

No. 20321

**FEDERAL REPUBLIC OF GERMANY
and
SWITZERLAND**

**Convention for the avoidance of double taxation in the field
of estate and inheritance taxes. Signed at Bonn on
30 November 1978**

Authentic text: German.

Registered by the Federal Republic of Germany on 7 August 1981.

**RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
et
SUISSE**

**Convention visant à éviter la double imposition en matière
d'impôts sur les successions. Signée à Bonn le 30 no-
vembre 1978**

Texte authentique : allemand.

Enregistrée par la République fédérale d'Allemagne le 7 août 1981.

[TRANSLATION — TRADUCTION]

CONVENTION¹ BETWEEN THE FEDERAL REPUBLIC OF GERMANY
AND THE SWISS CONFEDERATION FOR THE AVOIDANCE OF
DOUBLE TAXATION IN THE FIELD OF ESTATE AND INHERITANCE TAXES

The Federal Republic of Germany and the Swiss Confederation,
Desiring to conclude a Convention for the avoidance of double taxation in the
field of estate and inheritance taxes,
Have agreed as follows:

Article 1. 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. (1) This Convention shall apply, irrespective of the manner in which they are levied, to estate and inheritance taxes levied on behalf of one of the two Contracting States or of *Länder*, cantons, districts, *Kreise*, communes or association of communes, including additional taxes (*Zuschläge*).

(2) There shall be regarded as estate and inheritance taxes all taxes levied *mortis causa* as estate taxes, inheritance taxes, property transfer taxes or taxes on gifts made in contemplation of death.

(3) The existing taxes to which the Convention shall apply include:

- (a) In the Federal Republic of Germany: the inheritance tax;
- (b) In Switzerland: the inheritance taxes (legacy and estate taxes) levied by cantons, districts, *Kreise* and communes.

(4) The Convention shall also apply to all taxes on estates and inheritances which are levied in addition to, or in place of, the existing taxes after the signing of this Convention.

Article 3. (1) For the purposes of this Convention:

(a) The term “Federal Republic of Germany”, when used in a geographical sense, means the territory in which the Basic Law for the Federal Republic of Germany is in force, as well as any area adjacent to the territorial waters of the Federal Republic of Germany and designated as domestic area for the purposes of taxation law, in which the Federal Republic of Germany may, in accordance with international law, exercise its rights in respect of the sea-bed and the subsoil thereof, as well as of their natural resources;

(b) The term “Switzerland” means the Swiss Confederation;

(c) The terms “a Contracting State” and “the other Contracting State” mean, depending on the context, the Federal Republic of Germany or Switzerland;

(d) The term “nationals” means:

(aa) In respect of the Federal Republic of Germany: Germans within the meaning of article 116, paragraph 1, of the Basic Law of the Federal Republic of Germany

¹ Came into force on 28 September 1980, i.e., the thirtieth day following the day of the exchange of the instruments of ratification, which took place at Bern on 29 August 1980, in accordance with article 17 (2).

and bodies corporate, partnerships and other combinations of persons which have been established according to the law in force in the Federal Republic of Germany.

(bb) In respect of Switzerland: individuals who possess Swiss nationality and bodies corporate, partnerships and other combinations of persons which have been established in accordance with the law in force in Switzerland.

(e) The term “competent authority” means:

(aa) In the Federal Republic of Germany: the Federal Ministry of Finance;

(bb) In Switzerland: the Director of the Federal Tax Administration or his authorized representative.

(2) In the application of the Convention by a Contracting State, any term not defined in the Convention 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. (1) For the purposes of this Convention, the decedent was resident:

(a) In the Federal Republic of Germany if he was a domestic resident (*Inländer*) within the meaning of the inheritance tax law of the Federal Republic of Germany;

(b) In Switzerland if he had a domicile or permanent residence there within the meaning of the Swiss inheritance tax law or if the succession is to be opened there.

(2) If, in accordance with paragraph (1) above, a decedent was domiciled in both Contracting States, the following shall apply:

(a) The decedent shall be deemed to have been domiciled in the 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 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 State, he shall be deemed to have been domiciled in the State in which he was normally resident.

(c) If the decedent 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 the decedent was a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by agreement between them.

(3) Where a decedent was domiciled in Switzerland in accordance with paragraphs (1) and (2) above but, at the time of his death, had had a permanent home available to him in the Federal Republic of Germany for at least five years, the estate property may, irrespective of articles 5 to 8, paragraph (1), below, be taxed in accordance with the law of the Federal Republic of Germany. Taxation permitted in Switzerland in accordance with the Convention shall remain unaffected. Article 1, paragraph (10), below shall apply *mutatis mutandis*.

(4) If a decedent was domiciled in Switzerland at the time of his death and had previously had a permanent home available to him in the Federal Republic of Germany, the estate property may, irrespective of articles 5 to 8, paragraph (1) below, be taxed in accordance with the law of the Federal Republic of Germany if, during the last ten years before giving up his last home in the Federal Republic of Germany, the decedent had had such a home available to him for at least five years and his death took place during the year in which he had last had a home available to him or during the following five years. This provision shall not apply if the decedent

(a) Had established a domicile in Switzerland

(aa) Because he undertook a genuine employment in Switzerland but, apart from the employment relationship, had no economic interest in his employer either directly or indirectly through participation or in any other manner, or

(bb) Because he married a Swiss national or,

(b) At the time at which he last had a permanent home available to him in the Federal Republic of Germany, he was a Swiss national.

The taxation permissible under the Convention in Switzerland shall remain unaffected. Article 10, paragraph (1), below shall apply *mutatis mutandis*.

(5) A dwelling or premises which are used for purposes of convalescence, therapy, studies or sports and can be demonstrated to be used only occasionally shall not be deemed to be a permanent home within the meaning of this article.

Article 5. (1) Immovable property which a decedent who at the time of his death was domiciled in a Contracting State owned in the other Contracting State may be taxed in the said other Contracting State.

(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 agricultural 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 of 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) above shall also apply to the 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 6. (1) Property (with the exception of the property to be dealt with in accordance with articles 5 and 7) forming part of the business property of a permanent establishment which belongs to an enterprise and which a decedent, who at the time of his death was domiciled in one Contracting State, owned in the other Contracting State may be taxed in the said other Contracting State.

(2) The term “permanent establishment” means a fixed place of business in which the business of an 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, and
- (f) A mine, an oil or gas working, a quarry or any other place of extraction of natural resources.

(4) A construction site or assembly project shall be deemed to be a permanent establishment only if its duration exceeds 12 months.

(5) Irrespective of the foregoing provisions of this article, 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) Stocks of goods or merchandise belonging to the enterprise which are used solely for the purpose of storage, display or delivery;
- (c) Stocks of goods or merchandise belonging to the enterprise which are maintained solely for the purpose of processing or further processing by another enterprise;
- (d) A fixed place of business maintained solely for the purpose of purchasing goods and merchandise, or for collecting information, for the enterprise;
- (e) A fixed place of business maintained solely for the purpose of carrying on for the enterprise other activities which are of a preparatory nature or constitute auxiliary activities;
- (f) A fixed place of business maintained solely for the purpose of carrying on several of the activities referred to in subparagraphs (a) to (e) above, provided that the total activity of the fixed place of business resulting therefrom is of a preparatory nature or constitutes an auxiliary activity.

(6) Where a person — other than an agent of an independent status to whom paragraph (7) applies — acts on behalf of an enterprise and habitually exercises in a Contracting State the authority to conclude contracts on behalf of the enterprise, the enterprise shall, irrespective of paragraphs (2) and (3), be treated as if it had a permanent establishment in that State for all the activities carried on by the said person, unless those activities are limited to the activities referred to in paragraph (5), which, if they were carried on by a fixed place of business, would not cause that place of business to be considered a permanent establishment in accordance with the aforementioned paragraph.

(7) 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.

(8) Property (other than property which is to be treated in accordance with article 5) pertaining to a fixed base used for the performance of professional services or other independent activities of a similar character which a decedent, who at the time of his death was domiciled in a Contracting State, owned in the other Contracting State may be taxed in the said other State.

(9) This article shall also apply to participation in partnerships. It shall also extend to debt-claims of the partner against the partnership and to economic goods transferred by the partner to the partnership, provided that such items are counted as part of the operating property of the permanent establishment in accordance with the law of the Contracting State in which the permanent establishment is situated.

Article 7. Ships and aircraft operated in international traffic and boats engaged in inland waterways transport which are operated by an enterprise that belonged to a decedent domiciled at the time of his death in a Contracting State, and movable property pertaining to the operation of such ships, boats and aircraft, may be taxed in the other Contracting State if the place of effective management of the enterprise is situated in the said other State.

Article 8. (1) Property other than that which is to be treated in accordance with articles 5 to 7 shall be taxable only in the Contracting State in which the decedent was domiciled at the time of his death.

(2) Notwithstanding articles 5 to 7 and paragraph (1) of this article, estate property may be taxed in accordance with the law of the Federal Republic of Germany if, at the time of the decedent's death, the recipient had a permanent home available to him in the Federal Republic of Germany or was habitually resident there. The taxation permissible in Switzerland in accordance with this Convention shall remain unaffected. Article 4, paragraph (5), and article 10, paragraph (1), shall apply *mutatis mutandis*. The foregoing provisions shall not apply if at the time of the decedent's death he and the recipient were Swiss nationals.

Article 9. (1) Debts which are economically related to a specific item of property shall be deducted from the value of that item of property.

(2) Other debts shall be deducted from the value of property which may be taxed only in the Contracting State in which the decedent was domiciled. The said debts shall also be deducted in the Federal Republic of Germany in the application of article 4, paragraphs (3) and (4), and article 8, paragraph (2), if the decedent or the recipient was a domestic resident (*Inländer*) within the meaning of the inheritance tax law of the Federal Republic of Germany. If the decedent was not a domestic resident and the Federal Republic of Germany, in accordance with article 4, paragraph (4), taxes property which, under article 8, paragraph (1), is taxable only in Switzerland, the amount deducted from the value of the said property shall be that portion of the debts to be taken into account by Switzerland in accordance with this paragraph which corresponds to the ratio of that property, after a debt settlement in accordance with paragraph (3) has been taken into account, to the total gross amount of the property after deduction of the debts covered by paragraph (1).

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

(4) Where, after the deductions to be undertaken on the basis of the foregoing paragraphs, a residual debt remains, it shall be deducted from the value of the property taxable in the other Contracting State.

(5) The foregoing provisions concerning the deduction of debts shall also apply *mutatis mutandis* to deductions from legacies.

Article 10. (1) If at the time of his death the decedent was domiciled in the Federal Republic of Germany, double taxation shall be avoided as follows:

(a) In the case of immovable property, within the meaning of article 5, paragraph (2), which is situated in Switzerland, the Federal Republic of Germany shall exempt such property from taxation, if the decedent was a Swiss national at the time of his death. It may, however, in the determination of the taxes in re-

spect of the property for which it retains the right of taxation, apply the tax rate which would be applicable if the immovable property had not been exempted from taxation.

(b) Where subparagraph (a) is not applicable, the Federal Republic of Germany shall, in accordance with the provisions of German law on the taking into account of foreign taxes as part of the taxes established under its own law, take into account the taxes paid in Switzerland in respect of property which is taxable in Switzerland in accordance with the Convention. The amount to be taken into account may not, however, exceed the amount of the tax calculated before the said taking into account which is levied on the property taxable in Switzerland.

(2) If at the time of his death the decedent was domiciled in Switzerland, double taxation shall be avoided as follows: Switzerland shall exempt from taxation the property which is taxable in the Federal Republic of Germany in accordance with articles 5, 6 and 7. It may, however, in the determination of the taxes in respect of the property for which it retains the right of taxation, apply the tax rate which would have been applicable if the property in question had not been exempt from taxation.

Article 11. (1) Nationals of a Contracting State may not be subjected in the other Contracting State either to taxation or to an obligation relating thereto which is other or more burdensome than the taxation and the obligations relating thereto to which nationals of the other State are or may be subjected under similar circumstances.

(2) The taxation of a permanent establishment which an enterprise of one Contracting State has in the other Contracting State may not be less favourable in the other State than the taxation of enterprises of the said other State which engage in the same activity. This provision shall not be so interpreted as to require a Contracting State to grant to persons resident in the other Contracting State such tax-free amounts, tax preferences and tax reliefs on the ground of personal status or family burdens as it grants to persons resident in its own territory.

(3) Those enterprises of a Contracting State whose capital is owned in whole or in part, directly or indirectly, by a person or persons resident in the other Contracting State or is subject to their control may not be subjected in the first-mentioned Contracting State either to taxation or to an obligation related thereto which is other or more burdensome than the taxation and the obligations related thereto to which other similar enterprises of the first-mentioned State are or may be subjected.

(4) In this article the term "taxation" means taxes of any character or description.

Article 12. (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 domestic law of those States, present his case to the competent authority of one of the two States.

(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 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 agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together to consider how double

taxation may be avoided in cases not provided for in the Convention. This provision shall also apply to the taxation of gifts and donations *inter vivos*.

(4) The competent authorities of the Contracting States may communicate with each other direct, for the purpose of reaching agreement, in the sense of the preceding paragraphs. 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.

Article 13. (1) The competent authorities of the Contracting States may, upon request, exchange such information (available under the tax legislation of the two States as a part of normal administrative practice) as is necessary for the proper implementation of this Convention. Any information so exchanged shall be kept secret and not be made available to anyone who is not concerned with the levying or collection of, or with any legislation or criminal prosecution relating to, the taxes covered by this Convention. Information which would reveal any commercial, banking, industrial or professional secret or business process may not be exchanged.

(2) The provisions of this article may in no case be so interpreted as to require either Contracting State to implement administrative measures which would be contrary to its own legislation or to its administrative practice or which would run counter to its sovereignty, its security, its general interests or *ordre public*, or to transmit data which cannot be obtained on the ground of its own legislation and on the ground of the legislation of the requesting State.

Article 14. This Convention shall not affect the special rights in taxation matters which are granted to the members of the diplomatic mission or consular post or to their dependants according to the general rules of international law or by reason of special agreements. In so far as an estate or inheritance tax cannot be levied in the host country by reason of such special rights, the right of taxation shall belong to the sending State.

Article 15. Upon the entry into force of this Convention, the Convention of 15 July 1931 between the German Reich and the Swiss Confederation for the prevention of double taxation in the matter of direct taxes and succession duties, in the wording in force at the time, shall cease to have effect. It shall no longer be applied to estates to which this Convention is applicable in accordance with article 17, paragraph (2).

Article 16. This Convention shall also apply to *Land Berlin* provided that the Government of the Federal Republic of Germany does not make a contrary declaration to the Swiss Federal Council within three months after the entry into force of this Convention.

Article 17. (1) This Convention is subject to ratification; the instruments of ratification shall be exchanged at Berne as soon as possible.

(2) The Convention shall enter into force on the thirtieth day after the date of the exchange of the instruments of ratification. Its provisions shall be applied to the estates of persons who die on or after that date.

Article 18. This Convention shall remain in force for such time as it is not denounced by one of the Contracting States. Either Contracting State may denounce the Convention through the diplomatic channel, upon a notice of at least six months

before the end of a calendar year, not earlier than the end of the year 1983. In such case the Convention shall no longer be applied to the estates of persons who die after the expiry of the calendar year by the end of which the Convention has been denounced.

DONE at Bonn on 30 November 1978, in duplicate in the German language.

For the Federal Republic of Germany:

GÜNTHER VAN WELL

ROLF BÖHME

For the Swiss Confederation:

M. GELZER
