would bear all the expenses involved and that the result of the research would become its exclusive property ;

(b) Danish licensors shall nevertheless be entitled to draw the attention of the French tax administration to those cases in which they have acquired the right to patent an invention from a company or companies with which they have close relations by reason of capital held in common and with which they form an economic group. If the associated companies can prove their inventor status as defined above, the French tax administration will examine in a liberal spirit the possibility of extending the said inventor status to the Danish licensors themselves. Pending the outcome of that examination, the French tax administration shall be entitled to take all legal steps with a view to the collection of the tax, it being understood that this action can in no way impair the rights held by Danish licensors under French laws and regulations ;

(c) Exemption shall not be withheld solely on the ground that a patent has not been registered in the name of the Danish licensor, provided that all other conditions are fulfilled ;

(d) In the case of a merger of companies carried out either by the creation of a new company or by the absorption of a company or companies by an existing company through the grant of rights in the capital of the absorbing company to the shareholders of the companies absorbed ; in the case of the reorganization or transformation of companies not involving the creation of any new entity ; and in the case of division of a company into smaller entities, the companies resulting from these operations shall enjoy, in respect of the inventions included among the assets of the previous companies and to the extent that the new companies are deemed to succeed to the rights of the previous companies in these inventions, the exemptions and the benefits which were enjoyed by the previous companies or to which they would have been entitled under the provisions of this letter.

4. In the case where a licence granted by a Danish licensor relates both to inventions in respect of which he has inventor status as defined in paragraph 3 (a) above and to inventions in respect of which he does not have such status, exemption from turnover taxes shall be granted only as regards royalties relating to those inventions in respect of which the Danish licensor can claim inventor status, it being understood that the necessary division of the total royalty will be carried out by the licensor, on his own responsibility, subject to the right of verification by the French tax administration. If, however, the invention of the Danish licensor is clearly of preponderant importance in comparison with the inventions acquired from third parties, exemption from turnover taxes shall be granted for the total royalty.

5. Proof of "inventor" status shall be furnished, subject to the right of verification by the French administration, by a declaration made out on a special form (a specimen of which is attached to this letter) and certified by the Federation of Danish Industries, 18 H. C. Andersens Boulevard, Copenhagen V.

6. If the French administration has good reason to doubt the accuracy of the declaration provided for in paragraph 5 above, such further particulars as it finds necessary to request from Danish licensors must also be certified correct by the Federation of Danish Industries. Such information may not, however, have the effect of disclosing an industrial or commercial secret or a commercial process.

7. The tax on services paid by Danish licensors or for their account, shall create in favour of the French licensees a right to deduction in accordance with the legislation governing the French tax on value added.

8. The provisions of paragraph 1 to 7 above shall also have retroactive force. In the case of Danish licensors who do not fulfil the conditions of qualification for inventor status as prescribed above, or who fulfil them with respect to part of their licences only, the liability shall be settled as follows :

(a) If the royalties were paid before 1 July 1954 and were computed on the basis of an agreed sum, no claim shall be made for turnover taxes ;

- (b) If the royalties were paid before 1 July 1954 and were computed on the basis of turnover, the taxes shall be payable. However, the taxes shall only be payable—where appropriate—as from the date on which written demands were sent to the Danish licensors or to their accredited representatives in France in all those cases where the French tax administration has been in a position, in the course of its inspections, to establish that the French licensee has paid royalties to Danish licensors but the said administration has not raised the question whether these taxes were payable. On this point the French administration states that it considers that inspections have been carried out normally in the case of most French enterprises exploiting patents under licences granted by Danish enterprises, and that the only cases that might still be raised would be cases of fraud involving the person liable for the taxes ;
- (c) In the case of royalties paid after 1 July 1954, Danish licensors shall be liable for the taxes under the provisions of ordinary law.

In all the cases described above, or in any one of them except flagrant fraud, all pains and penalties for late payment of taxes shall be waived on condition that the Danish licensors regularize their position not later than six months after the entry into force of the provisions of this letter.

9. The French tax administration shall raise no objection to the insertion of a clause in an agreement (whether a revision of an existing contract or a new contract) between a Danish licensor and a French licensee whereby the licensee will himself pay the turnover taxes due as a result of putting the said contract into effect. Such clause shall nevertheless be without prejudice to the provisions of tax legislation relating to the assessment and collection of the said taxes.

10. Danish licensors shall be accorded any more extensive benefit which France may grant to French or foreign licensors.

11. The Danish administration will use its best endeavours to bring the obligations arising out of this agreement to the notice of the persons concerned.

If the foregoing provisions meet with the Danish Government's agreement, this arrangement will enter into force as from the date of your reply.

I have the honour to be, etc.

S. M. GUILLAUMAT

His Excellency Ejnar Wærum
Ambassador of Denmark
Paris

A N N E X

FOR PURPOSES OF EXEMPTION FROM TURNOVER TAX

(1) The undersigned _____ (surname, given name) _____ in his (their) normal capacity as _____ (manager, president, managing director, etc.) _____ of the Danish undertaking : _____ (name, legal status, full address) _____.

(2) Hereby declares (declare) that this undertaking has granted by contract dated _____ to the French undertaking : _____ (name, legal status, full address) _____.

(3) The right to exploit (or use) inventions (made available in the form of patents, copyright, trade marks, manufacturing processes or formulae, etc.) relating to _____ (enumeration of the products, etc., which are licensed and a brief description of the purpose of the contract and form of remuneration)* _____.

(4) He (they) certifies (certify) that :

- a. The above-mentioned inventions were not obtained from a third inventor unconnected with his (their) undertaking ;
- b. They originated (or were developed, etc.) in the research laboratories (or centres) of his (their) undertaking or in the research laboratories or centres of the following body : _____ (university, research institute or association) with which his (their) undertaking is associated under a special contract dated. _____
- c. The managers of the undertaking or the technicians (or the above-mentioned research body) that originated (or developed, etc.) the invention were (was) not acting in a personal capacity, but carried out their (its) research solely for the account of the said undertaking, under its control, according to its instructions, and at its expense and risk.

(date) _____

(signature) _____

(5) On the basis of the trustworthy statements and documents submitted by the applicant, the undersigned Federation of Danish Industries, after investigation, certifies that the information furnished above is correct.

Stamp and signature
of the Federation of Danish Industries

* If the invention was patented in France, give the number of the patent issued in France. This declaration shall be prepared in triplicate, one copy for the French licensee, one for the Federation of Danish Industries and one for the grantor.

II

EMBASSY OF DENMARK
PARIS

Paris, 17 September 1959

Your Excellency,

I have the honour to acknowledge receipt of your letter, with annex, dated 3 August 1959, which reads as follows :

[*See note I*]

In accordance with instructions received, I have the honour to inform you that the provisions contained in that letter and the text of the annex meet with the Danish Government's agreement and that my Government further agrees that this arrangement should enter into force as from today's date.

I have the honour to be, etc.

Ejnar WÆRUM

His Excellency S. M. Guillaumat
Paris