

§ 521.102

26 CFR Ch. I (4-1-10 Edition)

June 17, 1948, two-thirds of the Senators present concurring therein, did advise and consent to the ratification of the aforesaid convention subject to a reservation, as follows:

The Government of the United States of America does not accept Article XII of the convention relating to gains from the sale or exchange of capital assets.

And whereas the text of the aforesaid reservation was communicated by the Government of the United States of America to the Government of Denmark and thereafter the Government of Denmark gave notice of its acceptance of the aforesaid reservation;

And whereas the aforesaid convention was duly ratified by the President of the United States of America on November 24, 1948, in pursuance of the aforesaid advice and consent of the Senate and subject to the aforesaid reservation, and the said convention, with the exception of Article XII thereof, was duly ratified on the part of Denmark;

And whereas the respective instruments of ratification of the aforesaid convention were duly exchanged at Washington on December 1, 1948, and a protocol of exchange of instruments of ratification, in the English and Danish languages, was signed on that date by the respective Plenipotentiaries of the United States of America and Denmark, the English text of which protocol reads in part: "it is the understanding of both Governments that Article XII of the convention aforesaid shall be deemed to be deleted and of no effect.";

* * * * *

§ 521.102 Applicable provisions of the Internal Revenue Code.

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

CHAPTER I—INCOME TAX

* * * * *

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.

(b) Pursuant to section 62 of the Internal Revenue Code, other provisions of the internal revenue laws, and to Article XXII of the convention, the following regulations, which are designated as §§ 521.101 to 521.117 are hereby prescribed and all regulations inconsistent herewith are modified accordingly.

§ 521.103 Scope of the convention.

(a) The primary purposes of the convention, to be accomplished on a reciprocal basis, are to avoid double taxation upon major items of income derived from sources in one country by persons resident in, or by corporations of, the other country, and to provide for administrative cooperation between the competent tax authorities of the two countries looking to the avoidance of double taxation and fiscal evasion.

(b) The specific classes of income from sources within the United States exempt under the convention from United States tax for taxable years beginning on and after January 1, 1948, are:

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

(2) Income derived by a nonresident alien who is a resident of Denmark, or by a Danish corporation, from the operation of ships or aircraft registered in Denmark (Article V);

(3) Interest and royalties (including motion picture film rentals) 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 (Articles VII and VIII);

(4) Compensation and pensions paid by Denmark to aliens for services rendered to Denmark (Article X(1));

(5) Private pensions and life annuities derived by nonresident alien individuals residing in Denmark (Article X(2));

(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