No. 9103

AUSTRIA
and
SPAIN

Agreement for the avoidance of double taxation with respect to taxes on income and fortune. Signed at Vienna, on 20 December 1966

Official texts : German and Spanish.

Registered by Austria on 8 May 1968.

AUTRICHE
et
ESPAGNE

Convention tendant à éviter la Double imposition en matière d'impôts sur le revenu et d'impôts sur la fortune. Signée à Vienne, le 20 décembre 1966

Textes officiels allemand et espagnol.

Enregistrée par l'Autriche le 8 mai 1968.

[TRANSLATION — TRADUCTION]

No. 9103. AGREEMENT[1] BETWEEN THE REPUBLIC OF AUSTRIA AND SPAIN FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND FORTUNE. SIGNED AT VIENNA, ON 20 DECEMBER 1966

The Republic of Austria and Spain, desiring to conclude an Agreement for the avoidance of double taxation with respect to taxes on income and fortune, have agreed as follows :

Article 1

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

Article 2

1. This Agreement shall apply to taxes on income and on fortune imposed on behalf of each Contracting State or of its political or administrative subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on fortune all taxes imposed on total income, on total fortune, or on elements of income or of fortune, including taxes on gains from the alienation of movable or immovable property, as well as taxes on capital appreciation.

3. The existing taxes to which this Agreement shall apply are, in particular :

(*a*) In Austria :
- (i) The income tax *(Einkommensteuer);*
- (ii) The corporation tax *(Körperschaftsteuer);*
- (iii) 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);*

[1] Came into force on 1 January 1968, i.e., 1 January of the year following the exchange of the instruments of ratification, which took place at Madrid on 8 November 1967, in accordance with article 29 (2).

(iv) The tax on directors' fees *(Aufsichtsratsabgabe);*

(v) The business tax *(Gewerbesteuer)*, including the pay-roll tax *(Lohnsummensteuer);*
(vi) The tax on fortune *(Vermögensteuer);*
(vii) The land tax *(Grundsteuer);*
(viii) The tax on agricultural and forestry enterprises *(Abgabe von land- und fortswirtschaftlichen Betrieben);*
(ix) The tax on the land value of undeveloped real estate *(Abgabe vom Bodenwert bei unbebauten Grundstücken);*
(x) The tax on property exempt from the inheritance tax *(Abgabe von Vermögen, die der Erbschaftssteuer entzogen sind);*

(hereinafter referred to as "Autrian tax");

(*b*) In Spain :
(i) The general tax on the income of individuals *(Impuesto General sobre la Renta de las Personas Físicas);*
(ii) The general tax on the income of companies and other legal entities *(Impuesto General sobre la Renta de Sociedades y demás entidades jurídicas)*, including the special tax of 4 per cent instituted by article 104 of Act No. 41/1964 of 11 June 1964;
(iii) The following taxes collected in advance: the land tax on agricultural and stock-raising property and livestock *(Contribución Territorial sobre la Riqueza Rústica y Pecuaria)*, the land tax on urban property *(Contribución Territorial sobre la Riqueza Urbana)*, the tax on earnings from personal services *(Impuesto sobre los rendimientos del Trabajo Personal)*, the tax on income from capital *(Impuesto sobre las Rentas del Capital)* and the tax on commercial and industrial activities and profits *(Impuesto sobre Actividades y Beneficios Comerciales e Industriales);*
(iv) In Fernando Póo, Río Muni, Sahara and Ifni, the taxes on income (on earnings from services and from fortune) and on the profits of enterprises [*impuestos sobre la renta (sobre los rendimientos del trabajo y del patrimonio) y sobre los beneficios de las empresas*];
(v) The tax on surface area *(canon de superficie)*, the tax on gross earnings *(impuesto sobre el producto bruto)* and the special tax on profits *(impuesto especial sobre los beneficios)* governed by the Act of 26 December 1958 (applicable to enterprises engaged in prospecting for and extracting oil);

(vi) The local taxes on income or fortune *(impuestos locales sobre la renta o el patrimonio);*
(hereinafter referred to as "Spanish tax").

4. This Agreement shall also apply to any identical or similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other each year of any changes which have been made in their respective taxation laws.

If any change is made in the taxation law of either Contracting State, especially with regard to the taxation of dividends or interest, the two Contracting States shall, at the request of either of them, enter into negotiations with a view to revising such provisions of this Agreement as are affected by the change.

Article 3

1. In this Agreement, unless the context otherwise requires:

(*a*) The terms "a Contracting State" and "the other Contracting State" mean the Republic of Austria or Spain (Peninsular Spain, the Balearic and Canary Islands, the Spanish towns and provinces in Africa, and Equatorial Guinea, consisting of the Territories of Río Muni and Fernando Poo, both Territories being in the process of self-determination), as the context requires;

(*b*) The term "person" comprises an individual, a company and any other body of persons;

(*c*) The term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

(*d*) The terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean an enterprise carried on by a resident of Austria or an enterprise carried on by a resident of Spain, as the context requires;

(*e*) The term "competent authority" means:
   1. In Austria: the Federal Ministry of Finance;
   2. In Spain: the Minister of Finance, the Director-General for Direct Taxes or any other authority designated by the Minister.

2. As regards the application of the Agreement by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of the Agreement.

Article 4

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the law of that State, is liable to taxation

therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then this case shall be determined in accordance with the following rules :

(*a*) He shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closest (centre of vital interests);

(*b*) If the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has a habitual abode;

(*c*) If he has a habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated. If the place of effective management cannot be determined, then it shall be deemed to be a resident of the Contracting State in which its registered offices are situated.

Article 5

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

2. The term "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;

(*g*) A building site or construction or assembly project which exists for more than twelve months.