

PROTOCOL AMENDING THE TAX CONVENTION WITH
GERMANY

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

PROTOCOL AMENDING THE CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND THE FEDERAL REPUBLIC OF GERMANY FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON ESTATES, INHERITANCES, AND GIFTS SIGNED AT BONN ON DECEMBER 3, 1980, SIGNED AT WASHINGTON, DECEMBER 14, 1998



SEPTEMBER 21, 1999.—Protocol was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

U.S. GOVERNMENT PRINTING OFFICE

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *September 21, 1999.*

To the Senate of the United States:

I transmit herewith for Senate advice and consent to ratification the Protocol Amending the Convention Between the United States of America and the Federal Republic of Germany for the Avoidance of Double Taxation with Respect to Taxes on Estates, Inheritances, and Gifts signed at Bonn on December 3, 1980, signed at Washington, December 14, 1998. The Protocol provides a *pro rata* unified tax credit to the estate of a German domiciliary for purposes of computing U.S. estate tax. It allows a limited U.S. "marital deduction" for certain estates of limited value if the surviving spouse is not a U.S. citizen. In addition, the Protocol expands the United States jurisdiction to tax its citizens and certain former citizens and long-term residents and makes other changes to the treaty to more closely reflect current U.S. treaty policy.

I recommend that the Senate give early and favorable consideration to this Protocol and give its advice and consent to ratification.

WILLIAM J. CLINTON.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, September 2, 1999.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advise and consent to ratification, the Protocol Amending the Convention Between the United States of America and the Federal Republic of Germany for the Avoidance of Double Taxation with Respect to Taxes on Estates, Inheritances, and Gifts, Signed at Bonn, December 3, 1980, signed at Washington, December 14, 1998 (“the proposed Protocol”).

The proposed Protocol modifies the tax treatment of certain transfers of property by gift or upon death. The Protocol provides a *pro rata* unified tax credit to the estate of a German domiciliary for purposes of computing U.S. estate tax. It allows a limited U.S. “marital deduction” for certain estates of limited value if the surviving spouse is not a U.S. citizen. In addition, the Protocol expands the United States’ jurisdiction to tax its citizens and certain former citizens and long-term residents and makes other changes to the treaty to more closely reflect current U.S. treaty policy.

Article 1 of the proposed Protocol replaces subparagraph 3.c) of Article 4 of the Convention, which addresses fiscal domicile. The revised provision extends, from five to ten years, the period of time during which a citizen of one state can be domiciled in the other state without becoming subject to the primary taxing jurisdiction of the other state.

Article 2 amends paragraph 4 of Article 10 of the Convention, which addresses deductions and exemptions. The Convention gives the spouse of a decedent or donor of one state a 50-percent exemption for property subject to tax in the other state. The proposed Protocol provides that the United States need not provide this exemption if the decedent was a U.S. citizen or was a former U.S. citizen or long-term resident who lost his or her citizenship or residency status for tax-avoidance reasons.

Article 3 of the proposed Protocol adds paragraphs 5 and 6 to Article 10 of the Convention, which deals with deductions and exemptions from estate, inheritance, and gift taxes. Paragraph 5 provides a *pro rata* unified credit to the estate of a German domiciliary for purposes of computing the U.S. estate tax. Under this provision, a German domiciliary is allowed a credit against U.S. estate tax ranging from the amount ordinarily allowed to the estate of a non-resident under the Internal Revenue Code (\$13,000) to the amount of credit allowed to the estate of a U.S. citizen under the Internal

Revenue Code (\$211,300 in 1999), based on the extent to which the assets of the estate are situated in the United States.

Paragraph 6 provides a U.S. estate tax marital deduction up to the Internal Revenue Code's applicable exclusion amount (\$650,000 in 1999) when the surviving spouse is not a U.S. citizen. Certain 1988 changes in U.S. law deny a marital deduction when the surviving spouse is not a U.S. citizen. This provision is intended to provide relief from these changes in the case of estates of limited value.

Article 4 of the proposed Protocol replaces paragraph 1 of Article 11 of the Convention, which deals with credits. The revised provisions expands the description of persons who may be taxed by the United States to allow the United States to apply its estate and gift tax provisions to former citizens and long-term residents who lost their status as such for tax-avoidance reasons.

The Department of the Treasury and the Department of State cooperated in the negotiation of the proposed Protocol. It has the full approval of both Departments.

Respectfully submitted,

STROBE TALBOTT.

PROTOCOL
AMENDING THE CONVENTION BETWEEN
THE UNITED STATES OF AMERICA
AND
THE FEDERAL REPUBLIC OF GERMANY
FOR THE AVOIDANCE OF DOUBLE TAXATION
WITH RESPECT TO TAXES ON ESTATES, INHERITANCES, AND GIFTS,
SIGNED AT BONN ON DECEMBER 3, 1980

(1)

(1)

-2-

The United States of America and the Federal Republic of Germany, desiring to conclude a Protocol to amend the Convention Between the United States of America and the Federal Republic of Germany For the Avoidance of Double Taxation with Respect to Taxes on Estates, Inheritances, and Gifts, signed at Bonn on December 3, 1980 (hereinafter referred to as "the Convention"), have agreed as follows:

ARTICLE 1

Subparagraph c) of paragraph 3 of Article 4 (Fiscal Domicile) of the Convention shall be replaced by the following:

"c) by reason of the provisions of paragraph 1 domiciled in the other Contracting State for not more than ten years,".

ARTICLE 2

The following sentence shall be added to the end of paragraph 4 of Article 10 (Deductions and Exemptions) of the Convention:

"The provisions of this paragraph shall not apply to a citizen of the United States of America domiciled in the Federal Republic of Germany or a former citizen or long-term resident of the United States of America referred to in subparagraph a) of paragraph 1 of Article 11."

ARTICLE 3

New paragraphs 5 and 6 shall be added to Article 10
(Deductions and Exemptions) of the Convention as follows:

"5. In determining the estate tax imposed by the United States of America, the estate of a decedent (other than a citizen of the United States of America) who was domiciled in the Federal Republic of Germany at the time of the decedent's death shall be allowed a unified credit equal to the greater of:

a) The amount that bears the same ratio to the credit allowed to the estate of a citizen of the United States of America under the law of the United States of America as the value of the part of the decedent's gross estate that at the time of the decedent's death is situated in the United States of America bears to the value of the decedent's entire gross estate wherever situated;
or

b) The unified credit allowed to the estate of a nonresident not a citizen of the United States of America under the law of the United States of America.

The amount of any unified credit otherwise allowable under this paragraph shall be reduced by the amount of any credit previously allowed with respect to any gift made by the decedent. For purposes of subparagraph a),

the part of the decedent's gross estate that is situated in the United States of America shall not exceed the part of the decedent's gross estate that may be taxed by the United States of America in accordance with this Convention. A credit otherwise allowable under subparagraph a) shall be allowed only if all information necessary for the verification and computation of the credit is provided.

6. In determining the estate tax imposed by the United States of America, the value of the decedent's taxable estate shall be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property that passes to the decedent's surviving spouse (within the meaning of the law of the United States of America) and that would qualify for the estate tax marital deduction under the law of the United States of America if the surviving spouse were a citizen of the United States of America and all applicable elections were properly made (hereinafter referred to as "qualifying property"). The decedent's estate shall be entitled to such marital deduction provided that:

a) At the time of the decedent's death, the decedent was domiciled in either the Federal Republic of Germany or the United States of America;

-5-

b) The decedent's surviving spouse was at the time of the decedent's death domiciled in either the Federal Republic of Germany or the United States of America;

c) If both the decedent and the decedent's surviving spouse were domiciled in the United States of America at the time of the decedent's death, one or both was a citizen of the Federal Republic of Germany; and

d) The executor of the decedent's estate elects the benefits of this paragraph and irrevocably waives the benefits of any other estate tax marital deduction that would be allowed under the law of the United States of America on a United States estate tax return filed for the decedent's estate by the date on which a qualified domestic trust election could be made under the law of the United States of America.

The marital deduction allowed under this paragraph shall be equal to the lesser of the value of the qualifying property or the applicable exclusion amount (within the meaning of the law of the United States of America, determined without regard to any gift previously made by the decedent).

ARTICLE 4

Paragraph 1 of Article 11 (Credits) of the Convention shall be replaced by the following:

"1. The provisions of this Convention shall not preclude

a) the United States of America from taxing in accordance with its law the estate of a decedent or the gift of a donor who, at his death or at the making of the gift, was:

i) a citizen of the United States of America,

ii) domiciled (within the meaning of Article 4) in the United States of America, or

iii) a former citizen or long-term resident whose loss of such status had as one of its principal purposes the avoidance of tax (as defined under the laws of the United States of America), but only for a period of ten years following such loss;

b) the Federal Republic of Germany from taxing in accordance with its law an heir, a donee, or another beneficiary who was domiciled (within the meaning of Article 4) in the Federal Republic of Germany at the time of the death of the decedent or the making of the gift.

-7-

The preceding sentence shall not, however, apply to paragraphs 2, 3, and 4 of Article 10, paragraphs 2, 3, 4 and 5 of this Article, and Article 13; or paragraphs 5 or 6 of Article 10 as applied to the estates of persons other than former citizens and long-term residents referred to in the preceding sentence."

ARTICLE 5

1. This Protocol shall be subject to ratification in accordance with the applicable procedures in the United States of America and the Federal Republic of Germany and instruments of ratification shall be exchanged as soon as possible.
2. This Protocol shall enter into force upon the exchange of instruments of ratification and shall have effect with respect to deaths occurring and gifts made after that date.
3. Notwithstanding the foregoing provisions of paragraph 2 of this Article, Articles 3 and 4 of this Protocol shall, notwithstanding any limitation imposed under the law of a Contracting State on the assessment, reassessment or refund with respect to a person's or estate's return, have effect with respect to deaths occurring and gifts made after November 10, 1988, provided that any return or claim for refund asserting the benefits of this Protocol shall be filed within one year of the date on which this Protocol

enters into force or within the otherwise applicable period
for filing such claims under domestic law.

IN WITNESS WHEREOF, the undersigned, being duly
authorized thereto, have signed this Protocol.

DONE at Washington, in duplicate, this 14th day of
December, 1998, in the English and German languages,
both texts being equally authentic.

FOR THE UNITED STATES
OF AMERICA:

Barbara J. Brinn

FOR THE FEDERAL REPUBLIC
OF GERMANY:

Joachim G. ...

