

No. 11239

**UNITED STATES OF AMERICA
and
NETHERLANDS**

Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on estates and inheritances (with protocol). Signed at Washington on 15 July 1969

Authentic texts: English and Dutch.

Registered by the United States of America on 4 August 1971.

**ÉTATS-UNIS D'AMÉRIQUE
et
PAYS-BAS**

Convention tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière de droits de succession (avec protocole). Signée à Washington le 15 juillet 1969

Textes authentiques: anglais et néerlandais.

Enregistrée par les États-Unis d'Amérique le 4 août 1971.

CONVENTION¹ BETWEEN THE UNITED STATES OF AMERICA AND THE KINGDOM OF THE NETHERLANDS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON ESTATES AND INHERITANCES

The Government of the United States of America and the Government of the Kingdom of the Netherlands, desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on estates and inheritances, have appointed for that purpose as their respective Plenipotentiaries:

The Government of the United States of America:

William P. Rogers, Secretary of State, and

The Government of the Kingdom of the Netherlands:

Hendrik C. Maclaine Pont, Minister of the Kingdom of the Netherlands,

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

CHAPTER I

SCOPE OF THE CONVENTION

Article 1

ESTATES COVERED

This Convention shall apply to estates of decedents which are subject to the taxing jurisdiction of one or both States by reason of the decedent's domicile therein or citizenship thereof at death. A decedent who at death was a citizen of the United States but is considered under the

¹ Came into force on 3 February 1971 by the exchange of the instruments of ratification, which took place at The Hague, in accordance with article 16 (2).

laws of the United States as having been a nonresident not a citizen of the United States for purposes of its tax shall be considered as having been neither domiciled in nor a citizen of the United States for purposes of this Convention.

Article 2

TAXES COVERED

(1) The taxes to which this Convention shall apply are:

(a) In the case of the United States: The Federal estate tax; and

(b) In the case of the Netherlands: The succession duty and the transfer duty at death.

(2) This Convention shall also apply to any taxes on estates and inheritances imposed by the States on the occasion of death, which are subsequently enacted in addition to, or in place of, the existing taxes, in the form of (a) tax on the corpus of the estate, (b) tax on inheritances, (c) transfer duties, or (d) taxes on donations *mortis causa*.

(3) The competent authorities of the States shall notify each other of any substantial changes which have been made in their respective laws relating to taxes on estates and inheritances.

CHAPTER II

DEFINITIONS

Article 3

GENERAL DEFINITIONS

(1) In this Convention:

(a) The terms "State" and "other State" mean the United States or the Netherlands, as the context requires;

(b) 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;

(c) The term “the Netherlands” comprises the part of the Kingdom of the Netherlands that is situated in Europe;

(d) The term “tax” means the tax or taxes described in Article 2 which are imposed by the State (or States) indicated by the context of the term’s usage;

(e) The term “credit” means a deduction from tax; and

(f) The term “competent authority” means:

- (i) In the case of the United States, the Secretary of the Treasury or his delegate, and
- (ii) In the case of the Netherlands, the Minister of Finance or his duly authorized representative.

(2) Any term not otherwise defined in this Convention shall, unless the context otherwise requires, have the meaning which it has under the laws of the State whose tax is being determined.

Article 4

FISCAL DOMICILE

(1) For the purposes of this Convention, the question whether a decedent was domiciled in one of the States at his death shall be determined according to the law of that State.

(2) A decedent who at his death was a citizen of one of the States without being a citizen of the other State, and who would be considered, under paragraph (1), as having been domiciled in both States at his death, shall be deemed to have been domiciled in (and only in) the State of which he was a citizen, if:

- (a) He died when having been domiciled in the other State in the aggregate less than 7 years during the 10-year period ending at his death; and
- (b) He was in the other State for business, professional, educational, training, tourism, or a similar purpose (or in his capacity as the spouse or a dependent member of the family of a person who was in that other

State for such a purpose), and did not have a clear intention to remain indefinitely in the other State.

(3) Where by reason of the provisions of paragraph (1) a decedent, other than a decedent described in paragraph (2), was domiciled in both States, then this case shall be determined in accordance with the following rules:

- (a) He shall be deemed to have been domiciled in the State in which he made his permanent home for 5 years or more immediately preceding his death;
- (b) If he did not make his permanent home for 5 years or more in either State, his domicile shall be deemed to be in the State with which his personal relations were closest;
- (c) If the State in which his personal relations were closest cannot be determined, his domicile shall be deemed to be in the State of which he was a citizen; or
- (d) If he was a citizen of both States or of neither of them, the competent authorities of the States shall determine the State of his domicile by mutual agreement.

(4) For purposes of paragraph (2), unless all of the evidence considered together is clear and convincing to the contrary it shall be presumed that the decedent did not have a clear intention to remain indefinitely in the State of which he was not a citizen.

CHAPTER III

TAXING RULES

Article 5

APPLICATION OF DOMESTIC LAWS

(1) Except as otherwise provided in this Convention, each State shall impose its tax, and shall allow exemptions, deductions, credits, and other allowances, in accordance with its laws.

(2) In any case in which the laws of a State allocate deductions on the basis of the situs of property, property shall be deemed for the purpose of determining the amounts of any deductions to have a situs in that State only if that State may tax it under this Convention, and property shall be deemed for the purpose of determining the amounts of any

credits to have a situs in the other State only if a credit is allowable under Article 11 for the tax of that other State with respect to the property. However, for purposes of (and only for purposes of) (a) the requirements of the respective tax laws of the States relating to information or tax returns or notices, transfer certificates, or maintenance of records, and (b) determining the applicability and amount of any sanctions of such laws with respect to the requirements referred to in (a) above, neither this paragraph nor any provision of Article 6, 7, or 8 shall change the taxability or situs of property or the amount of tax which would otherwise have been due in the absence of this Convention (or the amount of any resulting underpayment of tax). Notwithstanding the preceding sentence, requirements or sanctions found to be unnecessary for the prevention of fraud or fiscal evasion with respect to tax may be eliminated or modified (but not made more burdensome) by regulations prescribed pursuant to paragraph (5) of Article 13.

(3) The provisions of this Convention shall not result in an increase in the amount of the tax imposed by either State (except to the extent that the increase results from a reduction under the provisions of this Convention of the tax paid to a State with respect to which credit is allowable).

Article 6

IMMOVABLE PROPERTY

(1) Immovable property may be taxed by a State if such property is situated in that State.

(2) Whether any property constitutes immovable property shall be determined in accordance with the laws of the State in which such property is located. However, the term "immovable property" shall in any case include real property (but not mortgages, bonds, or other security interests or ships, boats, or aircraft).

(3) The provisions of paragraphs (1) and (2) shall apply to immovable property whether or not such property forms part of the business

property of a permanent establishment or is used for the performance of professional services or other independent activities of a similar character.

(4) The provisions of this article shall not cause property which is not taxable by a State under its laws to be taxed (or taken into account in determining the rate of tax) by that State.

Article 7

BUSINESS PROPERTY OF A PERMANENT ESTABLISHMENT AND ASSETS PERTAINING TO A FIXED BASE USED FOR THE PERFORMANCE OF PROFESSIONAL SERVICES

(1) Except as provided in Article 6, assets (other than ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft) forming part of the business property of a permanent establishment may be taxed by a State if the permanent establishment is situated in that State.

(2) For purposes of this Convention, the term “permanent establishment” means a fixed place of business through which decedent was engaged in trade or business. A decedent shall be deemed to have been engaged in trade or business through a fixed place of business whether he is so engaged as a sole proprietor or through a partnership or other unincorporated association, but in the case of a partnership or association, only to the extent of his interest therein. References in this article to a “decedent” shall be deemed to include such interests.

(3) The term “fixed place of business” shall include especially:

- (a) A branch;
- (b) An office;
- (c) A factory;
- (d) A workshop;
- (e) A sales outlet;
- (f) A mine, quarry, or other place of extraction of natural resources; and
- (g) A building site or a construction or assembly project which exists for more than 12 months.

(4) Notwithstanding paragraphs (2) and (3), a permanent establish-

ment shall not include a fixed place of business used solely for one or more of the following activities:

- (a) The use of facilities for the purpose of storage, display, or delivery of goods or merchandise belonging to the decedent;
- (b) The maintenance of a stock of goods or merchandise belonging to the decedent for the purpose of storage, display, or delivery;
- (c) The maintenance of a stock of goods or merchandise belonging to the decedent for the purpose of processing by another;
- (d) The maintenance of a fixed place of business for the purpose of purchasing goods or merchandise, or for collecting information, for the decedent;
- (e) The maintenance of a fixed place of business for the purpose of advertising, for the supply of information, for scientific research, or for similar activities if they have a preparatory or auxiliary character, for the decedent;
- (f) The maintenance of a fixed place of business (by a person other than a dealer) for the purpose of investing or trading in stocks, securities, or commodities for the decedent's own account, whether directly or through a broker or other agent.

(5) A person who was acting in a State on behalf of a decedent—other than an agent to whom paragraph (4) (f) or (6) applies—shall be deemed to have been a permanent establishment of the decedent in that State if such person had, and habitually exercised in that State, an authority to conclude contracts in the name of the decedent, unless the exercise of such authority was limited to the purchase of goods or merchandise for the decedent.

(6) A decedent shall not be deemed to have had a permanent establishment in a State merely because he carried on a trade or business in that State through a broker, general commission agent, or any other agent of an independent status acting in the ordinary course of his business.

(7) The fact that the decedent controlled a corporation which engaged in trade or business in a State (whether through a permanent establishment or otherwise) shall not be taken into account in determining whether the decedent had a permanent establishment in such State.

(8) Except as provided in Article 6, assets pertaining to a fixed base used for the performance of professional services or other independent

activities of a similar character may be taxed by a State if the fixed base is situated in that State.

(9) The provisions of this article shall not cause property which is not taxable by a State under its laws to be taxed (or taken into account in determining the rate of tax) by that State.

Article 8

TAXATION ON THE BASIS OF DOMICILE

Subject to the provisions of Article 9, and except as provided in Article 6 or 7, property may be taxed (or taken into account in determining the rate of tax) only by the State in which the decedent was domiciled at his death.

Article 9

TAXATION ON THE BASIS OF CITIZENSHIP

If the decedent was a citizen of a State at his death that State may tax property in accordance with its laws, including property not enumerated in Article 6 or 7, whether or not he was domiciled therein.

Article 10

EXEMPTIONS

(1) Property (other than community property) which passes to the surviving spouse from a decedent who was a domiciliary or citizen of the United States, and which may be taxed by the Netherlands solely by reason of Article 6 or 7, shall, for the purpose of determining the Netherlands transfer duty at death, be included in the estate only to the extent its value exceeds 50 percent of the value of all property included in the estate which may be taxed by the Netherlands. For purposes of this paragraph, the value of the estate which may be taxed by the Netherlands, and of the property which passes to the surviving spouse, shall be determined after taking into account any applicable deductions but before applying paragraph (2).

(2) Where a State may tax solely by reason of Article 6 or 7, that State shall not impose any tax if the aggregate value of the property included in the estate subject to its tax (after taking into account any applicable deductions and after taking into account the provisions of paragraph (1), but before taking into account any other exemptions) does not exceed \$30,000. If the value so determined exceeds \$30,000, the tax imposed shall not exceed the lesser of (a) 50 percent of such value in excess of \$30,000, or (b) the amount of the tax determined in accordance with the provisions of this Convention taking into account any exemptions allowable under the laws of the State.

(3) Paragraph (1) shall be inapplicable during such period as the laws of the United States make the tax imposed by it with respect to estates of nonresident aliens substantially less favorable in relation to the tax imposed by it with respect to estates of its citizens or domiciliaries than is the case when this Convention is signed.

CHAPTER IV

RELIEF FROM DOUBLE TAXATION

Article 11

CREDITS

(1) Where both States impose tax with respect to property which may be taxed by a State in accordance with Article 6 or 7, a State which imposes its tax on the basis of the decedent's domicile therein or citizenship thereof at death shall allow a credit equal to the amount of the tax imposed by the other State with respect to property which may be taxed by such other State in accordance with Article 6 or 7.

(2) In addition to any credit allowable under paragraph (1), where both States impose tax with respect to property which is not property which one of the States may tax in accordance with Article 6 or 7:

- (a) If the decedent was a citizen of only one State at death and if at his death he had been domiciled in the other State in the aggregate 7 or more years during the 10-year period ending at his death, then the State of which he was a citizen shall allow a credit equal to the amount of the tax imposed by such other State;
- (b) If the decedent was a citizen of both States and a domiciliary of one State at death, then the State of which he was not a domiciliary shall allow a credit equal to the amount of the tax imposed by the other State; or
- (c) If neither subparagraph (a) nor subparagraph (b) is applicable, then each State shall allow a credit in the amount which bears the same proportion to the amount of its tax attributable to such property, or to the amount of the other State's tax attributable to the same property, whichever is less, as the former amount bears to the sum of both amounts.

(3) Notwithstanding the provisions of paragraphs (1) and (2), the total amount of all credits allowed by a State pursuant to this article or pursuant to the laws or other conventions of such State with respect to all property in respect of which a credit is allowable under paragraph (1) or (2) (a) or (b) shall not exceed that part of the tax of the crediting State which is attributable to such property.

(4) In determining the amount of the tax imposed by a State with respect to or attributable to property there shall be subtracted from the gross tax so imposed all credits allowed by such State with respect to such property except credits which are allowable under this article.

(5) As used in paragraphs (1) and (2) of this article, reference to property which may be taxed by a State in accordance with Article 6 or 7 includes pro-

perty which would be taxable by a State under the terms of one of those articles if taxable by the State under its laws, whether or not it is also taxable on the basis of the decedent's domicile or citizenship at death.

(6) No credit shall be finally allowed under this article until the tax for which the credit is allowable (reduced by any credit allowable with respect thereto) has been paid.

(7) Any credits authorized by this article are in lieu of, and not in addition to, any credits authorized by the respective laws of the States for the taxes of the other State.

CHAPTER V

SPECIAL PROVISIONS

Article 12

LIMITATION ON CLAIMS FOR CREDIT OR REFUND

(1) Any claim for credit or for refund of tax founded on the provisions of this Convention shall be made before the expiration of the latest of:

- (a) The time for the making of a claim for refund of tax under the laws of the State to which the claim for credit or refund is made;
- (b) Five years from the date of death of the decedent in respect of whose estate the claim is made; or
- (c) One year after final determination and payment of tax for which any credit under Article 11 is claimed, provided that the determination and payment are made within 10 years of the date of death of the decedent.

(2) Any refund based on the provisions of this Convention shall be made without payment of interest on the amount so refunded.

Article 13

COMPETENT AUTHORITIES

(1) Any person who considers that the actions of one or both of the States result or will result for him in taxation not in accordance with this Convention may, notwithstanding the remedies provided by the laws of those States, present his case to the competent authority of either State. Such presentation must be made within the period of time prescribed for the filing of a claim for credit or refund under Article 12. Should the person's claim be considered to have merit by the competent authority of the State to which the claim is made, it shall endeavor to come to an agreement with the competent authority of the other State with a view to the avoidance of taxation contrary to the provisions of this Convention.

(2) The competent authorities of the States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Convention.

(3) The competent authorities of the States may communicate with each other directly for the purpose of reaching an agreement in the sense of this article. When it seems advisable for the purpose of reaching an agreement, the competent authorities may meet together for an oral exchange of opinions.

(4) In the event that the competent authorities reach such an agreement, taxes shall be imposed, and refund or credit of taxes shall be allowed, by the States in accordance with such agreement.

(5) The competent authority of each State may prescribe such regulations and forms as may be necessary or appropriate to give effect to and implement the provisions of this Convention.

Article 14

EXCHANGE OF INFORMATION

(1) The competent authority of each State shall furnish the competent authority of the other State such information as is pertinent to (a) carrying out the provisions of this Convention or the laws of such other State concerning its tax insofar as the taxation thereunder is in accordance

with this Convention, or (b) preventing fraud or fiscal evasion in relation to the taxes which are the subject of this Convention (including information with respect to property exempted from the tax of the firstmentioned State by reason of Article 8). However, this paragraph shall not require the competent authority of a State to furnish information not in the possession of that State with respect to property exempted from its tax by reason of Article 8. Any information furnished shall be treated as secret and shall not be disclosed to any persons other than those (including a court or administrative body) concerned with assessment, collection, enforcement, or prosecution in respect of the taxes which are the subject of this Convention.

(2) In no case shall the provisions of paragraph (1) be construed so as to impose on one of the States the obligation:

- (a) To carry out administrative measures at variance with the laws or the administrative practice of that or of the other State;
- (b) To supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other State;
- (c) To supply information which would disclose any trade, business, industrial, commercial, or professional secret or trade process, or information the disclosure of which would be contrary to public policy.

(3) The furnishing of information shall be either on a routine basis or on request with reference to particular cases. The competent authorities of the States shall agree on the list of information which shall be furnished on a routine basis.

Article 15

DIPLOMATIC AND CONSULAR OFFICIALS

(1) Nothing in this Convention shall affect the fiscal privileges of diplomatic or consular officials or officials of international organizations under the general rules of international law or under the provisions of special agreements.

(2) Insofar as such privileges prevent the imposition of tax in the receiving State, the right to tax shall be reserved to the country in whose

service the persons concerned exercised their functions or in the case of international officials the country of citizenship, and notwithstanding any other provisions of this Convention such persons shall not be deemed to be domiciled in the receiving State.

CHAPTER VI

FINAL PROVISIONS

Article 16

ENTRY INTO FORCE

(1) This Convention shall be ratified and the instruments of ratification shall be exchanged at The Hague as soon as possible.

(2) This Convention shall enter into force on the date on which the instruments of ratification are exchanged and its provisions shall apply to estates of persons dying on or after that date.

Article 17

TERRITORIAL EXTENSION

(1) This Convention may be extended, either in its entirety or with any necessary modifications, to either or both of the countries of Surinam or the Netherlands Antilles and to all or any of the areas for whose international relations the United States is responsible, if the country or area concerned imposes taxes substantially similar in character to those to which this Convention applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed in an exchange of notes through diplomatic channels. Such notes shall be ratified and the instruments of ratification exchanged.

(2) Unless otherwise specified in the notice of termination referred to in Article 18 the termination of this Convention shall not also terminate the application of this Convention to any country or area to which it has been extended under this article.

Article 18

TERMINATION

This Convention shall remain in force until terminated by one of the States. Either State may terminate this Convention, through diplomatic channels, with effect from the end of any calendar year not earlier than 5 years after the effective date of this Convention by giving at least 6 months notice in writing of termination. In such an event, this Convention will not apply to estates of persons dying after the expiration of the calendar year with respect to the end of which this Convention has been terminated.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed this Convention.

DONE in duplicate, in the English and Dutch languages, both texts being equally authentic, at Washington this 15th day of July, 1969.

For the Government of the United States of America :

[*Signed*]

WILLIAM P. ROGERS

For the Government of the Kingdom of the Netherlands :

[*Signed*]

H. C. MACLAINE PONT

PROTOCOL

At the moment of signing the Convention between the Government of the United States of America and the Government of the Kingdom of the Netherlands for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on estates and inheritances (hereinafter to be called the Convention), the undersigned representatives have agreed on the following provisions:

I. The provisions of the Convention shall not affect property rights under laws relating to descent, distribution, succession, inheritance or other similar matters.

II. If the meaning of a term under the laws of one State is different from the meaning of the term under the laws of the other State, or if the meaning of such a term under the laws of one or both States is not readily

determinable, the competent authorities of the States may, in order to prevent double taxation or to further any other purpose of the Convention, establish a common meaning of the term for purposes of the Convention.

III. In construing Article 4 (3) (a), a decedent shall not be deemed to have more than one permanent home.

IV. As used in the Convention, the term “domicile” with respect to each of the States means residence for purposes of its tax.

V. The Kingdom of the Netherlands will not, for purposes of determining domicile under Article 4 of the Convention, assert its unilateral 10-year rule with respect to decedents who are citizens of the Netherlands and who were in the United States for less than 10 years, immediately preceding death, when such decedent had the intention to remain indefinitely in the United States; but this paragraph shall not affect the right of the Netherlands to tax pursuant to Article 9 of the Convention.

VI. Since it is intended by Article 4 to resolve all cases of double domicile, the competent authorities of the States shall resolve any dispute with respect to the domicile of the decedent for purposes of the Convention which is presented to one or both of them within the period of time prescribed for the filing of a claim for credit or refund under Article 12.

VII. The exemption provided by Article 10 (1) will apply before the application of the exemption provided by Article 10 (2).

VIII. It is understood that the Netherlands cannot disclose to the authorities of another country information obtained from banks and certain similar institutions, including insurance companies, except where and in so far as a bank or similar institution acts as the executor or administrator of an estate.

IX. If the effects of the Convention are substantially altered as a result of changes made in the laws of either State, then at the request of either State, the two States shall consult together with a view to making appropriate modifications in the Convention.

X. This Protocol shall be ratified together with the Convention and instruments of ratification thereof shall be exchanged at The Hague. It shall enter into force simultaneously with the Convention signed today and shall have the same duration as the Convention in accordance with Articles 16 and 18 thereof.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed this Protocol.

DONE in duplicate, in the English and Dutch languages, both texts being equally authentic, at Washington this 15th day of July, 1969.

For the Government of the States of America:

[Signed]

WILLIAM P. ROGERS

For the Government of the Kingdom of the Netherlands:

[Signed]

H. C. MACLAINE PONT
