

THE COUNCIL

Having regard to Article 13 (c) of the Convention for European Economic Co-operation of 16th April 1948 ;

Having regard to the Recommendation of the Council of 25th February 1955 concerning Double Taxation ;

Having regard to the Resolution of the Council of 16th March 1956 Creating a Fiscal Committee ;

Having regard to the Report of the Fiscal Committee of 28th May 1958 [Doc. No. C (58) 118] ;

Having regard to the Recommendation of the Council of 11th July 1958 concerning the Elimination of Double Taxation ;

Having regard to the Report of the Fiscal Committee of 18th June 1959 and, in particular, to paragraphs 13, 14, 33, 34 and 35, and to the Annexes to that Report [Doc. No. C (59) 147] ;

I. RECOMMENDS the Governments of the Member countries :

1. To pursue their efforts to conclude bilateral double taxation Conventions with those of their European partners with whom they have not yet entered into such agreements, and to revise those of the existing Conventions which may no longer be in keeping with the present circumstances.

2. To adopt, either when concluding new Conventions or when revising existing Conventions, the provisions set out in the Annex to this Recommendation, as interpreted by the Commentaries contained in the Reports of the Fiscal Committee of 28th May 1958 and 18th June 1959 referred to above.

However, in view of her particular situation in relation to shipping, Greece will retain her freedom of action with regard to those provisions in the Annex to this Recommendation which relate, respectively, to income from the operation of ships in international traffic, to remuneration of crews of such ships and to capital represented by ships in international traffic, and by assets, other than immovable property, pertaining to the operation of such ships.

1. Spain adhered to this Recommendation.

II. DECIDES :

Member countries shall, without delay, notify the Organisation of :

(a) The text of any new or revised bilateral Convention for the avoidance of double taxation which they conclude between them ;

(b) Those provisions in the Annex to this Recommendation which have been adopted in any such Convention, or the reasons why provisions in the Annex to this Recommendation have not been adopted in the said Convention.

III. INSTRUCTS the Fiscal Committee :

1. To report to the Council before 1st July of each year on measures taken by Member countries to implement the Recommendation in Section I.
2. To make proposals to the Council, if need be, on measures which ought to be taken in order to facilitate the implementation of that Recommendation.
3. To submit to the Council, for adoption, recommendations as and when agreement is reached by the Committee on questions within the terms of the mandate given by the Resolution of the Council of 16th March 1956 referred to above.
4. To submit to the Council, before 1st July 1961, a Draft Convention for the avoidance of double taxation with respect to taxes on income and capital as well as concrete proposals for the implementation of that Convention.
5. To report at the same time to the Council on the progress of the work relating to problems of double taxation with respect to taxes on estates and inheritances and to indirect taxes within the terms of the mandate given by the Resolution of the Council of 16th March 1956 referred to above.

IV. DECIDES :

The Recommendations of the Council of 25th February 1955 and of 11th July 1958 referred to above are hereby repealed.

ANNEX

Article 1

ON TAXES WHICH SHOULD BE COVERED BY DOUBLE TAXATION CONVENTIONS

A. Taxes on income and capital

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

2. There shall be regarded as taxes on income and capital all taxes imposed on total income, on total capital, or on the elements of income or of capital, including taxes on profits derived from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

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

(a) In the case of State A :

(b) In the case of State B :

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

5. The competent authorities of the Contracting States shall by mutual agreement resolve any doubts which arise as to the taxes to which this Convention ought to apply.

B. Taxes on estates and inheritances

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

2. There shall be regarded as taxes on estates and inheritances all taxes imposed on the occasion of death in the form of tax on the corpus of the estate, of tax on inheritances, of transfer duties, or of taxes on donations mortis causa.

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

(a) In the case of State A :

(b) In the case of State B :

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

5. The competent authorities of the Contracting States shall by mutual agreement resolve any doubts which arise as to the taxes to which this Convention ought to apply.

Article 2

ON PERMANENT ESTABLISHMENT

1. The term « permanent establishment » means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

- 2.** A 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.
- 3.** The term « permanent establishment » shall not be deemed 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 for collecting information, for the enterprise ;
 - (e) The maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character for the enterprise.
- 4.** A person acting in a Contracting State on behalf of an enterprise of the other Contracting State — other than an agent of an independent status to whom paragraph 5 applies — shall be deemed to be a permanent establishment in the first-mentioned State if he has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.
- 5.** An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where 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.

NOTE. The expression “enterprise of a Contracting State” means an enterprise carried on by a resident of the Contracting State concerned.

Article 3

ON FISCAL DOMICILE

1. For the purposes of this Convention, 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 similar criterion.

2. Where by reason of the provisions of the preceding paragraph an individual is a resident of both Contracting States, then this case shall be solved 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 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 or of neither of them, the competent authorities of the Contracting States shall determine the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a legal person 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. The same provision shall apply to partnerships and associations which are not legal persons under the national laws by which they are governed.

Article 4

ON TAX DISCRIMINATION ON GROUNDS OF NATIONALITY OR OTHER SIMILAR GROUNDS

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

2. The term “ nationals ” means :

(a) All individuals possessing the nationality of a Contracting State ;

- (b) All legal persons, partnerships and associations deriving their status as such from the law in force in a Contracting State.

3. Stateless persons shall not be subjected in a Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that State in the same circumstances are or may be subjected.

4. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

5. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.

6. In this Article, the term "taxation" means taxes of every kind and description.

NOTE. The expression "enterprise of a Contracting State" means an enterprise carried on by a resident of the Contracting State concerned.

Article 5

ON THE TAXATION OF INCOME FROM SHIPPING, INLAND WATERWAYS TRANSPORT AND AIR TRANSPORT

1. Income from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. Income from the operation of boats engaged in inland waterways transport shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

3. If the place of effective management of a shipping enterprise or of an inland waterways transport enterprise is aboard a ship or boat, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship or boat is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship or boat is a resident.

ARTICLES ON THE TAXATION OF INCOME
IN RESPECT OF INDEPENDENT
AND DEPENDENT PERSONAL SERVICES

Article 6

Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, such part of that income as is attributable to that base may be taxed in that other State.

Article 7

1. Subject to the provisions of Articles 8, 9 and 10, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1 above, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if :

- (a) The recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned;
- (b) The remuneration is paid by or on behalf of an employer who is not a resident of the other State; and
- (c) The remuneration is not deducted from the profits of a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration for personal services performed aboard a ship or aircraft in international traffic, or aboard a boat engaged in inland waterways transport, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 8

1. Remuneration, including pensions, paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to any individual in respect of services rendered to that State or subdivision or local authority thereof in the discharge of functions of a governmental nature may be taxed in that State.

2. The provisions of Articles 7, 9 and 10 shall apply to remuneration and pensions in respect of services rendered in connection with any trade or business carried on by one of the Contracting States or a political subdivision or a local authority thereof.

Article 9

Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 10

Subject to the provisions of paragraph 1 of Article 8, pensions and other similar remuneration paid in consideration of past employment shall be taxable only in the Contracting State of which the recipient is a resident.

Article 11

Notwithstanding anything contained in this Convention, income derived by public entertainers, such as theatre, motion picture, radio or television artistes and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

Article 12

Payments which a student or business apprentice from one of the Contracting States who is present in the other Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that other State, provided that such payments are made to him from sources outside that other State.

Article 13

ON THE TAXATION OF INCOME FROM IMMOVABLE PROPERTY

- 1.** Income from immovable property may be taxed in the Contracting State in which such property is situated.
- 2.** The term "immovable property" shall be defined in accordance with the laws 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 of agricultural and forestry enterprises, 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 mineral deposits, sources and other natural resources ; ships, boats and aircraft shall not be regarded as immovable property.
- 3.** The provisions of paragraphs 1 and 2 above shall apply to income derived from the direct use or from the letting of immovable property or the use in any other form of such property, including income from agricultural or forestry enterprises. They shall likewise apply to profits from the alienation of immovable property.

4. The provisions of paragraphs 1 to 3 above shall also apply to the income from immovable property of any enterprises other than agricultural or forestry enterprises and to income from immovable property used for the performance of professional services.

Article 14

ON THE TAXATION OF CAPITAL

1. Capital represented by immovable property, as defined in paragraph 2 of Article 13, may be taxed in the Contracting State in which such property is situated.

2. Subject to the provisions of paragraph 1 above, capital represented by assets forming part of the business property employed in a permanent establishment of an enterprise, or by assets pertaining to a fixed base used for the performance of professional services, may be taxed in the Contracting State in which the permanent establishment or fixed base is situated.

3. Ships and aircraft operated in international traffic and boats engaged in inland waterways transport and assets, other than immovable property, pertaining to the operation of such ships, aircraft and boats, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.