

N° 4345.

DANEMARK ET FINLANDE

Accord pour éviter la double imposition en matière d'impôts directs, et protocole final. Signés à Copenhague, le 2 décembre 1937.

DENMARK AND FINLAND

Agreement for the Prevention of Double Taxation in the Matter of Direct Taxes, and Final Protocol. Signed at Copenhagen, December 2nd, 1937.

¹ TRANSLATION.

No. 4345. — AGREEMENT BETWEEN THE KINGDOM OF DENMARK AND THE REPUBLIC OF FINLAND FOR THE PREVENTION OF DOUBLE TAXATION IN THE MATTER OF DIRECT TAXES. SIGNED AT COPENHAGEN, DECEMBER 2ND, 1937.

THE KINGDOM OF DENMARK and THE REPUBLIC OF FINLAND, in order to prevent double taxation in the matter of direct taxes, have decided to conclude an Agreement concerning the division of the right of taxation between the two States in respect of various sources of taxation.

For this purpose, they have appointed as their Plenipotentiaries :

HIS MAJESTY THE KING OF DENMARK AND ICELAND :

Dr. Peter Rochegune MUNCH, Minister for Foreign Affairs ;

THE PRESIDENT OF THE REPUBLIC OF FINLAND :

Dr. Rolf THESLEFF, Envoy Extraordinary and Minister Plenipotentiary of the Republic at Copenhagen ;

Who, having examined each other's full powers and found them in good and due form, have agreed upon the following provisions :

Article 1.

The present Agreement shall be applicable only to nationals of the Kingdom of Denmark and of the Republic of Finland and to Danish and Finnish juristic persons.

Article 2.

1. The Agreement relates only to direct taxes.
2. For the purposes of the present Agreement, direct taxes shall be taken to mean taxes levied in virtue of the laws of the Contracting States directly on income or on capital, whether on behalf of the State or on behalf of the communes belonging thereto.
3. In particular, the following shall be regarded as direct taxes :
 - I. In the case of Denmark :
 - (a) State tax on income and capital ;
 - (b) Joint communal tax on income and capital ;
 - (c) Communal tax on income ;
 - (d) Taxes and duties levied on the same basis as any of the taxes specified under (a) to (c).

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

II. In the case of Finland :

- (a) Tax on income and capital ;
- (b) Communal tax ;
- (c) Taxes and duties levied on the same basis as any of the taxes specified under (a) and (b).

Article 3.

Income derived from immovable property shall be taxable only in the State where such property is situate.

Article 4.

1. Income derived from commerce, industry or some other form of business or activity shall be taxable only in the State in whose territory the undertaking has its permanent business establishment.

2. For the purposes of the present Agreement, a permanent business establishment is a permanent business installation of the undertaking in which the operations of that undertaking are carried on, either wholly or in part.

3. Should the undertaking possess business establishments in both Contracting States, each State shall tax the part of the income derived from business establishments situated in its territory.

4. Income from part ownership of business undertakings shall be deemed to be income from business, with the exception of income derived from shares or similar securities.

5. Income from liberal professions exercised by a permanent business establishment (centre) in one of the Contracting States, such as the work of doctors, lawyers, engineers or architects, or the exercise of scientific, artistic, literary, instructional or educational activity shall also be regarded as income from business.

Article 5.

Income derived from shipping or air navigation undertakings shall be taxable only in that one of the two States in which the actual management of the undertaking is situated.

Article 6.

1. Income of any other kind than those mentioned in the previous Articles, including income derived from transferable securities, shall be taxable only in the State in which the taxpayer has his domicile.

2. Where the tax on income accruing within the country from capital is collected in either of the two States by means of deduction (at the source), the right to make such fiscal deductions shall not be affected by the provisions of paragraph 1 of the present Article.

Article 7.

1. For the purposes of the present Agreement, the taxpayer shall be deemed to have his domicile at the place where he has a dwelling under circumstances which furnish grounds for assuming that he will retain and use it.

2. If the conditions mentioned in paragraph 1 exist at the same time in both States, their supreme financial authorities shall conclude special agreements on the matter in each case.

3. If the conditions mentioned in paragraph 1 do not exist in either of the States, the taxpayer's domicile shall be deemed to be the place at which he has his permanent residence. A person shall be deemed to have his permanent residence, for the purposes of the present provisions,

at the place where he resides under circumstances which show that his residence at that place or in that country is not merely temporary. If the taxpayer has no permanent residence in either State, he shall be deemed to be resident in the State of which he is a national.

4. For the purposes of the present Agreement, the domicile of juristic persons shall be deemed to be the place where their management is situated.

5. The above provisions 1 to 4 shall not apply to undivided estates of deceased persons, in respect of which the question of domicile is decided in accordance with the rules contained in the legislation of each of the Contracting States.

Article 8.

1. Capital consisting of immovable property and appurtenances to such property shall be taxable only in the State in which the property is situated.

2. Capital invested in commerce, industry or any other activity or occupation for purposes of gain, including shipping and air navigation undertakings, shall be taxable only in the State which is entitled by the provisions of the present Agreement to tax income from the said capital.

3. All other kinds of capital shall be taxable in the State in which the taxpayer has his domicile.

Article 9.

1. The following special provisions shall apply to diplomatic and paid consular representatives, and other representatives of each of the Contracting States of equal status with them :

Such representatives who are permanent public servants, and the officials allotted to them, and the persons employed by such public servants or officials, provided they are nationals of the country which has appointed them, shall be liable to pay direct taxes in the country in which they are employed only in respect of the income specified in Articles 3, 4 and 5, and the capital specified in Article 8, paragraphs 1 and 2 ; or in cases where the tax is levied by deduction (at the source, see Article 6, paragraph 2) ; in other cases, taxation shall be reserved to the State which appoints them.

2. Honorary Consuls who are nationals only of the State which they represent shall not be liable to taxation in the country to which they are sent in respect of emoluments which they receive in payment for their consular work ; such taxation shall be reserved for the State which appoints them.

Article 10.

If a taxpayer can prove that the measures taken by the fiscal authorities of the Contracting States have resulted in his being subjected to double taxation, he may appeal to the State of which he is a national. If his objection is deemed to be valid, the supreme financial authorities of the State in question may come to an agreement with the supreme financial authorities of the other State, with a view to equitably avoiding double taxation.

Article 11.

In order to prevent double taxation in cases for which no provisions are contained in the present Agreement, and in cases where difficulties or doubts arise in the interpretation and application of the present Agreement, the supreme financial authorities of the two States may conclude special agreements.

Article 12.

The Contracting States undertake to entrust their supreme financial authorities with the equitable decision of all other questions in respect of direct taxes which may arise owing to the

different principles governing the collection of taxes in the two States, or, in general, those which may arise, without having been expressly decided in the present Agreement.

Article 13.

The present Agreement shall be applied for the first time to taxes payable in Denmark in respect of the assessment for the financial year 1938/39, and in Finland in respect of the assessment in the year 1938, on the basis of income and capital in the calendar year 1937, or the special financial years upon which these assessments are based.

Article 14.

The present Agreement, done in duplicate in Danish and Finnish, shall be ratified, and the instruments of ratification shall be exchanged as soon as possible at Helsinki.

The Agreement shall come into force thirty days after the exchange of the instruments of ratification, and shall continue in operation until it is denounced by either Contracting State. Such denunciation shall take place not later than eight months before the end of a calendar year.

If the Agreement is denounced with the above-mentioned notice, it shall cease to apply in respect of Finland from the end of the current calendar year, and in respect of Denmark from March 31st of the following calendar year.

In faith whereof the Plenipotentiaries of the two States have signed the present Agreement and have thereto affixed their seals.

Done at Copenhagen in duplicate, the nd day of December, 1937.

(L. S.) (Signed) P. MUNCH.

(L. S.) (Signed) ROLF THESLEFF.

FINAL PROTOCOL.

On signing the Agreement concluded this day between the Kingdom of Denmark and the Republic of Finland for the prevention of double taxation in the matter of direct taxes, the undersigned Plenipotentiaries have made the following identical declarations, which shall form an integral part of the Agreement :

1. With regard to taxpayers not nationals of either of the two States, the supreme financial authorities of those States may come to special agreements in each case with a view to preventing double taxation. In this respect, special account shall be taken of taxpayers who are nationals of States which have concluded with both the Contracting States agreements for the prevention of double taxation.

2. The list of direct taxes included in Article 2 of the Agreement is not intended to be exhaustive. Any doubts as to what taxes are included in the Agreement shall be settled by agreement between the supreme financial authorities of the two States.

The supreme financial authorities of the two States shall, whenever necessary, communicate to each other lists of the direct taxes levied in each State.

3. By "communes" shall be understood in this Agreement, in the case of Denmark, communes of both the higher and the lower categories, and in the case of Finland, communes and associations of communes, together with provinces.

4. For the purposes of the present Agreement, direct taxes shall not include increment taxes, turnover taxes, taxes on communications or consumption, special taxes on winnings from lotteries and betting, succession dues and taxes on gifts, together with taxes and dues on special privileges and immunities.

The Agreement shall not apply to the Finnish communal tax in respect of inheritance (by law or by testament), gifts and entails.

5. In respect of income or capital for which the undivided estate of a deceased person is taxed in one State, participants in the estate in the other State may not be taxed.

6. Reversions and payments in discharge of reversions (including Danish fiefs and estates in tail) shall not come within the provisions of the present Agreement, but capital vested in them and income derived from them shall be subject to taxation in accordance with the provisions of each State. Both States agree, in such cases, to enter into negotiations through their supreme financial authorities as to the extent to which, and the principles on which, relief from taxation may be granted to the owners of such entailed estates if they are subject to double taxation.

7. It is agreed that, until a special agreement has been concluded on these particular matters, each of the Contracting States shall, notwithstanding the provision contained in Article 6, paragraph 1, of the Agreement, act in accordance with its own legislation in respect of :

- (a) Income and capital derived from claims secured by mortgages.
- (b) Dividends or other yield on shares or similar securities.

8. The provisions of Article 3 shall apply to income derived both from the direct administration and use of immovable property and to income from letting or leasing or any other form of using such property, together with profit derived from alienations of immovable property which do not take place in the regular course of business, and appurtenances sold in connection with the property.

Income from immovable property shall be deemed to include income from timber-felling on the person's own property or on the property of others, and income which he may obtain from the transport of felled timber to the port of exportation and its sale within the country, and also from the working up of the timber in the country at places other than the permanent business establishment.

9. The provisions of Article 4 shall apply to income derived from the direct exercise of business and to income from the leasing of the business to others and to profit on the alienation of the business or parts thereof or of objects used in the business.

10. The term " permanent business establishment " in the sense of Article 4 shall include not only the head office of the undertaking and the place where it has its management, but also its branches and subsidiary establishments, factories and works, buying and selling offices, warehouses and other commercial premises of the nature of permanent business installations, as also permanent agencies.

It is agreed that the maintenance of business relations exclusively by means of a completely independent representative (commission agent) shall not constitute a business establishment in the sense of Article 4. The same shall apply in regard to the maintenance of a representative (agent), who, whilst permanently acting for physical or juristic persons of the one State in the territory of the other State, only negotiates business, without having full power to conclude transactions on behalf of the firm he represents.

A site used for building work, the execution of which has exceeded, or, as far as can be estimated, will exceed a period of twelve months, shall be regarded as a permanent place of business within the meaning of the Agreement.

11. The supreme financial authorities may conclude a special agreement with a view to the equitable allocation of the income from commerce, industry, or business or occupation, in the cases provided for in Article 4, paragraph 3.

12. " Similar securities " in Article 4, paragraph 4, and in the present Final Protocol, No. 7(b), shall be understood as regards Danish legislation to mean allotments held by " Kommanditists ", shareholders or other participants, who are not fully liable for the business, and as regards Finnish legislation, shares in Co-operative Societies and other share certificates.

13. Students who reside in one of the Contracting States solely for purposes of study shall not be subject to taxation in that State in respect of any allowances for their maintenance and studies which they receive from their relatives domiciled and taxable in the other State.

14. As regards taxes on successions and gifts, and mutual assistance in fiscal matters, the Contracting States reserve the right to conclude a special agreement.

15. With regard to the differences which appear in the fiscal legislation of the two States, it is agreed that if a taxpayer removes from one country to the other the procedure shall be as follows :

In the case of removal from Finland to Denmark, no taxation shall be levied in Finland on income coming under Article 6, paragraph 1, earned during the calendar year in which the removal takes place, while in Denmark, no taxation is levied on similar income earned by the taxpayer before the beginning of the year in which the removal takes place.

The same procedure is applied when a taxpayer removes from Denmark to Finland, such person not being taxed in Denmark for any part of the income coming under Article 6, paragraph 1, which he has earned during the year of the removal, while he is taxed for the whole of such income in Finland.

The taxation of capital in such cases and the beginning and ending of the liability to taxation shall in other respects be governed by the legislation of the Contracting States.

16. Each State shall be entitled in case of need to require proof that double taxation is taking place within the meaning of the present Agreement.

17. The provisions of Article 5 regarding the taxation of shipping and air navigation undertakings shall annul the provisions contained in the Exchange of Notes of January 12th, 1931, between Denmark and Finland, regarding mutual exemption in certain cases from taxation on income derived from shipping.

Done at Copenhagen in duplicate, the 2nd day of December, 1937.

(L. S.) (Signed) P. MUNCH.

(L. S.) (Signed) Rolf THESLEFF.