

No. 6383

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**UNITED STATES OF AMERICA  
and  
CANADA**

**Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on the estates of deceased persons. Signed at Washington, on 17 February 1961**

*Official text: English.*

*Registered by the United States of America on 28 November 1962.*

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**ÉTATS-UNIS D'AMÉRIQUE  
et  
CANADA**

**Convention tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur les successions. Signée à Washington, le 17 février 1961**

*Texte officiel anglais.*

*Enregistrée par les États-Unis d'Amérique le 28 novembre 1962.*

No. 6383. CONVENTION<sup>1</sup> BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF CANADA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON THE ESTATES OF DECEASED PERSONS. SIGNED AT WASHINGTON, ON 17 FEBRUARY 1961

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The Government of the United States of America and the Government of Canada, desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on the estates of deceased persons, agree as follows :

*Article I*

The taxes referred to in this Convention are :

- (a) for the United States of America : the Federal estate tax ;
- (b) for Canada : the estate tax imposed by the Government of Canada.

2. The present Convention shall also apply to any other taxes of a substantially similar character imposed by either contracting State subsequent to the date of signature of the present Convention.

*Article II*

Where a person dies a citizen of the United States of America or domiciled in the United States of America or Canada, the situs of any rights or interests, legal or equitable, in or over any of the following classes of property, which for the purposes of tax form or are deemed to form part of the estate of such person or pass or are deemed to pass on his death, shall, for the purposes of the imposition of tax on the basis of situs of property within the taxing State and for the purposes of the credit to be allowed under Article V, be determined exclusively in accordance with the following rules, but in cases not within such rules the situs of such rights or interests shall be determined for these purposes in accordance with the laws in force in the other contracting State :

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<sup>1</sup> Came into force on 9 April 1962, with retroactive effect from 1 January 1959, by the exchange of the instruments of ratification at Ottawa, in accordance with article XV.

- (a) immovable property (except any right or interest therein by way of security) shall be deemed to be situated at the place where such property is located ;
- (b) tangible movable property (except any right or interest therein by way of security and except any tangible movable property for which specific provision is made in any subsequent paragraph of this Article), and, in any case, bank or currency notes and other forms of currency recognized as legal tender in the place of issue, shall be deemed to be situated at the place where such property was located at the time of death, or, if in course of transit at that time, at the place of intended destination ;
- (c) debts whether secured or unsecured and whether under seal or otherwise (including bills of exchange and promissory notes, whether negotiable or otherwise, but not including any form of indebtedness for which specific provision is made in any subsequent paragraph of this Article), shall be deemed to be situated at the place where the debtor was ordinarily resident at the time of death, or, where the debtor is a company, then at the place where the company is incorporated ;
- (d) deposit accounts with a bank, trust company, loan company, or other similar institution shall be deemed to be situated at the place where the institution or branch thereof in which the account was kept is located ;
- (e) securities of or guaranteed by any government or municipality shall be deemed to be situated,
  - (i) if in bearer form, at the place where located at the time of death, or
  - (ii) if inscribed or registered, at the place where inscribed or registered by the issuer ;
- (f) shares, stock, bonds, debentures, and debenture stock of a company, and rights to subscribe for or purchase shares or stock of a company (including any such property held by a nominee, whether the beneficial ownership is evidenced by scrip certificates or otherwise) shall be deemed to be situated at the place where the company is incorporated ;
- (g) money deposited to the credit of the deceased with an insurance company, money payable under a policy of insurance effected on the life of the deceased or payable under an annuity contract in respect of the death of the deceased, and any policy of insurance or annuity contract in which the deceased had an interest shall be deemed to be situated at the place where the deceased was domiciled at the time of his death ;
- (h) shares in a partnership shall be deemed to be situated at the place where its business is principally carried on ;
- (i) ships and aircraft and shares thereof shall be deemed to be situated at the place of registration of the ship or aircraft ;
- (j) good-will of a business, trade or profession shall be deemed to be situated at the place where the business, trade or profession is principally carried on ;

- (k) patents, trade-marks and designs shall be deemed to be situated at the place where they are registered ;
- (l) copyright, franchises, and rights or licenses to use any copy-righted material, patent, trade-mark or design shall be deemed to be situated at the place where the rights arising therefrom are exercisable ;
- (m) rights *ex delicto* or causes of action *ex delicto* surviving to the benefit of the estate of any deceased or his legal representative shall be deemed to be situated at the place where such rights or causes of action arose, and other rights or causes of action so surviving shall be deemed to be situated at the place where, at the time of the death of the deceased, the person against whom the right or cause of action is enforceable was ordinarily resident, or, if a company, then at the place where the company is incorporated ;
- (n) judgment debts shall be deemed to be situated at the place where the judgment is recorded ; and
- (o) superannuation and pension benefits payable or granted on or after the death of the deceased in respect thereof shall be deemed to be situated at the place where the deceased was domiciled at the time of his death ;
- provided that this Article shall not be construed so as to increase the tax imposed by either contracting State.

### Article III

1. Allowance for debts shall be determined in accordance with the laws of the contracting State imposing the tax.

2. Where a contracting State imposes tax by reason of a decedent being domiciled therein or being a citizen thereof, no distinction shall be made between organizations created in that State and organizations created in the other contracting State in the allowance of any deduction authorized by its statute for a bequest, legacy, devise, or transfer made for exclusively religious, charitable, scientific, literary, or educational purposes.

3. Domicile shall be determined in accordance with the laws of the contracting State imposing the tax on the basis of domicile.

### Article IV

1. Where the United States imposes tax solely by reason of the property being situated therein, the United States shall, if the decedent was domiciled in Canada,

- (a) for the purpose of determining the tax rate or rates, take into account only property situated in the United States, and

- (b) exempt from tax property situated in the United States where the taxable estate before the allowance of a specific exemption does not exceed \$15,000.00, but if such estate exceeds \$15,000.00 the amount of the tax shall be the lesser of (1) the amount by which such estate exceeds \$15,000.00, or, (2) the tax computed after allowance of a specific exemption of \$2,000.00.
2. Where Canada imposes tax solely by reason of the property being situated therein, Canada shall, if the decedent was a citizen of or domiciled in the United States,
- (a) for the purpose of computing the tax apply a rate not to exceed 15% in respect of the property situated in Canada, and
- (b) exempt from tax property situated in Canada where the aggregate value thereof does not exceed \$15,000.00, but if the aggregate value exceeds \$15,000.00 the amount of the tax shall not be greater than the amount by which the aggregate value exceeds \$15,000.00.

#### *Article V*

1. Where either contracting State imposes tax by reason of a decedent being domiciled therein or being a citizen thereof, that contracting State shall allow against so much of its tax (as otherwise computed) as is attributable to property situated in the other contracting State a credit (not exceeding the amount of the tax so attributable) equal to so much of the tax imposed by the other contracting State as is attributable to such property.

2. Where each contracting State imposes tax on any property situated outside both contracting States or in both contracting States, each contracting State shall allow against so much of its tax (as otherwise computed) as is attributable to such property a credit which bears the same proportion to the amount of its tax so attributable or to the amount of the other contracting State's tax attributable to the same property, whichever is the lesser as the former amount bears to the sum of both amounts.

3. For the purpose of computing credit under this Article, the amount of the tax of the crediting State attributable to particular property shall be ascertained after taking into account any credit against or reduction of such part of the tax, except credit authorized under this Article or statutory credit in lieu thereof and except, in respect of the credit allowed by Canada, the deduction from tax authorized by subsection 4 of Section 9 of the Canadian Estate Tax Act. The amount of the tax of the other contracting State attributable to such property shall be ascertained after taking into account any credit against or reduction of such part of the tax, except credit authorized under this Article or statutory credit in lieu thereof, and

except credit allowed with respect to death taxes of a political subdivision of such State.

*Article VI*

1. Any claim for a credit or for a refund of tax founded on the provisions of this Convention shall be made

- (a) within the time limited for the making of a refund of tax by the law of the State to which the claim is made, or
- (b) within six years from the date of the death of the decedent in respect of whose estate the claim is made,

whichever is later.

2. Any such refund made by the United States shall be made without payment of interest on the amount so refunded.

*Article VII*

1. With a view to the prevention of fiscal evasion each of the contracting States undertakes to furnish to the other contracting State, as provided in the succeeding Articles of this Convention, the information which its competent authorities have at their disposal or are in a position to obtain under its revenue laws in so far as such information may be of use to the authorities of the other contracting State in the assessment of the taxes to which this Convention relates.

2. The information to be furnished under this Article, whether in the ordinary course or on request, may be exchanged directly between the competent authorities of the two contracting States.

*Article VIII*

1. The competent authority of the United States shall notify the competent authority of Canada as soon as practicable when the former authority ascertains that in the case of :

- (a) a decedent, any part of whose estate is subject to the Federal estate tax, there is property of such decedent situated in Canada ;
- (b) a decedent domiciled in Canada, there is property of such decedent situated in the United States.

2. The competent authority of Canada shall notify the competent authority of the United States as soon as practicable when the former authority ascertains that in the case of :

- (a) a decedent, any part of whose estate is subject to the estate tax of the Government of Canada, there is property of such decedent situated in the United States ;
- (b) a decedent domiciled in the United States, there is property of such decedent situated in Canada.

*Article IX*

1. If the competent authority of Canada deems it necessary to obtain the cooperation of the competent authority of the United States in determination of the estate tax liability of any person, the latter authority may, upon request, furnish the former authority information bearing upon the matter as such latter authority is entitled to obtain under the revenue laws of the United States.

2. If the competent authority of the United States deems it necessary to obtain the cooperation of the competent authority of Canada in the determination of the estate tax liability of any person, the latter authority may, upon request, furnish the former authority such information bearing upon the matter as such latter authority is entitled to obtain under the revenue laws of Canada.

*Article X*

The competent authorities of the contracting States may :

- (a) prescribe regulations to carry into effect this Convention within the respective States and rules with respect to the exchange of information ;
- (b) if doubt arises, settle questions of interpretation or application of this Convention by mutual agreement ;
- (c) communicate with each other directly for the purpose of giving effect to the provisions of this Convention.

*Article XI*

If any fiduciary or beneficiary can show that double taxation contrary to the provisions of this Convention has resulted or may result, such fiduciary or beneficiary shall be entitled to lodge a claim or protest with the contracting State of citizenship or domicile of the decedent. If the claim or protest should be deemed worthy of consideration, the competent authority of such State may consult with the competent authority of the other State to determine whether the alleged double taxation exists or may occur and if so whether it may be avoided in accordance with the terms of this Convention.

*Article XII*

The provisions of this Convention shall not be construed to restrict in any manner any exemption, deduction, credit, or other allowance accorded by the laws of one of the contracting States in the determination of the tax imposed by such State.

*Article XIII*

1. As used in this Convention :

- (a) The term “competent authority” or “competent authorities” means the Secretary and the Minister and their duly authorized representatives.
- (b) The term “Minister” means the Minister of National Revenue of Canada.
- (c) The term “Secretary” means the Secretary of the Treasury of the United States.
- (d) The term “United States” means the United States of America and when used in a geographical sense, means the States, including the former Territories of Alaska and Hawaii, and the District of Columbia.
- (e) The term “Canada”, when used in a geographical sense, means the provinces, the territories, and Sable Island.

*Article XIV*

Upon the entry into force of this Convention, the Convention between the United States of America and Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion in the Case of Estate Taxes and Succession Duties signed on the 8th day of June, 1944,<sup>1</sup> and the Convention supplementary thereto signed on the 12th day of June, 1950,<sup>2</sup> shall be deemed to have terminated on the first day of January, 1959, in so far as application to estates of decedents dying on or after the last-mentioned date is concerned, but shall continue in effect with respect to the estates of decedents dying prior to that date.

*Article XV*

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Ottawa as soon as possible.

2. When brought into force by the exchange of instruments of ratification, this Convention shall be deemed to have come into effect on the first day of January, 1959, and shall apply only with respect to the estates of decedents dying on or after that date. It shall continue in effect for a period of five years from that date, but

<sup>1</sup> United Nations, *Treaty Series*, Vol. 124, p. 297.

<sup>2</sup> United Nations, *Treaty Series*, Vol. 127, p. 57.



may be terminated by either of the contracting States at the end of that five-year period or at any time thereafter provided that at least six months prior notice of termination has been given.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed this Convention and affixed their seals.

DONE at Washington, in duplicate, this 17th day, of February, 1961.

For the Government of the United States of America :

Dean RUSK [SEAL]

For the Government of Canada :

A. D. P. HEENEY [SEAL]