

No. 31236

**AUSTRIA
and
FRANCE**

Convention for avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income and on capital (with protocol). Signed at Vienna on 26 March 1993

Authentic texts: German and French.

Registered by Austria on 27 September 1994.

**AUTRICHE
et
FRANCE**

Convention en vue d'éviter les doubles impositions et de prévenir l'évasion fiscale en matière d'impôts sur le revenu et sur la fortune (avec protocole). Signée à Vienne le 26 mars 1993

Textes authentiques : allemand et français.

Enregistrée par l'Autriche le 27 septembre 1994.

[TRANSLATION — TRADUCTION]

CONVENTION¹ BETWEEN THE REPUBLIC OF AUSTRIA AND THE
FRENCH REPUBLIC FOR AVOIDANCE OF DOUBLE TAXA-
TION AND PREVENTION OF FISCAL EVASION WITH RE-
SPECT TO TAXES ON INCOME AND ON CAPITAL

The Federal President of the Republic of Austria and the President of the French Republic, desiring to avoid double taxation and prevent fiscal evasion with respect to taxes on income and capital, have decided to conclude a Convention and have appointed as their plenipotentiaries for this purpose:

The Federal President of the Republic of Austria: Mr. Wolfgang Nolz, Section Chief in the Federal Ministry of Finance

The President of the French Republic: Mr. André Lewin, Ambassador of the French Republic to Austria

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

Article 1. PERSONAL SCOPE

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

Article 2. TAXES COVERED

1. This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its territorial subdivisions, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, 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 the Convention shall apply are in particular:

(a) In the case of the French Republic:

- (i) The income tax;
- (ii) The corporation tax;
- (iii) The tax on wages and salaries;
- (iv) The wealth tax;
- (v) The local tax on businesses;

¹ Came into force on 1 September 1994, i.e., the first day of the second month following the date of receipt of the last of the notifications (5 July 1994) by which the Contracting Parties had informed each other of the completion of the required procedures, in accordance with article 31 (1).

including any withholding tax, prepayment (*précompte*) or advance payment with respect to the aforesaid taxes; (hereinafter referred to as “French tax”);

(b) In the case of the Republic of Austria:

- (i) The income tax;
- (ii) The corporation tax;
- (iii) The capital tax;
- (iv) The tax on property eluding death duties;
- (v) The tax on commercial and industrial enterprises, including the tax levied on the total amount of wages;

(hereinafter referred to as “Austrian tax”).

4. The Convention shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of the Convention 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 Convention, unless the context otherwise requires:

(a) The term “person” includes an individual, a company and any other body of persons;

(b) The term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;

(c) 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 and an enterprise carried on by a resident of the other Contracting State;

(d) The term “international traffic” means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

(e) The term “competent authority” means:

- (i) In the case of the French Republic, the Minister for the Budget or his authorized representative;
- (ii) In the case of the Republic of Austria, the Federal Minister of Finance or his authorized representative.

2. As regards the application of the Convention by a Contracting State, any term or expression not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies. The term “law of that State” means especially the tax law, which, for the purposes of the Convention, shall take precedence over the other branches of law of that State.

Article 4. RESIDENT

1. For the purposes of this Convention, 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 management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

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 State in which he has a permanent home available to him; if he has a permanent home available to him in both 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 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 State, he shall be deemed to be a resident of the State in which he has an habitual abode;

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

(d) If he is a national of both States or of neither of them, the competent authorities of the Contracting States shall endeavour to 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 State in which its place of effective management is situated.

Article 5. PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, 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 term “permanent establishment” includes especially:

(a) A place of management;

(b) A branch;

(c) An office;

(d) A factory;

(e) A workshop; and

(f) A mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.

4. 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 carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

(f) The maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person — other than an agent of an independent status to whom paragraph 6 applies — 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 4 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.

6. 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.

7. 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 (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other 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. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

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