

N° 3274.

BELGIQUE ET FRANCE

Convention pour éviter les doubles impositions et régler certaines autres questions en matière fiscale, avec protocole final. Signés à Bruxelles, le 16 mai 1931.

BELGIUM AND FRANCE

Convention for the Prevention of Double Taxation and the Settlement of Various Other Questions connected with Fiscal Matters, with Final Protocol. Signed at Brussels, May 16, 1931.

¹ TRADUCTION. — TRANSLATION.No. 3274. — CONVENTION² BETWEEN BELGIUM AND FRANCE FOR THE PREVENTION OF DOUBLE TAXATION AND THE SETTLEMENT OF VARIOUS OTHER QUESTIONS CONNECTED WITH FISCAL MATTERS. SIGNED AT BRUSSELS, MAY 16, 1931.

French official text communicated by the Belgian Minister for Foreign Affairs. The registration of this Convention took place October 9, 1933.

HIS MAJESTY THE KING OF THE BELGIANS and THE PRESIDENT OF THE FRENCH REPUBLIC, being desirous of avoiding double taxation and settling certain other fiscal questions, have decided to conclude a Convention and have appointed as their Plenipotentiaries for this purpose :

HIS MAJESTY THE KING OF THE BELGIANS :

M. Charles CLAVIER, Director-General of Direct Taxation ;
 M. Rodolphe PUTMAN, Inspector-General of Direct Taxation ; and
 M. Fernand LAVERS, Director in the Ministry of Foreign Affairs ;

THE PRESIDENT OF THE FRENCH REPUBLIC :

M. Marcel Borduge, Counsellor of State, Director-General at the Ministry of Finance ;

Who, having communicated their full powers, found in good and due form, have agreed upon the following provisions :

Article 1.

§ 1. — Taxpayers having their fiscal domicile in either of the two Contracting States, a proportion of whose income is derived, in whole or in part, from the other State, shall be entitled in respect of such income to the special treatment prescribed in the following Articles.

§ 2. — For the purposes of the present Convention, the fiscal domicile of natural persons shall be their normal place of residence to be construed as meaning their permanent home, and that of companies constituting a separate legal entity shall be the place in which are situate their actual headquarters or seat.

Article 2.

§ 1. — The present Convention shall apply to impersonal direct taxes and to the registration duties referred to in Article 14.

¹ Traduit par le Secrétariat de la Société des Nations, à titre d'information.

¹ Translated by the Secretariat of the League of Nations, for information.

² The exchange of ratifications took place at Paris, July 15, 1933.
 The provisions of the Convention take effect as from July 15, 1933.

§ 2. — Direct taxes shall be deemed to be those levied directly on income, whether on behalf of the State or on behalf of the provinces, departments or communes.

§ 3. — For the purposes of the present Convention impersonal taxes shall be deemed to be those direct taxes levied on the various classes of income separately considered.

§ 4. — At the date of the present Convention the impersonal taxes are the following :

A. For Belgium :

The schedular taxes on income, that is to say, the land tax, the tax on movable property, the occupational tax, and the special tax on income derived from the letting of shooting, fishing or trapping rights.

B. For France :

The schedular taxes on income, that is to say, the land tax, the tax on income derived from securities and movable capital, proportional mining royalties, the tax on industrial and commercial profits, the tax on the profits of agricultural undertakings, the tax on salaries, allowances and emoluments. Wages, pensions and life annuities, and the tax on the profits of non-commercial occupations.

Article 3.

Income derived from immovable property up to the amount of its actual or estimated rentable value, together with all other income from such property which is not covered by Article 7 below shall be taxable exclusively in the State in which such property is situate.

Article 4.

§ 1. — Income from public funds, bonds, loans, deposits and deposit accounts and from all other claims, shall be taxable in that of the two States where the party liable in respect of such payments is established.

§ 2. — If the party liable has permanent establishments within the meaning of Article 7 below in both States, and if one of these establishments within the ambit of its own operations contracts a loan or receives a deposit, the tax shall be levied by that of the two States in whose territory such establishment is situated.

Article 5.

Income derived from shares or similar interests, or from limited partnerships, or from shares in companies regulated by the civil code or limited liability companies, shall be taxable in that of the two States where the actual seat of the company is situated.

Article 6.

§ 1. — Notwithstanding the provisions of Articles 4 and 5 of the present Convention, income from transferable securities (public funds, shares or other holdings of shareholders, bonds or other loan certificates) may be subjected to an impersonal tax by the State where the beneficiaries have their fiscal domicile, according to the methods laid down in its general legislation. In this case, however, the State in question agrees to deduct beforehand from such tax as it may levy under this head the amount of the tax paid in the other State in respect of the same income.

§ 2. — In view of the present position of fiscal burdens in France and Belgium, the two States undertake to apply by way of compounded payments the provisions of the preceding paragraph, as follows.

§ 3. — As regards Belgium and in so far as the general rate of the tax on income from foreign transferable securities does not exceed 12 per cent, this tax shall not be levied on income from French securities received by persons who have their fiscal domicile in Belgium. In the event of the general rate exceeding 12 per cent, it shall be reduced by 12 for the same securities.

§ 4. — As regards France, the general rate of the tax on income from foreign transferable securities shall be reduced by 12 for Belgian securities whether subject to the compounded duty system or not.

§ 5. — The rates of reduction specified in § 3 and § 4 shall be revised every five years from the date on which the present Convention comes into force.

Article 7.

§ 1. — Without prejudice to the foregoing provisions, industrial, mining, commercial or agricultural undertakings shall be taxable in either State in proportion to the income brought in by the permanent establishments situate in its territory.

§ 2. — In the absence of a regular system of accountancy showing such income accurately and separately, the competent authorities of the two Contracting States shall, if necessary, come to an agreement with a view to laying down rules for its apportionment.

§ 3. — Permanent establishments shall be deemed to include actual centres of management, branches, factories, works, workshops, agencies, warehouses, offices, laboratories, buying or selling departments, depositories and all other fixed premises of a productive character. Should an undertaking established in either of the two Contracting States have business dealings with the other country through the intermediary of a genuinely independent agent or company (broker, commission agent, subsidiary, etc.), this shall not be deemed to imply that the undertaking in question possesses a permanent establishment in the latter country.

§ 4. — Notwithstanding the provisions of § 3 above, departments engaged exclusively in the purchase of sundry goods to be supplied to one or more selling or finishing establishments operated by the taxpayer in the other country shall not be taxable.

Article 8.

§ 1. — Companies which have their fiscal domicile in Belgium and a permanent establishment in France and which are subject to the tax on income from transferable capital in virtue of the Law of June 29th, 1872, and of the Decree of December 6th following, shall pay such tax subject to the conditions laid down in these provisions ; nevertheless, the taxed income may not exceed the amount of the profits accruing in France, including, if necessary, any profits or advantages which the company may have derived indirectly from its branch or which have been assigned or accorded to third parties, whether by an increase or reduction of purchase or sale prices, or by any other means.

§ 2. — Companies which have their fiscal domicile in Belgium may not be subjected in France to the tax on income from movable capital by reason of their holding in a company whose actual seat is in France ; however, the profits distributed by the French company and liable to the tax on income from transferable securities shall, if necessary, be increased for the purpose of the collection of such tax, by any profits or advantages which the Belgium company may have indirectly derived from its holding or which have been assigned or accorded to third parties, whether by an increase or reduction of purchase or sale prices or by any other means.

§ 3. — Share companies which have their fiscal domicile in France and a permanent establishment in Belgium shall be subjected there, in respect of the profit accruing to them there,

to the regime applicable to similar foreign companies, unless they request, when making their annual declaration, that they may be subjected to the regime applicable to Belgian share companies ; in the latter case, the transferable property tax on income derived from shares shall be assessed on a fraction of the Belgian profit equal to the ratio between the profit distributed by the company and its total profit ; nevertheless, the sum liable to occupational tax and movable property tax, may not exceed the amount of the Belgian profit.

Article 9.

§ 1. — Income derived from non-commercial occupations, not covered by Article 11, by persons working at their private addresses shall be taxable in the Contracting State in which such persons possess a permanent establishment for the purpose of carrying on their professional activity.

§ 2. — Copyright fees and patent fees shall be taxable in the country in which the recipients have their fiscal domicile. Should such fees constitute income derived from an industrial or commercial undertaking, they shall be taxable under the conditions laid down in Article 7.

Article 10.

The remuneration of directors of joint-stock companies and of persons performing duties similar to those of a director shall be taxable in the State in which are situate the actual headquarters of the company, subject to the application of Article 11 to remuneration drawn by the persons aforementioned in any other effective capacity.

Article 11.

The remuneration of all persons in receipt of wages and salaries shall be taxable in the State in which those concerned carry on their activities.

Nevertheless, the salaries, wages or other remuneration of frontier workers who prove their identity by the production of the frontier card instituted by the conventions concluded between the two High Contracting Parties shall be taxable only in the country where they have their fiscal domicile.

Moreover, the salaries of public officials and employees of either of the two Contracting States performing their duties in the other State shall only be taxable in the country by which they are paid.

Article 12.

Public or private pensions are taxable in the State of the party liable for such payments.

Article 13.

Life annuities and income derived from all lucrative occupations not specified in the previous Articles shall be taxable in the State in whose territory the recipient has his fiscal domicile.

Article 14.

§ 1. — The collection of registration duties in respect of deeds which companies regulated by the civil code or commercial companies of one of the two States are in a position to have registered in the other State with a view to or as a result of the establishment in the latter State of a branch or of any seat of operations, shall be settled in accordance with the following provisions.

§ 2. — The rate of the registration duty to be collected in the case considered under § 1 in respect of deeds, relating to the constitution of companies, increase of share capital or prolongation of a company, may not exceed the rate applicable to national companies.

§ 3. — The duty thus fixed is calculated on a basis which may not exceed one twenty-fifth of the entire share capital, it being understood moreover that the amount of the said duty may not exceed, for each deed, the sum of 50,000 Belgian francs or the equivalent of that sum in French francs. However, if the company does not possess in the State to which it belongs by nationality industrial or commercial premises where operations are carried on the duty shall be paid on half of the entire share capital.

§ 4. — The duty paid as described under § 3 precludes the collection of any other registration duty under the provisions relating either to undertakings given by the company to its associates in return for the assets contributed by them or the agreements between the company and the managers, administrators or auditors or to the payment stipulated in the commercial law regarding the constitution of joint-stock companies.

Article 15.

§ 1. — The Contracting States undertake to afford each other, on the basis of reciprocity, help and assistance for the purpose of collecting, in respect of principal, surcharges, interest and costs or fines, in accordance with the rules laid down in their own legislation, the taxes finally due mentioned in Article 2 of the present Convention, and other direct taxes.

§ 2. — Legal proceedings and executory measures shall be instituted on production of an official copy of the executory documents together with any such decisions as have already acquired the force of *res judicata*.

§ 3. — Outstanding fiscal claims shall not be regarded as prior claims in the State to which application is made, nor shall the latter be required to apply executory measures not provided for in the laws of the State making application.

§ 4. — Should a fiscal claim be still subject to appeal, the State making the application may request the State to which application is made to take conservatory measures, to which *mutatis mutandis* the foregoing provisions shall apply.

§ 5. — The fiscal administrations of the two Contracting States shall settle the administrative procedure to be followed in each particular case.

Article 16.

The present Convention shall only apply to the home territory of the High Contracting Parties.

Article 17.

§ 1. — The present Convention shall be ratified and the instruments of ratification shall be exchanged in Paris as soon as possible.

§ 2. — The Convention shall come into force on January 1st of the year following that in which ratification takes place.

§ 3. — It may cease to apply as from this first day of January of each year if denounced at least eight months previously.

In faith whereof, the Plenipotentiaries have signed the present Convention and thereto affixed their seal.

Done at Brussels, in duplicate, the sixteenth day of May, one thousand nine hundred and thirty-one.

(Signed) C. CLAVIER.

(Signed) M. BORDUGE.

(Signed) R. PUTMAN.

(Signed) F. LAVERS.

FINAL PROTOCOL.

At the moment of signing the present Convention, the undersigned Plenipotentiaries have made the following identical declarations, which shall form an integral part thereof :

I.

§ 1. — It is understood that, as regards the application of the Law of June 29, 1872, and of the Decree of December 6 following, Article 8 of the present Convention supersedes the two paragraphs of Article 8 of the Establishment Convention signed by the two High Contracting Parties on October 6, 1927 ; it shall be applied retroactively as from November 6, 1927, without however entitling to reimbursement taxpayers who fail to prove their claim by a written application presented before January 1, 1931.

§ 2. — Subject to the necessary conservatory measures, the collection of the tax remaining due by the companies mentioned in Article 8 shall, pending ratification, be suspended for the period elapsed since November 6, 1927 ; nevertheless, the competent departments reserve the right to require payment of the tax due for that period on the basis of the provisions of Article 8 of the present Convention.

II.

§ 1. — It is understood that Belgian companies shall continue to benefit in France by the administrative provision whereby they are at present authorised to have registered only extracts of their articles of association or amendments thereto ; such extracts consist exclusively of the provisions necessary for the objects which they pursue.

§ 2. — Further, the articles of association of French companies or amendments thereto shall continue to be registered in Belgium as follows :

(1) At the general specific rate, when the companies concerned do not register the said deeds either with a view to the establishment on Belgian territory of a branch or any premises where operations are carried on or with a view to issuing, exhibiting, offering for sale or publicly selling their securities or entering them in the official price quotation list of a trade exchange ;

(2) At the specific rate of two thousand five hundred francs, when the said companies register their articles of association or amendments thereto with a view to issuing, exhibiting, offering for sale or publicly selling their securities or entering them in the official price quotation list of a trade exchange.

§ 3. — It is understood, moreover, that § 4 of Article 14 does not affect the transfer duty leviable in France on the conveyance, for consideration, of French property.

III.

§ 1. — In the event of one of the High Contracting Parties amending its fiscal legislation, the necessary readjustments in the provisions of the present Convention will be effected, in the spirit of the Convention, by agreement between the competent departments of the two States.

§ 2. — These emendatory or supplementary agreements shall be made the subject of notes exchanged through the diplomatic channel.

IV.

The question of personal taxes shall provisionally remain pending, Belgium having just substituted (Law of July 13, 1930) for the supplementary tax on total income or supertax a personal complementary tax based, in principle, on indices existing in the country. Experience alone will show in what circumstances and to what extent the question of double taxation may arise in respect of the French tax on total income assessed on real income.

V.

Students who are nationals of either of the two Contracting States sojourning in the other State for the exclusive purpose of study shall not be subject to taxation on the allowances received by them for maintenance and study.

Done at Brussels, in duplicate, the sixteenth day of May, one thousand nine hundred and thirty-one.

(Signed) C. CLAVIER.

(Signed) M. BORDUGE.

(Signed) R. PUTMAN.

(Signed) F. LAVERS.