

No. 7854

**BELGIUM
and
LUXEMBOURG**

Exchange of letters constituting an agreement to amend the Convention, signed at Brussels on 9 March 1931, for the prevention of double taxation as regards direct taxes and to guarantee reciprocal co-operation between the two countries in the collection of such taxes. Brussels, 9 and 11 March 1965

Official texts : French and Dutch.

Registered by Belgium on 8 July 1965.

**BELGIQUE
et
LUXEMBOURG**

Échange de lettres constituant un accord portant modification de la Convention, signée à Bruxelles le 9 mars 1931, ayant pour but d'éviter la double imposition en matière d'impôts directs et de garantir l'assistance réciproque des deux pays pour le recouvrement de ces impôts. Bruxelles, 9 et 11 mars 1965

Textes officiels français et néerlandais.

Enregistré par la Belgique le 8 juillet 1965.

[TRANSLATION — TRADUCTION]

No. 7854. EXCHANGE OF LETTERS CONSTITUTING AN AGREEMENT¹ BETWEEN BELGIUM AND THE GRAND DUCHY OF LUXEMBOURG TO AMEND THE CONVENTION, SIGNED AT BRUSSELS ON 9 MARCH 1931,² FOR THE PREVENTION OF DOUBLE TAXATION AS REGARDS DIRECT TAXES AND TO GUARANTEE RECIPROCAL CO-OPERATION BETWEEN THE TWO COUNTRIES IN THE COLLECTION OF SUCH TAXES. BRUSSELS, 9 AND 11 MARCH 1965

I

MINISTRY OF FOREIGN AFFAIRS AND FOREIGN TRADE

Brussels, 9 March 1965

Sir,

Belgium and the Grand Duchy of Luxembourg concluded on 9 March 1931² a Convention for the prevention of double taxation as regards direct taxes and to guarantee reciprocal co-operation between the two countries in the collection of such taxes.

This Convention was drawn up in the light of the fiscal systems in force in the two countries at the time. However, article 12 of the Convention provides as follows :

§ 1. Should either of the High Contracting Parties be called upon to deal with a case not expressly provided for in the foregoing provisions or to introduce amendments in its fiscal laws, the new situation shall be examined and any readjustments necessitated in the text of the present Convention shall be effected by agreement between the competent authorities of the two countries in the spirit of the foregoing articles.

§ 2. Any such amending or supplementary agreements shall be dealt with in notes exchanged through the diplomatic channel.

Among other measures adopted on the basis of this provision, an Additional Protocol was signed at Brussels on 7 February 1952³ in order to clarify the application of articles 5 and 11 of the aforementioned Convention.

Under the Belgian Income Tax Reform Act of 20 November 1962, substantial changes have been made in the Belgian fiscal system ; the three

¹ Came into force on 11 March 1965 by the exchange of the said letters.

² League of Nations, *Treaty Series*, Vol. CXXXVII, p. 267.

³ United Nations, *Treaty Series*, Vol. 147, p. 3.

schedular taxes, the supplementary personal tax and the national emergency contribution have been replaced by the following taxes :

1. *The tax on individuals*, payable on the total income of inhabitants of the Kingdom ;
2. *The company tax*, payable on the total profits of companies resident in Belgium and of other legal persons resident in Belgium that engage in gainful activity ;
3. *The tax on legal persons*, payable on income from the immovable and movable property of legal persons resident in Belgium that do not engage in gainful activity ;
4. *The non-residents' tax*, payable on income accruing in Belgium to, or received there by, non-inhabitants of the Kingdom or other non-residents (companies, associations, establishments or organizations of whatsoever nature).

These taxes are levied by deduction at source where they apply to certain types of income derived from immovable property, movable property, the exercise of an occupation or various other sources.

Furthermore, the system of direct taxes now in force in the Grand Duchy of Luxembourg includes, *inter alia*, a tax on the income of individuals and a tax on the income of bodies corporate.

Hence the two countries now have a fiscal system consisting essentially of a specific tax on companies and a single tax levied on the total income of individuals.

In view of this situation it seems essential that a new Convention should be concluded as soon as possible to supersede the Convention of 9 March 1931. The new Convention can also serve to prevent the double taxation of income from floating capital and movable property, which was not covered by the Agreement of 9 March 1931.

It is obvious, however, in view of the periods required for its signature and ratification, that some time will elapse before the entry into force of the new Convention which is to be negotiated.

The Belgian Government therefore considers that, pending the preparation and entry into force of the new Convention, all possible steps should be taken now, pursuant to and in the spirit of the Convention of 9 March 1931, to prevent double taxation with respect to the taxes at present levied in the two countries, and that this should be done by applying to these taxes the principles laid down in the 1931 Convention with regard to the earlier taxes. This adjustment can be made on a basis of complete reciprocity, since the fiscal systems now in force in the two countries are identical in structure.

Following the technical discussions held at Brussels on 30 September 1964 between representatives of the fiscal authorities of the two States and

having regard to the requests made by each side, I therefore have the honour to propose to you, under article 12 of the Convention of 9 March 1931 :

I. That the provisions of the said Convention should be amended as follows :

1. In article 2, as already amended by the Additional Protocol of 7 February 1952, replace paragraph 2 by the following :

§ 2. The direct taxes referred to are as follows :

A. *In respect of Belgium* : The tax on individuals, the company tax, the tax on legal persons and the non-residents' tax, including such part of these taxes as is levied by deduction and supplementary deduction at source — save for such part of the said taxes as is payable on income derived from floating capital and movable property — as well as such additional percentages and communal and provincial taxes as are or hereafter may be assessed on the base or the amount of these taxes ;

B. *In respect of the Grand Duchy of Luxembourg* : The tax on the income of individuals, the tax on the income of bodies corporate, the special tax on directors' percentages, the tax on fortune and the communal taxes on income and fortune, save for such part of the said taxes as is payable on floating capital and movable property or on income derived therefrom.

2. Replace article 5 by the following :

In the case of a joint stock company having its fiscal domicile in the Grand Duchy of Luxembourg and permanently holding at least one quarter of the joint stock capital of a similar company having its fiscal domicile in Belgium, the Luxembourg tax on all profits or income accruing and taxed in Belgium shall be reduced to such proportion of the normal amount as corresponds to the ratio (at present 34 %) between, on the one hand, the deduction at source for the tax on movable property applicable in Belgium to income from shares in or parts of companies having their fiscal domicile in the Grand Duchy of Luxembourg and, on the other hand, the total amount represented by the company tax, both principal and additional percentages, plus the deduction at source for the tax on movable property, applicable in Belgium to the distributed profits of companies having their fiscal domicile in the latter State.

II. That income taxable by one of the Contracting States under articles 3, 4, 6, 7, 8, 9 and 10 of the Convention of 9 March 1931 should be deemed not to be taxable in the other Contracting State, without prejudice to the application of the domestic legislation of such other State to determine the rate of its taxes applicable to other income of taxpayers having their fiscal domicile in the latter State.

III. That the foregoing provisions should apply for the first time :

A. *In Belgium* :

(a) To income for financial years ending on or after 31 December 1962 which is subject to the company tax payable by incorporated companies and

commandite share companies, to the tax on legal persons or non-residents' tax payable by companies, associations, establishments or organizations of whatsoever nature, as well as to the taxes accessory thereto or connected therewith which are referred to in article 2 of the said Convention ;

(b) To income for the calendar year 1963, or for financial years ending during that year, which is subject to the tax on individuals or non-residents' tax payable by individuals, as well as to the taxes accessory thereto or connected therewith which are referred to in article 2 of the said Convention ;

(c) To income for financial years ending on or after 31 December 1963 which is subject to the company tax payable by companies not referred to in sub-paragraph (a) ;

(d) To income for the year 1963 which is subject to deduction and supplementary deduction at source for the tax on immovable property.

B. In the Grand Duchy of Luxembourg :

To income and elements of fortune taxable for the assessment year 1963.

I would point out that the foregoing provisions are intended to apply only during the time required for the preparation, signature and ratification of the new draft Convention which is to supersede the Convention of 9 March 1931, and I should be most grateful if you would inform me of your Government's agreement to the amendments proposed above ; your affirmative reply will constitute an agreement between the High Contracting Parties.

Accept, Sir, etc.

P. H. SPAARK

His Excellency Mr. C. Dumont
Ambassador of the Grand Duchy of Luxembourg
Brussels

II

EMBASSY OF LUXEMBOURG IN BELGIUM

7.5.96

Brussels, 11 March 1965

Sir,

I have the honour to acknowledge receipt of your letter of 9 March 1965, which reads as follows :

[See letter I]

I have the honour to inform you that the Government of Luxembourg agrees to the provisions contained in that letter.

Accept, Sir, etc.

C. DUMONT

His Excellency Mr. Paul-Henri Spaak
Deputy Prime Minister
Minister for Foreign Affairs
Brussels
