

No. 14456

**NETHERLANDS
and
ISRAEL**

Convention for the avoidance of double taxation with respect to taxes on estates and inheritances. Signed at Jerusalem on 9 September 1974

Authentic texts: Dutch, Hebrew and English.

Registered by the Netherlands on 11 December 1975.

**PAYS-BAS
et
ISRAËL**

Convention tendant à éviter la double imposition en matière d'impôts sur les successions. Signée à Jérusalem le 9 septembre 1974

Textes authentiques : néerlandais, hébreu et anglais.

Enregistrée par les Pays-Bas le 11 décembre 1975.

CONVENTION¹ BETWEEN THE KINGDOM OF THE NETHERLANDS
AND THE STATE OF ISRAEL FOR THE AVOIDANCE OF DOU-
BLE TAXATION WITH RESPECT TO TAXES ON ESTATES AND
INHERITANCES

The Government of the Kingdom of the Netherlands and the Government of the State of Israel,

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 agreed as follows:

CHAPTER I. SCOPE OF THE CONVENTION

Article 1. ESTATES COVERED

This Convention shall apply to estates of deceased persons whose residence at their death was in one or both of the States.

Article 2. TAXES COVERED

1. This Convention shall apply to taxes on estates and inheritances imposed on behalf of each of the States irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on estates and inheritances all taxes imposed on the occasion of death in the form of tax on the corpus of the estate, of tax on inheritances, of transfer duties, or of taxes on donations *mortis causa*.

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

a) in the case of Israel:

— estate duty and transfer duty at death.

b) in the case of the Netherlands:

— *het recht van successie* (succession duty);

— *het recht van overgang bij overlijden* (transfer duty at death).

4. This Convention shall also apply to any taxes on estates and inheritances which are subsequently imposed in addition to, or in place of, the existing taxes. The competent authorities of the States shall notify to each other any substantial changes which have been made in their respective taxation laws.

CHAPTER II. DEFINITIONS

Article 3. GENERAL DEFINITIONS

1. In this Convention:

a) The term "State" means the Netherlands or Israel, unless the context requires otherwise; the term "States" means the Netherlands and Israel;

b) The term "the Netherlands" comprises the part of the Kingdom of the Netherlands that is situated in Europe;

c) The term "Israel" means the State of Israel;

¹ Came into force on 14 July 1975, the date on which the Contracting Governments notified each other in writing of the completion of the constitutional formalities in their respective countries, in accordance with article 21.

d) The term “competent authority” means:

1. in the Netherlands, the Minister of Finance or his authorized representative;
2. in Israel, the Minister of Finance or his authorized representative.

2. As regards the application of the Convention by either of the States, any term not otherwise defined shall, unless the context requires otherwise, have the meaning which it has under the laws of that State relating to the taxes which are the subject of this Convention.

Article 4. FISCAL DOMICILE

1. For the purposes of this Convention, the question whether a person at his death was a resident of one of the States shall be determined according to the law of that State.

2. For the purposes of this Convention, an individual who was a member of a diplomatic or consular mission of one of the States in the other State or in a third State and who was a national of the sending State, as well as members of his family living with him, shall be deemed to have been a resident of the sending State if their heirs or legatees are subjected therein to the same obligations in respect of taxes on estates and inheritances as are heirs and legatees of persons being residents of that State.

3. Where, by reason of the provisions of paragraph 1, a person was a resident of both States, then this case shall be determined in accordance with the following rules:

- a) He shall be deemed to have been a resident of the State in which he had a permanent home available to him. If he had a permanent home available to him in both States, his residence shall be deemed to be in the State with which his personal and economic relations were closest (centre of vital interests). In the case of a person who entered Israel as an *Oleh* (that is, under a visa issued pursuant to paragraph 2 of the Law of Return, 5710-1950, or who after entering Israel applied for and received an “*Oleh’s* Certificate”, under paragraph 3 of the said Law, such person hereinafter referred to as an *Oleh*), his centre of vital interests shall be deemed to be in Israel, unless the competent authorities of both States agree that all of the evidence considered together is clear and convincing to the contrary;
- b) If the State in which he had his centre of vital interests cannot be determined, or if he had not a permanent home available to him in either State, the residence shall be deemed to be in the State in which he had an habitual abode;
- c) If he had an habitual abode in both States or in neither of them, the residence shall be deemed to be in the State of which he was a national;
- d) If he was a national of both States or of neither of them, the competent authorities of the States shall settle the question by mutual agreement.

CHAPTER III. TAXING RULES

Article 5. IMMOVABLE PROPERTY

1. Immovable property may be taxed in the State in which such property is situated.

2. The term “immovable property” shall be defined in accordance with the law of the 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 and debt-claims of every kind, secured by mortgage, excluding bonds or debentures; ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of 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.

4. Shares and similar rights in a company, other than shares and rights dealt in on a Stock Exchange, the assets of which consist exclusively of real property situated in one of the States, including assets accessory thereto or assets material for the normal administration, repair and upkeep thereof shall be deemed to be immovable property situated in that State. However, the foregoing provision shall not apply to shares or similar rights in such company incorporated in the State in which the deceased person was resident at his death.

Article 6. BUSINESS PROPERTY OF A PERMANENT ESTABLISHMENT AND ASSETS PERTAINING TO A FIXED BASE USED FOR THE PERFORMANCE OF PROFESSIONAL SERVICES

1. Except for assets referred to in articles 5 and 7, assets forming part of the business property of a permanent establishment of an enterprise may be taxed in the State in which the permanent establishment is situated.

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 plantation, vineyard, grove or orchard;
- h) a building site or construction or assembly project which exists for more than twelve 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. An enterprise of one of the States shall be deemed to have a permanent establishment in the other State if it carries on supervisory activities in that other State

for more than twelve months in connection with a building site or construction or assembly project which is being undertaken in that other State.

6. A person acting in one of the States on behalf of an enterprise of the other State—other than an agent of an independent status to whom paragraph 7 applies—shall be deemed to be a permanent establishment in the first-mentioned State if:

- a) 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; or
- b) he maintains in the first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf of the enterprise.

7. An enterprise of one of the States shall not be deemed to have a permanent establishment in the other 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.

8. Except for assets described in article 5, assets pertaining to a fixed base used for the performance of professional services or other independent activities of a similar character may be taxed in the State in which the fixed base is situated.

Article 7. SHIPS AND AIRCRAFT

1. Subject to paragraph 2, 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 State of which the owner of the ships or aircraft was a resident at his death.

2. However, such assets may also be taxed in the other State, if the place of effective management of the enterprise is situated in that other State.

3. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the State in which the home harbour of the ship is situated, or if there is no such home harbour, in the State of which the owner of the ship was a resident at his death.

Article 8. SUBSTANTIAL HOLDING IN A COMPANY

Shares in a company, which is incorporated and effectively managed in one of the States, may be taxed in that State, if the deceased, either alone or together with his spouse or his relatives in a straight line, owned at his death directly at least 25 per cent of the share capital of that company.

Article 9. PROPERTY NOT EXPRESSLY MENTIONED

Subject to the provisions of article 12, property other than property referred to in articles 5, 6, 7 and 8 shall be taxable only in the State of which the deceased was a resident at his death.

Article 10. PROPERTY BEQUEATHED OR DONATED TO A STATE

1. Exemptions from and reductions of tax accorded by the law of either State to property bequeathed to that State or local authority thereof shall apply to property bequeathed to the other State or a local authority thereof.

2. The provision of paragraph 1 shall likewise apply to taxes on donations, gifts and other transfers, *inter-vivos*.

Article 11. DEDUCTION OF DEBTS

1. Debts especially secured on any property referred to in article 5 shall be deducted from the value of that property. Debts, not being especially secured on any property referred to in article 5, which are represented by the acquisition, conversion, repair or upkeep of any such property, shall be deducted from the value of that property.

2. Subject to paragraph 1, debts pertaining to a permanent establishment of an enterprise or to a fixed base used for the performance of professional services or other independent activities of a similar character, debts pertaining to any business of shipping or air transport, and debts connected with a substantial holding shall be deducted from the value of the property referred to in article 6, article 7, or article 8, as the case may be.

3. Other debts shall be deducted from the value of property to which article 9 applies.

4. If a debt exceeds the value of the property from which it is deductible in one of the States, according to paragraphs 1, 2 and 3, the excess shall be deducted from the value of any other property taxable in that State.

5. Any excess still remaining after the deductions referred to in the preceding paragraphs shall be deducted from the value of the property liable to tax in the other State.

Article 12. TAXATION ON THE BASIS OF NATIONALITY

1. If the deceased, being a resident of one of the States, at his death was a national of the other State, and had once been a resident of that other State within ten years before his death, that other State may tax the estate according to its domestic law, even if no part of the estate consists of property enumerated in articles 5 to 8 and situated in its territory.

2. The provisions of paragraph 1 shall not apply if the deceased was at his death an *Oleh* and had continuously maintained his residence in Israel.

CHAPTER IV

Article 13. ELIMINATION OF DOUBLE TAXATION

1. Where both States impose tax with respect to property which may be taxed by a State in accordance with articles 5, 6, 7, paragraph 2, or 8, a State which imposes its tax by reason of the decedent's residence therein or nationality thereof at death shall allow a credit equal to the amount of tax paid to the other State with respect to the net amount of property which may be taxed by that other State in accordance with articles 5, 6, 7, paragraph 2, and 8, taking into account the provisions of article 11, paragraphs 1, 2 and 4.

2. In addition to any credit allowable under paragraph 1 of this article, where both States impose tax with respect to property which is not property which may be taxed by a State in accordance with articles 5, 6, 7, paragraph 2, or 8, the State of which the decedent was not a resident at death shall allow a credit equal to the amount of tax paid to the other State with respect to the net amount of such property.

3. Where, under the provisions of paragraph 1 or 2 above, the Netherlands is obliged to give credit for Israeli tax, credit will be given for any amount of Israeli tax that might have been payable under this Convention except for the provisions of the Law for the Encouragement of Capital Investments, 5719-1959. After a period of ten years subsequent to the entry into force of this Convention the two Governments

shall enter into negotiations with each other in order to envisage a review of this provision in the light of the circumstances then prevailing.

4. 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 the net amount of all property in respect of which a credit is allowable under paragraphs 1, 2 or 3, shall not exceed that part of the tax of the crediting State which is attributable to the net amount of such property.

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

6. Where one of the States has imposed gift tax in respect of a donation of property, which under its legislation does not form part of the estate, then that State shall allow a refund of that gift tax, provided that

- a) the donation did not concern property as meant in articles 5, 6, 7, paragraph 2, and 8, situated in its territory; and
- b) the donation under the legislation of the other State forms part of the estate of the deceased; and
- c) the donation was made within a period of five years before the donor's death.

However, the refund shall not exceed that part of the estate duty levied in the other State, which is attributable to the said property or, in the case of Israel, would have been attributable to the said property, if in the determination of the Israeli estate duty the provisions of the Law of the Encouragement of Capital Investments, 5719-1959, had been left out of account.

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 14. LIMITATION ON CLAIMS FOR CREDIT OR REFUND

Any claims for credit or for refund of tax founded on the provisions of this Convention shall be made within five years from the date of death of the decedent in respect of whose death the claim is made, or within six months from the date that all legal remedies in both of the States have been exhausted, whichever period is the longer.

Article 15. NON-DISCRIMINATION

1. The nationals of one of the States, whether they are residents of that State or not, shall not be subjected in the other 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) all individuals possessing the nationality of one of the States;
- b) all legal persons, partnerships and associations deriving their status as such from the law in force in one of the States.

3. The taxation on a permanent establishment which an enterprise of one of the States has in the other 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 as obliging one of the States to grant to residents of the other 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.

4. Enterprises of one of the States, the capital of which is wholly or partly owned [or] controlled, directly or indirectly, by one or more residents of the other State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements 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 16. MUTUAL AGREEMENT PROCEDURE

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 national 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 14.

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 State, with a view to the avoidance of taxation not in accordance with this Convention.

3. The competent authorities of the 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 this Convention.

4. The competent authorities of the States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 17. EXCHANGE OF INFORMATION

1. The competent authorities of the States shall exchange such information (being information which such authorities have in proper order at their disposal) as is necessary for the carrying out of this Convention, in particular for the prevention of fraud, and for the administration of statutory provisions against legal avoidance concerning taxes covered by this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment or collection 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. Paragraph 1 shall not apply to information obtained from banks or from institutions assimilated therewith. The term "institutions assimilated therewith" means, *inter alia*, insurance companies.

Article 18. DIPLOMATIC AND CONSULAR OFFICIALS

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

2. This Convention shall not apply to estates of deceased officials of international organizations or members of a diplomatic or consular mission of a third State, as well as to estates of deceased members of their family living with them, who were present in one of the States and were not treated as being residents of either State in respect of taxes on estates and inheritances.

Article 19. REGULATIONS

The competent authorities of each of the States, in accordance with the practices of that State, may prescribe regulations necessary to carry out the provisions of this Convention.

Article 20. 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, if the country 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 notes to be exchanged through diplomatic channels.

2. Unless otherwise agreed the termination of the Convention shall not also terminate the application of the Convention to any country to which it has been extended under this article.

CHAPTER VI. FINAL PROVISIONS

Article 21. ENTRY INTO FORCE

This Convention shall enter into force on the date on which the Contracting Governments have notified each other in writing that the formalities constitutionally required in their respective countries have been complied with, and its provisions shall have effect in relation to estates of persons dying on or after the date on which this Convention is signed.

Article 22. TERMINATION

This Convention shall remain in force until terminated by one of the States. Either State may terminate the Convention, through diplomatic channels, with effect from the end of any calendar year not earlier than 5 years from its entry into force by giving at least six months notice of termination. In such an event, the Convention will not apply to estates of persons who died after the expiry of the calendar year with respect to the end of which the Convention has been terminated.

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

DONE at Jerusalem on 9 September 1974, in two originals each, in the Netherlands, Hebrew and English languages, the three texts being equally authentic.

In case there is any divergence of interpretation between the Netherlands and the Hebrew texts, the English shall prevail.

For the Government of the Kingdom of the Netherlands:
G. J. JONGEJANS

For the Government of the State of Israel:
YIGAL ALLON
Deputy Prime Minister and Minister for Foreign Affairs
