

## THE COUNCIL

Having regard to Article 5(b) of the Convention on the Organisation for Economic Co-operation and Development of 14th December 1960 ;

Having regard to the Report of the Fiscal Committee of 31st May 1966 on the Draft Convention for the Avoidance of Double Taxation with respect to Taxes on Estates and Inheritances between the Member Countries of the O.E.C.D. and, in particular, to paragraphs 45 - 53, as well as the Commentaries on the Articles of the Draft Convention contained in that Report [Doc. No. C(66)50] ;

Having regard to the Recommendation of the Council of 30th July 1963 concerning the Avoidance of Double Taxation with respect to Taxes on Income and Capital [Doc. No. C(63)113].

Having regard to the desirability of extending to taxes on estates and inheritances the efforts of Member countries with regard to the elimination of double taxation and of concluding Conventions between them for that purpose ;

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1. The Delegates for Canada and Japan abstained from voting on this Recommendation.

Having also regard to the need for harmonising existing bilateral Conventions concerning the avoidance of double taxation with respect to taxes on estates and inheritances, on uniform principles, with uniform definitions, rules and methods, and of agreeing on a common interpretation, and of extending the existing network of such Conventions to all Member countries ;

#### I. RECOMMENDS TO THE GOVERNMENTS OF MEMBER COUNTRIES :

1. To pursue their efforts to conclude bilateral Conventions for the avoidance of double taxation with respect to taxes on estates and inheritances with Member countries with whom they have not concluded such Conventions, and to revise such existing Conventions between themselves which may no longer be in keeping with present circumstances.

2. When concluding or revising bilateral Conventions between themselves, to conform to the Draft Convention, set out in the Annex hereto (hereinafter referred to as the «Draft Convention»), as interpreted by the Commentaries and in the Report of the Fiscal Committee hereinbefore referred to and having regard to the derogations and reservations contained in those Commentaries and the said Report.

II. REQUESTS the Governments of Member countries to notify the Organisation of the text of any new or revised bilateral double taxation Convention with respect to taxes on estates and inheritances which they may conclude between themselves, and, where appropriate, the reasons why the provisions of the Draft Convention have not been adopted in any such Convention.

#### III. INSTRUCTS THE FISCAL COMMITTEE :

1. To seek solutions to the problems mentioned in paragraph 49 of the Report of the Fiscal Committee hereinbefore referred to, and to report to the Council before 1st July 1968.

2. To examine the information submitted in conformity with Section II above, and to report to the Council as and when appropriate.

3. To report to the Council, as and when appropriate, on the feasibility of concluding a Multilateral Convention for the avoidance of double taxation with respect to taxes on estates and inheritances among all Member countries of the O.E.C.D.

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### ANNEX

#### DRAFT CONVENTION FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON ESTATES AND INHERITANCES

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TITLE OF THE CONVENTION

*Convention between (State A) and (State B) for the  
avoidance of double taxation with respect to  
taxes on estates and inheritances*

*Preamble*

Note : The preamble of the Convention shall be drafted in accordance with the constitutional procedure of both Contracting States.

Chapter I  
*Scope of the Convention*

Article 1  
*Estates covered*

This Convention shall apply to estates of deceased persons whose domicile at their death was in one or both of the Contracting States.

Article 2  
*Taxes covered*

1. This Convention shall apply to taxes on estates and inheritances imposed on behalf of each Contracting State or of its political sub-divisions 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 the Convention shall apply are, in particular :
  - (a) in the case of (State A) : .....
  - (b) in the case of (State B) : .....
4. The Convention shall also apply to any taxes on estates and inheritances 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.

Chapter II  
*Definitions*

Article 3  
*General definitions*

1. In this Convention :
  - (a) the terms « a Contracting State » and « the other Contracting State » mean (State A) or (State B), as the context requires ;
  - (b) the term « competent authority » means :
    - (i) in (State A)
    - (ii) in (State B)
2. As regards the application of the Convention by a Contracting State, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of the Convention.

Article 4  
*Fiscal domicile*

1. For the purposes of this Convention, the question whether a person at his death was domiciled in a Contracting State shall be determined according to the law of that State.
2. Where by reason of the provisions of paragraph 1 a person was domiciled in both Contracting States, then this case shall be determined in accordance with the following rules :
  - (a) He shall be deemed to have been domiciled in the Contracting State in which he had a permanent home available to him. If he had a permanent home available to him in both Contracting States, the domicile shall be deemed to be in the Contracting State with which his personal and economic relations were closest (centre of vital interests) ;
  - (b) If the Contracting State in which he had his centre of vital interests cannot be determined, or if he had not a permanent home available to him in either Contracting State, the domicile shall be deemed to be in the Contracting State in which he had an habitual abode ;

(c) If he had an habitual abode in both Contracting States or in neither of them, the domicile shall be deemed to be in the Contracting State of which he was a national ;

(d) If he was a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

### Chapter III *Taxing rules*

#### Article 5 *Immovable property*

1. 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 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 paragraphs 1 and 2 shall also apply to immovable property of an enterprise and to immovable property used for the performance of professional services or other independent activities of a similar character.

#### Article 6 *Business property of a permanent establishment and assets pertaining to a fixed base used for the performance of professional services*

1. Except for assets referred to in Articles 5 and 7, assets forming part of the business property of a permanent establishment of an enterprise may be taxed in the Contracting State in which the permanent establishment is situated.
2. The term «permanent establishment» means a fixed place of business in which the business of the enterprise is wholly or partly carried on.
3. The term «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.
4. 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.

5. 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 6 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.

6. 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.

7. Except for assets described in Article 5, assets pertaining to a fixed base used for the performance of professional services or other independent activities of a similar character may be taxed in the Contracting State in which the fixed base is situated.

## Article 7

### *Ships, boats and aircraft*

1. Ships and aircraft operated in international traffic and boats engaged in inland waterways transport, and movable property pertaining to the operation of such ships, aircraft and boats, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated

## Article 8

### *Property not expressly mentioned*

1. Property other than property referred to in Articles 5, 6 and 7 shall be taxable only in the Contracting State in which the deceased was domiciled at his death.

## Article 9

### *Deduction of debts*

1. Debts especially secured on any property referred to in Article 5 shall be deducted from the value of that property. Debts, not being especially secured on any property referred to in Article 5, which are represented by the acquisition, conversion, repair or upkeep of any such property, shall be deducted from the value of that property.

2. Subject to paragraph 1, debts pertaining to a permanent establishment of an enterprise or to a fixed base used for the performance of professional services or other independent activities of a similar character, and debts pertaining to any business of shipping, inland waterways transport or air

transport, shall be deducted from the value of property referred to in Article 6 of Article 7, as the case may be.

3. Other debts shall be deducted from the value of property to which Article 8 applies.

4. If a debt exceeds the value of the property from which it is deductible in a Contracting State, according to paragraphs 1, 2 and 3, the excess shall be deducted from the value of any other property taxable in that State.

5. Any excess still remaining after the deductions referred to in the preceding paragraph shall be deducted from the value of the property liable to tax in the other Contracting State.

## Chapter IV

### *Methods for elimination of double taxation*

#### Article 10 (A)

##### *Exemption method*

1. The Contracting State in which the deceased was domiciled at his death shall exempt from tax any property which, in accordance with the provisions of this Convention, may be taxed in the other Contracting State but may, in calculating tax on any property which it remains entitled to tax, apply the rate of tax which would have been applicable if the exempted property had not been so exempted.

#### Article 10 (B)

##### *Credit method*

1. The Contracting State in which the deceased was domiciled at his death shall deduct from the tax calculated according to its law an amount equal to the tax paid in the other Contracting State on property which, in accordance with the provisions of this Convention, may be taxed in that other State.

2. The deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is appropriate to the property which may be taxed in the other Contracting State.

## Chapter V

### *Special provisions*

#### Article 11

##### *Non-discrimination*

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation of 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.

## Article 12

### *Mutual agreement procedure*

1. Any person who considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of either State.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Convention.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

## Article 13

### *Exchange of information*

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Convention and of the domestic laws of the Contracting State concerning taxes covered by this Convention insofar as the taxation thereunder is in accordance with this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment or collection of the taxes which are the subject of the Convention.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on one of the Contracting States the obligation :

- (a) to carry out administrative measures at variance with the laws or the administrative practice of that of the other Contracting State ;
- (b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State ;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).

#### Article 14

##### *Diplomatic and Consular officials*

Nothing in this Convention shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreements.

#### Article 15

##### *Territorial extension*

1. This Convention may be extended, either in its entirety or with any necessary modifications, [to any part of the territory of (State A) or of (State B) which is specifically excluded from the application of the Convention or] to any State or territory for whose international relations (State A) or (State B) is responsible, which imposes taxes substantially similar in character to those to which the Convention applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed between the Contracting States in notes to be exchanged through diplomatic channels or in any other manner in accordance with their constitutional procedures.

2. Unless otherwise agreed by both Contracting States, the denunciation of the Convention by one of them under Article 17 shall terminate, in the manner provided for in that Article, the application of the Convention [to any part of the territory of (State A) or of (State B) or] to any State or territory to which it has been extended under this Article.

Note : The words between brackets are of relevance when, by special provision, a part of the territory of a Contracting State is excluded from the application of the Convention.

#### Chapter VI

##### *Final provisions*

#### Article 16

##### *Entry into force*

- 1. This Convention shall be ratified and the instruments of ratification shall be exchanged at ..... as soon as possible.
- 2. The Convention shall enter into force on the day on which the instruments of ratification are exchanged and its provisions shall have effect in relation to estates of persons dying on or after that day.

#### Article 17

##### *Termination*

This Convention shall remain in force until denounced by one of the Contracting States. Either Contracting State may denounce the Convention,

through diplomatic channels, with effect from the end of any calendar year not earlier than the year ..... by giving at least six months notice of termination. In such an event, the Convention will not apply to estates of persons who died after the expiry of the calendar year with respect to the end of which the Convention has been denounced.

### *Terminal Clause*

Note : The terminal clause concerning the signing shall be drafted in accordance with the constitutional procedure of both Contracting States.

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In adopting this Recommendation, the Council EXPRESSED ITS APPRECIATION of the work done by the Fiscal Committee and APPROVED the publication of the Committee's Report of 31st May 1966 on the Draft Double Taxation Convention on Estates and Inheritances [Doc. No. C(66)50, Parts I and II and corrigendum].