

No. 7723

**UNITED STATES OF AMERICA
and
LUXEMBOURG**

**Convention with respect to taxes on income and property.
Signed at Washington, on 18 December 1962**

Official texts: English and French.

Registered by the United States of America on 27 April 1965.

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

**Convention concernant les impôts sur le revenu et la fortune.
Signée à Washington, le 18 décembre 1962**

Textes officiels anglais et français.

Enregistrée par les États-Unis d'Amérique le 27 avril 1965.

No. 7723. CONVENTION¹ BETWEEN THE UNITED STATES OF AMERICA AND THE GRAND DUCHY OF LUXEMBOURG WITH RESPECT TO TAXES ON INCOME AND PROPERTY. SIGNED AT WASHINGTON, ON 18 DECEMBER 1962

The President of the United States of America and Her Royal Highness the Grand Duchess of Luxembourg, desiring to conclude a convention for the avoidance of double taxation of income, the prevention of fiscal evasion, and the promotion of trade and investment, have appointed for that purpose as their respective Plenipotentiaries :

The President of the United States of America :

Dean Rusk, Secretary of State of the United States of America, and

Her Royal Highness the Grand Duchess of Luxembourg :

Georges Heisbourg, Ambassador Extraordinary and Plenipotentiary of the Grand Duchy of Luxembourg at Washington,

who, having communicated to each other their full powers, found in good and due form, have agreed upon the following Articles :

Article I

(1) The taxes which are the subject of the present Convention are :

(a) In the case of the United States :

The Federal income tax, including surtax.

(b) In the case of Luxembourg :

(i) The income taxes on individuals and corporations, the tax on fees of directors of corporations, and the communal tax on commercial profits, and

(ii) The wealth tax and the communal taxes on invested capital and land.

(2) The present Convention shall also apply to substantially similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes.

(3) The competent authorities of the Contracting States shall notify each other of the adoption of new taxes or of substantial changes in, or the abolition of, existing taxes covered by the present Convention.

¹ Came into force on 22 December 1964, the date of the exchange of the instruments of ratification at Luxembourg, and became effective for taxable years beginning on or after 1 January 1964, in accordance with the provisions of article XXII (1).

Article II

(1) In the present Convention, unless the context otherwise requires :

(a) The term "United States" means the United States of America, and when used in a geographical sense means the States thereof and the District of Columbia;

(b) The term "Luxembourg" when used in a geographical sense means the Grand Duchy of Luxembourg;

(c) The term "enterprise of one of the Contracting States" means, as the case may be, "United States enterprise" or "Luxembourg enterprise";

(d) The term "United States enterprise" means an industrial or commercial enterprise or undertaking carried on by a citizen or resident (including an individual in his individual or fiduciary capacity or as a member of a partnership) of the United States or by a United States corporation; the term "United States corporation" means a corporation or other entity created or organized under the laws of the United States or of any State or Territory of the United States;

(e) The term "Luxembourg enterprise" means an industrial or commercial enterprise or undertaking carried on by a resident of Luxembourg (including an individual in his individual capacity or as a member of a partnership) or by a Luxembourg corporation; the term "Luxembourg corporation" means a juridical person or an entity treated as a juridical person for tax purposes under the laws of Luxembourg if such person or entity has its business management or seat in Luxembourg but does not include a United States corporation;

(f) (i) The term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on;

(ii) A permanent establishment shall include especially :

(A) a place of management;

(B) a branch;

(C) an office;

(D) a factory;

(E) a workshop;

(F) a mine, quarry, or other place of extraction of natural resources; and

(G) a building site, or construction or assembly project, which exists for more than six months;

(iii) The term "permanent establishment" shall be deemed not to include :

(A) the use of facilities solely for the purpose of storage, display, or delivery of goods or merchandise belonging to the enterprise;

- (B) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display, or delivery;
- (C) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (D) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
- (E) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research, or for similar activities which have a preparatory or auxiliary character, for the enterprise;

(iv) A person acting in one of the Contracting States on behalf of an enterprise of the other Contracting State, other than an agent of an independent status to whom subdivision (v) applies, shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise;

(v) An enterprise of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent, or any other agent of an independent status, where such persons are acting in the ordinary course of their business;

(vi) The fact that a corporation of one of the Contracting States controls or is controlled by (A) a corporation of the other Contracting State, or (B) a corporation which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either corporation a permanent establishment of the other;

(g) The term "competent authority" or "competent authorities" means, in the case of the United States, the Secretary of the Treasury or his delegate and, in the case of Luxembourg, the Minister of Finance or his delegate; and

(h) The terms "resident of one of the Contracting States" and "resident of the other Contracting State" mean a resident of the United States or a resident of Luxembourg, as the context requires. An individual shall be considered to be a resident of Luxembourg if under its law his income from sources within and from sources without Luxembourg is subject to income tax. An individual present in one of the Contracting States solely for one of the purposes specified in Articles XIII and XIV of the present Convention shall not be considered a resident of that State merely because of his presence there for that purpose.

(2) In the application of the provisions of the present Convention by either of the Contracting States, any term which is not defined in the present Conven-

tion shall, unless the context otherwise requires, have the meaning which that term has under the laws of such State relating to the taxes which are the subject of the present Convention.

(3) A resident or corporation of one of the Contracting States, or an enterprise of such State, shall be considered to have a permanent establishment in the other State for purposes of Articles III, VII, VIII, and IX if such person has a permanent establishment in that State at any time during the taxable year in which the income is received.

Article III

(1) The industrial or commercial profits of an enterprise of one of the Contracting States shall be taxable only by that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, tax may be imposed by the other State on the industrial or commercial profits of the enterprise but only on so much of them as is attributable to that permanent establishment. In applying the preceding sentence for purposes of the United States tax, all industrial or commercial profits of the enterprise from sources within the United States shall be deemed to be attributable to the permanent establishment.

(2) Where an enterprise of one of the Contracting States carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each State be attributed to that permanent establishment the industrial or commercial profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing independently with the enterprise of which it is a permanent establishment.

(3) In the determination of the industrial or commercial profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

(4) No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

Article IV

Where—

(a) an enterprise of one of the Contracting States participates directly or indirectly in the management, control, or capital of 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 of the Contracting States and an enterprise of the other Contracting State, 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 would, but for those conditions, have accrued to one of the enterprises may be included in the profits of that enterprise and taxed accordingly.

Article V

Income which an enterprise of one of the Contracting States derives from the operation of ships or aircraft registered in that State shall be exempt from taxation by the other Contracting State.

Article VI

Income from real property, including gains derived from the sale or exchange of such property and interest on debts (other than bonds) secured by mortgages on real property, and royalties in respect of the operation of mines, quarries, or other natural resources shall be taxable, except as otherwise provided in Article XVI, only by the Contracting State in which such property, mines, quarries, or other natural resources are situated; provided that a resident or corporation of one of the Contracting States deriving any such income from sources within the other Contracting State may elect for any taxable year to be subject to such other State's tax on such income on a net income basis.

Article VII

Royalties, rentals, and similar payments derived as consideration for the use of, or for the privilege of using,

- (a) copyrights, artistic or scientific works, patents, designs, plans, secret processes or formulae, trade-marks, motion picture films, films or tapes for radio or television broadcasting, or other like property or rights, or
- (b) industrial, commercial, or scientific equipment, knowledge, experience, skill, or know-how

and received by a resident or corporation of one of the Contracting States not having a permanent establishment in the other Contracting State shall be exempt from tax by such other State.

Article VIII

Interest on bonds, notes, debentures, securities, or on any other form of indebtedness (exclusive of interest on debts, other than bonds, secured by mortgages on real property) received by a resident or corporation of one of the Contracting States not having a permanent establishment in the other Contracting State shall be exempt from tax by such other State.

Article IX

(1) Dividends received from sources within one of the Contracting States by a resident or corporation of the other Contracting State not having a permanent establishment in the former State shall be subject to tax by the former State—

- (a) at a rate which is equal to 50 percent of the statutory rate of tax otherwise imposed on such dividends by the former State, or,
- (b) when the recipient is a corporation, at the rate of 5 percent if—
 - (i) during the part of the payer corporation's taxable year which precedes the date of payment of the dividend and during the whole of its prior taxable year, at least 50 percent of the voting stock of the payer corporation was owned by the recipient corporation either alone or in association with not more than three other corporations of the other State and at least ten percent of the voting stock of the payer corporation was owned by each such corporation of the other State; and
 - (ii) not more than 25 percent of the gross income of the payer corporation (other than a corporation the principal business of which is the making of loans) for such prior taxable year was derived from interest and dividends other than interest and dividends received from its subsidiary corporations.

(2) The term "statutory rate", as used in this Article, means, in the case of United States tax, the rate of tax imposed by section 871 (a) or section 881 (a), Internal Revenue Code of 1954, as in effect on January 1 of the year in which the instruments of ratification are exchanged, and, in the case of Luxembourg tax, the rate of tax imposed by Article 4 of Decree Law of August 7, 1945, as amended by Article 1 of the Law of November 27, 1952.

(3) The term "subsidiary corporation", as used in this Article, means any corporation of which at least 50 percent of the total voting power of all classes of stock entitled to vote, or of the total value of all classes of stock, is owned by the payer corporation.

Article X

(1) Dividends and interest paid by a Luxembourg corporation to a person other than a citizen, resident, or corporation of the United States shall be exempt from tax by the United States.

(2) Dividends and interest paid by a United States corporation to a person other than (a) a resident of Luxembourg or (b) a corporation having its business management or seat in Luxembourg shall be exempt from tax by Luxembourg.

Article XI

(1) (a) Wages, salaries, and similar compensation, and pensions, annuities, or similar benefits paid by Luxembourg, its political subdivisions, or its compulsory social security funds to an individual (other than an individual who is a citizen of the United States or has been admitted to the United States for permanent residence therein) for services rendered to Luxembourg or to any of its political subdivisions in the discharge of governmental functions shall be exempt from tax by the United States.

(b) Wages, salaries, and similar compensation, and pensions, annuities, or similar benefits paid by, or from public funds of, the United States or the political subdivisions thereof to an individual (other than a citizen of Luxembourg) for services rendered to the United States or to any political subdivisions in the discharge of governmental functions shall be exempt from tax by Luxembourg.

(2) Private pensions and private life annuities which are from sources within one of the Contracting States and are paid to individuals who are residents of the other Contracting State shall be exempt from tax by the former State.

(3) The term "life annuities", as used in paragraph (2), means a stated sum payable periodically at stated times during life, or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration.

Article XII

(1) Compensation for labor or personal services (other than fees of directors of corporations) performed in the United States during the taxable year by a resident of Luxembourg shall be exempt from tax by the United States if he is temporarily present in the United States for a period or periods not exceeding a total of 180 days during the taxable year and the compensation—

- (a) is received for labor or personal services performed as an employee of a resident or corporation of Luxembourg, or of a permanent establishment within Luxembourg of a United States enterprise, and the burden of such compensation is borne by such resident, corporation, or establishment; or
- (b) does not exceed \$3,000.

(2) The exemption of paragraph (1) shall apply, *mutatis mutandis*, to tax by Luxembourg upon the compensation for labor or personal services performed in Luxembourg during the taxable year by a resident of the United States.

(3) Compensation for labor or personal services (other than fees of directors of corporations) performed in the United States (whether or not put to use in Luxembourg) by a resident of the United States shall be exempt from tax by Luxembourg.

(4) The exemption of paragraph (3) shall apply, *mutatis mutandis*, to tax by the United States upon compensation for labor or personal services performed in Luxembourg.

Article XIII

(1) A resident of one of the Contracting States who, at the invitation of a university, college, school, or other recognized educational institution situated in the other Contracting State, is temporarily present in the other State solely for the purpose of teaching, or engaging in research, or both, at that educational institution shall, for a period not exceeding two years from the date of his arrival in the other State, be exempt from tax by the other State on his remuneration for such teaching or research.

(2) No exemption shall be granted under this Article with respect to any remuneration for research carried on for the benefit of any person other than the educational institution which extended the invitation referred to in paragraph (1).

Article XIV

(1) A resident of one of the Contracting States who is temporarily present in the other Contracting State solely—

- (a) as a student at a university, college, school, or other recognized educational institution situated in the other State, or
- (b) as a business apprentice for a period not exceeding one year, or
- (c) as the recipient of a grant, allowance, or award which is for the primary purpose of study or research from a religious, charitable, scientific, literary, or educational organization,

shall be exempt from tax by the other State with respect to his remuneration from abroad for employment or remittances from abroad for the purposes of his maintenance, education, or training.

(2) A resident of one of the Contracting States who is temporarily present in the other Contracting State for a period not exceeding one year, as an employee of, or under contract with, an enterprise of the former State or an organization of the former State referred to in paragraph (1) (c), solely to acquire technical, professional, or business experience from a person other than that enterprise or organization shall be exempt from tax by the other State with respect to his remuneration for that period (including remuneration, if any, from an employer abroad), in an amount not in excess of \$5,000 or its equivalent in Luxembourg currency.

(3) A resident of one of the Contracting States who is temporarily present in the other Contracting State for a period not exceeding one year solely for the purpose of training, research, or study, under arrangements with the Government of the other State, shall be exempt from tax by the other State with respect to his remuneration for services directly related to such training, research, or study (including any remuneration from his employer abroad) in an amount not in excess of \$10,000 or its equivalent in Luxembourg currency.

(4) An individual who qualifies for exemption under more than one provision of the preceding paragraphs of this Article, or under one of the preceding paragraphs and Article XII or Article XIII, shall be entitled to claim the exemption most favorable to him.

Article XV

The present Convention shall not apply to the income of any holding company entitled to any special tax benefit under Luxembourg Law of July 31, 1929, and Decree Law of December 27, 1937, or under any similar law subsequently enacted, or to any income derived from such companies by any shareholder thereof. In the event that substantially similar benefits are granted to other corporations under any law enacted by Luxembourg after the date of signature of the present Convention, the provisions of the present Convention shall not apply to the income of any such corporation or to any income derived from such corporation by any shareholder thereof. The expression "substantially similar benefits" shall be deemed not to include tax reduction or exemption granted to any corporation in respect of dividends derived from another corporation, 25 percent or more of the stock of which is owned by the recipient corporation.

Article XVI

(1) It is agreed that double taxation of income shall be avoided in the following manner :

(a) The United States, in determining the income tax of individuals who are citizens or residents of the United States or of its corporations may, regardless of any other provision of the present Convention, include in the basis upon which such tax is imposed all items of income taxable under the revenue laws of the United States as if the present Convention had not come into effect. The United States shall, however, deduct from its tax so calculated the amount of the Luxembourg income taxes specified in paragraph (1) (b) (i) of Article I. Except as otherwise provided in the present Convention, the amount of Luxembourg tax thus to be deducted shall be determined in accordance with the revenue laws of the United States. It is agreed that by virtue of the provisions of subparagraph (b) of this paragraph Luxembourg satisfies the similar credit requirement prescribed by section 901 (b) (3), Internal Revenue Code of 1954.

(b) Luxembourg, in determining the income taxes and the tax on fees of directors of corporations in the case of its residents or of corporations having their business management or seat in Luxembourg, may, regardless of any other provision of the present Convention, include in the basis upon which such taxes are imposed all items of income taxable under the tax laws of Luxembourg as if the present Convention had not come into effect. Luxembourg shall, however, deduct from its taxes so calculated the amount of the income tax of the United States upon income from sources therein, but the amount so to be deducted shall not exceed that proportion of such taxes of Luxembourg which the income from sources within the United States and taxable by Luxembourg bears to the entire income subject to the taxes of Luxembourg.

(c) This paragraph shall not be construed to deny the benefits conferred by Articles XI (1) and XX (3) of the present Convention.

(2) Luxembourg, in determining the following taxes of its residents or of corporations having their business management or seat in Luxembourg, shall exclude from the basis upon which such taxes are imposed—

- (a) in the case of the communal land tax, any real property situated in the United States;
- (b) in the case of the communal tax on commercial profits and invested capital, the profits and capital of a permanent establishment situated in the United States; and
- (c) in the case of the wealth tax,
 - (i) any real property situated in the United States and all accessories appertaining thereto,
 - (ii) all debts (other than bonds) secured by real property situated in the United States,

- (iii) the invested capital of a permanent establishment situated in the United States and not appertaining to a maritime shipping or air transport undertaking, and
- (iv) the invested capital of a maritime shipping or air transport undertaking, but only in that proportion which the income of such undertaking from sources within the United States bears to its entire income,

provided, however, that Luxembourg reserves the right, in the determination of the rate of its wealth tax, to take into account all items excluded from the tax base pursuant to this subparagraph.

(3) Luxembourg, in determining the wealth tax and the communal taxes on invested capital and lands of citizens, residents, or corporations of the United States, shall not tax the property of such persons consisting of—

- (a) real property and all accessories appertaining thereto,
- (b) debts secured by mortgages on real property, and
- (c) any property used by commercial or industrial enterprises, including maritime shipping or air transport enterprises,

unless it is entitled under other provisions of the present Convention to tax the income derived from such property.

Article XVII

For the purposes of the present Convention—

(a) Industrial or commercial profits attributable to a permanent establishment which an enterprise of one of the Contracting States has in the other Contracting State shall be treated as income from sources within such other State.

(b) Gains, profits, and income (other than profits described in subparagraph (a)) from the purchase and sale of personal property shall be treated as income from sources within the Contracting State in which the property is sold.

(c) Gains, profits, and income derived by a taxpayer from the sale in one of the Contracting States of goods produced in the other Contracting State by such taxpayer shall, to the extent not otherwise allocable under other provisions of the present Convention, be treated as derived in part from the State in which produced and in part from the State in which sold.

(d) Income which is exempt from tax by one of the Contracting States pursuant to Article V of the present Convention shall be treated as income from sources within the other Contracting State.

(e) Income from real property, including gains derived from the sale or exchange of such property and interest on debts (other than bonds) secured by mortgages on real property, and royalties in respect of the operation of mines, quarries, or other natural resources shall be treated as income from sources within the Contracting State in which such real property, mines, quarries, or other natural resources are situated.

(f) Royalties, rentals, and similar payments for the use, or for the privilege of using, in one of the Contracting States of copyrights, artistic or scientific works, patents, designs, plans, secret processes or formulae, trade-marks, motion picture films, films or tapes for radio or television broadcasting, or other like property or rights, or industrial, commercial, or scientific equipment, knowledge, experience, skill, or know-how shall be treated as income from sources within that State.

(g) Interest (exclusive of interest on debts, other than bonds, secured by mortgages on real property) paid by one of the Contracting States, including any political subdivision thereof, or by a resident, corporation, or enterprise of one of the Contracting States shall be treated as income from sources within that State.

(h) Dividends paid by a corporation of one of the Contracting States shall be treated as income from sources within that State.

(i) Compensation for labor or personal services, including compensation or remuneration from the practice of the liberal professions or from public entertainment but not including fees described in subparagraph (j), shall be treated as income from sources within the Contracting State where the labor or personal services are performed.

(j) Directors' fees paid by a corporation of one of the Contracting States shall be treated as income from sources within that State.

Article XVIII

(1) The competent authorities of the Contracting States shall exchange such information, being information available under the respective taxation laws of the Contracting States, as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or the like in relation to the taxes which are the subject of the present Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of the present Convention. No information shall be exchanged which would disclose any trade, business, industrial, or professional secret, or any trade process.

(2) Each of the Contracting States may collect such taxes imposed by the other Contracting State as though such taxes were the taxes of the former State as will ensure that any exemption or reduced rate of tax granted under the present Convention by the other State shall not be enjoyed by persons not entitled to such benefits.

(3) In no case shall the provisions of this Article be construed so as to impose upon either of the Contracting States the obligation to carry out administrative measures at variance with the regulations and practice of either Contracting State or which would be contrary to its sovereignty, security, or public policy or to supply particulars which are not procurable under its own legislation or that of the State making application.

Article XIX

(1) Where a taxpayer shows proof that the action of the tax authorities of the Contracting States has resulted, or will result, in double taxation contrary to the provisions of the present Convention, he shall be entitled to present his case to the State of which he is a citizen or a resident, or, if the taxpayer is a corporation of one of the Contracting States, to that State. Should the taxpayer's claim be deemed worthy of consideration, the competent authority of the State to which the claim is made shall endeavor to come to an agreement with the competent authority of the other State with a view to avoidance of the double taxation.

(2) For the settlement of difficulties or doubts in the interpretation or application of the present Convention or in respect of its relation to Conventions of the Contracting States with third States the competent authorities of the Contracting States shall endeavor to reach a mutual agreement as quickly as possible.

Article XX

(1) The provisions of the present Convention shall not be construed to restrict in any manner the right of diplomatic or consular officers to additional exemptions now enjoyed or which may hereafter be granted to such officers.

(2) The provisions of the present Convention shall not be construed to restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded (a) by the laws of one of the Contracting States in the determination of the tax imposed by that State or (b) by any other agreement between the Contracting States.

(3) The citizens of one of the Contracting States shall not, while residents of the other Contracting State, be subject therein to other or more burdensome taxes than are the citizens of such other State who are residents of its territory.

The term “ citizens ”, as used in this Article, includes all juridical persons, partnerships, and associations created or organized under the laws in force in the respective Contracting States. In this Article the word “ taxes ” means taxes of every kind or description, whether national, State, communal, or municipal.

(4) The provisions of the law of Luxembourg granting a carry-over of losses to taxpayers domiciled therein shall apply with respect to the taxation of a permanent establishment, which is maintained in Luxembourg by a resident or corporation of the United States, under the same conditions and in the same manner as in the case of taxpayers who are domiciled in Luxembourg.

Article XXI

(1) The competent authorities of the two Contracting States may prescribe regulations necessary to carry into effect the present Convention within the respective States.

(2) The competent authorities of the two Contracting States may communicate with each other directly for the purpose of giving effect to the provisions of the present Convention.

Article XXII

(1) The present Convention shall be ratified and the instruments of ratification shall be exchanged at Luxembourg as soon as possible. It shall have effect for taxable years beginning on or after the first day of January of the calendar year in which such exchange takes place.

(2) The present Convention shall continue effective for a period of five years, beginning with the calendar year in which the exchange of the instruments of ratification takes place and indefinitely after that period, but may be terminated by either of the Contracting States at the end of the five-year period or at any time thereafter, provided that at least six months' prior notice of termination has been given; and, in such event, the present Convention shall cease to be effective for taxable years beginning on or after the first day of January next following the expiration of the six-month period.

DONE in duplicate, in the English and French languages, at Washington, the two texts having equal authenticity, this 18th day of December, 1962.

For the President of the United States of America :
Dean RUSK

For Her Royal Highness the Grand Duchess of Luxembourg :
G. HEISBOURG