No. 7248

AUSTRIA
and
LUXEMBOURG

Agreement for the avoidance of double taxation with respect to taxes on income and fortune. Signed at Luxembourg, on 18 October 1962

Official text: German.

Registered by Austria on 19 May 1964.

AUTRICHE
et
LUXEMBOURG

Convention tendant à éviter la double imposition en matière d'impôts sur le revenu et sur la fortune. Signée à Luxembourg, le 18 octobre 1962

Texte officiel allemand.

Enregistrée par l'Autriche le 19 mai 1964.

[TRANSLATION — TRADUCTION]

No. 7248. AGREEMENT[1] BETWEEN THE REPUBLIC OF AUSTRIA AND THE GRAND DUCHY OF LUXEMBOURG FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND FORTUNE. SIGNED AT LUXEMBOURG, ON 18 OCTOBER 1962

The Federal President of the Republic of Austria and Her Royal Highness The Grand Duchess of Luxembourg, desiring to avoid, so far as possible, double taxation with respect to taxes on income and fortune, have agreed to conclude an Agreement. For that purpose they have appointed as their plenipotentiaries :

The Federal President of the Republic of Austria :

Dr. Ernst Lemberger, Ambassador Extraordinary and Minister Plenipotentiary of the Republic of Austria in the Grand Duchy of Luxembourg.

Her Royal Highness the Duchess of Luxembourg :

Mr. Eugène Schaus, Minister for Foreign Affairs,

Mr. Pierre Werner, Minister of Finance.

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

Article 1

(1) This Agreement shall apply to individuals and bodies corporate domiciled, within the meaning of article 2, in the Republic of Austria or in the Grand Duchy of Luxembourg, or in both Contracting States.

(2) This Agreement shall apply to taxes (including surtaxes) on income and fortune levied on behalf of either of the two Contracting States, or of their provinces, municipalities or associations of municipalities, regardless of the manner in which they are levied.

(3) The expression "taxes on income and fortune" shall be deemed to mean all taxes levied on total income or total fortune or on elements of income or fortune, including taxes on profits derived from the alienation of movable or immovable property, and taxes on increase in fortune.

[1] Came into force on 7 February 1964, the date of the exchange of the instruments of ratification at Vienna, in accordance with the provisions of article 27.

(4) The taxes to which this Agreement applies are at present :

1. In the Republic of Austria :
   (*a*) The income tax (*Einkommensteuer*),
   (*b*) The corporation tax (*Körperschaftsteuer*),
   (*c*) The tax on fortune (*Vermögensteuer*),
   (*d*) The contribution from income for the promotion of residential building and for the equalization of family burdens (*Beitrag vom Einkommen zur Förderung des Wohnbaues und für Zwecke des Familienlastenausgleiches*),
   (*e*) The tax on directors' fees (*Aufsichtsratsabgabe*),
   (*f*) The business tax (*Gewerbesteuer*) [including the pay-roll tax (*Lohnsummensteuer*)],
   (*g*) The land tax (*Grundsteuer*),
   (*h*) The tax on agricultural and forestry enterprises (*Abgabe von land- und forstwirtschaftlichen Betrieben*),
   (*i*) The tax on the land value of undeveloped real estate (*Abgabe von Bodenwert bei unbebauten Grundstücken*),
   (*j*) The tax on property exempt from the inheritance tax (*Abgabe von Vermögen, die der Erbschaftssteuer entzogen sind*).

2. In the Grand Duchy of Luxembourg :
   (*a*) The income tax (*Einkommensteuer*),
   (*b*) The corporation tax (*Körperschaftsteuer*),
   (*c*) The special tax on directors' fees (*besondere Steuer von Tantiemen*),
   (*d*) The tax on fortune (*Vermögensteuer*),
   (*e*) The business tax (*Gewerbesteuer*) [including the payroll tax (*Lohnsummensteuer*)],
   (*f*) The land tax (*Grundsteuer*).

(5) This Agreement shall also apply to any taxes of the same or of like nature which may be levied in the future in addition to or in place of the existing taxes. The chief financial authorities of the two Contracting States shall at the end of each year inform each other of any changes which have been made in their taxation laws.

(6) The chief financial authorities mentioned in this Agreement are, in the case of the Republic of Austria, the Federal Ministry of Finance, and in the case of the Grand Duchy of Luxembourg, the Minister of Finance or his authorized representative.

Article 2

(1) Where a person domiciled in one of the Contracting States received income in respect of which no provision is made in this Agreement, the said income shall be subject to taxation by that State.

(2) In this Agreement the expression "a person domiciled in one of the Contracting States" means an individual liable under the laws of that Contracting State to taxation therein by reason of his domicile or habitual residence, or a body corporate liable under the laws of that Contracting State to taxation therein by reason of its domicile or place of actual management.

(3) Where, under the provisions of paragraph (2), an individual may be deemed to be domiciled in both of the Contracting States, the domicile shall be determined for the purposes of this Agreement as follows :

(*a*) An individual shall be deemed to be domiciled in the Contracting State in which he has a permanent residence available to him. If he has a permanent residence available to him in both Contracting States, he shall be deemed to be domiciled in the Contracting State with which he has the closer personal and economic relations (centre of vital interests),

(*b*) If it cannot be determined in which of the two Contracting States the individual has his centre of vital interests, or if he has no permanent residence available to him in either Contracting State, he shall be deemed to be domiciled in the Contracting State in which he habitually resides,

(*c*) If the individual habitually resides in both or neither of the Contracting States, he shall be deemed to be domiciled in the Contracting State of which he is a national,

(*d*) If the individual is a national of both or neither of the Contracting States, the chief financial authorities of the two Contracting States shall settle the question by agreement.

(4) Where, under the provisions of paragraph (2), a body corporate may be deemed to be domiciled in both Contracting States, it shall be domiciled for the purposes of this Agreement in the Contracting State in which its place of actual management is situated. The same shall apply to partnerships and other associations which are not bodies corporate under the national laws by which they are governed.

Article 3

(1) Where a person domiciled in one of the Contracting States derives income from immovable property situated in the other Contracting State, such income shall be subject to taxation by the latter State.

(2) The term "immovable property" shall be defined in accordance with the laws of the Contracting State in which the property is situated. It shall in any event include property accessory to immovable property, livestock and equipment of agricultural and forestry enterprises, rights to which the provisions of private law concerning real property apply, rights of usufruct in immovable property, and rights to variable or fixed payments for the use of mineral deposits, springs and other natural resources ; ships and aircraft shall not be deemed to be immovable property.

(3) Paragraph (1) shall apply to income derived from the direct use or the letting of movable property or from the use in any other form of such property. It shall also apply to profits from the alienation of immovable property.

(4) Paragraphs (1) and (3) shall also apply to income from immovable property belonging to a business enterprise and to income from immovable property used in the practice of a profession.

Article 4

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

(2) The provisions of paragraph 1 shall also apply to income derived from active or inactive participation in a corporate enterprise, other than participation in the form of shares, mining shares (*Kuxe*) profit-participation certificates (*Genuss-scheine*), participating debentures (*Obligationen mit Gewinnbeteiligung*) and other securities, and shares in co-operative societies and private limited companies (*Gesellschaften mit beschränkter Haftung*).

(3) Paragraphs (1) and (2) shall apply both to income derived from the direct use of the business enterprise and to income derived from the letting or use in any other form thereof : they shall also apply to income derived from the alienation of a business as a whole, of a share in the business, of part of it, or of objects used in the business.

(4) The income to be attributed to the permanent establishment shall be that which would have accrued to it if it were a separate enterprise engaged in the same or similar activities under the same or similar conditions and carrying on business as an independent enterprise.