No. 5901

DENMARK
and
FRANCE

Exchange of notes (with annex) constituting an agreement concerning exemption from tax on royalties in respect of the utilization in France of Danish inventions. Paris, 3 August and 17 September 1959

Official text: French.

Registered by Denmark on 5 October 1961.

DANEMARK
et
FRANCE

Échange de notes (avec annexe) constituant un accord concernant l'exonération de taxes sur les redevances pour l'exploitation d'inventions danoises en France. Paris, 3 août et 17 septembre 1959

Texte officiel français.

Enregistré par le Danemark le 5 octobre 1961.

[TRANSLATION — TRADUCTION]

No. 5901. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT[1] BETWEEN DENMARK AND FRANCE CONCERNING EXEMPTION FROM TAX ON ROYALTIES IN RESPECT OF THE UTILIZATION IN FRANCE OF DANISH INVENTIONS. PARIS, 3 AUGUST AND 17 SEPTEMBER 1959

I

MINISTRY OF FOREIGN AFFAIRS

Paris, 3 August 1959

Your Excellency,

The application of turnover taxes to royalties paid by French individuals or bodies corporate to Danish licensers of patents has given rise to a number of difficulties.

The taxes in question are at present levied on such licensers regardless of whether they are themselves the inventors of the licensed patents or are merely the holders thereof through acquisition of ownership from third parties.

It is a fact, however, that French licensers of the right to use patents are exempt from the said taxes in all cases where they can claim inventor status, since they are not performing commercial transactions.

Danish individuals and bodies corporate granting the right to exploit in France patents or processes which they have invented have asked to be subjected to the same system as French nationals granting such right.

The Danish Government has suggested in this connexion that proof of inventor status should take the form of the production by the licenser or assignor of a declaration certified correct by the Federation of Danish Industries, 18 H. C. Andersens Boulevard, Copenhagen V.

I have the honour to inform you that the French Government is prepared to accept this method of furnishing proof and accordingly considers it possible to determine the position of Danish licensers, with respect to the turnover taxes levied in France, on the basis of the following proposals :

[1] Came into force on 17 September 1959 by the exchange of the said notes.

1. In respect of royalties received in return for the grant of licences to exploit inventions in France, Danish licensers shall be subjected to the same system as French licensers. The turnover taxes (tax on services, transactions tax and local tax up to 30 June 1955 ; tax on services as from 1 July 1955) shall not therefore be levied on royalties accruing to Danish enterprises which grant licences for the use of "inventions" in France and which can claim inventor status in respect thereof. It is agreed that the term "inventions" includes the following whether registered or not : patents, copyright, trade marks, manufacturing processes and formulae (know-how).

2. The exemption from turnover tax shall cover not only royalties paid in consideration of the right to exploit the aforesaid inventions (paragraph 1) but also payments for the whole group of processes necessary to the practical utilization of the invention (know-how), for the protection of the invention and for such technical assistance as is indispensable to the exploitation of the invention (for example, providing the French licensee with technicians on the staff of the Danish licenser to put the invention into operation ; supervision of the assembly of the installations needed to put the invention into operation, and the use of blue-prints ; instruction of the licensee ; and the supervision of initial manufacture). The exemption shall not, on the other hand, apply to payments relating to accessory operations, such as providing labour, furnishing supplies and advertising, carried out in French territory.

3. (*a*) The status of inventor shall be determined in accordance with the criteria established by French tax legislation and by the practice of the Conseil d'État ; it shall therefore be subject to the production by the Danish licenser (individual or body corporate) of proof, as prescribed in paragraph 5 below, that the invention in question is the result of research carried out by him or by technicians working exclusively for his account, under his control, according to his instructions and at his sole expense. The status of inventor will thus be accorded to a Danish enterprise which entrusted research to a third party (for example a university, research institute or research company), on condition that a prior contract was concluded by the Danish enterprise with the third party defining the purpose of the research and stipulating that the research would be undertaken for its account, that it would bear all the expenses involved and that the result of the research would become its exclusive property ;

(*b*) Danish licensers shall nevertheless be entitled to draw the attention of the French tax administration to those cases in which they have acquired the right to patent an invention from a company or companies with which they have close relations by reason of capital held in common and with which they form an economic group. If the associated companies can prove their inventor status as defined above, the French tax administration will examine in a liberal spirit the possibility of extending the said inventor status to the Danish licensers themselves. Pending the outcome of that examination, the French tax administration shall be entitled to take all legal steps with a view to the collection of the tax, it being understood that this action can in no way impair the rights held by Danish licensers under French laws and regulations ;