

No. 50788. United States of America and Denmark

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE KINGDOM OF DENMARK FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME. WASHINGTON, 19 AUGUST 1999 [*United Nations, Treaty Series, vol. 2917, I-50788.*]

PROTOCOL AMENDING THE CONVENTION BETWEEN THE GOVERNMENT OF THE KINGDOM OF DENMARK AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME (WITH EXCHANGE OF LETTERS). COPENHAGEN, 2 MAY 2006*

Entry into force: 28 December 2007 by notification, in accordance with article V

Authentic text: English

Registration with the Secretariat of the United Nations: United States of America, 2 May 2014

*No UNTS volume number has yet been determined for this record. The Text(s) reproduced below, if attached, are the authentic texts of the agreement /action attachment as submitted for registration and publication to the Secretariat. For ease of reference they were sequentially paginated. Translations, if attached, are not final and are provided for information only.

Nº 50788. États-Unis d'Amérique et Danemark

CONVENTION ENTRE LE GOUVERNEMENT DES ÉTATS-UNIS D'AMÉRIQUE ET LE GOUVERNEMENT DU ROYAUME DU DANEMARK TENDANT À ÉVITER LA DOUBLE IMPOSITION ET À PRÉVENIR L'ÉVASION FISCALE EN MATIÈRE D'IMPÔTS SUR LE REVENU. WASHINGTON, 19 AOÛT 1999 [*Nations Unies, Recueil des Traités, vol. 2917, I-50788.*]

PROTOCOLE MODIFIANT LA CONVENTION ENTRE LE GOUVERNEMENT DU ROYAUME DU DANEMARK ET LE GOUVERNEMENT DES ÉTATS-UNIS D'AMÉRIQUE TENDANT À ÉVITER LA DOUBLE IMPOSITION ET À PRÉVENIR L'ÉVASION FISCALE EN MATIÈRE D'IMPÔTS SUR LE REVENU (AVEC ÉCHANGE DE LETTRES). COPENHAGUE, 2 MAI 2006*

Entrée en vigueur : 28 décembre 2007 par notification, conformément à l'article V

Texte authentique : anglais

Enregistrement auprès du Secrétariat de l'Organisation des Nations Unies : États-Unis d'Amérique, 2 mai 2014

*Aucun numéro de volume n'a encore été attribué à ce dossier. Les textes disponibles qui sont reproduits ci-dessous sont les textes originaux de l'accord ou de l'action tels que soumis pour enregistrement. Par souci de clarté, leurs pages ont été numérotées. Les traductions qui accompagnent ces textes ne sont pas définitives et sont fournies uniquement à titre d'information.

[ENGLISH TEXT – TEXTE ANGLAIS]

PROTOCOL
AMENDING THE CONVENTION BETWEEN
THE GOVERNMENT OF THE KINGDOM OF DENMARK
AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA
FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME

The Government of the Kingdom of Denmark and the Government of the United States of America, desiring to amend the Convention between the Government of the Kingdom of Denmark and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed at Washington on August 19, 1999 (hereinafter referred to as "the Convention"),

Have agreed as follows:

ARTICLE I

Paragraph 4 of Article 1 (General Scope) of the Convention is omitted and the following paragraph is substituted:

"4. Except to the extent provided in paragraph 5, this Convention shall not affect the taxation by a Contracting State of its residents (as determined under Article 4 (Residence)) and its citizens. Notwithstanding the other provisions of this Convention, a former citizen or long-term resident of a Contracting State may, for the period of ten years following the loss of such status, be taxed in accordance with the laws of that Contracting State."

ARTICLE II

1. Article 10 (Dividends) of the Convention shall be omitted and the following shall be substituted:

"ARTICLE 10

Dividends

1. Dividends paid by a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

- a) 5 percent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 10 percent of the share capital of the company paying the dividends;
- b) 15 percent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. Notwithstanding the provisions of paragraph 2, such dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial owner is:

- a) a company that is a resident of the other Contracting State that has owned, directly or indirectly through one or more residents of either Contracting State, shares representing 80 percent or more of the voting power in the company paying the dividends for a 12-month period ending on the date on which entitlement to the dividends is determined and:
 - (i) satisfies the conditions of clause (i),(ii) or (iii) of subparagraph c) of paragraph 2 of Article 22 (Limitation of Benefits);
 - (ii) satisfies the conditions of clauses (i) and (ii) of subparagraph f) of paragraph 2 of Article 22, provided that the company satisfies the conditions described in paragraph 4 of that Article with respect to the dividends;
 - (iii) is entitled to benefits with respect to the dividends under paragraph 3 of Article 22; or
 - (iv) has received a determination pursuant to paragraph 7 of Article 22 with respect to this paragraph; or
- b) a qualified governmental entity that is a resident of the other Contracting State and that does not control the payor of the dividend; or
- c) a pension fund, which is described in subparagraph e) of paragraph 2 of Article 22 (Limitation of Benefits), that is a resident of the other Contracting State, provided that such dividends are not derived from the carrying on of a business by the pension fund or through an associated enterprise.

4. a) Subparagraph a) of paragraph 2 and subparagraph a) of paragraph 3 shall not apply in the case of dividends paid by a U.S. Regulated Investment Company (RIC) or a U.S. Real Estate Investment Trust (REIT). In the case of dividends paid by a RIC, subparagraph b) of paragraph 2 and subparagraphs b) and c) of paragraph 3 shall apply. In the case of dividends paid by a REIT, subparagraph b) of paragraph 2 and subparagraphs b) and c) of paragraph 3 shall apply only if:

- (i) the beneficial owner of the dividends is an individual or pension fund, in either case holding an interest of not more than 10 percent in the REIT;

- (ii) the dividends are paid with respect to a class of stock that is publicly traded and the beneficial owner of the dividends is a person holding an interest of not more than 5 percent of any class of the REIT's stock; or
- (iii) the beneficial owner of the dividends is a person holding an interest of not more than 10 percent in the REIT and the REIT is "diversified."

The rules of this paragraph shall also apply to dividends paid by companies resident in Denmark that are similar to the United States companies referred to in this paragraph. Whether companies that are residents of Denmark are similar to the United States companies referred to in this paragraph will be determined by mutual agreement of the competent authorities.

b) For purposes of this paragraph, a REIT shall be diversified if the value of no single interest in real property exceeds 10 percent of its total interests in real property. For the purposes of this rule, foreclosure property shall not be considered an interest in real property. Where a REIT holds an interest in a partnership, it shall be treated as owning directly a proportion of the partnership's interests in real property corresponding to its interest in the partnership.

5. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income that is subject to the same taxation treatment as income from shares by the laws of the State of which the payor is a resident.

6. The provisions of paragraphs 2 and 3 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State, of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the dividends are attributable to such permanent establishment or fixed base. In such case, the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

7. A Contracting State may not impose any tax on dividends paid by a company which is not a resident of that State, except insofar as the dividends are paid to a resident of that Contracting State or the dividends are attributable to a permanent establishment or a fixed base situated in that State, nor may it impose tax on a corporation's undistributed profits, except as provided in paragraph 8, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that State.