

**No. 14257**

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**AUSTRIA  
and  
SWITZERLAND**

**Convention for the avoidance of double taxation with  
respect to taxes on estates and inheritances. Signed at  
Vienna on 30 January 1974**

*Authentic text: German.*

*Registered by Austria on 2 September 1975.*

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**AUTRICHE  
et  
SUISSE**

**Convention en vue d'éviter les doubles impositions en  
matière d'impôts sur les successions. Signée à Vienne le  
30 janvier 1974**

*Texte authentique: allemand.*

*Enregistrée par l'Autriche le 2 septembre 1975.*

## [TRANSLATION—TRADUCTION]

CONVENTION<sup>1</sup> BETWEEN THE REPUBLIC OF AUSTRIA AND  
THE SWISS CONFEDERATION FOR THE AVOIDANCE OF  
DOUBLE TAXATION WITH RESPECT TO TAXES ON ES-  
TATES AND INHERITANCES

The Republic of Austria and the Swiss Confederation,

Desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on estates and inheritances,

Have agreed as follows:

*Article 1.* This Convention shall apply to estates of deceased persons who at the time of their death were domiciled in one or both of the Contracting States.

*Article 2.* (1) This Convention shall apply to taxes on estates and inheritances imposed on behalf of either Contracting State or of *Länder*, cantons, districts, *Kreise*, communes or associations of communes including additional taxes (*Zuschlägen*), irrespective of the manner in which they are levied.

(2) These shall be regarded as taxes on estates and successions all taxes imposed *mortis causa* as estate or inheritance taxes, taxes on the transfer of property or taxes on gifts in contemplation of death.

(3) The existing taxes to which this Convention shall apply are, in particular

- (a) in Austria: the inheritance and gift tax (*Erbschaft- und Schenkungsteuer*), in so far as such tax is payable on acquisitions *mortis causa*;
- (b) in Switzerland: estate and inheritance taxes imposed by cantons, districts, *Kreise* and communes.

(4) The Convention shall also apply to any taxes on inheritances and estates which are subsequently imposed in addition to, or in place of, the existing taxes.

*Article 3.* (1) For the purposes of this Convention, the question whether a deceased person was domiciled in a Contracting State shall be determined according to the law of that State.

(2) Where by reason of the provision of paragraph 1 a deceased person was domiciled in both Contracting States, the following shall apply:

- (a) He shall be deemed to have been domiciled in the Contracting State in which he had a permanent home available to him. If he had a permanent home available to him in both Contracting States, he shall be deemed to have been domiciled in the Contracting State with which his personal and economic relations were closest (centre of vital interests).
- (b) If the Contracting State in which he has his centre of vital interests cannot be determined or if he had not a permanent home available to him in either Contracting State, he shall be deemed to have been domiciled in the Contracting State in which he was normally resident.

<sup>1</sup> Came into force on 4 December 1974 by the exchange of the instruments of ratification, which took place at Bern, in accordance with article 13 (1) and (2).

- (c) If he was normally resident in both Contracting States or in neither of them, he shall be deemed to have been domiciled in the State of which he was a national.
- (d) If he was a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement in accordance with article 10.

*Article 4.* (1) 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; ships, boats and aircraft shall not be regarded as immovable property.

(3) Paragraphs 1 and 2 shall also apply to immovable property of an enterprise and to immovable property used for the performance of professional services or other independent activities of a similar character.

*Article 5.* (1) Property forming part of the business property of a permanent establishment of an enterprise—other than property which is to be treated in accordance with articles 4 and 6—may be taxed in the Contracting State in which the permanent establishment is situated. The same shall apply to participation in a partnership.

(2) The term “permanent establishment” means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

(3) The term “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;
- (g) a building site or construction or assembly project which exists for more than 12 months.

(4) The term “permanent establishment” shall not be deemed 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.

(5) A person acting in a Contracting State on behalf of an enterprise of the other Contracting State—other than an agent of an independent status to whom paragraph 6 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.

(6) 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.

(7) Property pertaining to a fixed base used for the performance of professional services or other independent activities of a similar character—other than property which is to be treated in accordance with article 4—may be taxed in the Contracting State in which the fixed base is situated.

*Article 6.* Ships and aircraft operated in international traffic and boats engaged in inland waterways transport, and movable property pertaining to the operation of such ships, aircraft and boats, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

*Article 7.* Property other than that which is to be treated in accordance with articles 4, 5 and 6 shall be taxable only in the Contracting State in which the deceased person was domiciled at the time of his death.

*Article 8.* The debts of an estate shall be deducted in the proportion which the elements of the gross assets of the estate taxable in each Contracting State bear to the aggregate gross property left by the deceased person.

*Article 9.* The Contracting State in which the deceased person was domiciled at the time of his death shall exempt from tax any property which, in accordance with this Convention, may be taxed in the other Contracting State; in calculating tax on the property which it retains the right to tax, it may, however, apply the rate of tax which would have been applicable if the exempted property had not been so exempted.

*Article 10.* (1) Where any person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of one of the two States.

(2) The competent authority 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 interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

(4) The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs and may exchange such information as is necessary for that purpose. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

(5) The term “competent authority” means:

(a) in Austria: the Federal Minister of Finance;

(b) in Switzerland: the Director of the Federal Tax Administration or his authorized representative.

*Article 11.* (1) Nothing in this Convention shall affect the fiscal privileges of members of a diplomatic or consular mission or members of their families under the general rules of international law or under the provisions of special agreements.

(2) In so far as, owing to diplomatic or consular privileges granted to a person under the general rules of international law or under the provisions of special international treaties, property is not subject to tax in the receiving State, the right to tax shall be reserved to the sending State.

*Article 12.* Upon the entry into force of this Convention, the Convention between the Republic of Austria and the Swiss Confederation for the avoidance of double taxation with respect to taxes on income and property and to death duties of 12 November 1953 shall cease to have effect, in so far as it has not already ceased to have effect by virtue of the Convention between the Republic of Austria and the Swiss Confederation for the avoidance of double taxation with respect to taxes on income and fortune of 30 January 1974. The provisions thereof which are abrogated in accordance with the precedent sentence shall, however, apply to estates of persons who die before 1 January 1975.

*Article 13.* (1) This Convention shall be ratified. The instruments of ratification shall be exchanged at Bern as soon as possible.

(2) The Convention shall enter into force upon the exchange of the instruments of ratification, and its provisions shall apply to estates of persons who die after 31 December 1974.

*Article 14.* This Convention shall remain in force until denounced by one of the Contracting States. Either Contracting State may denounce the Convention, through the diplomatic channel, by giving notice of termination in writing at least six months before the end of any calendar year. In such event, the Convention shall no longer apply to estates of persons who die after the expiry of the calendar year at the end of which the Convention is terminated.

IN WITNESS WHEREOF the duly authorized plenipotentiaries have signed this Convention and have thereto affixed their seals.

DONE at Vienna, on 30 January 1974, in duplicate.

For the Republic of Austria:  
Dr. ALFRED TWAROCH

For the Swiss Confederation:  
Dr. O. ROSSETTI