

No. 14693

---

**FEDERAL REPUBLIC OF GERMANY**  
**and**  
**AUSTRIA**

**Agreement concerning the levying of turnover tax on the traffic in goods and services between the Austrian communes of Mittelberg and Jungholz and the Federal Republic of Germany. Signed at Vienna on 11 October 1972**

*Authentic text: German.*

*Registered by the Federal Republic of Germany on 1 April 1976.*

---

**RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE**  
**et**  
**AUTRICHE**

**Accord concernant les impôts sur le chiffre d'affaires des échanges de biens et services entre les communes autrichiennes de Mittelberg et Jungholz et la République fédérale d'Allemagne. Signé à Vienne le 11 octobre 1972**

*Texte authentique : allemand.*

*Enregistré par la République fédérale d'Allemagne le 1<sup>er</sup> avril 1976.*

## [TRANSLATION — TRADUCTION]

AGREEMENT<sup>1</sup> BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE REPUBLIC OF AUSTRIA CONCERNING THE LEVYING OF TURNOVER TAX ON THE TRAFFIC IN GOODS AND SERVICES BETWEEN THE AUSTRIAN COMMUNES OF MITTELBERG AND JUNGHOLZ AND THE FEDERAL REPUBLIC OF GERMANY

The Federal Republic of Germany and the Republic of Austria,

Considering that, under the Treaties of 2 December 1890 and 3 May 1868, the Austrian communes of Mittelberg and Jungholz were attached to the German customs territory,

Considering that, as regards the levying of turnover tax, this situation would lead to double taxation and non-taxation,

Desiring to avoid this and to establish a verifiable régime for the levying of turnover tax,

Have agreed as follows:

*Article 1.* For the purposes of this Agreement:

1. The term “recipient (*Leistungsempfänger*) in the commune of Mittelberg or Jungholz” means:

- (a) A recipient who has his domicile or his headquarters in that territory;
- (b) A branch or subsidiary company (*Organgesellschaft*) of an entrepreneur resident outside that territory which has its headquarters in that territory, if it conducted the taxable transaction in its own name;

2. The term “German recipient” means;

- (a) A recipient who has his domicile or headquarters in the Federal Republic of Germany;
- (b) A branch or subsidiary company of an entrepreneur resident outside the Federal Republic of Germany which has its headquarters in the Federal Republic of Germany, if it conducted the taxable transaction in its own name.

*Article 2.* (1) Without prejudice to the provisions of paragraph 2, in the case of deliveries of goods and other services liable to German turnover tax to a recipient in the commune of Mittelberg or Jungholz, the following tax exemptions under the German Turnover Tax Act shall, in accordance with German law now in force, be inapplicable:

- 1. Exemption from tax on deliveries for exports;
- 2. Exemption from tax on job processing for foreign principals;
- 3. Exemption from tax on the services to foreign principals specified in the German Turnover Tax Act.

This legal position shall remain unchanged so long as the present Agreement is in force.

<sup>1</sup> Came into force on 19 April 1974, i.e., one calendar month after the exchange of the instruments of ratification, which took place at Vienna on 18 March 1974, in accordance with article 9(1) and (2).

(2) Other services liable to German turnover tax to a recipient in the commune of Mittelberg or Jungholz shall be exempt from tax if they are utilized outside the territory in which the German Turnover Tax Act applies and the entrepreneur proves that he has paid a foreign turnover tax on the services in question. Proof that the specified requirements have been met must be furnished in the form of entries in accounts.

(3) Exemption from tax under the German Turnover Tax Act in respect of deliveries for export and of job processing for foreign principals shall not apply if the goods delivered or processed only reach the territory of the commune of Mittelberg or Jungholz.

(4) A recipient in the commune of Mittelberg or Jungholz may make arrangements with a German internal revenue office for taxes previously paid to be deducted from the German turnover tax assessed upon him only if he meets the requirements specified in the Austrian Turnover Tax Act for the deduction of previous taxes and does not estimate the taxes deductible on an average basis. The foregoing shall apply even if the recipient does not make deliveries or perform other services, or have his headquarters or a permanent establishment, in the Federal Republic of Germany. Any adjustment of a deduction claimed in respect of taxes previously paid shall also be governed by the provisions of the Austrian Turnover Tax Act. The provisions of the German Turnover Tax Act shall apply to the procedure for the levying of tax. Any balance in favour of the entrepreneur shall be refunded.

(5) The provisions of paragraph 4 shall apply *mutatis mutandis* to the deduction from the German import turnover tax of taxes previously paid by an entrepreneur in the commune of Mittelberg or Jungholz.

(6) Notwithstanding the provisions of paragraphs 4 and 5, the deduction of taxes previously paid shall be governed not by the provisions of the Austrian Turnover Tax Act but by those of the German Turnover Tax Act of goods delivered or imported for an enterprise are used in the Federal Republic of Germany or other services performed for an enterprise are utilized in that territory. The foregoing shall not apply if the goods or other services are used for the benefit of an enterprise or part of an enterprise situated in the commune of Mittelberg or Jungholz.

*Article 3.* (1) In the case of deliveries of goods and other services liable to Austrian turnover tax to a German recipient which are performed in the commune of Mittelberg or Jungholz, the following tax exemptions under the Austrian Turnover Tax Act shall be inapplicable:

1. Exemption from tax on deliveries for export;
2. Exemption from tax on job processing for foreign principals;
3. Exemption from tax on the services to foreign principals specified in the Austrian Turnover Tax Act.

(2) Exemption from tax under the Austrian Turnover Tax Act shall not be granted in respect of deliveries for export and of job processing for foreign principals liable to Austrian turnover tax which are performed in the commune of Mittelberg or Jungholz, even if the goods delivered or processed only reach the Federal Republic of Germany.

(3) A German recipient may make arrangements with an Austrian internal revenue office for taxes previously paid to be deducted from the Austrian turnover tax assessed upon him in respect of deliveries for export or other services performed in the communes of Mittelberg and Jungholz only if he meets the requirements specified in the German Turnover Tax Act for the deduction of previous taxes and does

not estimate the taxes deductible on an average basis. The foregoing shall apply even if the German recipient does not make deliveries or perform other services, or have his headquarters or a permanent establishment, in Austrian federal territory. Any adjustment of a deduction claimed in respect of taxes previously paid shall also be governed by the provisions of the German Turnover Tax Act. The provisions of the Austrian Turnover Tax Act shall apply to the procedure for the levying of tax. Any balance in favour of the entrepreneur shall be refunded.

(4) Notwithstanding the provisions of paragraph 3, the deduction of taxes previously paid shall be governed not by the provisions of the German Turnover Tax Act but by those of the Austrian Turnover Tax Act if goods delivered for an enterprise are used in the communes of Mittelberg and Jungholz or other services performed for an enterprise are utilized in those territories. The foregoing shall not apply if the goods or other services are used for the benefit of an enterprise or part of an enterprise situated in the Federal Republic of Germany.

*Article 4.* No financial settlement shall be effected between the Contracting States in respect of the amounts of tax collected by the Contracting States and expended by them through the deduction of previous taxes in accordance with articles 2 and 3.

*Article 5.* An entrepreneur who maintains his headquarters or a permanent establishment in the other Contracting State must submit claims for the deduction of previous taxes under the terms of article 2, paragraphs 4 to 6, and article 3, paragraphs 3 and 4, of this Agreement to the internal revenue office of the other Contracting State which is competent for the levying of his turnover tax. In the case of entrepreneurs who do not maintain a headquarters or permanent establishment in the other Contracting State, each Contracting State shall designate the competent internal revenue office. The two Contracting States shall give notice in writing, through the diplomatic channel, of the two internal revenue offices.

*Article 6.* The Contracting States shall, on the basis of reciprocity:

1. Grant upon request such judicial assistance as may be necessary for the implementation of this Agreement. The procedure for granting judicial assistance shall be governed by the provisions of the Agreement between the Federal Republic of Germany and the Republic of Austria concerning Legal Protection and Judicial Assistance in Matters of Taxation of 4 October 1954.
2. Exchange information even in the absence of a request, with a view to protecting the tax revenue of the other Contracting State, if it has been ascertained in the course of the procedure for the levying of tax that:
  - (a) An entrepreneur having his domicile, his headquarters or a permanent establishment in the Federal Republic of Germany has conducted in the commune of Mittelberg or Jungholz transactions which are liable to Austrian turnover tax;
  - (b) An entrepreneur having his domicile, his headquarters or a permanent establishment in the commune of Mittelberg or Jungholz has conducted transactions which are liable to German turnover tax.

The transmission of such information shall be effected in the Federal Republic of Germany through the Divisional Internal Revenue Administration (*Oberfinanzdirektionen*) and in the Republic of Austria through the International Revenue Land Administration (*Finanzlandesdirektionen*). The legal provisions of the Contracting

States concerning official secrecy and confidentiality with respect to taxes shall apply to the content of such information.

*Article 7.* (1) Where an entrepreneur to whom the provisions of this Agreement have been applied considers that the actions of one or both of the Contracting States have resulted or will result for him in taxation not in accordance with this Agreement, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the federal Minister responsible for financial affairs of the Contracting State of which he is a resident.

(2) The federal Minister responsible for financial affairs shall endeavour, if the objection appears to him to be justified and if he is not himself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the federal Minister responsible for financial affairs of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Agreement.

(3) The federal Ministers responsible for financial affairs of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement.

(4) The federal Ministers responsible for financial affairs of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

*Article 8.* (1) This Agreement shall also apply to *Land Berlin* provided that the Government of the Federal Republic of Germany has not made a contrary declaration to the Government of the Republic of Austria within three months from the date of entry into force of this Agreement.

(2) Upon the application of the Agreement to *Land Berlin*, references to the Federal Republic of Germany shall be deemed also to be references to *Land Berlin*.

*Article 9.* (1) This Agreement shall be ratified. The instruments of ratification shall be exchanged at Vienna.

(2) This Agreement shall enter into force upon the expiration of one calendar month from the date of exchange of instruments of ratification, but not before 1 January 1973.

(3) The provisions of this Agreement shall apply to deliveries and other services performed after the date of its entry into force and to imports for which the date determining their liability to import turnover tax is subsequent to the date of its entry into force.

*Article 10.* Either Contracting State may denounce the Agreement through the diplomatic channel by giving notice of termination at least six months before the end of any calendar year after the year 1974. In such event, the Agreement shall continue to apply to deliveries and other services performed before the date of termination of the Agreement and to imports for which the date determining their liability to import turnover tax is prior to the date of termination of the Agreement.

DONE at Vienna on 11 October 1972, in two original copies in the German language.

For the Federal Republic of Germany:

Dr. SCHIRMER

For the Republic of Austria:

Dr. TWAROCH