

**No. 13182**

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**BELGIUM  
and  
AUSTRIA**

**Convention for the avoidance of double taxation and the regulation of certain other matters with respect to taxes on income and fortune, including the business tax and land taxes. Signed at Vienna on 29 December 1971**

*Authentic texts: German, French and Dutch.*

*Registered by Belgium on 25 March 1974.*

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**BELGIQUE  
et  
AUTRICHE**

**Convention en vue d'éviter les doubles impositions et de régler certaines autres questions en matière d'impôts sur le revenu et sur la fortune, y compris l'impôt sur les exploitations et les impôts fonciers. Signée à Vienne le 29 décembre 1971**

*Textes authentiques : allemand, français et néerlandais.*

*Enregistrée par la Belgique le 25 mars 1974.*

## [TRANSLATION — TRADUCTION]

CONVENTION<sup>1</sup> BETWEEN THE REPUBLIC OF AUSTRIA AND THE KINGDOM OF BELGIUM FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE REGULATION OF CERTAIN OTHER MATTERS WITH RESPECT TO TAXES ON INCOME AND FORTUNE, INCLUDING THE BUSINESS TAX AND LAND TAXES

The Federal President of the Republic of Austria and His Majesty the King of the Belgians,

Desiring to avoid double taxation and to regulate certain other matters with respect to taxes on income and fortune, including the business tax and land taxes, have decided to conclude a convention and for that purpose have appointed as their plenipotentiaries:

The Federal President of the Republic of Austria:

Dr. Josef Hammerschmidt, Director-General, Ministry of Finance,

His Majesty the King of the Belgians:

Mr. George C. Puttevils, Ambassador of Belgium at Vienna,

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

## I. SCOPE OF THE AGREEMENT

*Article 1. PERSONAL SCOPE*

This Convention shall apply to persons who are residents of one or both of the Contracting States.

*Article 2. TAXES COVERED*

1. This Convention shall apply to taxes on income and on fortune imposed on behalf of each Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on fortune all taxes imposed on total income, on total fortune, or on elements of income or of fortune, including taxes on gains from the alienation of movable or immovable property, as well as taxes on capital appreciation.

3. The existing taxes to which the Convention shall apply are:

(1) In the case of Belgium:

(a) The tax on individuals (*l'impôt des personnes physiques*);

<sup>1</sup> Came into force on 28 June 1973, i.e. the fifteenth day following the date of the exchange of the instruments of ratification, which took place at Brussels on 13 June 1973, in accordance with article 28(1) and (2).

- (b) The company tax (*l'impôt des sociétés*);
  - (c) The tax on legal persons (*l'impôt des personnes morales*);
  - (d) The non-residents' tax (*l'impôt des non-résidents*),  
including taxes collected in advance (*précomptes*) and supplements to taxes collected in advance (*compléments de précomptes*), surcharges (*décimes et centimes additionnels*) on the aforementioned taxes and advance collections, and the additional communal tax (*taxe communale additionnelle*) to the tax on individuals;
- (2) In the case 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 vom Bodenwert bei unbebauten Grundstücken*);
  - (j) The tax on property exempt from the inheritance tax (*Abgabe von Vermögen, die der Erbschaftssteuer entzogen sind*);
  - (k) The contributions from agricultural and forestry enterprises to the equalization fund for family subsidies (*Beiträge von land- und forstwirtschaftlichen Betrieben zum Ausgleichsfonds für Familienbeihilfen*);
  - (l) The special tax on income (*Sonderabgabe vom Einkommen*);
  - (m) The special tax on fortune (*Sonderabgabe vom Vermögen*);
  - (n) The contribution from income to the Disaster Fund (*Katastrophenfondsbeitrag vom Einkommen*);
  - (o) The contribution from fortune to the Disaster Fund (*Katastrophenfondsbeitrag vom Vermögen*),  
irrespective of the manner in which they are levied.

4. The provisions of the Convention relating to the taxation of business profits shall also apply by analogy to the business tax levied on a basis other than profits or fortune.

5. The Convention shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes. At the end of each year, the competent authorities of the Contracting

States shall notify each other of any changes which have been made in their respective taxation laws.

## II. DEFINITIONS

### *Article 3. GENERAL DEFINITIONS*

1. In this Convention, unless the context otherwise requires:

(1) (a) The term “Belgium”, when used in a geographical sense, means the territory of the Kingdom of Belgium; it includes any territory outside Belgian national sovereignty which by Belgian legislation concerning the continental shelf and in accordance with international law has been or may hereafter be designated as territory over which the rights of Belgium with respect to the sea-bed and subsoil and their natural resources may be exercised;

(b) The term “Austria”, when used in the same sense, means the territory of the Republic of Austria;

(2) The terms “a Contracting State” and “the other Contracting State” mean Belgium or Austria, as the context requires;

(3) The term “person” comprises an individual and a company;

(4) The term “company” means any body corporate or any entity which is liable to taxation as such in respect of its income or its fortune in the State of which it is a resident;

(5) The terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(6) The term “competent authorities” means:

(a) In the case of Belgium, the authority which is competent under its national laws, and

(b) In the case of Austria, the Federal Minister of Finance.

2. As regards the application of the Convention by a Contracting State any term not otherwise defined 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 Convention.

### *Article 4. FISCAL DOMICILE*

1. For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature; it also means any company or partnership under Belgian law—other than a company or partnership limited by shares (*société par actions*)—which has elected to have its profits subjected to the tax on individuals.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then this case shall be determined in accordance with the following rules:

- (1) He shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closest (centre of vital interests);
- (2) If the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has a habitual abode;
- (3) If he has a habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
- (4) If he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall consult together in accordance with article 25.

3. Where by reason of the provisions of paragraph 1 a company is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

#### *Article 5. PERMANENT ESTABLISHMENT*

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include especially:

- (1) A place of management;
- (2) A branch;
- (3) An office;
- (4) A factory;
- (5) A workshop;
- (6) A mine, quarry or other place of exploitation of natural resources;
- (7) A building site or construction or assembly project which exists for more than 12 months.

3. The term "permanent establishment" shall not be deemed to include:

- (1) The use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- (2) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (3) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

- (4) The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
- (5) 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.

4. A person—other than an agent of an independent status to whom paragraph 5 applies—acting in a Contracting State on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment of the enterprise 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.

5. An enterprise of a Contracting State 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.

6. An insurance enterprise of a Contracting State shall be deemed to have a permanent establishment in the other State if it collects premiums in the territory of that State or insures risks situated in that territory through a representative to whom paragraph 4 applies or an agent of an independent status who has, and habitually exercises, an authority to conclude contracts in the name of the enterprise.

7. The fact that a company which is a resident of a Contracting State controls a company which is a resident of the other State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

### III. TAXATION OF INCOME

#### *Article 6. INCOME FROM IMMOVABLE PROPERTY*

1. Income from immovable property may be taxed in the Contracting State in which such property is situated.

2. The term “immovable property” shall be defined in accordance with the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional services.

#### Article 7. BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in 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, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Without prejudice to the application of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the 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 acting wholly independently.

3. In the determination of the 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. Where there are no regular accounts or other records from which it is possible to determine how much of the profits of an enterprise of a Contracting State is attributable to its permanent establishment situated in the other Contracting State, the tax in that other State may be determined in accordance with the law of that other State, in particular by taking as a basis the normal profits of similar enterprises of that other State carrying on the same or similar activities under the same or similar conditions.

In the case referred to in the preceding subparagraph, the profits attributable to the permanent establishment in question may also be determined on the basis of an apportionment of the total profits of the enterprise to its various parts, provided that the result thus obtained is in accordance with the principles laid down in this article.

5. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

6. The provisions of this article shall also apply to the profits of a partner in a *stille Gesellschaft* under Austrian law.

7. Where profits include items of income which are dealt with separately in other articles of this Agreement, then the provisions of this article shall not affect the provisions of those articles as concerns the taxation of such items of income.

*Article 8. PROFITS OF SHIPPING AND AIR TRANSPORT ENTERPRISES*

1. Notwithstanding the provisions of article 7, paragraphs 1 to 6, profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State of which the sole or principal operator is a resident.

*Article 9. INTERDEPENDENT ENTERPRISES*

Where:

- (a) An enterprise of a Contracting State participates directly or indirectly in the management, control or financing of an enterprise of the other Contracting State, or
- (b) The same persons participate directly or indirectly in the management, control or financing of an enterprise of a Contracting State 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, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

*Article 10. DIVIDENDS*

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the law of that State; but the tax so charged shall not exceed 15 per cent of the gross amount of the said dividends.

The provisions of this paragraph shall not limit the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this article means income from shares, *jouissance* shares or *jouissance* rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights treated in the same way as income from shares under the taxation law of the State of which the company making the distribution is a resident. The said term includes income—even if paid in the form of interest—which is taxable as income from capital invested by partners in partnerships—other than partnerships limited by shares—which are residents of Belgium.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the dividends, being a resident of a Contracting State, has in the other Contracting State, of which the company paying the dividends is a resident, a permanent



establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a case, the provisions of article 7 shall apply, if being understood that the said dividends may be taxed either separately or as profits, according to the law of that other Contracting State.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, the latter may not impose any tax on the dividends paid by that company outside that other State to persons who are not residents of that other State, or subject the company's undistributed profits to any additional taxation, even if the dividends distributed or the undistributed profits consist wholly or partly of profits or income arising in such other State. The foregoing shall not prevent such other State from taxing dividends pertaining to a holding which is effectively connected with a permanent establishment maintained in that other State by a resident of the first-mentioned State.

#### *Article 11. INTEREST*

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may be taxed in the Contracting State in which it arises, and according to the law of that State; but the tax so charged shall not exceed 15 per cent of the amount of the interest.

3. The term "interest" as used in this article means income from government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and, subject to the provisions of paragraph 4 below, debt-claims or deposits of every kind, as well as lottery bond prizes and all other income treated in the same way as income from money lent or deposited under the taxation law of the State in which the income arises.

4. The provisions of this article shall not apply to:

- (1) Interest which, in accordance with article 10, paragraph 3, second sentence, is treated as dividends;
- (2) Interest on commercial debt-claims—including those represented by bills of exchange—resulting from payment in instalments for goods, merchandise or services by an enterprise of a Contracting State to a resident of the other Contracting State;
- (3) Interest on current accounts or advances between banking enterprises of the two States;
- (4) Interest on deposits of sums of money, not represented by bearer certificates, in banking enterprises, including public credit institutions.

Interest as referred to in items (2) to (4) above shall be subject to the rules laid down in article 7 or article 21, as the case may be.

5. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the interest, being a resident of a Contracting State, has in the other Contracting State in which the interest arises a permanent establishment with which the loan, debt-claim or deposit from which the interest arises is effectively connected. In such a case, the provisions of article 7 shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connexion with which the indebtedness on which the interest is paid was incurred, and the interest is borne as such by the permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

7. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, having regard to the debt-claim or deposit for which it is paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of paragraphs 1 and 2 shall apply only to the last-mentioned amount. In that case, the excess amount of the interest shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of the Convention applicable to income to which such excess amount may be assimilated.

#### *Article 12. ROYALTIES*

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. Royalties paid by a company which is a resident of one of the Contracting States to a person being a resident of the other Contracting State who owns more than 50 per cent of the capital of the company paying the royalties may be taxed in the first-mentioned State, but the rate of the tax so charged shall not exceed 10 per cent of the gross amount of the said royalties.

3. The term "royalties" as used in this article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films and films or recordings intended for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, not being immovable property within the meaning of article 6, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the royalties, being a resident of a Contracting State, 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 effectively connected. In such a case, the provisions of article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connexion with which the contract giving rise to the royalties was concluded, and the royalties are borne as such by the permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the normal amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of paragraphs 1 and 2 shall apply only to the last-mentioned amount. In that case, the excess amount of the royalties shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of the Convention applicable to income to which such excess amount may be assimilated.

#### *Article 13. CAPITAL GAINS*

1. Gains from the alienation of immovable property, as defined in article 6, paragraph 2, may be taxed in the Contracting State in which such property is situated.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other State. The rules laid down in article 7, paragraphs 2 and 3, shall apply to the determination of the amount of such gains.

However, gains from the alienation of movable property of the kind referred to in article 22, paragraph 3, shall be taxable only in the Contracting State in which such movable property is taxable according to the said article.

3. Gains from the alienation of any other property, including a holding—not forming part of the business property of a permanent establishment as referred to in paragraph 2—in a company limited by shares or other joint-stock company, shall be taxable only in the Contracting State of which the alienator is a resident.

#### *Article 14. PROFESSIONAL SERVICES*

1. Subject to the provisions of articles 16 and 17, income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless he has a fixed base regularly available to him in the other State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to the activities performed through that fixed base.

2. The term “professional services” includes, especially, independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

*Article 15.* DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of articles 16, 17, 18, 19 and 20, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1 and subject to the proviso contained therein, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- (1) It is paid in respect of an activity exercised in the other State for a period or periods not exceeding in the aggregate 183 days—including normal interruptions of work—in the calendar year, and
- (2) The remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- (3) The remuneration is not borne as such by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the provisions of paragraphs 1 and 2 and subject to the proviso contained in paragraph 1, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic shall be deemed to pertain to an activity exercised in the Contracting State in which the place of effective management of the enterprise is situated and may be taxed in that State.

*Article 16.* DIRECTORS OF COMPANIES LIMITED BY SHARES  
OR JOINT-STOCK COMPANIES

1. Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or similar organ of a company limited by shares or other joint-stock company which is a resident of the other Contracting State may be taxed in that other State. The same shall apply to remuneration derived by a general partner (*associé commandité*) in a partnership limited by shares (*société en commandite par actions*) which is a resident of Belgium.

2. Remuneration paid to a person referred to in paragraph 1 in respect of a daily activity exercised in a permanent establishment situated in the Contracting State of which the company or partnership is not a resident may be taxed in that State if the remuneration is borne as such by the permanent establishment.

*Article 17.* ARTISTS AND ATHLETES

Income derived by public entertainers, such as theatre, motion picture, radio or television artists, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

*Article 18.* PENSIONS

1. Subject to the provisions of article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

2. However, pensions and all recurring or non-recurring payments which are paid pursuant to the social legislation of a Contracting State by that State or a political subdivision, a local authority or a public corporation thereof may be taxed in that State.

*Article 19.* PUBLIC REMUNERATION AND PENSIONS

1. Remuneration, including pensions, paid by, or out of funds created by, a Contracting State or a political subdivision, a local authority or a public corporation thereof in respect of services rendered to that State or a political subdivision, a local authority or a public corporation thereof may be taxed in that State.

This provision shall not apply if the recipient of such income is a national of the other State but is not at the same time a national of the first-mentioned State.

2. Paragraph 1 shall not apply to remuneration or pensions in respect of services rendered in connexion with any trade or business carried on by a Contracting State or a political subdivision, a local authority or a public corporation thereof.

*Article 20.* STUDENTS, APPRENTICES OR BUSINESS TRAINEES

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

2. Remuneration derived by a person referred to in paragraph 1 in respect of an employment exercised in the other State, for the sole purpose of acquiring practical experience, for a period not exceeding 183 days in the calendar year shall not be taxed in that State.

*Article 21.* INCOME NOT EXPRESSLY MENTIONED

A resident of a Contracting State shall not be liable to tax in the other Contracting State in respect of items of income which are not expressly mentioned in the foregoing articles unless such items of income are included in the income attributable to a permanent establishment or a fixed base maintained in the last-mentioned State by the said resident of the first-mentioned State.

## IV. TAXATION OF FORTUNE

*Article 22*

1. Fortune represented by immovable property, as defined in article 6, paragraph 2, may be taxed in the Contracting State in which such property is situated.

2. Subject to the provisions of paragraph 3, fortune represented by movable property forming part of the business property of a permanent establishment of an enterprise, or by movable property pertaining to a fixed base used for the performance of professional services, may be taxed in the Contracting State in which the permanent establishment or fixed base is situated.

3. Ships and aircraft operated in international traffic, and movable property pertaining to the operation of such ships and aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. All other elements of fortune of a resident of a Contracting State, including a holding—not forming part of the business property of a permanent establishment as referred to in paragraph 2—in a company limited by shares or other joint-stock company, shall be taxable only in that State.

## V. METHODS FOR AVOIDANCE OF DOUBLE TAXATION

*Article 23*

1. In the case of residents of Austria, double taxation shall be avoided as follows:

(1) Income arising in Belgium—with the exception of income as specified in item (2) below—and elements of fortune situated in Belgium which, according to the foregoing articles, may be taxed in that State shall be exempt from taxes in Austria. This exemption shall not limit the right of Austria to take into account, in determining the rate of its taxes, the income and elements of fortune so exempted.

(2) The tax levied in Belgium in accordance with this Convention:

(a) On dividends to which the rule laid down in article 10, paragraph 2, applies and which are not covered by item (3) below, and

(b) On interest which may be taxed in accordance with article 11, paragraph 2, and

(c) On royalties which may be taxed in accordance with article 12, paragraph 2, shall be allowed as a deduction from the tax on the same income levied in Austria. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is proportionate to the income which may be taxed in Belgium.

(3) Where the resident of Austria is a partner in a general partnership (*société en nom collectif*) or limited partnership (*société en commandite simple*) which is a resident of Belgium, the provisions of item (1) above shall apply to his

share of the profits and his participation on the fortune of the partnership; the same rule shall apply to income, other than income from invested capital, derived by a resident of Austria in his capacity as a partner in a limited-liability partnership (*société de personnes à responsabilité limitée*) which is a resident of Belgium.

2. In the case of residents of Belgium, double taxation shall be avoided as follows:

(1) Income arising in Austria—with the exception of income as specified in items (2) and (3) below—and elements of fortune situated in Austria which, according to the foregoing articles, may be taxed in that State shall be exempt from taxes in Belgium. This exemption shall not limit the right of Belgium to take into account, in determining the rate of its taxes, the income and elements of fortune so exempted.

(2) In the case of dividends to which the rule laid down in article 10, paragraph 2, applies, in the case of interest which may be taxed in accordance with article 11, paragraph 2 or 7, and in the case of royalties which may be taxed in accordance with article 12, paragraph 2 or 6, the fixed quota of foreign tax provided for under Belgian law shall be allowed as a deduction, under the conditions and at the rate laid down by the said law, from the tax on individuals in respect of dividends, interest and royalties or from the company tax in respect of interest and royalties.

(3) (a) Where a company which is a resident of Belgium owns stock or shares in a joint-stock company which is a resident of Austria, dividends paid by the last-mentioned company to the first-mentioned company which are subject to the rule laid down in article 10, paragraph 2, shall be exempt from the company tax in Belgium, to the extent that exemption would be granted if both companies were residents of Belgium; this provision shall not preclude the levying, in respect of such dividends, of the movable property tax collected in advance (*pré-compte mobilier*) payable under Belgian law;

(b) Where stock or shares in a joint-stock company which is a resident of Austria and which is liable to the corporation tax in that State have been throughout the said company's financial year by a company which is a resident of Belgium as sole owner, the last-mentioned company may also be exempted from the movable property tax collected in advance payable under Belgian law in respect of dividends on the said stock or shares, provided that it makes written application for such exemption within the prescribed time for the submission of its annual tax return; in such a case, the dividends so exempted may not, when they are passed on to the shareholders of the last-mentioned company, be deducted from the distributed dividends which are subject to the movable property tax collected in advance. This provision shall not apply if the Belgian company has formally elected to have its profits subjected to the tax on individuals.

If the provisions of Belgian law exempting from the company tax the net amount of dividends which a company being a resident of Belgium receives from another company being a resident of Belgium are amended in such a way as to limit the exemption to dividends pertaining to holdings of a certain size in the capital of the last-mentioned company, then the provisions of the preceding subparagraph shall apply only to dividends paid by companies being residents of

Austria which pertain to holdings of the same size in the capital of the said companies.

(4) Where the resident is a company or partnership other than a company or partnership limited by shares:

- (a) The exemption provided for in item (1) above shall also apply to the members of the said company or partnership, whether they are residents of Belgium or not, to the extent that the income or elements of fortune of the said company or partnership which may be taxed in Austria according to the Convention may also be taxed in Belgium under Belgian law—otherwise than as income from invested capital—in the name of the said members;
- (b) The deduction provided for in item (2) above shall also apply to the same extent to the members of the said company or partnership if the company or partnership has elected to have its profits subjected to the tax on individuals.

(5) The exemption provided for in item (1) above shall not apply to the income of a resident of Belgium who is a partner in a general partnership, a limited partnership or a civil partnership under Austrian law, which has its place of effective management in Austria, if such income is not income which may be taxed in the last-mentioned State under the law of that State.

3. Where, according to the law of a Contracting State, losses suffered by an enterprise of that State through a permanent establishment situated in the other State are, for the purposes of the taxation of the said enterprise, actually deducted from its profits which may be taxed in the first-mentioned State, the exemption provided for in paragraph 1 (1) and paragraph 2 (1) shall not apply in the first-mentioned State to the profits for other taxable periods attributable to that permanent establishment, to the extent that the said profits have also been exempted from taxes in the other State as offsetting the said losses.

## VI. SPECIAL PROVISIONS

### *Article 24. NON-DISCRIMINATION*

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

2. The term "nationals" means:

- (a) Individuals possessing the nationality of a Contracting State;
- (b) Companies deriving their status as such from the law in force in a Contracting State.

3. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.



This provision shall not be construed:

- (1) As obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents;
- (2) As preventing Belgium from taxing in their entirety, at the rate prescribed by its law, the total profits attributable to the permanent establishment maintained in that State by a company which is a resident of Austria or by any other body of persons or partnership having its place of effective management in Austria, provided that the principal rate applied does not exceed the maximum rate applicable to all or part of the profits of companies which are residents of Belgium;
- (3) As preventing Belgium from taxing nationals of Austria who are not residents of Belgium, but who have a dwelling available to them in that State, on the minimum amount of income laid down by its laws in the case of non-residents of that State, whether or not they are nationals of Belgium, who have a dwelling available to them in that State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of 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 other similar enterprises of that first-mentioned State are or may be subjected.

5. In this article the term "taxation" means taxes of every kind and description.

#### *Article 25. MUTUAL AGREEMENT PROCEDURE*

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the Convention, he may, without prejudice to the remedies provided by the national laws of those States, make written application for a review of the said taxation to the competent authority of the Contracting State of which he is a resident. In order to be admissible, such application must be submitted within two years from the date of notification or of deduction at the source of the taxation.

2. The competent authority referred to in paragraph 1 shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Convention.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the application of the Convention.

4. The competent authorities of the Contracting States shall agree on the administrative measures compatible with their laws which are required for the

implementation of the provisions of the Convention, and in particular on the evidence to be produced by residents of each State in order to enjoy in the other State the tax exemptions or reductions provided for in this Convention.

#### Article 26. EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of the Convention and of the domestic laws of the Contracting States concerning taxes covered by the Convention in so far as the taxation thereunder is in accordance with the Convention.

Any information so obtained shall be treated as secret; it shall be disclosed—other than to the taxpayer or his agent—only to the persons or authorities concerned with the assessment or collection of the taxes which are the subject of the Convention and with appeals relating thereto.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

- (1) To carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;
- (2) To supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (3) 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 (*ordre public*).

#### Article 27. MISCELLANEOUS PROVISIONS

1. Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions and consulates under the general rules of international law or under the provisions of special agreements.

2. For the purposes of the Convention, persons who are members of a diplomatic or consular mission of a Contracting State in the other Contracting State or in a third State and who are nationals of the sending State shall be deemed to be residents of the sending State if they are submitted therein to the same obligations in respect of taxes on income and fortune as are the residents of that State.

3. The Convention shall not apply to international organizations, to organs or officials thereof and to persons who are members of a diplomatic or consular mission of a third State, being present in a Contracting State and not treated in either Contracting State as residents in respect of taxes on income and fortune.

4. Nothing in the Convention shall be construed so as to:

- (1) Prevent a Contracting State from applying the provisions of its national law for the prevention of fiscal evasion and fiscal fraud;
- (2) Limit the taxation of a company which is a resident of Belgium in the event of redemption of its own stock or shares or division of its assets.

5. The Minister of Finance of Belgium or his authorized deputies and the Federal Minister of Finance of Austria shall communicate with each other for the purposes of the application of the Convention.

## VII. FINAL PROVISIONS

### *Article 28.* ENTRY INTO FORCE

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

2. The Convention shall enter into force on the fifteenth day following the date of the exchange of instruments of ratification and shall apply:

(1) In Belgium:

- (a) To taxes payable by deduction at the source in respect of income normally accruing or paid after the thirty-first day of December of the year in which the instruments of ratification are exchanged;
- (b) To other taxes levied on income for taxable periods normally ending after the thirty-first day of December of the said year;

(2) In Austria:

- (a) To taxes payable by deduction at the source in respect of income accruing after the thirty-first day of December of the year in which the instruments of ratification are exchanged;
- (b) To other taxes levied for years subsequent to the said year.

### *Article 29.* TERMINATION

The Convention shall remain in force indefinitely; but either Contracting State may, on or before the thirtieth day of June of any calendar year beginning with the fifth year following the year of its ratification, give written notice of termination, through the diplomatic channel, to the other Contracting State. In the event of notice of termination, the Convention shall apply for the last time:

(1) In Belgium:

- (a) To taxes payable by deduction at the source in respect of income normally accruing or paid on or before the thirty-first day of December of the year in which notice of termination is given;
- (b) To other taxes levied on income for taxable periods normally ending on or before the thirty-first day of December of the said year;

(2) In Austria:

- (a) To taxes payable by deduction at the source in respect of income accruing on or before the thirty-first day of December of the year in which notice of termination is given;
- (b) To other taxes levied for the said year.

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

DONE at Vienna, on 29 December 1971, in duplicate in the French, Dutch and German languages, the three texts being equally authentic.

For the Republic of Austria:

J. HAMMERSCHMIDT

For the Kingdom of Belgium:

G. C. PUTTEVILS

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