

(6) Compensation, subject to certain limitations, for personal services derived by a nonresident alien who is a resident of Denmark (Article XI);

(7) Remittances from sources outside the United States received in the United States by a Danish citizen who is temporarily present in the United States for the purposes of study or for acquiring business experience, such remittances being for the purpose of his maintenance or studies (Article XIII);

(8) Remuneration derived from teaching in the United States for a period of not more than two years by a professor or teacher who is a resident of Denmark but who is temporarily present in the United States (Article XIV).

(c) The convention also reduces to 15 percent the rate of tax otherwise imposed upon dividends derived by a nonresident alien who is a resident of Denmark, or by a Danish corporation, if such alien or corporation has no permanent establishment in the United States (Article VI).

(d) [Reserved]

(e) The convention does not affect the liability to United States income taxation of citizens of Denmark who are residents of the United States except that such individuals are entitled to the benefits of Article XV (relating to credit for Danish income tax), and of Article XVI (relating to equality of taxation). Except as provided in Article XV, relating to the credit for income tax, the convention does not affect taxation by the United States of a citizen of the United States or of a domestic corporation, even though such citizen is resident in Denmark and such corporation is engaged in trade or business in Denmark.

[T.D. 5777, 15 FR 1595, Mar. 22, 1950, as amended by T.D. 8732, 62 FR 53498, Oct. 14, 1997]

§ 521.104 Definitions.

(a) As used in §§ 521.101 to 521.117, unless the context otherwise requires, the terms defined in the convention shall have the meanings so assigned to them. Any term used in §§ 521.101 to 521.117, which is not defined in the convention but which is defined in the Internal Revenue Code shall be given the definition contained therein unless the context otherwise requires.

(b) As used in §§ 521.101 to 521.117.

(1) The term “permanent establishment” means a branch office, factory, warehouse or other fixed place of business, but does not include the casual and temporary use of merely storage facilities. The fact that a Danish corporation has a domestic subsidiary corporation or a foreign subsidiary corporation having a branch in the United States, does not of itself constitute either subsidiary corporation a permanent establishment of the parent Danish enterprise. The fact that a Danish enterprise has business dealings in the United States through a bona fide commission agent, broker, or custodian, acting in the ordinary course of his business as such, or maintains in the United States an office or other fixed place of business used exclusively for the purchase of goods or merchandise, does not mean that such Danish enterprise has a permanent establishment in the United States. If, however, a Danish enterprise carries on business in the United States through an agent who has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprise or if it has an agent who maintains within the United States a stock of merchandise from which he regularly fills orders on behalf of his principal, then such enterprise shall be deemed to have a permanent establishment in the United States. However, an agent having power to contract on behalf of his principal but only at fixed prices and under conditions determined by the principal does not necessarily constitute a permanent establishment of such principal. The mere fact that an agent (assuming he has no general authority to contract on behalf of his employer or principal) maintains samples or occasionally fills orders from incidental stocks of goods maintained in the United States will not constitute a permanent establishment within the United States. The mere fact that salesmen, employees of a Danish enterprise, promote the sale of their employer's products in the United States or that such enterprise transacts business in the United States by means of mail order activities, does not mean such enterprise has a permanent

establishment therein. The term “permanent establishment” as used in the convention implies the active conduct therein of a business enterprise. The mere ownership, for example, of timberlands or a warehouse in the United States by a Danish enterprise does not mean that such enterprise has a permanent establishment therein. As to the effect of the maintenance of a permanent establishment within the United States upon exemption from United States tax in the case of interest and royalties and reduction in the rate of United States tax in the case of dividends, see § 521.108.

(2) The term “enterprise” means any commercial or industrial undertaking whether conducted by an individual, partnership, corporation, or other entity. It includes such activities as manufacturing, merchandising, mining, processing, and banking. It does not include the rendition of personal services. Hence, a non resident alien who is a resident of Denmark and who renders personal services is not, merely by reason of such services, engaged in an enterprise within the meaning of the convention and his liability to United States tax is not affected by Article III of the convention.

(3) The term “Danish enterprise” means an enterprise carried on in Denmark by a resident of Denmark or by a Danish corporation or other entity. The term “Danish corporation or other entity” means a partnership, corporation or other entity created or organized in Denmark or under the laws of Denmark.

(4) The term “industrial or commercial profits” means profits arising from industrial, commercial, mercantile, manufacturing, and like activities of a Danish enterprise as defined in this section. Such term does not include rentals, royalties, interest, dividends, fees, compensation for personal services, nor gains derived from the sale or exchange of capital assets. Such enumerated items of income are not governed by the provisions of Article III of the convention.

§ 521.105 Scope of convention with respect to determination of “industrial or commercial profits”.

(a) *General.* Article III of the convention adopts the principle that an enterprise of one of the contracting States shall not be taxable by the other contracting State upon its industrial or commercial profits unless it has a permanent establishment in the latter State. Hence, a Danish enterprise is subject to United States tax upon its industrial and commercial profits to the extent of such profits from sources within the United States only if it has a permanent establishment within the United States. From the standpoint of Federal income taxation, the article has application only to a Danish enterprise and to the industrial and commercial income thereof from sources within the United States. It has no application for example, to compensation for labor or personal services performed in the United States nor to income derived from real property located in the United States, including rentals and royalties therefrom, nor to gains from the sale or disposition of such property, nor to interest, dividends, royalties, other fixed or determinable annual or periodical income and gains derived from the sale or exchange of capital assets.

(b) *No United States permanent establishment.* A nonresident alien (including a nonresident alien individual, fiduciary and partnership) who is a resident of Denmark or a Danish corporation, carrying on an enterprise in Denmark and having no permanent establishment in the United States, is not for taxable years beginning on or after January 1, 1948, subject to United States income tax upon industrial or commercial profits from sources within the United States. For example, if the Danish enterprise carried on by such alien or corporation sells, in 1948, merchandise, such as silverware, dairy products, or liquors, through a bona fide commission agent or broker in the United States acting in the ordinary course of his business as such agent or broker, the resulting profits are, under the terms of Article III of the convention, exempt from United States income tax. Likewise no permanent establishment exists and no United