No. 27198

SWEDEN
and
GERMAN DEMOCRATIC REPUBLIC

Agreement for the avoidance of double taxation with respect to taxes on income and on capital. Signed at Stockholm on 26 June 1986

Authentic texts: Swedish and German.

Registered by Sweden on 18 April 1990.

SUÈDE
et
RÉPUBLIQUE DÉMOCRATIQUE ALLEMANDE

Convention tendant à éviter la double imposition en matière d'impôts sur le revenu et sur la fortune. Signée à Stockholm le 26 juin 1986

Textes authentiques : suèdois et allemand.

Enregistrée par la Suède le 18 avril 1990.

[TRANSLATION — TRADUCTION]

AGREEMENT[1] BETWEEN THE GOVERNMENT OF THE GERMAN DEMOCRATIC REPUBLIC AND THE GOVERNMENT OF THE KINGDOM OF SWEDEN FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Government of the German Democratic Republic and the Government of the Kingdom of Sweden, desiring further to develop and to deepen relations between the German Democratic Republic and the Kingdom of Sweden in accordance with the principles of the Final Act of the Conference on Security and Cooperation in Europe,[2] and with a view to avoiding double taxation with respect to taxes on income and on capital, have agreed as follows:

Article 1. PERSONAL SCOPE

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

Article 2. TAXES COVERED BY THE AGREEMENT

1. The existing taxes to which this Agreement shall apply are:

(*a*) In the German Democratic Republic:

1. Remittance of projects of public enterprises;
2. Income tax;
3. Corporate income tax;
4. Trade tax;
5. Tax on wages;
6. Tax on income from a free-lance activity;
7. Tax on royalties;
8. Capital tax;

(hereinafter referred to as "German Democratic Republic tax");

(*b*) In the Kingdom of Sweden:

1. The State income tax, including the coupon tax and the seamen's tax;
2. The tax on distributed profits;
3. The communal income tax;
4. The tax on public entertainers;

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[1] Came into force on 24 December 1986, i.e., 30 days after the date of receipt of the last of the notifications (11 August and 24 November 1986) by which the Contracting States had notified each other of the completion of the procedures required, in accordance with article 27 (2).

[2] *International Legal Materials*, vol. 14 (1975), p. 1292 (American Society of International Law).

5. The State capital tax;

(hereinafter referred to as "Swedish tax").

2. The Agreement shall also apply to any identical or substantially similar taxes which are imposed after the signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

Article 3. GENERAL DEFINITIONS

1. For the purposes of this Agreement, unless the context otherwise requires:

(*a*) The terms "a Contracting State" and "the Other Contracting State" mean the German Democratic Republic or the Kingdom of Sweden as the context requires;

(*b*) The term "German Democratic Republic" means the German Democratic Republic and, when used in a geographical sense, the territory of the German Democratic Republic and all areas outside the territorial waters of the German Democratic Republic in so far as the German Democratic Republic is able, under international law, to exercise sovereign rights to explore the continental shelf there and exploit its natural resources;

(*c*) The term "Sweden" means the Kingdom of Sweden and, when used in a geographical sense, the territory of Sweden and all areas outside the territorial waters of Sweden in so far as Sweden is able, under international law, to exercise sovereign rights to explore the continental shelf and exploit its natural resources;

(*d*) The term "person" includes nationals of the Contracting States and other individuals, companies and any other bodies of persons;

(*e*) The term "national" means:

(1) In the case of the German Democratic Republic, any individual possessing the nationality of the German Democratic Republic under its laws;

(2) In the case of Sweden, any individual possessing Swedish nationality under Swedish law;

(*f*) The term "company" means any body corporate or any entity established or registered under the law of one of the Contracting States or treated as a body corporate for tax purposes;

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

(*h*) The term "competent authority" means:

(1) In the case of the German Democratic Republic, the Ministry of Finance;

(2) In the case of Sweden, the Minister of Finance, his authorized representative or the authority to which he has delegated his powers;

(*i*) The term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State.

2. As regards the application of this Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State, particularly with respect to the taxes to which this Agreement applies.

Article 4. Resident

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of head office, 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 his status shall be determined as follows:

(*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 State with which his personal and economic relations are closer (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 an habitual abode;

(*c*) If he has an 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;

(*d*) If he is a national of both Contracting States, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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.

Article 5. Permanent establishment

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

2. The site of a construction, assembly or installation project constitutes a permanent establishment only if it lasts more than 12 months.

3. Notwithstanding the preceding provisions of this article, 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 of collecting information, for the enterprise;

(*e*) The maintenance of a fixed place of business solely for the purpose of advertising for the enterprise, providing information or conducting scientific research or carrying on similar activities;

(*f*) A fixed place of business which is maintained or established by an enterprise of one Contracting State in the other Contracting State especially on the basis or as a result of agreements between the Contracting States and which is maintained exclusively for the purpose of carrying on a combination of the activities referred to in paragraphs (*a*) to (*e*), provided that the overall activity carried on from the fixed place of business on the basis of that combination is of a preparatory or auxiliary character.

4. Notwithstanding the provisions of paragraph 1, where a person — other than an agent of an independent status to whom the provisions of paragraph 5 apply — is acting on behalf of an enterprise and has and habitually exercises in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 3 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

5. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

6. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6. INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property situated in the other Contracting State may be taxed in that other Contracting State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. Ships and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall also apply to income derived from the direct use, letting or use in any other form of immovable property.

Article 7. BUSINESS PROFITS

1. The profits derived by an enterprise of a Contracting State from business activities may be taxed in the other Contracting State only when the enterprise carries on business through a permanent establishment situated therein. However,