

No. 7723

**UNITED STATES OF AMERICA
and
LUXEMBOURG**

**Convention with respect to taxes on income and property.
Signed at Washington, on 18 December 1962**

Official texts: English and French.

Registered by the United States of America on 27 April 1965.

**ÉTATS-UNIS D'AMÉRIQUE
et
LUXEMBOURG**

**Convention concernant les impôts sur le revenu et la fortune.
Signée à Washington, le 18 décembre 1962**

Textes officiels anglais et français.

Enregistrée par les États-Unis d'Amérique le 27 avril 1965.

No. 7723. CONVENTION¹ BETWEEN THE UNITED STATES OF AMERICA AND THE GRAND DUCHY OF LUXEMBOURG WITH RESPECT TO TAXES ON INCOME AND PROPERTY. SIGNED AT WASHINGTON, ON 18 DECEMBER 1962

The President of the United States of America and Her Royal Highness the Grand Duchess of Luxembourg, desiring to conclude a convention for the avoidance of double taxation of income, the prevention of fiscal evasion, and the promotion of trade and investment, have appointed for that purpose as their respective Plenipotentiaries :

The President of the United States of America :

Dean Rusk, Secretary of State of the United States of America, and
Her Royal Highness the Grand Duchess of Luxembourg :

Georges Heisbourg, Ambassador Extraordinary and Plenipotentiary of the
Grand Duchy of Luxembourg at Washington,

who, having communicated to each other their full powers, found in good and due form, have agreed upon the following Articles :

Article I

(1) The taxes which are the subject of the present Convention are :

(a) In the case of the United States :

The Federal income tax, including surtax.

(b) In the case of Luxembourg :

(i) The income taxes on individuals and corporations, the tax on fees of directors of corporations, and the communal tax on commercial profits, and

(ii) The wealth tax and the communal taxes on invested capital and land.

(2) The present Convention shall also apply to substantially similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes.

(3) The competent authorities of the Contracting States shall notify each other of the adoption of new taxes or of substantial changes in, or the abolition of, existing taxes covered by the present Convention.

¹ Came into force on 22 December 1964, the date of the exchange of the instruments of ratification at Luxembourg, and became effective for taxable years beginning on or after 1 January 1964, in accordance with the provisions of article XXII (1).

Article II

(1) In the present Convention, unless the context otherwise requires :

(a) The term "United States" means the United States of America, and when used in a geographical sense means the States thereof and the District of Columbia;

(b) The term "Luxembourg" when used in a geographical sense means the Grand Duchy of Luxembourg;

(c) The term "enterprise of one of the Contracting States" means, as the case may be, "United States enterprise" or "Luxembourg enterprise";

(d) The term "United States enterprise" means an industrial or commercial enterprise or undertaking carried on by a citizen or resident (including an individual in his individual or fiduciary capacity or as a member of a partnership) of the United States or by a United States corporation; the term "United States corporation" means a corporation or other entity created or organized under the laws of the United States or of any State or Territory of the United States;

(e) The term "Luxembourg enterprise" means an industrial or commercial enterprise or undertaking carried on by a resident of Luxembourg (including an individual in his individual capacity or as a member of a partnership) or by a Luxembourg corporation; the term "Luxembourg corporation" means a juridical person or an entity treated as a juridical person for tax purposes under the laws of Luxembourg if such person or entity has its business management or seat in Luxembourg but does not include a United States corporation;

(f) (i) The term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on;

(ii) A permanent establishment shall include especially :

(A) a place of management;

(B) a branch;

(C) an office;

(D) a factory;

(E) a workshop;

(F) a mine, quarry, or other place of extraction of natural resources; and

(G) a building site, or construction or assembly project, which exists for more than six months;

(iii) The term "permanent establishment" shall be deemed not to include :

(A) the use of facilities solely for the purpose of storage, display, or delivery of goods or merchandise belonging to the enterprise;

- (B) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display, or delivery;
- (C) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (D) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
- (E) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research, or for similar activities which have a preparatory or auxiliary character, for the enterprise;

(iv) A person acting in one of the Contracting States on behalf of an enterprise of the other Contracting State, other than an agent of an independent status to whom subdivision (v) applies, shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise;

(v) An enterprise of one of the Contracting States 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;

(vi) The fact that a corporation of one of the Contracting States controls or is controlled by (A) a corporation of the other Contracting State, or (B) a corporation which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either corporation a permanent establishment of the other;

(g) The term "competent authority" or "competent authorities" means, in the case of the United States, the Secretary of the Treasury or his delegate and, in the case of Luxembourg, the Minister of Finance or his delegate; and

(h) The terms "resident of one of the Contracting States" and "resident of the other Contracting State" mean a resident of the United States or a resident of Luxembourg, as the context requires. An individual shall be considered to be a resident of Luxembourg if under its law his income from sources within and from sources without Luxembourg is subject to income tax. An individual present in one of the Contracting States solely for one of the purposes specified in Articles XIII and XIV of the present Convention shall not be considered a resident of that State merely because of his presence there for that purpose.

(2) In the application of the provisions of the present Convention by either of the Contracting States, any term which is not defined in the present Conven-

tion shall, unless the context otherwise requires, have the meaning which that term has under the laws of such State relating to the taxes which are the subject of the present Convention.

(3) A resident or corporation of one of the Contracting States, or an enterprise of such State, shall be considered to have a permanent establishment in the other State for purposes of Articles III, VII, VIII, and IX if such person has a permanent establishment in that State at any time during the taxable year in which the income is received.

Article III

(1) The industrial or commercial profits of an enterprise of one of the Contracting States shall be taxable only by that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, tax may be imposed by the other State on the industrial or commercial profits of the enterprise but only on so much of them as is attributable to that permanent establishment. In applying the preceding sentence for purposes of the United States tax, all industrial or commercial profits of the enterprise from sources within the United States shall be deemed to be attributable to the permanent establishment.

(2) Where an enterprise of one of the Contracting States carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each State be attributed to that permanent establishment the industrial or commercial profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing independently with the enterprise of which it is a permanent establishment.

(3) In the determination of the industrial or commercial profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

(4) No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

Article IV

Where—

(a) an enterprise of one of the Contracting States participates directly or indirectly in the management, control, or capital of an enterprise of the other Contracting State, or