

No. 17436

**HUNGARY
and
AUSTRIA**

**Convention for the avoidance of double taxation with
respect to taxes on income, on revenue and on fortune.
Signed at Vienna on 25 February 1975**

Authentic texts: Hungarian and German.

Registered by Hungary on 19 January 1979.

**HONGRIE
et
AUTRICHE**

**Convention pour éviter la double imposition en matière
d'impôts sur le revenu et sur la fortune. Signée à Vienne
le 25 février 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 WITH RESPECT TO TAXES ON INCOME,
ON REVENUE AND ON FORTUNE

The Hungarian People's Republic and the Republic of Austria, desiring to avoid double taxation with respect to taxes on income, on revenue and on fortune, have agreed to conclude the following Convention:

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 BY THE CONVENTION

1. This Convention shall apply to taxes imposed directly on income, on revenue and on fortune on behalf of the Contracting States or of their political subdivisions or local authorities, according to the legislation of either Contracting State.

2. The taxes to which this Convention shall apply are the following:

- (1) In the Hungarian People's Republic:
 - (a) The general income tax;
 - (b) The income tax on persons engaged in intellectual work;
 - (c) The income tax on the agricultural population;
 - (d) The profit tax and the special company tax;
 - (e) The profit tax on economic associations operating with foreign participation;
 - (f) The house tax;
 - (g) The house value tax;
 - (h) The unimproved real property tax;
 - (i) The contribution to community development;
 - (j) The tax on the payment by trading companies of dividends and profits;
- (2) In the Republic of Austria:
 - (a) The income tax;
 - (b) The corporation tax;
 - (c) The tax on directors' fees;
 - (d) The tax on fortune;
 - (e) The tax on fortune exempt from the inheritance tax;
 - (f) The business tax, including the payroll tax;
 - (g) The land tax;
 - (h) The tax on agricultural and forestry enterprises;

¹ Came into force on 9 February 1976, 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 27.

- (i) The contributions from agricultural and forestry enterprises to the equalization fund for family subsidies;
 - (j) The tax on the land value of undeveloped real estate.
3. The Convention shall be applied to any identical or substantially similar tax which, after the signing of the Convention, is imposed in addition to, or in place of, the existing taxes.

Article 3. GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires:
- (a) The term “persons” includes individuals and bodies corporate;
 - (b) 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;
 - (c) 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 term 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. For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.

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

- (a) 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 familial and economic relations are closer (centre of vital interests);
- (b) 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 an habitual abode;
- (c) If he has an 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;
- (d) If he is a national of both Contracting States or of neither of them, the Contracting States shall proceed in accordance with article 24.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, it shall be deemed to be a resident of the Contracting State in which it is liable to tax by reason of the location of its head office.

Article 5. PERMANENT ESTABLISHMENT

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

2. 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 construction or installation project which lasts more than two years.

3. 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 treatment or processing by another enterprise;
- (d) The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of 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.

4. Where a person — other than an agent of an independent status to whom paragraph 5 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.

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, 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.

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

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

4. 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 independent personal 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. 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 dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining 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. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. Where profits include items of income which are dealt with separately in other articles of this Convention, the provisions of those articles shall not be affected by the provisions of this article.

6. The provisions of this article shall also apply to such shares of profits as are acquired from participation in an enterprise as a silent partner.

Article 8. SHIPPING, INLAND WATERWAYS TRANSPORT AND AIR TRANSPORT

1. A resident of a Contracting State deriving profits from the operation of ships or aircraft in international traffic may be subjected to taxation only in that Contracting State.

2. A resident of a Contracting State deriving profits from the operation of inland waterways boats in international traffic may be subjected to taxation only in that Contracting State.

3. Paragraphs 1 and 2 shall also apply where an enterprise has, in the territory of the other State, an agency for the transport of persons or goods. This provision

shall, however, apply only to activities related to air transport, shipping and inland waterways transport, including delivery services.

4. The provisions of this article shall also apply to the participation of air transport enterprises in joint operations, irrespective of whether they own or charter the aircraft used for such transport.

Article 9. ASSOCIATED ENTERPRISES

Where:

- (a) An enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
- (b) The same persons participate directly or indirectly in the management, control or capital 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, 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 body corporate 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 body corporate paying the dividends is a resident and according to the laws of that State, but the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

This paragraph shall not affect the taxation of the body corporate 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 which is subjected to the same treatment as income from shares by the taxation laws of the State of which the body corporate making the distribution is a resident.

4. Paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, has a permanent establishment in the other Contracting State, of which the body corporate paying the dividends is a resident, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case, article 7 shall apply.

5. Where a body corporate which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the body corporate to persons who are not residents of that other State, nor subject the profits of the body corporate to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11. INTEREST

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

2. The term “interest” as used in this article means income from government securities, from bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and from debt claims of every kind, as well as all other income which is subjected to the same treatment as income from money lent by the taxation law of the State in which the income arises.

3. Paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, has a permanent establishment in the other Contracting State, in which the interest arises, and the debt-claim from which the interest arises is effectively connected with such permanent establishment. In such case, article 7 shall apply.

4. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest paid, having regard to the debt claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, this article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 12. ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State.

2. 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 and television films, or 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, or for information concerning industrial, commercial or scientific experience.

3. Paragraph 1 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, has a permanent establishment in the other Contracting State, in which the royalties arise, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case, article 7 shall apply.

4. Where, by reason of a special relationship between the payer and the beneficial owner 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 amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, this article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 13. CAPITAL GAINS

1. Gains from the alienation of immovable property referred to 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 independent personal services, including such gains from the alienation of such permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State. However, gains from the alienation of movable property referred to in article 21, paragraph 3, may be taxed only in the Contracting State in which such movable property is taxable according to the said article.

3. Gains from the alienation of any property other than that referred to in paragraphs 1 and 2 shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14. INDEPENDENT PERSONAL SERVICES

1. 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 Contracting 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 that fixed base.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational, teaching or sports activities, as well as the independent activities of physicians, lawyers, engineers, architects, dentists and tax experts.

Article 15. DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of articles 16, 17 and 18, salaries, wages and other similar remuneration derived by an individual who is 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, remuneration derived by an individual who is 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:

- (a) The remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- (b) The remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State, and
- (c) The recipient is present in the other State for a period not exceeding in the aggregate 183 days in the fiscal year concerned.

3. Notwithstanding the preceding provisions of this article, remuneration derived in respect of an employment exercised aboard a ship, aircraft or inland waterways boat operated in international traffic may be taxed in the Contracting State of which the person deriving profits from the operation of the ship, aircraft or boat is a resident.

Article 16. DIRECTORS' FEES

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a body corporate which is a resident of the other Contracting State may be taxed in that other State.

Article 17. PENSIONS

Subject to the provisions of article 18, paragraph 1, 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.

Article 18. GOVERNMENT SERVICE

1. Remuneration, including pensions, paid directly by, or out of special funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State, subdivision or authority in the discharge of functions of a governmental nature may be taxed in that State.

2. Articles 15, 16 and 17 shall apply to remuneration or pensions in respect of services rendered in connection with any trade or business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 19. STUDENTS AND BUSINESS APPRENTICES

Payments which a student or business apprentice who is or previously was 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.

Article 20. INCOME NOT EXPRESSLY MENTIONED

Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing articles shall be taxable only in that State.

Article 21. TAXATION OF FORTUNE

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

2. 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 independent personal services, may be taxed in the Contracting State in which the permanent establishment or fixed base is situated.

3. Ships, boats and aircraft operated in international traffic and movable property pertaining to the operation of such ships, boats and aircraft shall be taxable only in the Contracting State of which the person deriving profits from the operation of the ship, boat or aircraft is a resident.

4. All other elements of fortune of a resident of a Contracting State shall be taxable only in that State.

Article 22. AVOIDANCE OF DOUBLE TAXATION

1. Where a resident of a Contracting State derives income or owns fortune which, in accordance with this Convention, may be taxed in the other Contracting State, the first-mentioned State shall, subject to the provisions of paragraph 2, exempt such income or fortune from tax; the first-mentioned State may, however, in calculating the tax on the remaining income or fortune of that resident, apply the rate of tax which would have been applicable if the income or fortune in question had not been exempted from taxation.

2. Where a resident of a Contracting State derives items of income which, in accordance with the provisions of article 10, may be taxed in the other Contracting State, the first-mentioned State shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in the other Contracting State. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income derived from the other Contracting State.

Article 23. NON-DISCRIMINATION

1. 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 Contracting State in the same circumstances are or may be subjected.

2. The term "national" means:

- (a) All individuals possessing the nationality of a Contracting State;
- (b) All bodies corporate, partnerships and other associations which were established according to the law of 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 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.

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 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 the first-mentioned State are or may be subjected.

5. The term "taxation" used in this article means taxes of every kind and description.

6. It is stipulated that the taxation of Hungarian socialist economic organizations which differs from the foregoing is not contrary to the provisions of this article.

Article 24. 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 this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident.

2. The competent authority shall, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, endeavour 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 25. 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 one of the Contracting States 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 26. 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 27. 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.

Article 28. BEGINNING OF APPLICABILITY

The provisions of this Convention shall apply to all fiscal years which begin after 31 December of the year in which the instruments of ratification are exchanged.

Article 29. TERMINATION

This Convention shall remain in force until it is denounced by one of the Contracting States.

Either Contracting State may denounce the Convention in writing, through the diplomatic channel, giving notice six months before the end of the calendar year. In such event, the Convention shall not apply to fiscal periods which begin 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:

[LAJOS FALUVÉGI]

For the Republic of Austria:

[HANNES ANDROSCH]