

No. 23173

**SWEDEN
and
AUSTRIA**

**Agreement for the avoidance of double taxation with
respect to death duties. Signed at Vienna on 21 November
1962**

Authentic texts: Swedish and German.

Registered by Sweden on 11 December 1984.

**SUÈDE
et
AUTRICHE**

**Convention tendant à éviter la double imposition en matière
d'impôts sur les successions. Signée à Vienne le 21 no-
vembre 1962**

Textes authentiques : suédois et allemand.

Enregistrée par la Suède le 11 décembre 1984.

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN SWEDEN AND AUSTRIA FOR THE
AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO
DEATH DUTIES

His Majesty the King of Sweden and the Federal President of the Republic of Austria, desiring to avoid so far as possible double taxation with respect to death duties, have agreed to conclude an Agreement.

For that purpose they have appointed as their plenipotentiaries:

His Majesty the King of Sweden: Mr. Sven Allard, His Majesty's Ambassador Extraordinary and Plenipotentiary at Vienna;

The Federal President of the Republic of Austria: Dr. Josef Stangelberger, Director-General, and Dr. Otto Watzke, Director of the Federal Ministry of Finance.

The plenipotentiaries, having exchanged their full powers, found in good and due form, have agreed as follows:

Article 1. This Agreement shall apply to estates of persons who at the time of their death were domiciled in one or both of the two States or were nationals of one or both of the two States.

Article 2. 1. This Agreement shall apply to death duties levied on behalf of the two States or their Länder, communes or associations of communes, irrespective of the manner in which such duties are levied.

2. The following shall be regarded as death duties: all taxes which are levied *mortis causa* on the whole estate, on parts of the estate which accrue to heirs or on the transfer of property, and all taxes which are levied on gifts in the event of death.

3. The taxes to which this Agreement applies include in particular, at the present time, the following:

- (a) In Austria: the succession and gift tax (*Erbschafts- und Schenkungssteuer*), in so far as such tax is payable on acquisitions *mortis causa* or on grants for specific purposes or subject to specific obligations *mortis causa*.
- (b) In Sweden: the succession and gift tax (*arvs- och gåvoskatten*), in so far as such tax is payable on acquisitions *mortis causa*.

4. This Agreement shall also apply to any taxes of the same or of a like nature which may in the future be levied in addition to or instead of the existing taxes. The chief financial authorities of the two States shall inform each other at the end of each year of any changes in their fiscal laws.

Article 3. 1. An individual shall be deemed to be domiciled in the State in which he has a permanent home. If he has a permanent home in both States, he shall be deemed to be domiciled in the State with which he has the closer personal and economic ties (centre of vital interests).

¹ Came into force on 10 June 1963 by the exchange of the instruments of ratification, which took place at Stockholm, in accordance with article 13 (2).

2. If it cannot be determined in which State the individual has the centre of his vital interests or if he has no permanent home in either State, he shall be deemed to be domiciled in the State in which he regularly resides.

3. If the individual regularly resides in both or in neither of the States, he shall be deemed to be domiciled in the State of which he is a national.

Article 4. 1. Immovable estate (including accessories thereto and livestock and equipment used in agricultural or forestry enterprises) situated in one of the two States shall be taxable only in that State. Rights which are subject to the provisions of private laws relating to real property shall be deemed to be equivalent to immovable property.

2. Paragraph 1 shall also apply where the property referred to belongs to a business enterprise (article 5).

3. The question what shall be deemed to constitute immovable property or accessories thereto and what shall be deemed to constitute a right equivalent to immovable property shall be decided in accordance with the law of the State in which the property concerned or the property to which the right in question relates is situated.

Article 5. 1. In the case of an estate which is used in a business enterprise in one of the two States, the following shall apply:

(a) If the enterprise has a permanent establishment in only one of the two States, such property shall be taxed only in that State.

(b) If the enterprise has permanent establishments in both States, the property shall be taxed in each State only in so far as it is by the permanent establishment situated in that State.

2. The term "permanent establishment" shall be construed in accordance with the provisions of the Agreement concluded between the two States on 14 May 1959 for the avoidance of double taxation with respect to taxes on income and fortune.¹

3. Paragraph 1 shall also be applicable to participations in partnerships (*handelsbolag, kommanditbolag enkelt bolag, partrederi, gruvbolag*) and other associations which do not constitute bodies corporate under the relevant national legislation; however, it shall be applicable to participation in an enterprise as a silent partner only where the investment involves participation in the property of the enterprise.

Article 6. Estates not covered by the provisions of article 4 or article 5 shall be taxed only in the State in which the deceased was domiciled within the meaning of article 3, at the time of his death.

Article 7. 1. Debts economically related to or secured by the parts of a deceased person's estate referred to in articles 4 or 5 shall be charged first against such property.

2. Debts other than those referred to in the preceding paragraph shall be charged first against the property covered by the provisions of article 6.

3. Where, after the debts have been charged as prescribed in the two preceding paragraphs, there remains an outstanding balance, such balance shall be deducted from the value of any other property liable to death duties in the same State. If there is no other property liable to death duties in that State or if after such deduction there

¹ United Nations, *Treaty Series*, vol. 428, p. 3.

still remains a balance, the balance shall be charged against the property liable to death duties in the other State.

4. Notwithstanding the foregoing provisions, debts shall be charged against entailed estates only in so far as they encumber or are secured by the latter.

Article 8. This Agreement shall not affect the right of either State to tax such parts of an estate as remain taxable by that State at the rate which would apply if the whole estate were taxable in accordance with the law of that State.

Article 9. This Agreement shall not affect claims to any additional exemptions to which the members of diplomatic or consular missions may be entitled under the general rules of international law or by virtue of special agreements. Where, owing to such additional exemptions, an estate is not taxed in the receiving State, the right of taxation shall be reserved to the sending State.

Article 10. 1. Any taxpayer who believes that the action of one or both of the two States is resulting or will result in his case in taxation contrary to this Agreement shall be entitled, without prejudice to such legal remedies as may be open to him in the two States, to submit his case to the chief financial authority of the State in which he is deemed to be domiciled, within the meaning of article 3, or to the chief financial authority of the State in which the deceased was domiciled at the time of his death.

2. If the chief financial authority considers the claim justified and is not itself in a position to bring about a satisfactory solution, it shall endeavour, in agreement with the chief financial authority of the other State, to settle the case in such a way that taxation contrary to this Agreement is avoided.

3. The chief financial authorities of the two States shall endeavour to settle by arrangement between themselves any difficulties or doubts which may arise in the interpretation or application of this Agreement. They may also consult together with a view to the avoidance of double taxation in cases not provided for in this Agreement.

4. The chief financial authorities of the two States may communicate directly with each other for the purpose of arriving at an arrangement within the meaning of the preceding paragraph. If it appears that agreement would be facilitated by an oral exchange of views, such exchange of views may take place in a commission composed of representatives of the chief financial authorities of the two States.

Article 11. 1. The chief financial authorities of the two States shall exchange such information as is necessary for carrying out this Agreement or for preventing tax evasion. The chief financial authorities shall not, however, be required to provide information which cannot be given on the basis of data at the disposal of the financial authorities but would necessitate special inquiries. Information communicated to the chief financial authorities in accordance with this article shall be treated as secret, but may be disclosed to persons and authorities (including, in Sweden, the courts) which are statutorily concerned with the assessment or collection of the taxes which are the subject of this Agreement. Such persons and authorities shall be under the same duty as the chief financial authorities.

2. Paragraph 1 shall in no case be so construed as to impose upon either State the obligation:

- (a) To take administrative action at variance with its legislation or its administrative practice;
 - (b) To supply particulars which are not obtainable under the legislation of either State.
3. No information which would disclose a business or professional secret may be given.

Article 12. 1. In the application of this Agreement by either of the two States, any term not defined in this Agreement shall, unless the context otherwise requires, have the meaning which it has under the laws of that State relating to the taxes which are the subject of the Agreement.

2. The chief financial authorities referred to in this Agreement are, in the case of the Republic of Austria, the Federal Ministry of Finance and, in the case of the Kingdom of Sweden, the Ministry of Finance or the authority delegated to deal in its stead with questions relating to this Agreement.

Article 13. 1. This Agreement shall be ratified, in the case of Austria, by the Federal President of the Republic of Austria and, in the case of Sweden, by His Majesty the King of Sweden with the consent of the Riksdag. The instruments of ratification shall be exchanged at Stockholm as soon as possible.

2. This Agreement shall enter into force upon the exchange of the instruments of ratification and shall apply to all cases where the decedent died after that date.

3. This Agreement shall remain in force until notice of its termination is given by one of the two States. If such notice is given not less than six months before the end of a calendar year, the Agreement shall cease to have effect on 1 January of the following year. It shall therefore continue to apply to cases where the decedent died before that date.

IN WITNESS WHEREOF the plenipotentiaries of the two States have signed this Agreement and have thereto affixed their seals.

DONE at Vienna, on 21 November 1962, in duplicate in the Swedish and German languages, both texts being equally authentic.

SVEN ALLARD
Dr. JOSEF STANGELBERGER
Dr. OTTO WATZKE
