

No. 17437

**HUNGARY
and
AUSTRIA**

**Convention for the avoidance of double taxation in the
field of estate and inheritance taxes. Signed at Vienna
on 25 February 1975**

*Authentic texts: Hungarian and German.
Registered by Hungary on 19 January 1979.*

**HONGRIE
et
AUTRICHE**

**Convention tendant à éviter la double imposition en matière
d'impôts sur les successions. Signée à Vienne le 25 fé-
vrier 1975**

*Textes authentiques : hongrois et allemand.
Enregistrée par la Hongrie le 19 janvier 1979.*

[TRANSLATION — TRADUCTION]

**CONVENTION¹ BETWEEN THE HUNGARIAN PEOPLE'S REPUBLIC
AND THE REPUBLIC OF AUSTRIA FOR THE AVOIDANCE OF
DOUBLE TAXATION IN THE FIELD OF ESTATE AND INHERI-
TANCE TAXES**

The Hungarian People's Republic and the Republic of Austria, desiring to avoid double taxation in the field of estate and inheritance taxes, have decided to conclude the following Convention:

Article 1. ESTATES COVERED BY THE CONVENTION

This Convention relates to the estates of decedents who at the time of their death were residents of one or both of the Contracting States.

Article 2. TAXES COVERED BY THE CONVENTION

1. This Convention shall apply, irrespective of the method of collection, to those estate and inheritance taxes which are levied on behalf of one of the two Contracting States or of a territorial subdivision or a local authority thereof.

2. There shall be regarded as estate and inheritance taxes all taxes (duties), which are levied in the event of death as estate taxes (duties), inheritance taxes (duties), property transfer taxes (duties), or taxes (duties) on gifts made in contemplation of death.

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

- (a) In the Hungarian People's Republic: the inheritance duty;
- (b) In the Republic of Austria: the inheritance tax, in so far as it applies to acquisition by reason of death or bequests for specific purposes in the event of death.

4. The Convention shall also apply to all estate and inheritance taxes which may subsequently be levied in addition to, or in place of, the existing taxes.

Article 3. GENERAL DEFINITIONS

1. For the purposes of this Convention, the term "competent authority" means:

- (1) In the Hungarian People's Republic, the Minister of Finance;
- (2) In the Republic of Austria, the Federal Minister of Finance.

2. As regards the application of the Convention by a Contracting State, any expression not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

Article 4. FISCAL DOMICILE

1. In the application of this Convention, the question whether the decedent was at the time of death a resident of a Contracting State shall be determined in accordance with the laws of that State.

¹ Came into force on 9 February 1978, i.e., 60 days after the exchange of the instruments of ratification, which took place at Budapest on 11 December 1975, in accordance with article 14.

2. Where by reason of the provisions of paragraph 1 the decedent was a resident of both Contracting States, the following rules shall apply:

- (a) The decedent shall be deemed to have been a resident of 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 a resident of the Contracting State with which his personal and economic relations were closer (centre of vital interests);
- (b) If the Contracting State in which the decedent had 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 a resident of the Contracting State in which he had an habitual abode;
- (c) If the decedent had an habitual abode in both Contracting States or in neither of them, he shall be deemed to have been a resident of the Contracting State of which he was a national;
- (d) If the decedent was a national of both Contracting States or of neither of them, the Contracting States shall proceed in accordance with article 11.

Article 5. IMMOVABLE PROPERTY

1. Immovable property shall be taxable in the Contracting State in which such property is situated.

2. The term “immovable property” shall have the meaning which it has under 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 the immovable property of an enterprise and to immovable property used for the performance of professional services or other independent personal services of a similar character.

Article 6. PROPERTY OF A PERMANENT ESTABLISHMENT AND PROPERTY OF A FIXED BASE USED FOR THE EXERCISE OF A PROFESSION

1. Property constituting the business property of a permanent establishment of an enterprise — with the exception of property which is to be treated in accordance with articles 5 and 7 — shall be taxable in the Contracting State in which the permanent establishment is situated.

2. The term “permanent establishment” means a permanent place of business or production at which the business of an enterprise is wholly or partly carried on.

3. The term “permanent establishment” includes especially:

- (a) A place of management;
- (b) A branch;
- (c) An office;
- (d) A factory;
- (e) A workshop;

- (f) A mine, a quarry or any other place of extraction of natural resources;
 - (g) A building site or installation project which lasts more than two years.
4. The following shall not be deemed to be permanent establishments:
- (a) Facilities used solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
 - (b) A stock of goods or merchandise belonging to the enterprise which is maintained solely for the purpose of storage, display or delivery;
 - (c) A stock of goods or merchandise belonging to the enterprise which is maintained solely for the purpose of processing or treatment by another enterprise;
 - (d) A fixed place of business which is maintained solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;
 - (e) A fixed place of business maintained 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. Where a person — other than an agent of an independent status to whom paragraph 6 applies — is acting in a Contracting State on behalf of an enterprise of the other Contracting State, a permanent establishment shall be deemed to exist in the first-mentioned State if the said person 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, a general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

7. Property belonging to a fixed base used for the purpose of performing professional services or of other independent personal services of a similar character shall — except in the case of property to be treated in accordance with article 5 — be taxable in the Contracting State in which the fixed base is situated.

Article 7. SHIPS, BOATS AND AIRCRAFT

Ships, boats and aircraft operated in international traffic, as well as movable property used for the operation of such ships, boats and aircraft, shall be taxable in the Contracting State of which the decedent was a resident at the time of his death.

Article 8. PROPERTY NOT EXPRESSLY MENTIONED

Property which is not to be treated in accordance with articles 5, 6 and 7 shall be taxable only in the Contracting State of which the decedent was a resident at the time of his death.

Article 9. DEDUCTION OF DEBTS

1. Debts especially secured by the property referred to in article 5 shall be deducted from the value of the said property. Debts which are not especially secured by the property referred to in article 5 but are connected with the acquisition, alteration, repair or maintenance of such property shall be deducted from the value of the said property.

2. Subject to the provisions of paragraph 1, debts which are connected with a permanent establishment of an enterprise or with a fixed base used for the performance

of professional services or other independent personal services of a similar character and debts which are connected with shipping, inland waterways transport or air transport operations shall be deducted from the value of the property referred to in article 6 or article 7, as the case may be.

3. Other debts shall be deducted from the value of the property covered by article 8.

4. Where the debt exceeds the value of the property from which, in accordance with paragraphs 1, 2 and 3, it is to be deducted in a Contracting State, the excess amount shall be deducted from the value of the remaining property which is taxable in that State.

5. Where any debt remains after the deductions made on the basis of the preceding paragraphs, such debt shall be deducted from the value of the property taxable in the other Contracting State.

Article 10. AVOIDANCE OF DOUBLE TAXATION

The Contracting State of which the decedent was a resident at the time of his death shall exempt from taxation such property as is taxable in the other Contracting State under this Convention; the latter State may, however, in calculating the tax on the property in respect of which it retains the right to tax, apply the rate of tax which would have been applicable if the property in question had not been exempted from taxation.

Article 11. MUTUAL AGREEMENT PROCEDURE

1. Where a 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, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of one of the two Contracting 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 a satisfactory 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 which is 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. Where 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.

Article 12. EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention. The competent authorities of the Contracting States shall not, however, be obliged to give information which cannot be given on the basis of documents available to the revenue authorities but would require separate inquiries. Any information so exchanged shall be treated as secret and shall not be made available to any persons or

authorities other than those concerned with the assessment or collection of the taxes covered by the Convention.

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

- (a) To carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting 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 Contracting 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 (*ordre public*).

Article 13. DIPLOMATIC AGENTS AND CONSULAR OFFICERS

Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under special agreements.

Article 14. ENTRY INTO FORCE

1. This Convention shall be ratified in accordance with the legal system of each of the two Contracting States. The instruments of ratification shall be exchanged at Budapest as soon as possible.

2. The Convention shall enter into force 60 days after the exchange of the instruments of ratification, and its provisions shall apply to the estates of persons who die on or after that date.

Article 15. TERMINATION

This Convention shall remain in force until denounced by a Contracting State.

Either Contracting State may denounce the Convention in writing, through the diplomatic channel, giving notice six months before the end of any calendar year. In such event, the Convention shall not apply to the estates of persons who die after the end of the calendar year by the end of which notice has been received.

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

DONE at Vienna on 25 February 1975, in duplicate in the Hungarian and German languages, both texts being equally authentic.

For the Hungarian People's Republic:

[Dr. LAJOS FALUVÉGI]

For the Republic of Austria:

[Dr. HANNES ANDROSCH]