

Internal Revenue Service, Treasury

§ 520.101

520.119 Mutual assistance in the collection of taxes.

AUTHORITY: 53 Stat. 32, 467; 26 U.S.C. 62, 3791.

SOURCE: Treasury Decision 4975, 5 FR 2400, June 28, 1940, unless otherwise noted. Redesignated at 25 FR 14022, Dec. 31, 1960.

EFFECTIVE DATE NOTE: By T.D. 8732, 62 FR 53498, Oct. 14, 1997, part 520 was removed, effective Jan. 1, 1999. By T.D. 8804, 63 FR 72183, Dec. 31, 1998, the effective date was delayed until Jan. 1, 2000. By T.D. 8856, 64 FR 73408, Dec. 30, 1999, the effective date was delayed until Jan. 1, 2001.

Subpart—General Income Tax

§ 520.101 Introductory.

(a) The tax convention and protocol between the United States and Sweden, referred to in this subpart as the convention, proclaimed by the President of the United States on December 12, 1939, and effective January 1, 1940, provides as follows:

ARTICLE I

The taxes referred to in this Convention are:

(a) In the case of the United States of America:

(1) The Federal income taxes, including surtaxes and excess-profits taxes.

(2) The Federal capital stock tax.

(b) In the case of Sweden:

(1) The National income and property tax, including surtax.

(2) The National special property tax.

(3) The communal income tax.

It is mutually agreed that the present Convention shall also apply to any other or additional taxes imposed by either contracting State, subsequent to the date of signature of this Convention, upon substantially the same bases as the taxes enumerated herein.

The benefits of this Convention shall accrue only to citizens and residents of the United States of America, to citizens and residents of Sweden and to United States or Swedish corporations and other entities.

ARTICLE II

An enterprise of one of the contracting States is not subject to taxation by the other contracting State in respect of its industrial and commercial profits except in respect of such profits allocable to its permanent establishment in the latter State. The income thus taxed in the latter State shall be exempt from taxation in the former State.

No account shall be taken, in determining the tax in one of the contracting States, of

the mere purchase of merchandise effected therein by an enterprise of the other State.

The competent authorities of the two contracting States may lay down rules by agreement for the apportionment of industrial and commercial profits.

ARTICLE III

When an enterprise of one of the contracting States, by reason of its participation in the management or capital of an enterprise of the other contracting State, makes or imposes on the latter in their commercial or financial relations conditions different from those which would be made with an independent enterprise, any profits which should normally have appeared in the balance sheet of the latter enterprise but which have been in this manner diverted to the former enterprise may, subject to applicable measures of appeal, be incorporated in the taxable profits of the latter enterprise. In such case consequent rectifications may be made in the accounts of the former enterprise.

ARTICLE IV

Income which an enterprise of one of the contracting States derives from the operation of ships or aircraft registered in that State is taxable only in the State in which registered. Income derived by such an enterprise from the operation of ships or aircraft not so registered shall be subject to the provisions of Article II.

ARTICLE V

Income of whatever nature derived from real property, including gains derived from the sale of such property, but not including interest from mortgages or bonds secured by real property, shall be taxable only in the contracting State in which the real property is situated.

ARTICLE VI

Royalties from real property or in respect of the operation of mines, quarries, or other natural resources shall be taxable only in the contracting State in which such property, mines, quarries, or other natural resources are situated.

Other royalties and amounts derived from within one of the contracting States by a resident or by a corporation or other entity of the other contracting State as consideration for the right to use copyrights, patents, secret processes and formulas, trademarks and other analogous rights, shall be exempt from taxation in the former State.

ARTICLE VII

1. Dividends shall be taxable only in the contracting State in which the shareholder is resident or, if the shareholder is a corporation or other entity, in the contracting State

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in which such corporation or other entity is created or organized; provided, however, that each contracting State reserves the right to collect and retain (subject to applicable provisions of its revenue laws) the taxes which, under its revenue laws, are deductible at the source, but not in excess of 10 per centum of the amount of such dividends. For the purposes of this Article the National income and property tax imposed by Sweden shall be deemed to be a tax deducted at the source.

2. Notwithstanding the provisions of Article XXII of this Convention, the provisions of this Article may be terminated by either of the contracting States at the end of two years from the date upon which this Convention enters into force or at any time thereafter, provided at least six months' prior notice of termination is given, such termination to become effective on the first day of January following the expiration of such six-month period. In the event the provisions of this Article are terminated, the provisions of—

(1) Article XIII (2), in so far as they relate to the special property tax imposed by Sweden upon shares in a corporation;

(2) Article XIV(b)(2), relating to the allowance of an additional deduction from taxes on dividends; and

(3) Article XVI, in so far as they relate to exchange of information with respect to dividends,

will likewise terminate.

ARTICLE VIII

Interest on bonds, notes, or loans shall be taxable only in the contracting State in which the recipient of such interest is a resident or, in the case of a corporation or other entity, in the State in which the corporation or other entity is created or organized; *Provided, however,* That each contracting State reserves the right to collect and retain (subject to applicable provisions of its revenue laws) the taxes which, under its revenue laws, are deductible at the source.

ARTICLE IX

Gains derived in one of the contracting States from the sale or exchange of capital assets by a resident or a corporation or other entity of the other contracting State shall be exempt from taxation in the former State, provided such resident or corporation or other entity has no permanent establishment in the former State.

ARTICLE X

Wages, salaries and similar compensation and pensions paid by one of the contracting States or by the political subdivisions or territories or possessions thereof to individuals residing in the other State shall be exempt from taxation in the latter State.

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Private pensions and life annuities derived from within one of the contracting States and paid to individuals residing in the other contracting State shall be exempt from taxation in the former State.

ARTICLE XI

(a) Compensation for labor or personal services, including the practice of the liberal professions, shall be taxable only in the contracting State in which such services are rendered.

(b) The provisions of paragraph (a) are, however, subject to the following exceptions:

A resident of Sweden shall be exempt from United States tax upon compensation for labor or personal services performed within the United States of America if he fails within either of the following classifications:

1. He is temporarily present within the United States of America for a period or periods not exceeding a total of one hundred eighty days during the taxable year and his compensation is received for labor or personal services performed as an employee of, or under contract with, a resident or corporation or other entity of Sweden; or

2. He is temporarily present in the United States of America for a period or periods not exceeding a total of ninety days during the taxable year and the compensation received for such services does not exceed \$3,000.00 in the aggregate.

In such cases Sweden reserves the right to the taxation of such income.

(c) The provisions of paragraph (b) of this Article shall apply, *mutatis mutandis*, to a resident of the United States of America deriving compensation for personal services performed within Sweden.

(d) The provisions of paragraphs (b) and (c) of this Article shall have no application to the professional earnings of such individuals as actors, artists, musicians and professional athletes.

(e) The provisions of this Article shall have no application to the income to which Article X relates.

ARTICLE XII

Students or business apprentices from one contracting State residing in the other contracting State exclusively for purposes of study or for acquiring business experience shall not be taxable by the latter State in respect of remittances received by them from within the former State for the purposes of their maintenance or studies.

ARTICLE XIII

(1) If the property consists of:

(a) Immovable property and accessories appertaining thereto;

In the case of taxes on property or increment of property the following provisions shall be applicable:

(b) Commercial or industrial enterprises, including maritime shipping and air transport undertakings;

the tax may be levied only in that contracting State which is entitled under the preceding Articles to tax the income from such property.

(2) In the case of all other forms of property, the tax may be levied only in that contracting State where the taxpayer has his residence or, in the case of a corporation or other entity, in the contracting State where the corporation or other entity has been created or organized.

The same principles shall apply to the United States capital stock tax with respect to corporations of Sweden having capital or other property in the United States of America.

ARTICLE XIV

It is agreed that double taxation shall be avoided in the following manner:

(a) Notwithstanding any other provision of this Convention, the United States of America in determining the income and excess-profits taxes, including all surtaxes, of its citizens or residents or corporations may include in the basis upon which such taxes are imposed all items of income taxable under the revenue laws of the United States of America as though this Convention had not come into effect. The United States of America shall, however, deduct the amount of the taxes specified in Article I (b) (1) and (3) of this Convention or other like taxes from the income tax thus computed but not in excess of that portion of the income tax liability which the taxpayer's net income taxable in Sweden bears to his entire net income.

(b)(1) Notwithstanding any other provision of this Convention, Sweden, in determining the graduated tax on income and property of its residents or corporations or other entities, may include in the basis upon which such tax is imposed all items of income and property subject to such tax under the taxation laws of Sweden. Sweden shall, however, deduct from the tax so calculated that portion of such tax liability which the taxpayer's income and property exempt from taxation in Sweden under the provisions of this Convention bears to his entire income and property.

(2) There shall also be allowed by Sweden from its National income and property tax a deduction offsetting the tax deducted at the source in the United States of America, amounting to not less than 5 per centum of the dividends from within the United States of America and subject to such tax in Sweden. It is agreed that the United States of America shall allow a similar credit against the United States income tax liability of citizens of Sweden residing in the United States of America.

ARTICLE XV

With a view to the more effective imposition of the taxes to which the present Convention relates, each of the contracting States undertakes, subject to reciprocity, to furnish such information in the matter of taxation, which the authorities of the State concerned have at their disposal or are in a position to obtain under their own law, as may be of use to the authorities of the other State in the assessment of the taxes in question and to lend assistance in the service of documents in connection therewith. Such information and correspondence relating to the subject matter of this Article shall be exchanged between the competent authorities of the contracting States in the ordinary course or on demand.

ARTICLE XVI

1. In accordance with the preceding Article, the competent authorities of the United States of America shall forward to the competent authorities of Sweden as soon as practicable after the close of each calendar year the following information relating to such calendar year:

(a) The names and addresses of all addressees within Sweden deriving from sources within the United States of America dividends, interest, royalties, pensions, annuities, or other fixed or determinable annual or periodical income, showing the amount of such income with respect to each addressee;

(b) Any particulars which the competent United States authorities may obtain from banks, savings banks or other similar institutions concerning assets belonging to individuals resident in Sweden or to Swedish corporations or other entities;

(c) Any particulars which the competent United States authorities may obtain from inventories in the case of property passing on death concerning debts contracted with individuals resident in Sweden or Swedish corporations or other entities.

2. The competent authorities of Sweden shall forward to the competent authorities of the United States of America as soon as practicable after the close of each calendar year the following information relating to such calendar year:

(a) The particulars contained in the forms delivered to the Swedish authorities in connection with the payment to individuals or corporations or other entities whose addressees are within the United States of America of dividends on shares in a corporation or participation certificates in cooperative societies, and interest on bonds or other similar securities;

(b) The particulars contained in permits accorded to individuals resident in the United State of America or to United States corporations or other entities to enable them

to acquire for business purposes immovable property situated in Sweden;

(c) Any particulars which the central Swedish authorities may obtain from banks, savings banks or other similar institutions concerning assets belonging to individuals resident in the United States of America or to United States corporations or other entities;

(d) Any particulars which the central Swedish authorities may obtain from inventories in the case of property passing on death, concerning debts contracted with individuals resident of the United States of America, or United States corporations or other entities;

(e) A list of the names and addresses of all United States citizens resident in the United States of America who have made declarations to the Central Committee in Stockholm in charge of the taxation of taxpayers not resident in Sweden for purposes of the Swedish tax on income and property;

(f) Particulars concerning annuities and pensions, public or private, paid to individuals resident in the United States of America.

ARTICLE XVII

Each contracting State undertakes, in the case of citizens or corporations or other entities of the other contracting State, to lend assistance and support in the collection of the taxes to which the present Convention relates, together with interest, costs, and additions to the taxes and fines not being of a penal character. The contracting State making such collection shall be responsible to the other contracting State for the sums thus collected.

In the case of applications for enforcement of taxes, revenue claims of each of the contracting States which have been finally determined shall be accepted for enforcement by the other contracting State and collected in that State in accordance with the laws applicable to the enforcement and collection of its own taxes. The State to which application is made shall not be required to enforce executory measures for which there is no provision in the law of the State making the application.

The applications shall be accompanied by such documents as are required by the laws of the State making the application to establish that the taxes have been finally determined.

If the revenue claim has not been finally determined the State to which application is made may at the request of the other contracting State, take such measures of conservancy as are authorized by the revenue laws of the former State.

ARTICLE XVIII

The competent authority of each of the contracting States shall be entitled to obtain, through diplomatic channels, from the competent authority of the other contracting State, particulars in concrete cases relative to the application to citizens or to corporations or other entities of the former State, of the taxes to which the present Convention relates. With respect to particulars in other cases, the competent authority of each of the contracting States will give consideration to requests from the competent authority of the other contracting State.

ARTICLE XIX

In no case shall the provisions of Article XVII, relating to mutual assistance in the collection of taxes, or of Article XVIII, relating to particulars in concrete cases, be construed so as to impose upon either of the contracting States the obligation.

(1) to carry out administrative measures at variance with the regulations and practice of either contracting State, or

(2) to supply particulars which are not procurable under its own legislation or that of the State making application.

The State to which application is made for information or assistance shall comply as soon as possible with the request addressed to it. Nevertheless, such State may refuse to comply with the request for reasons of public policy or if compliance would involve violation of a business, industrial or trade secret or practice. In such case it shall inform, as soon as possible, the State making the application.

ARTICLE XX

Where a taxpayer shows proof that the action of the revenue authorities of the contracting States has resulted in double taxation in his case in respect of any of the taxes to which the present Convention relates, he shall be entitled to lodge a claim with the State of which he is a citizen or, if he is not a citizen of either of the contracting States, with the State of which he is a resident, or, if the taxpayer is a corporation or other entity, with the State in which it is created or organized. Should the claim be upheld, the competent authority of such State may come to an agreement with the competent authority of the other State with a view to equitable avoidance of the double taxation in question.

ARTICLE XXI

The competent authorities of the two contracting States may prescribe regulations necessary to interpret and carry out the provisions of this Convention. With respect to the provisions of this Convention relating to

exchange of information, service of documents and mutual assistance in the collection of taxes, such authorities may, by common agreement, prescribe rules concerning matters of procedure, forms of application and replies thereto, conversion of currency, disposition of amounts collected, minimum amounts subject to collection and related matters.

ARTICLE XXII

The present Convention shall be ratified, in the case of the United States of America, by the President, by and with the advice and consent of the Senate, and in the case of Sweden, by His Majesty the King, with the consent of the Riksdag. The ratifications shall be exchanged at Stockholm.

This Convention shall become effective on the first day of January following the exchange of the instruments of ratification and shall apply to income realized and property held on or after that date. The Convention shall remain in force for a period of five years and indefinitely thereafter but may be terminated by either contracting State at the end of the five-year period or at any time thereafter, provided at least six months' prior notice of termination has been given, the termination to become effective on the first day of January following the expiration of the six-month period.

In witness whereof the respective Plenipotentiaries have signed this Convention and have affixed their seals hereto.

Done in duplicate, in the English and Swedish languages, both authentic, at Washington, this twenty-third day of March, nineteen hundred and thirty-nine.

For the President of the United States of America:

SUMNER WELLES [SEAL]

For His Majesty the King of Sweden:

W. BOSTROM [SEAL]

PROTOCOL

At the moment of signing the Convention for the avoidance of double taxation, and the establishment of rules of reciprocal administrative assistance in the case of income and other taxes, this day concluded between the United States of America and Sweden, the undersigned Plenipotentiaries have agreed that the following provisions shall form an integral part of the Convention:

1. As used in this Convention:

(a) The term "permanent establishment" includes branches, mines and oil wells, plantations, factories, workshops, warehouses, offices, agencies, installations, and other fixed places of business of an enterprise but does not include the casual or temporary use of merely storage facilities. A permanent establishment of a subsidiary corporation shall not be deemed to be a permanent establishment of the parent corporation. When an en-

terprise of one of the contracting States carries on business in the other State through an employee or agent, established there, who has general authority to contract for his employer or principal, it shall be deemed to have a permanent establishment in the latter State. But the fact that an enterprise of one of the contracting States has business dealings in the other State through a bona fide commission agent, broker or custodian shall not be held to mean that such enterprise has a permanent establishment in the latter State.

(b) The term "enterprise" includes every form of undertaking whether carried on by an individual, partnership, corporation, or any other entity.

(c) The term "enterprise of one of the contracting States" means, as the case may be, "United States enterprise" or "Swedish enterprise".

(d) The term "United States enterprise" means an enterprise carried on in the United States of America by a resident of the United States of America or by a United States corporation or other entity; the term "United States corporation or other entity" means a partnership, corporation or other entity created or organized in the United States of America or under the law of the United States of America or of any State or Territory of the United States of America.

(e) The term "Swedish enterprise" is defined in the same manner, mutatis mutandis, as the term "United States enterprise".

2. The term "corporation" includes associations, joint-stock companies, and insurance companies.

3. A citizen of one of the contracting States not residing in either shall be deemed, for the purpose of this Convention, to be a resident of the contracting State of which he is a citizen.

When doubt arises with respect to residence or with respect to the taxable status of corporations or other entities, the competent authorities of the two contracting States may settle the question by mutual agreement.

4. The provisions of Swedish law concerning the taxation of the undivided estates of deceased persons shall not apply where the beneficiaries are directly liable to taxation in the United States of America.

5. The term "life annuities" referred to in Article X of this Convention means a stated sum payable periodically at stated times during life, or during a specified number of years, under an obligation to make the payments in consideration of a gross sum paid for such obligation.

6. The Swedish so-called "fees tax" (bevillingsavgift for vissa offentliga forestallningar) based on gross income in so far as it affects such individuals as actors, artists, musicians and professional athletes

shall be deemed to be an income tax for the purposes of Article XIV (a).

The credit for taxes provided in Article XIV shall have no application to taxes deducted at the source from dividends and interest except to the extent provided in paragraph (b)(2) of that Article.

In the application of the provisions of this Convention the benefits of section 131 of the United States Revenue Act of 1938, relating to credits for foreign taxes shall be accorded but the credit provided for in Article XIV(a) shall not extend to United States excess-profits taxes nor to the surtax imposed on personal holding companies.

7. Citizens of each of the contracting States residing within the other contracting State shall not be subjected in the latter State to other or higher taxes than are imposed upon the citizens of such latter State.

8. The provisions of this Convention shall not be construed to deny or affect in any manner the right of diplomatic and consular officers to other or additional exemptions now enjoyed or which may hereafter be granted to such officers, nor to deny to either of the contracting States the right to subject to taxation its own diplomatic and consular officers.

9. The provisions of the present Convention shall not be construed to restrict in any manner any exemption, deduction, credit or other allowance accorded by the laws of one of the contracting States in the determination of the tax imposed by such State.

10. In the administration of the provisions of this Convention relating to exchange of information, service of documents, and mutual assistance in collection of taxes, fees and costs incurred in the ordinary course shall be borne by the State to which application is made but extraordinary costs incident to special forms of procedure shall be borne by the applying State.

11. Documents and other communications or information contained therein, transmitted under the provisions of this Convention by one of the contracting States to the other contracting State shall not be published, revealed or disclosed to any person except to the extent permitted under the laws of the latter State with respect to similar documents, communications or information.

12. As used with respect to revenue claims in Article XVII of this Convention the term "finally determined" shall be deemed to mean:

(a) In the case of Sweden, claims which have been finally established, even though still open to revision by exceptional procedure;

(b) In the case of the United States of America, claims which are no longer appealable, or which have been determined by decision of a competent tribunal, which decision has become final.

13. As used in this Convention the term "competent authority" or "competent authorities" means, in the case of the United States of America, the Secretary of the Treasury and in the case of Sweden, the Finance Ministry.

14. The term "United States of America" as used in this Convention in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

15. Should any difficulty or doubt arise as to the interpretation or application of the present Convention, or its relationship to Conventions between one of the contracting States and any other State, the competent authorities of the contracting States may settle the question by mutual agreement.

16. The present Convention and Protocol shall not be deemed to affect the exchange of notes between the United States of America and Sweden providing relief from double income taxation on shipping profits, signed March 31, 1938.

Done at Washington, this twenty-third day of March, nineteen hundred and thirty-nine.

SUMNER WELLES [SEAL]

W. BOSTROM [SEAL]

And where the said convention and the said protocol have been duly ratified on both parts and the ratifications of the two Governments were exchanged at Stockholm on the fourteenth day of November, one thousand nine hundred and thirty-nine;

And whereas, as is provided in Article XXII, the said convention shall become effective on the first day of January following the exchange of the instruments of ratification;

Now, therefore, be it known that I, Franklin D. Roosevelt, President of the United States of America, have caused the said convention and the said protocol to be made public to the end that the same and every article, clause and part thereof may be observed and fulfilled with good faith by the United States of America and the citizens thereof on and from the first day of January, one thousand nine hundred and forty.

In testimony whereof, I have hereunder set my hand and caused the Seal of the United States of America to be affixed.

Done at the city of Washington this twelfth day of December, in the year of our Lord one thousand nine hundred and thirty-nine, and of the Independence of the United States of America the one hundred and sixty-fourth.

[SEAL]

FRANKLIN D. ROOSEVELT

By the President:

CORDELL HULL

Secretary of State.

(b) The Internal Revenue Code provides in part as follows:

SEC. 22. GROSS INCOME.

* * * * *

(b) *Exclusions from gross income.* The following items shall not be included in gross income and shall be exempt from taxation under this chapter:

* * * * *

(7) *Income exempt under treaty.* Income of any kind, to the extent required by any treaty obligation of the United States:

SEC. 62. RULES AND REGULATIONS.

The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this chapter.

§ 520.102 Scope of this subpart.

(a) The primary purposes of the convention, to be accomplished on a mutually reciprocal basis, are the avoidance of double taxation, exchange of fiscal information complementary to those provisions of the convention relating to avoidance of double taxation, and mutual assistance in the collection of the taxes to which the convention relates. The regulations in this subject deal primarily with the effect of the convention upon the determination of taxable income from sources within the United States of nonresident alien individuals resident in Sweden and of Swedish corporations and other Swedish entities, and with the information to be made available to the Finance Minister of Sweden.

(b) The specific classes of income from sources within the United States exempt by reason of the convention from United States income tax are:

(1) Industrial and commercial profits of a Swedish enterprise having no permanent establishment in the United States (Article II);

(2) Income derived by a Swedish enterprise from the operation of ships or aircraft registered in Sweden (Article IV);

(3) Royalties and amounts derived by a nonresident alien individual resident in Sweden or by a Swedish corporation or other entity as consideration for the right to use copyrights, patents, secret processes and formulas, trade-marks and other analogous rights (Article VI);

(4) Gains derived from the sale or exchange of capital assets by a nonresident alien individual resident in Sweden, or by a Swedish corporation or other entity, having no permanent establishment in the United States (Article IX);

(5) Wages, salaries and similar compensation and pension paid by Sweden or by a political subdivision thereof to individuals (other than citizens of the United States) temporarily residing in the United States (Article X);

(6) Private pensions and life annuities paid to nonresident alien individuals residing in Sweden (Article X);

(7) Compensation for labor or personal services performed within the United States by a nonresident alien individual resident in Sweden, such exemption being, however, subject to the limitations set forth in Article XI of the convention and in § 520.113;

(8) Remittances from sources within Sweden (if and to the extent that they constitute gross income without regard to this convention) received in the United States by a nonresident alien individual resident of Sweden who is temporarily resident in the United States for the purposes of study or for acquiring business experience, such remittances being for the purposes of their maintenance or studies (Article XII).

(c) The convention does not affect the liability to United States income tax of Swedish citizens resident in the United States except to the extent such citizens are entitled to the benefits of Article XIV of the convention. For the purposes of the convention, an individual resident in neither Sweden nor the United States and claiming the benefits of the convention as a citizen of Sweden shall be deemed to be a resident of Sweden if it is shown to the satisfaction of the Commissioner that he is such citizen. With respect to dividends and interest, see § 520.10.

(d) Except as to those items of income expressly exempted by the convention, the income tax liability of a nonresident alien individual resident of Sweden and of a Swedish corporation or other entity is determined in accordance with the provisions of the internal revenue laws of the United States and the regulations thereunder