

No. 26159

**AUSTRIA
and
FEDERAL REPUBLIC OF GERMANY**

Agreement for the avoidance of double taxation with respect to taxes on income and fortune, and to business taxes and land taxes (with final protocol). Signed at Bonn on 4 October 1954

Authentic text: German.

Registered by Austria on 16 September 1988.

**AUTRICHE
et
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE**

Convention tendant à éviter les doubles impositions en matière d'impôts sur le revenu et sur la fortune, de contributions des patentes et d'impôts fonciers (avec protocole final). Signée à Bonn le 4 octobre 1954

Texte authentique : allemand.

Enregistrée par l'Autriche le 16 septembre 1988.

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE REPUBLIC OF AUSTRIA AND THE FEDERAL REPUBLIC OF GERMANY FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND FORTUNE AND TO BUSINESS TAXES AND LAND TAXES

The Republic of Austria and the Federal Republic of Germany, desiring to conclude an Agreement with respect to taxes on income and fortune and to business taxes and land taxes, have agreed to conclude the following Agreement. For that purpose they have appointed as their plenipotentiaries:

The Federal President of the Republic of Austria:

Sektionschef Dr. J. Stangelberger and
Ministerialrat Dr. O. Watzke
of the Federal Ministry of Finance,

The President of the Federal Republic of Germany:

Ministerialdirektor of the Federal Ministry of Finance W. Mersmann.

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

Article 1

(1) The purposes of this Agreement shall be to prevent individuals and bodies corporate, domiciled in one or both of the Contracting States, from being called upon to pay double taxation (including surtaxes) which should be avoided under the laws of the two Contracting States, or levied directly on income or fortune or business or land on behalf of the Contracting States or of their *Länder*, communes or associations of communes.

(2) For the purposes of this Agreement, an individual shall be deemed to be domiciled in the Contracting State in which he possesses a dwelling in circumstances such as to justify the presumption that he will retain and use such dwelling. Where an individual does not possess a dwelling in either of the Contracting States, such habitual residence shall be deemed to be his domicile.

(3) For the purposes of this Agreement, a body corporate shall be deemed to be domiciled where its place of business management is situated; if it has no such place in either Contracting State, it shall situate its business management in its head office.

Article 2

(1) The following shall be regarded as taxes within the meaning of this Agreement:

¹ Came into force on 7 September 1955 by the exchange of the instruments of ratification, which took place at Vienna, in accordance with article 24.

1. In the Federal Republic of Germany:

- (a) The income tax;
- (b) The corporation tax;
- (c) The Berlin emergency contribution;
- (d) The tax on fortune;
- (e) The business tax;
- (f) The land tax;

2. In the Republic of Austria:

- (a) The income tax;
- (b) The corporation tax;
- (c) The tax on fortune;
- (d) The contribution from income for the promotion of residential building and for the equalization of family burdens;
- (e) The tax on directors' fees;
- (f) The business tax;
- (g) The land tax.

(2) This Agreement shall also apply to any other taxes of the same or of like nature introduced in either of the Contracting States after its signature.

(3) The chief financial authorities of the Contracting States shall brief each other on the introduction of new taxes, on important changes or on the termination of current taxes which are affected by this Agreement.

Article 3

(1) Where a person domiciled in one of the Contracting States derives income from real property (including appurtenances) which is situated in the other State, the said income shall be taxable by the latter State.

(2) The provisions of paragraph (1) shall apply both to income derived from the direct use of immovable property (including agricultural and subsidiary forest enterprises), in particular fixed or variable compensation for the use of real property and from the alienation of immovable property.

(3) Where a person domiciled in one of the Contracting States derives income from claims secured by mortgages or other liens on real property situated in the other State, the said income shall be taxable by the latter State.

(4) The assets of the enterprise shall also belong to the immovable property.

Article 4

(1) Where a person domiciled in one of the Contracting States derives income, as owner or partner, from a business enterprise whose activities extend to the territory of the other State, the said income shall be taxable by the latter State only in so far as it is attributable to a permanent establishment of the enterprise which is situated in its territory.

(2) In this connection, the income to be attributed to a permanent establishment shall be that which would have accrued to it if it had been an independent enterprise engaged in the same or similar activities under the same or similar conditions and had carried on its activities as an independent enterprise.

(3) For the purposes of this Agreement, the term “permanent establishment” means a fixed place of business in which an enterprise carries on all or part of its activities.

(4) The provisions of paragraph (1) shall apply both to income derived from the direct administration and use of the business enterprise and to income derived from the lease or use in any other form thereof; they shall also apply to income derived from the alienation of an entire business, of a part of a business, of a share in the enterprise or of an object used in the business.

Article 5

(1) Where an enterprise of one of the Contracting States, by virtue of its participation in the management or financial structure of an enterprise of the other State, arranges with or imposes upon that enterprise economic or financial conditions differing from those which would be arranged with an independent enterprise, any income which would normally have accrued to one of the two enterprises but which by reason of those conditions has not so accrued may be included in the income of that enterprise and taxed accordingly.

(2) The provisions of paragraph (1) shall apply as appropriate to the relationship between two enterprises in whose management or assets one and the same person participates directly or indirectly.

Article 6

(1) Where a person domiciled in one of the Contracting States derives income from the operation of an enterprise of maritime shipping, inland shipping or aircraft services which has its place of actual management in one of the Contracting States, the said income directly connected with the operation of maritime transport, inland shipping or aircraft services shall be taxable only by the State of the place of management, even if there is a permanent establishment of the enterprise in the other State.

(2) The corresponding provision shall apply to railway enterprises of one of the two States which extend their operation into the territory of the other State. However, rail-connected stretches, situated in the other States each exceeding the standard length of 15 kilometres, shall be accepted.

Article 7

(1) Where a person domiciled in one of the Contracting States derives income from the alienation of a substantial participation in a corporation which has its place of actual management in the other State, the said income shall be taxable by the State in which the enterprise is situated.

(2) The provisions of paragraph 1 shall not apply where a person domiciled in one of the Contracting States has a permanent establishment in the other State and derives income from the said establishment. In such a case, the said income shall be taxable by the other State (article 4).

Article 8

(1) Where a person domiciled in one of the Contracting States derives income from self-employment being, or having been, carried out in the other State, then said income shall be taxable by the other State. Income from professions shall be deemed to include, self-employment in particular.

(2) A person shall not be considered to be a professional in the other State unless in the exercise of his occupation he makes use of permanent facilities regularly available to him there. This restriction shall not, however, apply to self-employment, e.g. for artists, performers, athletes or artistes.

(3) The provisions of article 4, paragraph (4), shall apply as appropriate.

(4) Where an individual domiciled in one of the Contracting States receives from a body corporate domiciled in the other State fees as a member of a board of directors or board of management or as a non-managing member of the governing body or of a similar institution, the said fees shall be taxable by the other State.

Article 9

(1) Where an individual domiciled in one of the Contracting States derives income from present or past employment in the other State, the said income shall be taxable by the latter State unless the provisions of article 10 otherwise apply.

(2) The provisions of paragraph (1) shall not apply where:

1. The individual is present in the other State only temporarily for not more than 183 days in one calendar year, and

2. The remuneration for his work is not charged against an employee domiciled in the same State as that of the said individual, and

3. Does not work for a permanent establishment of the employer in the other State.

(3) The provisions of paragraph (1) shall not apply any further, where the individual

1. Is domiciled in one State close to the frontier and has his place of employment close to the frontier in the other State and

2. Goes daily to and from between his place of work and his domicile (as a frontier commuter).

(4) Where an individual domiciled in one of the Contracting States receives half-pay, a retirement pension, a widow's or orphan's pension, and other emoluments or any similar recurrent payments or benefits in money's worth in respect of past services, which are granted by persons other than those specified in article 10, the income in question shall be taxable by the State in which the recipient is domiciled.

Article 10

(1) Where a person domiciled in one of the Contracting States receives income from wages, salaries and similar remuneration or a retirement, pension, widow's or orphan's pension paid by the other State or by *Länder*, communes, associations of communes and other public corporations of the other State for present or past services, the said income shall be taxable by the other State.

(2) The foregoing shall apply also to emoluments which are paid

1. By the statutory social insurance scheme;

2. Pursuant to statutory regulations from public funds to provide for war-disabled, dependent war veterans and persons of the same status;

3. Pursuant to statutory regulations from public funds for victims of political prosecution.

Article 11

(1) Where a person domiciled in one of the Contracting States receives income from personal property, the said income shall be taxable by the other State of domicile notwithstanding article 3, paragraph (3).

(2) Insofar as the tax on domestic capital income is collected at the source, the right to levy the tax in advance shall not be affected pursuant to paragraph 1. The tax collected at source on interest for bonds other than convertible and profit-sharing bonds shall be returned on request.

(3) Insofar as the tax collected at the source by the other State is not collected pursuant to paragraph 2 is not returned and insofar as the income according to paragraph 1 is also taxed in the State of residence, the tax collected at source by request of the creditor of the State of residence shall be charged to the tax thereof for such income.

(4) Paragraphs 1 to 3 shall not apply where a person domiciled in one of the Contracting States has a permanent establishment in the other State and the income shall be obtained through the permanent establishment. In this case the said income shall be taxable by the other State (article 4).

Article 12

(1) Where a person domiciled in one of the Contracting States derives from the other State income from royalties and other remuneration paid as consideration for the use of, or for the right to use, copyrights, patents, registered designs, manufacturing processes, trademarks or similar rights (other than rights pertaining to the exploitation of natural resources), the said income shall be taxable by the other State.

(2) Rentals and like payments in respect of the hire of cinematograph films (including films used for television broadcasts) or for the use of industrial, commercial or scientific equipment or industrial information shall be treated as royalties.

(3) The provisions of paragraphs (1) and (2) shall not apply where a person domiciled in one of the Contracting States has a permanent establishment in the other State and realizes the interest through such establishment. In this case the said interest shall be taxable by the other State (article 4).

Article 13

(1) Where a person domiciled in one of the Contracting States receives income, the right to impose tax on which it is not regulated in the preceding articles, the said income shall be taxable by that State.

(2) A student, business or other apprentice or unsalaried trainee from one of the Contracting States who is present in the other State for the sole purpose of study

or training shall not be taxed by the latter State in respect of sums which he receives from outside that State for his maintenance, study or training.

Article 14

(1) Where the property of a person domiciled in one of the Contracting States consists of:

- (a) Immovable property (including accessories thereto),
- (b) Claims secured by liens on immovable property,
- (c) Business enterprises including maritime transport, inland shipping, aircraft services and railway enterprises,
- (d) Property used for practising a profession,

In one of the Contracting States, the said property shall be taxable by the State which is entitled to tax the income derived therefrom.

(2) Other property belonging to a person domiciled in one of the Contracting States shall be taxable by the State of domicile.

Article 15

(1) The State of domicile shall have no right to tax if, in the foregoing articles, such right has been assigned to the other State.

(2) Where, pursuant to the foregoing articles, the State of domicile has the right to tax, the other Contracting State shall not exercise such right. Article 11, paragraph (2) and article 12, paragraph (1), second sentence, shall remain unaffected.

(3) Paragraph (1) shall not preclude the State of domicile from raising taxes on the income and properties left thereto for taxing at the rate corresponding to the total income and total property of the taxable person.

Article 16

Should an individual or body corporate have a domicile in each of the Contracting States, then, insofar as the right to tax is determined by the domicile, the rule shall be to decide on the domicile which has the closest personal and economic relations (the centre of vital interests). If this is not established, the chief financial authorities of the Contracting States shall come to an understanding in accordance with article 21.

Article 17

(1) The following special provisions shall apply to the diplomatic, consular and representatives of each of the Contracting States:

The representatives, in their capacity as officials, shall be taxable in the receiving State within the meaning of this Agreement in respect of the incomes specified in articles 3, 4, 6 and 7 and the property listed in article 14, paragraph (1), or to the extent that the tax is levied by withholding. The foregoing shall apply to the representatives appointed as officials and to natural persons in their service and in the service of their officials.

(2) Paragraph 1 shall apply, so long as the said persons are members of the sending State and outside their office or service in the receiving State and do not exercise any profession, trade or any other not only occasional gainful activity.

(3) Paragraphs 1 and 2 shall not apply to honorary consuls. Honorary consuls who possess only the nationality of the sending State shall, with their official emoluments which they enjoy as remuneration for their work as consuls, not be taxed on income in the receiving State.

(4) Where, pursuant to this article, income and property are not taxed in the receiving State, the right of taxation shall be reserved to the sending State.

Article 18

The provisions of article 17, paragraphs 1, 2 and 4, shall apply appropriately to persons assigned to the customs and railway administrations or in the service of the frontier police who are stationed in a post of their administration in the other State and therefore live there, as well as for their relations living in marital cohabitation and domestic servants, insofar as the said persons are citizens of the sending State.

Article 19

(1) Where a person domiciled in one of the Contracting States shows proof that the action of the taxation authorities of the Contracting States has resulted in his case in double taxation contrary to the principles of this Agreement, he shall be entitled, without prejudice, to such legal remedies as may be open to him under national law, to apply to the chief financial authority of the State in which he is domiciled.

(2) If the application is allowed, the authority competent under paragraph (1) shall endeavour to come to an agreement with the highest authority of the other State with a view to the avoidance of double taxation.

Article 20

The chief financial authorities of the Contracting States shall exchange such information which, under the tax laws of the two Contracting States, may be required and which are necessary for carrying out this Agreement, especially to prevent tax evasion. Information communicated shall be treated as secret and may be disclosed to persons who are statutorily concerned with the extension and correction of the taxes which are the subject of this Agreement.

Article 21

(1) The chief financial authorities of the Contracting States may, in dealing with questions arising from this Agreement, exchange directly with each other.

(2) In order to eliminate difficulties and doubts which may arise in interpreting or applying this Agreement and to avoid cases of hardship and double taxation which are not regulated in this Agreement, the chief financial authorities shall reach mutual agreement prior to enacting implementing regulations in the Contracting States.

Article 22

This Agreement shall apply also to *Land Berlin* unless the Government of the Federal Republic of Germany issues a declaration to the contrary to the Republic of Austria within three months after entry into force of the Agreement.

Article 23

(1) This Agreement shall first apply to the taxes which have been levied from the period of 1 January 1955 onwards.

(2) The Treaty of 23 May 1922 between the German Reich and the Republic of Austria for the equal distribution of taxes at home and abroad, and in particular for the prevention of double taxation in the field of direct taxation,¹ and the supplementary Agreement to the said Treaty of 11 September 1937 henceforth to be applied to taxes which were levied for the period until 31 December 1954.

Article 24

This Agreement shall be ratified and the instruments of ratification shall be exchanged as soon as possible in Vienna. The Agreement shall enter into force on the day of the exchange of the instruments of ratification and shall remain in force so long as it has not been terminated by one of the Contracting States. If the Agreement is terminated for at least three months before the end of a calendar year, it shall cease to have effect on the first day of January of the next year or otherwise on the first day of January of the second following year.

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

DONE at Bonn, in duplicate on 4 October 1954.

For the Republic of Austria:

Dr. J. STANGELBERGER

Dr. O. WATZKE

For the Federal Republic of Germany:

W. MERSMANN

¹ League of Nations, *Treaty Series*, vol. XXVI, p. 405.

FINAL PROTOCOL

Today, on the occasion of signing the Agreement between the Republic of Austria and the Federal Republic of Germany for the avoidance of double taxation with respect to taxes on income and fortune and to business taxes and land taxes, the signatory plenipotentiaries have submitted the following agreed declaration which shall constitute an integral part of the Agreement:

Ad article 1

1. For the purposes of this Agreement the term "person" shall include both individuals and bodies corporate. Bodies corporate shall be deemed to include any associations or any assets which are subject to taxation as bodies corporate.

2. For the purposes of this Agreement, anyone who has normal residence wherein he stays in circumstances which indicate that he is not staying only temporarily in this country.

Ad article 2

3. For the purposes of this Agreement, the chief financial authorities shall be the Federal Minister of Finance in the Federal Republic of Germany and the Federal Ministry of Finance in the Republic of Austria.

4. The chief financial authorities of both Contracting States shall reach agreement if doubts arise as to which future taxes the Agreement applies. The Contracting States shall concur that the Agreement shall not extend to non-recurrent taxes on fortune or increased fortune.

Ad article 3

5. Article 3 shall apply also to laws which shall be subject to civil law provisions of the Contracting States concerning real property.

6. The Contracting States shall concur that income derived from the direct use of immovable property shall include income from the direct use of agricultural and subsidiary forest enterprises, and speculative profits derived from the direct use of immovable property are to be understood. Recurrent emoluments based on the alienation of immovable property but are taxable only pursuant to the resultant annuity formula shall not be subject to this provision.

7. Paragraph 3 shall apply to claims which are directly secured by liens on real property. Bonds shall also then not be applicable to such claims if they are secured by immovable property. Mortgages and other liens shall be valid as rights *in rem*.

Ad article 4

8. The following shall be permanent establishments: offices, factories, workshops, warehouses, mines, quarries or other places for exploiting land, permanent sales exhibitions; including constructions, installations and the like, which have lasted more than 12 months or are likely to last that period, and other permanent business establishments.

9. Regardless of the provisions in item 10 below, the following shall not count as permanent establishments:

- (a) The occasional or time-limited use of mere job lots;
- (b) Mere maintenance of a stock-room, even in a warehouse, for purposes of delivery but not of display;

(c) Mere maintenance of a permanent business establishment exclusively for purchasing goods and commodities.

10. Permanent agencies shall be considered as permanent establishments, where

(a) The representative or employee has a comprehensive authority to negotiate and conclude agreement for an enterprise and also exercises such authority usually in the other State, or

(b) A representative or employee has at his disposal a stock-room from which he regularly executes orders for the enterprise, or

(c) A commission agent, broker or another independent representative, over and above the scope of his normal business activities, carries out business relations in one of the Contracting States for an operation of the other State.

11. The fact that a company resident in one of the Contracting States owns a subsidiary company which is a resident in the other State or maintains business relations shall not imply that the subsidiary company belongs to the permanent establishment of its parent company.

12. The income derived from the activities of a permanent establishment shall as a general rule be determined from the balance-sheet of the permanent establishment. In this connection, account shall be taken of all expenditure that is attributable to the permanent establishment, including business management and general administrative expenses of the enterprise, but excluding interest or royalties.

13. In special cases, the income may be determined by allocating the income, in accordance with article 4, paragraph (2), by dividing up the total profits of the enterprise. For insurance enterprises, the coefficient applied in such cases may be the ratio between the gross premium receipts of the permanent establishment and the total gross premium receipts of the enterprise. The financial authorities of the Contracting States shall reach agreement as soon as possible where such agreement is necessary for the allocation of income in any particular case.

14. The right of taxation for the business tax levied in respect of total wages and salaries shall be that of the State which is entitled to levy the tax on income.

Ad articles 4, 6 and 11

15. A silent partner shall be treated as an entrepreneur if he is bound by his contribution to a participation in the assets of the enterprise. If this is not the case, the income from the participation as a silent partner shall be treated as income from personal property (article 11).

16. Shares, mining shares, investment certificates and other securities from investments in cooperatives and limited liability companies shall not be treated as income from a business enterprise but as income from personal property (article 11).

Ad article 6

17. The provisions of article 6 shall apply also where chartered vehicles are operated. The same shall apply to agencies where the agency operation is directly connected with the operation or with the commuter service.

18. The provisions of article 6 shall apply also for participation of aircraft enterprises in a pool of an operating company.

Ad article 7

19. A substantial participation shall be given if the transferor alone or with his relatives had a share of over one quarter indirectly or directly within the last five years in the corporation.

Ad article 8

20. The activities shall consist of the following in particular: science, arts, writing, teaching and education; the professions of doctors, lawyers and notaries, engineers, architects, commercial chemists, dentists, surveyors, chartered accountants, tax consultants, commercial book specialists and the like.

21. Paragraph 4 shall apply only to fees which are paid for supervisory occupations. Fees for other occupations shall be covered in article 9 or article 10.

Ad article 9

22. The following shall be income from employment: salaries, payments, wages, percentages of profits, bonuses or other emoluments, advantages and compensation in money's worth of individuals in private service other than those specified in article 10.

23. Where a partnership consists of the employer, the management shall be deemed to be his place of residence for the purposes of article 9, paragraph 2, subparagraph 2.

24. The term close to the frontier shall be deemed to mean situated in a zone of 30 kilometres on both sides of the frontier.

25. The provisions of article 9, paragraph (1), shall not apply to students who, against payment in an enterprise in the other State, are employed for not more than 183 days in the course of one calendar year in order to receive the necessary practical training.

Ad article 10

26. For the purposes of article 10, paragraph (2), subparagraph 3, remuneration shall be as follows:

- (a) In the Federal Republic of Germany, periodical payments, compensatory awards and payments for therapy shall be granted, pursuant to statutory provisions, for righting the national-socialist illegality, for damage to life, the body, and health and for deprivation of liberty;
- (b) In the Republic of Austria, annuities shall be paid, pursuant to special statutory provisions, for the sacrifices suffered in the fight for a free democratic Austria, and compensation shall be given for detention suffered and court costs owing to political disciplinary measures in the public service.

Ad article 11

27. As evidence of the tax levied at source by the other State it shall be sufficient to present a statement of account in the place where the capital income was paid.

Ad article 17

28. Article 17 shall not affect the claim for some more extensive privileges to which diplomatic and consular officials are entitled under the general rules of international law or special agreements. On the basis of some more extensive privileges,

so long as income and property are not taxed in the receiving State, the taxation shall remain entitled to the sending State.

Ad article 23

29. Single capital or growth-of-capital taxes shall also be included under article 23, paragraph (2).

DONE at Bonn, in duplicate on 4 October 1954.

For the Republic of Austria:

Dr. J. STANGELBERGER

Dr. O. WATZKE

For the Federal Republic of Germany:

W. MERSMANN
