

[JOINT COMMITTEE PRINT]

**EXPLANATION OF PROPOSED
ESTATE AND GIFT TAX TREATY
BETWEEN THE UNITED STATES AND
THE FEDERAL REPUBLIC OF GERMANY**

PREPARED FOR THE USE OF THE
COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE
BY THE STAFF OF THE
JOINT COMMITTEE ON TAXATION



SEPTEMBER 22, 1981

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1981

84-084 O

JCS-51-81

C O N T E N T S

	Page
Introduction.....	1
I. Summary.....	3
II. Explanation of Proposed Tax Treaty.....	6
Article 1. Scope.....	6
Article 2. Taxes Covered.....	6
Article 3. General Definitions.....	6
Article 4. Fiscal Domicile.....	7
Article 5. Immovable Property.....	8
Article 6. Business Property of a Permanent Estab- lishment and Assets Pertaining to a Fixed Base Used for the Performance of Inde- pendent Personal Services.....	9
Article 7. Ships and Aircraft.....	10
Article 8. Interests in Partnerships.....	10
Article 9. Property not Expressly Mentioned.....	10
Article 10. Deductions and Exemptions.....	10
Article 11. Credits.....	11
Article 12. Estates and Trusts.....	13
Article 13. Mutual Agreement Procedure.....	13
Article 14. Exchange of Information.....	13
Article 15. Members of Diplomatic Missions or Con- sular Posts.....	14
Article 16. Land Berlin.....	14
Article 17. Entry into Force.....	14
Article 18. Termination.....	14

INTRODUCTION

This pamphlet provides an explanation of the proposed estate and gift tax treaty between the United States and the Federal Republic of Germany ("Germany"). The proposed treaty was signed by the United States and Germany on December 3, 1980, and has been submitted to the Senate for advice and consent to its ratification. A public hearing on the proposed treaty is scheduled by the Senate Committee on Foreign Relations for September 24, 1981.

The Convention is the first estate and gift tax treaty between the United States and Germany. In the case of the United States the treaty applies to the Federal estate tax, the Federal gift tax, and the Federal tax on generation-skipping transfers. In the case of Germany it applies to the inheritance and gift tax.

The first part of the pamphlet is a summary of the principal provisions of the proposed estate, inheritance and gift tax treaty. This is followed by a detailed, article-by-article explanation of the proposed treaty.

I. SUMMARY

In General

The purpose of the proposed estate and gift tax treaty between the United States and Germany is to alleviate double taxation on the estates and gifts of citizens and domiciliaries of both countries by modifying the jurisdictional rules of estate and gift taxation with respect to these individuals and to prevent evasion of taxes on estates, gifts and inheritances. The treaty modifies the jurisdictional rules in two ways.

First, an individual's country of domicile has primary tax jurisdiction on the estates and gifts of its domiciliaries. However, real property and business property located in the other country ("situs country") are subject to primary tax jurisdiction in the situs country.

The second modification is that in situations where both countries under their own domestic law consider an individual to be a domiciliary, the individual will be treated as having only one country of domicile for purposes of the taxes covered by the treaty. The treaty sets forth several criteria to determine which country is the country of domicile.

Estate and Gift Taxation

The United States imposes its estate tax on estates of individuals who were U.S. citizens or U.S. domiciliaries at the time of their death, and on assets of nondomiciliaries where the assets are situated in the United States at the time of their death. The United States imposes its gift tax on gifts made by U.S. citizens and U.S. domiciliaries regardless of where the property which is the subject of the gift is located, and on gifts made by nondomiciliaries where the property which is the subject of the gift is tangible property situated in the United States at the time of the gift.

Germany imposes an inheritance tax on property transferred at death where either the heir or decedent has a residence or customary place of abode in Germany. Similarly, Germany imposes a tax on gifts where either the donor or donee has a residence or customary place of abode in Germany. Otherwise Germany will only impose its inheritance or gift tax when the subject property is, in general, located in Germany.

Causes of Double Taxation

Double taxation can arise for a variety of reasons including, conflicts between the laws of the two countries regarding when a person is a domicile of the country, conflicts as to criterion for imposing tax, differences in the basic system under which tax is imposed, and taxation of worldwide assets. Double taxation usually occurs in situations where a decedent was either domiciled in both countries or was domiciled in one country and owned property located in another country.

Since each country has its own definition of what constitutes domicile in that country, it is possible that the definition of domicile in the two countries could overlap and a person could thus be considered a domiciliary of both countries. As such, his estate would be subject to worldwide taxation by both countries.

When the decedent is considered domiciled in only one country but owned property in the other country at the time of his death, that property is subject to tax in the situs country regardless of the decedent's domicile. Thus, the country of domicile will tax the property, since it is included in the worldwide assets of the estate, and the situs country will tax the property because it was located within its boundaries at the time of the decedent's death.

In both of these situations, unless one of the two countries gives up its right to tax the property or allows a credit for the estate taxes paid to the other country, the estate will be subject to double taxation.

A similar situation exists for gifts where the donor is a domiciliary of both countries or a domiciliary of one country and the property which is the subject of the gift is situated in another country. As in the case of estates, the country of domicile will tax the gifts made by its domiciliaries on a worldwide basis and the situs country will tax those same gifts to the extent the property is located within its boundaries. Again, unless one of the countries gives up its right to tax the transfer or allows a credit for the taxes paid to the other country, the gift will be subject to double taxation.

Also, some countries, like Germany, will tax not only the estate of a decedent domiciled in that country but also inheritances of persons domiciled in that country where the decedent is domiciled in another country. In this case both countries might tax the same property.

Elimination of Double Taxation

The proposed treaty will alleviate double taxation on gifts and estates of U.S. citizens and domiciliaries and German domiciliaries by permitting each asset held by an estate or each gift to be subject to primary tax jurisdiction in only one of the two countries. This is accomplished in the treaty by allowing both countries to impose their tax but requiring one of the countries to allow a credit against its tax for the taxes paid to the other country. In most situations, the treaty allows the country of domicile to assert primary tax jurisdiction. However, the situs country is given a priority of taxation in the case of real property and business property (i.e., assets of a permanent establishment or a fixed base) which are located in that country.

The treaty provides that the domicile of an individual will be determined separately under the laws of each country. If only one of the two countries treats the individual as a domiciliary under its domestic laws, then that is the country of domicile for purposes of the treaty. However, if both countries treat the individual as a domiciliary under their domestic laws, then the treaty sets forth an extensive set of rules to determine the individual's domicile for purposes of establishing primary tax jurisdiction under the treaty. The approach used in this set of rules is to recognize that where an individual domiciled in both countries is

a national of one of the two countries and has been resident for only a limited period of time in the other country, his ties with the country of residence are not sufficient to justify the assertion of primary tax jurisdiction by that country. However, where an individual has been domiciled in both countries for a substantial period of time, the country with which he has his closest ties (such as the place of his permanent home) has the greater claim to domicile and, thus, primary tax jurisdiction will generally be allowed to that country.

II. EXPLANATION OF PROPOSED TAX TREATY

A detailed article-by-article explanation of the proposed estate and gift tax treaty between the United States and Germany is presented below.

Article 1. Scope

The proposed treaty will apply to the estate of any person who was a domiciliary of either or both countries at the time of his death. Similarly, the proposed treaty also applies to all gifts made by donors who were domiciliaries of either or both countries at the time the gift was made.

Article 2. Taxes Covered

The proposed treaty applies to the U.S. estate tax, gift tax, and the tax on generation-skipping transfers. In the case of Germany, the proposed treaty applies to inheritance and gift taxes.

The United States imposes its estate tax on the worldwide assets of estates of persons who were citizens or domiciliaries of the United States at the time of their death, and on property belonging to non-domiciliaries of the United States which is located in the United States at the time of their death. The U.S. gift tax is imposed on all gifts made by U.S. citizens and domiciliaries, and on gifts of property made by nondomiciliaries where the property is located in the United States at the time of the gift.

The U.S. tax on generation-skipping transfers was enacted in 1976 to prevent the transfer of the use of property among generations of the transferor's descendants without the payment of gift or estate taxes. In general, the tax on generation-skipping transfers is imposed when property passes through a trust from persons of one generation to persons of another generation and the transfer is not otherwise subject to estate or gift tax.

Germany imposes an inheritance tax on property transferred at death where either the heir or decedent has a residence or customary place of abode in Germany. Similarly, Germany imposes a tax on gifts where either the donor or donee has a residence or customary place of abode in Germany. Otherwise Germany will only impose its inheritance or gift tax when the subject property is, in general, located in Germany.

As is generally true of other U.S. estate tax treaties, the proposed treaty does not apply to death or gift taxes imposed by state or local governments. In addition, the proposed treaty provides that it will apply to any similar taxes on estates, inheritances and gifts that either country may subsequently impose.

Article 3. General Definitions

The standard definitions generally found in most existing U.S. estate tax treaties are contained in the proposed treaty.

When used in the geographical sense, the term "United States of America" means the states and the District of Columbia. It also includes the territorial sea of the United States and the seabed and subsoil of the submarine areas adjacent to the coast of the United States over which the United States exercises sovereign rights for the purposes of exploration and exploitation of natural resources.

The term "Federal Republic of Germany" when used in a geographical sense means the territory in which the Basic Law for Germany is in force. It also includes any area adjacent to the territorial waters of Germany which, under international law, is designed as a domestic area for tax purposes.

The term "enterprise" means an industrial or commercial undertaking. An "enterprise of a Contracting State" is an enterprise carried on by a person domiciled in one of the treaty countries.

The U.S. competent authority is the Secretary of the Treasury or his delegate. The German competent authority is the Federal Minister of Finance.

The proposed treaty also contains the standard provision that undefined terms are to have the meaning which they have under the applicable tax laws of the country applying the treaty.

Article 4. Fiscal Domicile

The concept of domicile is important because under the proposed treaty the country of domicile has the primary tax jurisdiction on all property other than the property subject to situs taxation. The threshold test for determining the country of domicile is the domestic laws of each country. However, in those situations where both countries would treat an individual as a domiciliary, the treaty sets forth rules for establishing the country of domicile for purposes of the taxes covered by this treaty.

The proposed treaty provides that a person will be a domiciliary of the United States if he is a "resident" or citizen of the United States. Article 3(2) of the treaty states that terms not defined in the treaty are defined by the estate and gift tax law of the country to which the term applies. Since the term "resident," as it applies to U.S. persons, is not defined by the estate and gift tax law of the country to which the term and gift tax law.

Under the estate and gift tax regulations (sections 20.0-1(b)(1) and 25.2501-1(b) respectively) a resident of the United States is defined as a person who had his domicile in the United States at the time of his death or at the time of the gift. The regulations go on to state that, "a person acquires a domicile in a place by living there, for even a brief period of time, with no definite present intention of later removing therefrom. Residence without the requisite intention to remain indefinitely will not suffice to constitute domicile, nor will intention to change domicile effect such a change unless accomplished by actual removal." Domicile for the U.S. estate and gift tax law is a matter of Federal law. It is not determined with reference to state law and it does not incorporate any presumption that the domicile of one spouse controls the domicile of the other spouse.

The treaty provides that a person will be a domiciliary of Germany if he has his domicile or habitual abode in Germany or if he is deemed

to be subject to unlimited tax liability for purposes of the German inheritance or gift tax.

To provide relief from double taxation where the individual is considered domiciled in both countries, the proposed treaty provides a series of rules designed to establish a single country of domicile for the individual for purposes of the taxes covered by the treaty. The country so selected will then have the primary tax jurisdiction with respect to the worldwide estate of the decedent or with respect to his worldwide gifts, other than real property and assets of a permanent establishment or a fixed base situated in the other country. As described below, these rules are based on the concept that primary tax jurisdiction should be exercised either by the country of nationality, if the dual domicile individual has not been resident in the other country for a substantial period of time prior to his death or the making of the gift, or by the country in which he has his most significant contacts if that nationality test is not determinative.

Under the first of these rules, if the individual is a citizen of one country and not a citizen of the other country and has not been domiciled in that other country for more than five years, then the individual will be considered a domicile of the country of his citizenship. The five-year period is shorter than the seven out of ten-year period allowed in the U.S. model treaty.

It is contemplated that this rule will resolve the great majority of dual domicile situations. However, if a dual domicile problem still remains after application of these rules, the proposed treaty provides four additional rules to determine domicile. The rules (applied in the order presented) provide that the individual will be considered domiciled in the country (1) in which he had a permanent home available to him, (2) in which his personal and economic relations were the closest (center of vital interests), (3) in which he had a habitual abode, or (4) in which he was a citizen. In cases where an individual's domicile cannot be determined by these tests, then the competent authorities of the countries are to settle the question by mutual agreement.

The proposed treaty does not treat certain residents of U.S. possessions as U.S. nationals or domiciliaries. These are individuals who acquired U.S. citizenship solely because they were citizens of a possession or because they were born in a possession or were residents of a possession. Under U.S. tax law (Code sec. 2209 and sec. 2501(c)), these individuals are not taxed by the United States on their worldwide estates and gifts, so protection against double taxation is generally unnecessary. Accordingly, the proposed treaty will not apply to estates or gifts of these individuals, unless it is applicable by reason of their being domiciled in Germany.

The proposed treaty provides that the domicile of persons other than individuals will be determined under the law of each country. If the person is domiciled in both countries then the competent authorities will settle the case by mutual agreement.

Article 5. Immovable Property

Under the proposed treaty, immovable property is one of two types of property over which the situs country has primary tax jurisdiction over the country of domicile. The other type is assets of a permanent establishment or fixed base. (Article 6).

The determination of whether an item of property is immovable property is to be made under the laws of the country in which the property is located. Although U.S. law does not define "immovable property," that term for U.S. purposes is considered to mean real property.

Immovable property is specifically defined to include:

1. Property accessory to immovable property;
2. Livestock and equipment used in agriculture and forestry;
3. Rights to which the provision of general law respecting landed property apply;
4. Usufruct of immovable property; and
5. Rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources.

Immovable property does not include ships, boats, and aircraft.

This article also applies to the immovable property held by an enterprise or used for the performance of independent personal services.

Article 6. Business Property of a Permanent Establishment and Assets Pertinent to a Fixed Base Used for the Performance of Independent Personal Services

Under the proposed treaty, the second type of property owned by a nondomiciliary over which the situs country has primary tax jurisdiction is the business assets (other than ships or aircraft described in Article 7) of such person's permanent establishment which is located in the situs country and the assets (other than ships or aircraft described in Article 7) of a fixed base of such person which is situated in that country and is used for the performance of independent personal services. The real property of either enterprise is to be taxed by the country in which it is situated, as provided in Article 5.

The proposed treaty contains a definition of the term "permanent establishment" which is similar to the definition found in recent U.S. income tax treaties. Generally, any fixed place of business through which a person engages in a trade or business is considered a permanent establishment. A fixed place of business generally includes an office, branch, place of management, store or other sales outlet, factory, workshop, place of extraction of natural resources, and any building site or construction or assembly project which exists for more than 12 months. This general rule is modified by providing that a fixed place of business which is used for certain activities specified in the treaty will not be considered a permanent establishment. These activities include, for example, the warehousing of goods for purposes of storage, display, or delivery, or for processing by another person. They also include the maintenance of a fixed place of business solely for the purpose of purchasing merchandise or collecting information.

The proposed treaty also provides that a person will be deemed to have a permanent establishment in a country if he has an agent in that country who has and habitually exercises a general contracting authority (other than for the purchase of goods or merchandise) in that country. This agency rule does not apply, however, if the agent is a broker, general commission agent, or any other agent of an independent status, provided the agent is acting in the ordinary course of his business.

A company will not be held to have a permanent establishment in one of the countries solely because it controls, is controlled by, or is under the common control of a person which is a resident of that country.

Article 7. Ships and Aircraft

Ships and aircraft (and movable property related to their operation) which are operated in international traffic and which belong to an enterprise that forms part of the estate or gift of a domiciliary of one country may only be taxed in that country.

Article 8. Interests in Partnerships

If an interest in a partnership forms part of the estate or gift of a person domiciled in one of the countries and the partnership owns immovable property described in Article 5 or business property described in Article 6 in the other country, the other country may tax the partnership interest but only to the extent the value of the interest is attributable to such property.

Article 9. Property Not Expressly Mentioned

This article sets forth the general treaty rule that the country of domicile, as determined under the treaty, has the primary tax jurisdiction over the estates or gifts of its domiciliaries, other than the property specifically reserved for situs taxation. The proposed treaty generally provides that property, other than immovable property (Article 5), business assets (Article 6), ships and aircraft (Article 7), and partnership interests (Article 8), which is not located in the country of domicile may only be subject to tax in the country of domicile of the decedent or donor.

However, this rule does not apply if the domiciliary was a citizen of the United States (see Article 11). Since the United States imposes its tax on the basis of citizenship as well as domicile, there is still the possibility of double taxation if an individual is a U.S. citizen and a German domiciliary. The possibility of double taxation in this situation is alleviated under the tax credit structure discussed in Article 11.

Also this provision does not prevent Germany from taxing an heir, donee or other beneficiary who was domiciled in Germany at the time the decedent died or the gift was made (see Article 11).

Article 10. Deductions and Exemptions

The proposed treaty provides that a deduction or reduction in the taxable value of property shall be allowed for debt incurred on property subject to situs taxation under Articles 5, 6, and 8. In the case of immovable property (Article 5) a deduction or reduction is allowed for debts incurred for the acquisition, repair or upkeep of the property. For business assets (Article 6) a deduction or reduction is allowed for debts incurred in connection with the operation of the permanent establishment or fixed base. Finally, with respect to the taxation of a partnership interest (Article 8) a deduction or reduction will be allowed for debts of the partnership regarding its immovable property and business assets to the same extent (including application of this article) as if such property or assets were held directly by the decedent or donor.

The proposed treaty also allows contributions made to charitable or public organizations in one country to be exempt from tax in the

other country. This treatment is allowed only if the transfer would be eligible for an exemption if the charitable organization had been created in the taxing country. Additionally, the charitable organization must have a tax-exempt status in its home country so that payments to it are exempt and it must be organized and operated exclusively for religious, charitable, scientific, educational or public purposes. A similar exemption is contained in the U.S. model treaty.

Public and private pensions, annuities and other similar payments made by a governmental body or resident of one country are exempt from tax in the other country to the extent they would be exempt from tax in the first country if they were paid to a domiciliary of that country. This provision applies to pensions, annuities and other similar payments made under the Social Security law of the country, as consideration for services rendered, or as compensation for injury or damage sustained.

The exempt payments may, however, be offset against the "Versorgungsfreibetrag" according to the provisions of the German inheritance and gift tax.

The proposed treaty also provides that property (other than community property) which passes to the spouse of a domiciliary of one of the countries, and which is subject to situs country taxation (see Articles 5, 6, and 8), is only subject to tax in the situs country to the extent that the value of the property exceeds 50 percent of the property subject to tax in that country. However, in the case of Germany the amount of this exemption may not exceed the German marital deduction. In the case of the United States, the exclusions cannot result in a lower U.S. tax than would have been applicable using rates applicable to a U.S. domicile.

Article 11. Credits

The proposed treaty preserves the right of the United States to tax its citizens (and certain former citizens) no matter where they are domiciled, and it preserves the right of Germany to tax heirs, donees and other beneficiaries who are domiciled in Germany. These rules do not apply to restrict the deduction and exemption rules (Article 10), the credit provisions (Article 11), and the mutual agreement provisions (Article 13).

The proposed treaty provides a series of rules to determine the amount of credits against estate, gift, and inheritance taxes that will be allowed by each country in cases where a person's property is taxed by both countries. Those provisions constitute rules for determining the priority of the countries' rights to tax property in the sense that the country which grants a credit for the other country's tax, in effect, is exercising a secondary, rather than a primary, taxing jurisdiction. These credit rules, in conjunction with the limitations imposed by the proposed treaty on situs country taxation, constitute the approach employed by the proposed treaty to avoid double taxation where both countries tax an individual's property.

In general, the proposed treaty provides for two credit rules to alleviate double taxation. Under the first credit rule the country in which a person was domiciled, or of which he was a citizen, will allow a credit for the taxes imposed by the other country on that person's immovable property and business property of a permanent establish-

ment or fixed base which is situated in that other country. The country of domicile or citizenship will allow this credit for taxes attributable to property situated in the other country whether the other country imposes its tax on the basis of situs jurisdiction or imposes it on the worldwide estate of the decedent on the basis of his citizenship or domicile in that country.

In cases where both countries tax the property of an individual on a worldwide basis because he was a citizen of one country and a domiciliary of the other country, the second credit rule of the proposed treaty generally provides for the allowance of an additional tax credit equal to the tax on all property other than immovable property and business assets of a permanent establishment or fixed base located in the country of citizenship by the country in which the individual was not domiciled. Thus, the nondomiciliary country, which is the country of citizenship, yields primary taxing jurisdiction on all assets other than those subject to situs taxation to the country of domicile. However, if the tax in the country of citizenship exceeds the tax of the country of domicile the excess will be collected by the country of citizenship.

In determining the amount of credit to allow, Germany will allow a credit for taxes imposed by political subdivisions of the United States. Thus, although State inheritance and gift taxes are not covered by the proposed treaty, Germany has agreed to permit a credit against its taxes for State taxes. Also, in order to avoid double taxation, each country will take into account in allowing credits, any tax imposed by the other country on prior gifts of the decedent where the property is in the taxable estate of the first country. They will also take into account any credit allowed by the other country for estate or gift taxes paid upon prior taxable events. The competent authorities are directed to consult and resolve any difficulties arising in applying these provisions.

The amount of the credit allowed cannot exceed the amount of tax, computed before the credit is given, attributable to the property for which a credit is allowed under this article.

Under the Internal Revenue Code, a claim for credit or refund of U.S. estate and gift taxes generally must be made within three years from the date the return was filed. The proposed treaty provides a period of limitation during which claims for credit or refund of taxes based on the provisions of the treaty may be made which, in some cases, may be longer than that allowed by the Internal Revenue Code. It is provided that a claim for a credit or refund of taxes based on the provisions of the treaty must be made within one year from the final determination and payment of a tax for which a credit is claimed under the treaty (provided the determination and payment occur within ten years from the date of the decedent's death or the date of the gift). The competent authorities may extend the ten year limitation if circumstances beyond the taxpayer's control prevented the determination of the tax within that ten year time period.

The proposed treaty follows the approach of other U.S. estate tax treaties and provides that any refund based on the provisions of the treaty is to be made without interest.

Article 12. Estates and Trusts

This article deals with the difference in the timing of taxable events for the two countries when property is placed in trust. In general, the United States imposes a tax when property is irrevocably transferred to a trust, whereas Germany does not impose the tax until the beneficiary receives a distribution from the trust. Also, under German law a credit for foreign taxes will not be allowed if the foreign tax was paid more than five years prior to the payment of the German tax. Thus, if the U.S. tax is paid in 1980, when property is transferred to a trust, and the German tax is not paid until 1987, when there is a distribution to the beneficiary, Germany would not allow a credit for the U.S. tax. The article is intended to permit a credit in such situations.

The proposed treaty provides that it does not prevent either country from applying its domestic law to transfers of property to and from an estate or trust. However, if there is a difference in the timing (but not greater than five years) of the taxable event between the two countries the competent authorities may confer to avoid any hardship to the taxpayers. Moreover, to avoid the possible loss of credit, the treaty provides that a trust or estate beneficiary may elect to be taxed under the German inheritance and gift tax (as well as the German income tax) as if a taxable transfer had been made to him at the time of the transfer.

Article 13. Mutual Agreement Procedure

The proposed treaty contains various administrative provisions which are generally found in other U.S. tax treaties. In general, the proposed treaty provides—

- (1) For consultation and negotiation between the competent authorities of the two countries to resolve differences arising in the interpretation or application of the proposed treaty and also to resolve claims by taxpayers that they are being subjected to taxation contrary to the proposed treaty;
- (2) If the competent authorities reach agreement, taxes shall be imposed and credits or refunds allowed in accordance with that agreement, notwithstanding any procedural rule (including statute of limitations) applicable in either country.

Article 14. Exchange of Information

The proposed treaty provides for the exchange between the countries of tax-related information and information necessary to carry out the provisions of the proposed treaty or the tax laws of one of the countries, insofar as its taxation is in accordance with the proposed treaty, or to prevent fraud or fiscal evasion with respect to the taxes covered by the proposed treaty. The exchange is not limited by estates or gifts covered by the proposed treaty.

Information exchanged is to be treated as secret in the same manner as information obtained under the domestic laws of the receiving country, except that it may be disclosed to persons involved in the assessment or collection, or litigation concerning, the taxes to which the treaty applies. The information may be used for such purposes only. Accordingly, it is not clear that Congress in the exercise of its oversight responsibilities, could obtain the information.

The proposed treaty contains narrow limitations on the obligations of the countries to supply requested information. A country is not required to carry out administrative measures contrary to its law or administrative practice, to supply particulars not obtainable under its laws or in the normal course of administration, or to supply information that would disclose a trade secret or the disclosure of which would be contrary to public policy.

The proposed treaty provides that a country receiving a request will endeavor to obtain the information requested in the same way as if its own taxation was involved. A requested country will use its subpoena or summons powers and any other powers that it has under its own laws to collect information requested by the other country.

The proposed treaty also provides that if, by reason of Articles 7 and 9 (without regard to Article 11(1)), property is taxed in the decedent's or donor's country of domicile but the tax is not paid, then the competent authorities can agree that the property may be taxed in the other country.

Article 15. Members of Diplomatic Missions or Consular Posts

The proposed treaty provides that its provisions are not to affect the fiscal privileges which diplomatic and consular officials enjoy under the general rules of international law or the provisions of special agreements. Moreover, the proposed treaty shall not apply to officials of international organizations or to members of a diplomatic mission or consular post of a third country, who were established in one of the countries but was not considered domiciled in either country for purposes of estate, inheritance or gift tax liability.

Article 16. Land Berlin

The proposed treaty will also apply to Land Berlin unless Germany makes a contrary declaration to the United States within three months of the date this treaty enters into force.

Article 17. Entry into Force

The proposed treaty is subject to the ratification procedures of each country and the instruments of ratification will be exchanged in Washington as soon as possible. The treaty will enter into force upon the exchange of instruments of ratification and will apply to estates of persons dying and gifts made on or after January 1, 1979.

In the case of estates of persons dying on or after January 1, 1974 and before January 1, 1979, the proposed treaty provides that the competent authorities may agree to eliminate double taxation not covered by internal relief measures. To this end they may allow taxes of one country to be credited against the taxes of the other country notwithstanding differences of the countries' internal rules regarding situs and standing domicile.

Article 18. Termination

The proposed treaty will continue in force indefinitely. However, either country may terminate the treaty after it has been in force for three years if at least six months prior notice has been given. If terminated, the treaty will not apply to estates of persons dying after or gifts made after the December 31 next following the expiration of the six-month period.