

No. 7248

**AUSTRIA
and
LUXEMBOURG**

Agreement for the avoidance of double taxation with respect to taxes on income and fortune. Signed at Luxembourg, on 18 October 1962

Official text: German.

Registered by Austria on 19 May 1964.

**AUTRICHE
et
LUXEMBOURG**

Convention tendant à éviter la double imposition en matière d'impôts sur le revenu et sur la fortune. Signée à Luxembourg, le 18 octobre 1962

Texte officiel allemand.

Enregistrée par l'Autriche le 19 mai 1964.

[TRANSLATION — TRADUCTION]

No. 7248. AGREEMENT¹ BETWEEN THE REPUBLIC OF AUSTRIA AND THE GRAND DUCHY OF LUXEMBOURG FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND FORTUNE. SIGNED AT LUXEMBOURG, ON 18 OCTOBER 1962

The Federal President of the Republic of Austria and Her Royal Highness The Grand Duchess of Luxembourg, desiring to avoid, so far as possible, double taxation with respect to taxes on income and fortune, have agreed to conclude an Agreement. For that purpose they have appointed as their plenipotentiaries :

The Federal President of the Republic of Austria :

Dr. Ernst Lemberger, Ambassador Extraordinary and Minister Plenipotentiary of the Republic of Austria in the Grand Duchy of Luxembourg.

Her Royal Highness the Duchess of Luxembourg :

Mr. Eugène Schaus, Minister for Foreign Affairs,
Mr. Pierre Werner, Minister of Finance.

The plenipotentiaries, having exchanged their full powers, found in good and due form, have agreed as follows :

Article 1

(1) This Agreement shall apply to individuals and bodies corporate domiciled, within the meaning of article 2, in the Republic of Austria or in the Grand Duchy of Luxembourg, or in both Contracting States.

(2) This Agreement shall apply to taxes (including surtaxes) on income and fortune levied on behalf of either of the two Contracting States, or of their provinces, municipalities or associations of municipalities, regardless of the manner in which they are levied.

(3) The expression "taxes on income and fortune" shall be deemed to mean all taxes levied on total income or total fortune or on elements of income or fortune, including taxes on profits derived from the alienation of movable or immovable property, and taxes on increase in fortune.

¹ Came into force on 7 February 1964, the date of the exchange of the instruments of ratification at Vienna, in accordance with the provisions of article 27.

(4) The taxes to which this Agreement applies are at present :

1. In the Republic of Austria :

- (a) The income tax (*Einkommensteuer*),
- (b) The corporation tax (*Körperschaftsteuer*),
- (c) The tax on fortune (*Vermögensteuer*),
- (d) The contribution from income for the promotion of residential building and for the equalization of family burdens (*Beitrag vom Einkommen zur Förderung des Wohnbaues und für Zwecke des Familienlastenausgleiches*),
- (e) The tax on directors' fees (*Aufsichtsratsabgabe*),
- (f) The business tax (*Gewerbesteuer*) [including the pay-roll tax (*Lohnsummensteuer*)],
- (g) The land tax (*Grundsteuer*),
- (h) The tax on agricultural and forestry enterprises (*Abgabe von land- und forstwirtschaftlichen Betrieben*),
- (i) The tax on the land value of undeveloped real estate (*Abgabe von Bodenwert bei unbebauten Grundstücken*),
- (j) The tax on property exempt from the inheritance tax (*Abgabe von Vermögen, die der Erbschaftssteuer entzogen sind*).

2. In the Grand Duchy of Luxembourg :

- (a) The income tax (*Einkommensteuer*),
- (b) The corporation tax (*Körperschaftsteuer*),
- (c) The special tax on directors' fees (*besondere Steuer von Tantiemen*),
- (d) The tax on fortune (*Vermögensteuer*),
- (e) The business tax (*Gewerbesteuer*) [including the payroll tax (*Lohnsummensteuer*)],
- (f) The land tax (*Grundsteuer*).

(5) This Agreement shall also apply to any taxes of the same or of like nature which may be levied in the future in addition to or in place of the existing taxes. The chief financial authorities of the two Contracting States shall at the end of each year inform each other of any changes which have been made in their taxation laws.

(6) The chief financial authorities mentioned in this Agreement are, in the case of the Republic of Austria, the Federal Ministry of Finance, and in the case of the Grand Duchy of Luxembourg, the Minister of Finance or his authorized representative.

Article 2

(1) Where a person domiciled in one of the Contracting States received income in respect of which no provision is made in this Agreement, the said income shall be subject to taxation by that State.

(2) In this Agreement the expression "a person domiciled in one of the Contracting States" means an individual liable under the laws of that Contracting State to taxation therein by reason of his domicile or habitual residence, or a body corporate liable under the laws of that Contracting State to taxation therein by reason of its domicile or place of actual management.

(3) Where, under the provisions of paragraph (2), an individual may be deemed to be domiciled in both of the Contracting States, the domicile shall be determined for the purposes of this Agreement as follows :

- (a) An individual shall be deemed to be domiciled in the Contracting State in which he has a permanent residence available to him. If he has a permanent residence available to him in both Contracting States, he shall be deemed to be domiciled in the Contracting State with which he has the closer personal and economic relations (centre of vital interests),
- (b) If it cannot be determined in which of the two Contracting States the individual has his centre of vital interests, or if he has no permanent residence available to him in either Contracting State, he shall be deemed to be domiciled in the Contracting State in which he habitually resides,
- (c) If the individual habitually resides in both or neither of the Contracting States, he shall be deemed to be domiciled in the Contracting State of which he is a national,
- (d) If the individual is a national of both or neither of the Contracting States, the chief financial authorities of the two Contracting States shall settle the question by agreement.

(4) Where, under the provisions of paragraph (2), a body corporate may be deemed to be domiciled in both Contracting States, it shall be domiciled for the purposes of this Agreement in the Contracting State in which its place of actual management is situated. The same shall apply to partnerships and other associations which are not bodies corporate under the national laws by which they are governed.

Article 3

(1) Where a person domiciled in one of the Contracting States derives income from immovable property situated in the other Contracting State, such income shall be subject to taxation by the latter State.

(2) The term “immovable property” shall be defined in accordance with the laws of the Contracting State in which the property is situated. It shall in any event include property accessory to immovable property, livestock and equipment of agricultural and forestry enterprises, rights to which the provisions of private law concerning real property apply, rights of usufruct in immovable property, and rights to variable or fixed payments for the use of mineral deposits, springs and other natural resources ; ships and aircraft shall not be deemed to be immovable property.

(3) Paragraph (1) shall apply to income derived from the direct use or the letting of movable property or from the use in any other form of such property. It shall also apply to profits from the alienation of immovable property.

(4) Paragraphs (1) and (3) shall also apply to income from immovable property belonging to a business enterprise and to income from immovable property used in the practice of a profession.

Article 4

(1) Where a person domiciled in one of the Contracting States derives income from a business enterprise whose activities extend to the territory of the other Contracting State, the said income shall be subject to taxation by the latter Contracting State only in so far as it is attributable to a permanent establishment of the enterprise which is situated in its territory.

(2) The provisions of paragraph 1 shall also apply to income derived from active or inactive participation in a corporate enterprise, other than participation in the form of shares, mining shares (*Kuxe*) profit-participation certificates (*Genuss-scheine*), participating debentures (*Obligationen mit Gewinnbeteiligung*) and other securities, and shares in co-operative societies and private limited companies (*Gesellschaften mit beschränkter Haftung*).

(3) Paragraphs (1) and (2) shall apply both to income derived from the direct use of the business enterprise and to income derived from the letting or use in any other form thereof : they shall also apply to income derived from the alienation of a business as a whole, of a share in the business, of part of it, or of objects used in the business.

(4) The income to be attributed to the permanent establishment shall be that which would have accrued to it if it were a separate enterprise engaged in the same or similar activities under the same or similar conditions and carrying on business as an independent enterprise.

(5) The income derived from the activities of a permanent establishment shall as a general rule be determined from the balance-sheet of the permanent establishment. In this connexion, account shall be taken of all expenditure which is attributable to the permanent establishment, including a share in the general administrative expenses of the enterprise but excluding artificial transfers of profits, and, in particular, interest or royalties agreed upon between permanent establishments of the same enterprise.

(6) In special cases, the income may be determined by dividing up the total profits of the enterprise. For insurance enterprises, the coefficient applied in such cases may be the ratio between the gross premium receipts of the permanent establishment and the total gross premium receipts of the enterprise. The chief financial authorities of the Contracting States shall reach agreement as soon as possible, where such agreement is necessary for the apportionment of income in any particular case.

(7) Paragraph 1 shall be applied *mutatis mutandis* to business tax levied on a tax base other than income.

Article 5

(1) The term "permanent establishment" means a fixed place of business in which an enterprise carries on all or part of its activities.

(2) The following shall, in particular, be deemed to be permanent establishments :

- (a) The place of management,
- (b) A branch,
- (c) A business office,
- (d) A factory,
- (e) A workshop,
- (f) A mine, a quarry or any other place where natural resources are worked,
- (g) A construction or assembly project the duration of which exceeds twelve months.

(3) The following shall not be deemed to constitute a permanent establishment :

- (a) The use of facilities exclusively for the storage, display or delivery of goods or merchandise belonging to the enterprise,
- (b) The maintenance, exclusively for storage, display or delivery, of a stock of goods or merchandise belonging to the enterprise,

- (c) The maintenance, exclusively for processing or finishing by some other enterprise, of a stock of goods or merchandise belonging to the enterprise,
- (d) The maintenance of a fixed place of business exclusively for the purpose of purchasing goods or merchandise or procuring information for the enterprise,
- (e) The maintenance of a fixed place of business exclusively for advertising purposes, for the supply of information, or for scientific research or other activities of a preparatory or auxiliary nature.

(4) A person—other than an independent representative within the meaning of paragraph (5)—acting in one of the two Contracting States on behalf of an enterprise of the other Contracting State shall be deemed to constitute a permanent establishment in the first-mentioned Contracting State if he has and habitually exercises a general authority to conclude contracts in that Contracting State on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

(5) An enterprise of one of the Contracting States shall not be deemed to have a permanent establishment in the other State merely because it carries on its activities there through a broker, commission agent or other independent representative acting in the ordinary course of his business as such.

(6) The fact that a body corporate domiciled in one of the Contracting States controls or is controlled by a body corporate domiciled in the other Contracting State or carrying on its activities there (either through a permanent establishment or otherwise) shall not of itself constitute one of the said bodies corporate a permanent establishment of the other.

(7) An insurance enterprise of one of the Contracting States shall be deemed to have a permanent establishment in the other Contracting State if, through a representative other than one within the meaning of paragraph (5), it receives premiums in the territory of the other Contracting State or insures risks arising in that territory.

Article 6

Where

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

and where, in such cases, conditions are arranged or imposed between the two enterprises, in their commercial or financial relations, which differ from those which would be arranged between independent enterprises, then the profits which but for those conditions would have accrued to one of the enterprises but which by reason of those conditions have not so accrued may be included in the profits of that enterprise and taxed accordingly.

Article 7

(1) Where a person domiciled in one of the Contracting States receives profits from the operation of ships or aircraft in international traffic, such profits shall be subject to taxation only by the Contracting State in which the place of actual management of the enterprise is situated.

(2) Where a person domiciled in one of the Contracting States derives profits from the operation of boats engaged in inland waterways transport, such profits shall be subject to taxation only by the Contracting State in which the place of actual management of the enterprise is situated.

(3) If the place of actual management of the shipping or inland waterways transport enterprise is situated on board a ship or boat, then it shall be deemed to be situated in the Contracting State in which the ship or boat has its home harbour, or, if no home harbour exists, in the Contracting State in which the person operating the ship or boat is domiciled.

(4) Paragraph (1) shall also apply where a shipping or air transport enterprise of one of the Contracting States operates a passenger or goods transport agency in the territory of the other Contracting State. This shall apply, however, only to activities directly connected with the operation of the shipping or air transport services, including their feeder services.

(5) The provisions of paragraphs (1) and (4) shall also apply to participations of air transport enterprises in a pool or a joint operating organization.

(6) The provisions of this Article shall be applied *mutatis mutandis* to business tax levied on a tax base other than income.

Article 8

Where a person domiciled in one of the Contracting States derives income from the disposal of an interest in a joint-stock company (*Kapitalgesellschaft*) domiciled in the other Contracting State, the said income shall be subject to taxation by the former State. If the income is realized through a permanent establishment situated in the other Contracting State, it shall be subject to taxation only by that Contracting State.

Article 9

(1) Royalties received by a person domiciled in one of the Contracting States from the other Contracting State shall be subject to taxation only by the Contracting State in which the person is domiciled.

(2) Royalties within the meaning of paragraph (1) which are paid by a joint-stock company domiciled in one of the Contracting States to a person domiciled in the other Contracting State and owning more than 50 per cent of the capital of the debtor company may, notwithstanding the provisions of paragraph (1), be taxed in the first-mentioned Contracting State ; the tax, however, may not exceed 10 per cent of the gross amount of the royalties. At the request of the recipient of the royalties, such tax shall be credited by the other Contracting State against the tax which it levies on this income.

(3) The term "royalties" as used in this article means payments of any kind made as consideration for the use of or for the right to use copyrights in literary, artistic or scientific works, including cinematograph films, patents, trade marks, designs or models, plans, or secret formulae or processes, or for the use of or the right to use industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

(4) Profits derived from the alienation of a right or property mentioned in paragraph (3) shall be taxable only in the Contracting State in which the alienor is domiciled.

(5) Paragraphs (1), (2), and (4) shall not apply where the recipient of the royalties or profits, being domiciled in one of the Contracting States, has in the other Contracting State in which the royalties arise a permanent establishment with which the right or property giving rise to the royalties is actually connected. In such case, article 4 shall apply.

(6) Where, by reason of a special relationship existing between the payer and the recipient or between both of them and a third party, the amount of the royalties, having regard to the use, right or information for which they were paid, exceeds that which would have been agreed upon by the payer and the recipient in the absence of such relationship, this article shall apply only to the last-mentioned amount. In that case the excess amount shall be taxable in accordance with the municipal law of the Contracting States, subject to the other provisions of this Agreement.

Article 10

(1) Where a person domiciled in one of the Contracting States receives dividends paid by a company domiciled in the other Contracting State, such dividends shall be subject to taxation by the Contracting State in which the person is domiciled.

(2) The Contracting State in which the company paying the dividends is domiciled may, however, tax such dividends in accordance with its own law ; but the rate of tax levied by it may not exceed :

- (a) 5 per cent of the gross amount of the dividends, where the recipient is a company (other than a partnership), which holds directly at least 25 per cent of the capital of the company paying the dividends ;
- (b) In all other cases, 15 per cent of the gross amount of the dividends.

(3) At the request of the recipient of the dividends, tax which is levied in the Contracting State in which the company paying the dividends is domiciled, in accordance with paragraph (2), shall be credited by the other Contracting State against its income tax chargeable to those dividends.

(4) Dividends which are paid by a joint-stock company domiciled in one of the Contracting States to a joint-stock company domiciled in the other Contracting State shall be exempt from tax in the latter State, but only to the extent that they would have been exempt from tax under the laws of that State if both companies had been domiciled there. In this case, the provisions of paragraph (3) shall not apply.

(5) Paragraph (2) shall not affect the right of the Contracting State in which the company paying the dividends is domiciled to tax such dividends at the full rate by deduction at the source. If the tax is deducted at the source, it shall be refunded on application, to the extent that it exceeds the rates of tax specified in paragraph (2). The application for refund must be submitted to the competent authority of the State of domicile within two years after the expiry of the calendar year in which the taxable payment became due.

(6) The chief financial authorities of the two Contracting States shall come to an agreement concerning the procedure for granting relief from taxes deducted at the source on dividends, and in particular concerning the form of the required certificates and applications, the type of proofs to be furnished and the measures to be taken to prevent improper claims for relief. Neither State shall be required in this connexion to take measures which are at variance with its legislation.

(7) With respect to the claims of members of diplomatic or consular missions and of international organizations and their organs and officials under the provisions of paragraph (2), the following rules shall apply :

- (a) A member of a diplomatic or consular mission of one of the Contracting States who is resident in the other Contracting State or in a third State and is a national of the sending State shall be deemed to be domiciled in the last-mentioned Contracting State if he is required to pay direct taxes there on dividends which are taxed in the other Contracting State by deduction at the source.
- (b) International organizations and their organs, and officials of such organizations and members of the staffs of diplomatic or consular missions of a third State who are present or resident in one of the two Contracting States and are exempt in that Contracting State from the payment of direct taxes on dividends shall not be entitled to relief from taxes collected in the other Contracting State by deduction at the source.

(8) Where the recipient of the income is already entitled, under the law of the State levying the tax, to complete relief from taxes collected at the source, such relief cannot be granted under paragraph (5) of this article, but only under the municipal law of the said State.

(9) Paragraph (2) shall not affect the liability to tax of the company in respect of the profits from which the dividends are paid.

(10) The term "dividends" as used in this article means income from shares, profit-participation shares (*Genussaktien*) or rights (*Genuss-scheine*), mining shares (*Kuxe*), founders' shares or other rights affording participation in profits, and income from other corporate rights which is treated as income from shares under the taxation law of the State in which the paying company is domiciled. Income from claims or from sleeping partners' participations shall not be deemed to be dividends.

(11) The foregoing paragraphs shall not apply where the recipient of the dividends being domiciled in one of the two Contracting States has a permanent establishment in the other Contracting State, in which the company paying the dividends is domiciled, and the interest in respect of which the dividends are paid is actually connected with that permanent establishment. In this case, article 4 shall apply.

Article 11

(1) Where a person domiciled in one of the Contracting States receives interest from the other Contracting State, such interest shall be subject to taxation only in the Contracting State in which the person is domiciled.

(2) The provisions of article 10, paragraphs (5) to (8) shall apply as appropriate.

(3) The term "interest" as used in this article means income from public loans, bonds (whether or not secured by charge on real estate or carrying a right to participation in profits) and claims of any kind, and all other income treated as income from loans under the taxation law of the State from which it originates. Income from sleeping partners' participations shall not be deemed to be interest.

(4) Paragraph 1 shall not apply where the recipient of the interest being domiciled in one of the two Contracting States, has a permanent establishment in the other Contracting State from which the interest originates, and the claim from which the interest arises is actually connected with that permanent establishment. In that case, article 4 shall apply.

(5) Where, by reason of special relationship existing between the payer and the recipient or between both of them and a third party, the amount of the interest, having regard to the claim for which it is paid, exceeds that which would have been agreed upon by the payer and the recipient in the absence of such relationship, this article shall apply only to the last-mentioned amount. In that case the excess amount shall be taxable in accordance with the municipal law of the Contracting States, subject to the other provisions of this Agreement.

Article 12

(1) Where a person domiciled in one of the Contracting States derives income from the practice of a profession or from other independent activities of a similar nature, the said income shall be subject to taxation only by that State, unless the person has a fixed base regularly available to him in the other Contracting State for the exercise of his activities. If he has such a fixed base, the income shall be subject to taxation in the other Contracting State, but only to the extent that it is attributable to that fixed base.

(2) Professions shall be deemed to include, in particular, self-employment of a scientific, artistic, literary, pedagogic or educational nature and self-employment as a physician, lawyer, architect, engineer, accountant or patent agent.

Article 13

(1) Where an individual domiciled in one of the Contracting States receives remuneration as a member of a supervisory board (*Aufsichtsrat*) or board of management (*Verwaltungsrat*) or as a non-managing member of such a body, from a body corporate domiciled in the other Contracting State, such remuneration shall be subject to taxation by the latter State.

(2) Paragraph (1) shall only apply to remuneration granted in respect of activities of a supervisory nature. Remuneration for other activities shall be treated in accordance with articles 12 or 14.

Article 14

(1) Wages, salaries or similar remuneration for work received by an employed person domiciled in one of the Contracting States shall be subject to taxation, without prejudice to the provisions of articles 16 and 17, only by that State, unless the work is performed in the other Contracting State. If the work is performed there, the remuneration derived from it shall be subject to taxation by the latter State.

(2) Notwithstanding paragraph 1, remuneration received by employed persons domiciled in one of the Contracting States for work performed in the other Contracting State shall be taxable only in the first-mentioned State if :

- (a) The recipient is present in the other State for a total of not more than 183 days during the calendar year concerned and
- (b) The remuneration is paid by or on behalf of an employer not domiciled in the other State and
- (c) The remuneration is not charged to a permanent establishment or a fixed base which the employer has in the other State.

(3) Notwithstanding the foregoing provisions of this article, remuneration for services performed on board a ship or aircraft in international traffic or on board a boat engaged in inland waterways transport may be taxed in the Contracting State in which the place of actual management of the enterprise is situated.

(4) Paragraph 1 shall not apply to students of a university, technical college or similar educational establishment of either of the Contracting States who engage in paid employment at an enterprise in the other Contracting State for not more than 183 days in one calendar year in order to receive practical training.

Article 15

Notwithstanding the provisions of article 12 and article 14, paragraph (2), income derived by professional entertainers such as theatre, motion picture, radio or television performers and musicians and by athletes domiciled in one of the Contracting States from their personal activities as such in the other Contracting State shall be taxed only in the Contracting State in which they engage in these activities.

Article 16

Where a person domiciled in one of the Contracting States receives a retirement pension or similar remuneration paid in respect of past employment, such remuneration shall be subject to taxation, without prejudice to the provisions of article 17, paragraph (1), only by the Contracting State in which he is domiciled.

Article 17

(1) Where a person domiciled in one of the Contracting States receives income in the form of wages, salaries or similar remuneration or of retirement, widow's or orphan's pensions paid in respect of past or present work or services by the other State or by provinces, municipalities or associations of municipalities or other public corporations of that State, such income shall, notwithstanding the provisions of articles 14 and 16 be subject to taxation by the latter State. The same shall apply to allowances paid under the statutory social insurance scheme of the said State.

(2) Articles 14 and 16 shall apply to remuneration and retirement pensions paid in respect of services rendered in connexion with commercial or industrial activity carried on by one of the Contracting States or their territorial corporations or by one of the public corporation mentioned in paragraph 1.

(3) The question whether a given corporation is a public corporation shall be determined in accordance with the law of the State in which it is constituted.

Article 18

Payments which a student or apprentice from one of the Contracting States who is present in the other Contracting State solely for the purpose of education or training receives for his maintenance, education or training shall not be taxed in the latter State, provided that such payments are made to him from sources outside that State.

Article 19

(1) Where the fortune of a person domiciled in one of the Contracting States consists of :

- (a) Immovable property (article 3),
- (b) Property used by a business enterprise (articles 4 and 7),
- (c) Property used in the practice of a profession (article 12),

it shall be subject to taxation by the Contracting State which is entitled to tax the income therefrom.

(2) Other fortune shall be subject to taxation by the Contracting State in which the owner is domiciled.

(3) Shares in a joint-stock company domiciled in one of the Contracting States owned by a joint-stock company domiciled in the other Contracting State shall be exempt from tax in the latter State, provided that such shares would have been exempt from tax under the laws of that State if both companies had been domiciled there.

Article 20

(1) Income and fortune which under the provisions of this Agreement are subject to taxation in one of the Contracting States shall not be subject to taxation, including taxation by deduction at the source, in the other Contracting State. The foregoing shall be without prejudice to the provisions of Articles 9, 10 and 11.

(2) Notwithstanding the provisions of paragraph (1), this Agreement shall not restrict the right of either Contracting State, in the case of persons domiciled in its territory, to impose taxes at the rates applicable to the taxpayer's total income or total fortune on such portions of income or fortune as are subject to taxation by that State.

Article 21

This Agreement shall not affect claims to any additional exemptions to which members of diplomatic or consular missions may be entitled under the general rules of international law or by virtue of special agreements. To the extent that, owing to such additional exemptions, income and fortune are not taxed in the receiving State, the right of taxation shall be reserved to the sending State.

Article 22

(1) Nationals of one Contracting State shall not be subjected in the other Contracting State to any taxation or to any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of the latter State are or may be subjected under like conditions.

(2) The term "nationals" means :

- (a) All individuals possessing the nationality of either of the Contracting States ;
- (b) All bodies corporate, partnerships and other associations constituted under the law in force in either of the Contracting States.

(3) Permanent establishments in one of the Contracting States owned by an enterprise of the other Contracting State shall not be subjected in the former State to taxation which is less favourable than that to which enterprises of that State carrying on the same activity are subjected. This provision shall not be interpreted

in such a way as to require either Contracting State to grant to persons domiciled in the other State tax allowances, reliefs and reductions on account of marital status or family responsibilities which it grants to persons domiciled in its own territory.

(4) Enterprises of one Contracting State whose capital is wholly or partly owned or controlled, directly or indirectly, by one or more persons domiciled in the other Contracting State shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which similar enterprises in the first-mentioned State are or may be subjected.

(5) In this article the term "taxation" means the taxes which are the subject of this Agreement.

Article 23

(1) Where a person domiciled in one of the Contracting States believes that the action of one or both of the Contracting States has resulted or will result in his case in taxation inconsistent with this Agreement, he shall be entitled, without prejudice to such legal remedies as may be available under the national law of either State, to submit his case to the chief financial authority of the Contracting State in which he is domiciled.

(2) If the chief financial authority considers the objection to be justified and if it is not itself able to arrive at a satisfactory solution, it shall endeavour to resolve the case by agreement with the chief financial authority of the other Contracting State with a view to the avoidance of taxation inconsistent with this Agreement.

(3) The chief financial authorities of the Contracting States shall endeavour to resolve by agreement any difficulties or doubts arising in the interpretation or application of this Agreement. They may also consult together with a view to the avoidance of double taxation in cases not provided for in this Agreement.

(4) The chief financial authorities of the Contracting States may communicate with each other directly with a view to reaching agreement for the purposes of the foregoing paragraphs. Where it appears that agreement would be assisted by an oral exchange of opinions, such an exchange may be effected through a commission consisting of representatives of the chief financial authorities of the two Contracting States.

Article 24

(1) The chief financial authorities of the two Contracting States shall exchange such information as is necessary for carrying out this Agreement and in particular for preventing tax evasion. The chief financial authorities shall not, however, be required

to provide information which cannot be given on the basis of data at the disposal of the financial authorities but which would necessitate special inquiries. Information communicated to the chief financial authorities in accordance with this article shall be treated as secret but may be disclosed to persons and authorities statutorily concerned with the assessment or collection of the taxes which are the subject of this Agreement. Such persons and authorities shall be under the same obligation as the chief financial authorities.

(2) In no case shall the provisions of paragraph (1) be so construed as to impose upon either Contracting State the obligation :

- (a) To carry out administrative measures at a variance with its laws or administrative practice,
- (b) To supply particulars which are not obtainable under the laws of either of the two Contracting States.

(3) No information may be given which would disclose a business or professional secret.

Article 25

In the application of this Agreement by either Contracting State, any term not defined in this Agreement shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of the Agreement.

Article 26

(1) This Agreement shall not apply to holding companies within the meaning of the special Luxembourg legislation (at this date the Acts of 31 July 1929 and 27 December 1937). It shall similarly not apply to income derived by a person domiciled in Austria from such holding companies, or to shares in such companies owned by such a person.

(2) This Agreement shall not apply to non-recurrent taxes on fortune or on capital gains.

(3) The two Contracting States envisage the conclusion of a special agreement to provide for mutual assistance in the assessment and collection of the taxes which are the subject of the present Agreement.

Article 27

(1) This Agreement shall be ratified and the instruments of ratification shall be exchanged as soon as possible at Vienna ; it shall enter into force upon the exchange of the instruments of ratification.

Article 28

After the exchange of the instruments of ratification, the provisions of the Agreement shall apply in respect of fiscal years commencing on or after 1 January 1961.

Article 29

This Agreement shall remain in force unless terminated by one of the two Contracting States. Each Contracting State may terminate the Agreement by giving six months' notice to take effect at the end of a calendar year. In that event, the Agreement shall apply for the last time to taxes levied for the period up to 31 December of the year at the end of which the Agreement ceases to have effect.

IN WITNESS WHEREOF the plenipotentiaries of the two States have signed this Agreement and have thereto affixed their seals.

DONE at Luxembourg on 18 October 1962, in duplicate.

For the Republic of Austria :

Dr. LEMBERGER

For the Grand Duchy of Luxembourg :

E. SCHAUS

P. WERNER