N° 660.

ALLEMAGNE ET AUTRICHE

Traité en vue d'assurer la péréquation des impôts intérieurs et extérieurs et notamment d'éviter la double imposition en matière d'impôts directs avec Protocole final et Traité relatif aux garanties légales et à l'assistance juridique en matière d'impôts, signés à Berlin le 23 mai 1922.

GERMANY AND AUSTRIA

Treaty for the equal distribution of taxes at home and abroad, and in particular for the prevention of double taxation in the field of direct taxation, with final Protocol and Treaty concerning legal safeguards and legal assistance in matters of taxation, signed at Berlin, May 23, 1922.

TEXTE ALLEMAND. — GERMAN TEXT.

No. 660. — VERTRAG [1] ZWISCHEN DEM DEUTSCHEN REICHE UND DER REPUBLIK ÖSTERREICH ZUR AUSGLEICHUNG DER IN-UND AUSLÄNDISCHEN BESTEUERUNG, INSBESONDERE ZUR VERMEIDUNG DER DOPPELBESTEUERUNG AUF DEM GEBIETE DER DIREKTEN STEUERN, GEZEICHNET ZU BERLIN DEN 23. MAI 1922.

Texte officiel allemand communiqué par le Consul d'Allemagne à Genève et par le Représentant du Gouvernement Fédéral d'Autriche auprès de la Société des Nations [2]. L'enregistrement de ce traité a eu lieu le 18 *juillet* 1924.

German Official text communicated by the German Consul at Geneva, and by the Representative of the Austrian Federal Government accredited to the League of Nations [2]. The registration of this Treaty took place July 18, 1924.

Das DEUTSCHE REICH und die REPUBLIK OESTERREICH haben, von dem Wunsche geleitet auf dem Gebiete der direkten Steuern die in- und ausländische Besteuerung in den beiden Staaten auszugleichen, insbesondere die Doppelbesteuerung zu vermeiden, den nachstehenden Vertrag abgeschlossen.

Zu diesem Zwecke wurden als Bevollmächtigte ernannt :

von seiten des DEUTSCHEN REICHS :

der Ministerialdirektor im Auswärtigen Amte Dr. Gerhard KÖPKE, der Dirigent im Reichsfinanzministerium Geheimer Regierungsrat und Ministerialrat Ernst PEIFFER ;

von seiten der REPUBLIK ÖSTERREICH :

der Sektionschef im Bundesministerium für Finanzen Dr. Otto GOTTLIEB-BILLROTH, der Ministerialrat im Bundesministerium für Finanzen Dr. Paul GRÜNWALD-EHREN.

Die Bevollmächtigten haben, nachdem sie sich ihre Vollmachten mitgeteilt und diese als richtig befunden haben, folgendes vereinbart :

Artikel 1.

1. Deutsche oder österreichische Staatsangehörige sollen, soweit nicht in den folgenden Artikeln etwas anderes vereinbart ist, zu den direkten Steuern nur in dem Staate herangezogen werden, in welchem sie ihren Wohnsitz und in Ermangelung eines solchen ihren dauernden Aufenthalt haben.

2. Ist in beiden Staaten ein Wohnsitz begründet so ist :

a) das Einkommen (der Ertrag) in jedem der beiden Staaten nur zu dem Teile zu besteuern, welcher dem Verhältnis der Aufenthaltsdauer während des Steuerjahres entspricht. Dabei ist ein Aufenthalt ausserhalb der vertragschliessenden Staaten der Aufenthalts-

[1] L'échange des ratifications a eu lieu à Vienne le 17 mai 1923.

[2] Voir renvoi Vol. II, page 60 de ce Recueil.

[1] The exchange of ratifications took place at Vienna, May 17, 1923.

[2] See foot note Vol. II, page 60 of this Series.

Artikel 4.

Auf den Erwerb aus wissenschaftlicher, künstlerischer, schriftstellerischer, unterrichtender oder erziehender Tätigkeit, aus der Berufstätigkeit der Aerzte, Rechtsanwälte, Architekten, Ingenieure und der Ausübung anderer freier Berufe finden die Bestimmungen des Artikels 3 nur insoweit Anwendung, als die Ausübung der Berufstätigkeit in dem andern Staate von einem festen Mittelpunkte (Betriebsstätte) aus stattfindet.

Artikel 5.

Die Bestimmungen des Artikels 6 und des Artikels 24 des deutsch-österreichischen Wirtschaftsabkommens[1] vom 1. September 1920 bleiben unberührt.

Artikel 6.

Aus öffentlichen Kassen (Reichs-, Bundes-, Staatslandes-, Bezirks, Gemeindekassen usw.) zahlbare, regelmässig wiederkehrende Bezüge oder Unterstützungen, die mit Rücksicht auf eine gegenwärtige oder frühere Dienstleistung oder Berufstätigkeit gewährt werden (Besoldungen, Ruhegehälter, Wartegelder, Versorgungsbezüge und dergleichen), sollen nur in dem Staate, aus welchem die Zahlung zu erfolgen hat, zu den direkten Steuern herangezogen werden.

Artikel 7.

Die Bestimmungen des Artikels 2 und des Artikels 3 Abs. 1 bis 4 finden auch auf nichtphysische Personen entsprechende Anwendung.

Artikel 8.

Soweit nach dem deutschen Kapitalertragsteuergesetze vom 29. März 1920 oder den Gesetzen der Republik Österreich, betreffend die Rentensteuer, eine Besteuerung von Zinsen, Gewinnanteilen und anderen Kapitalerträgen an der Quelle (im Abzugswege) stattfindet, steht die Steuer nur dem Staate zu, in dessen Gebiet der Abzug nach diesen Gesetzen zu bewirken ist. Befindet sich in dem einen Staate die Hauptniederlassung und in dem andern Staate eine Zweigniederlassung, so ist der Abzug des Steuer von den Zinsen, die im Geschäftsbetriebe der Zweigniederlassung erwachsen, nur zugunsten des Staates zulässig, in dem die Zweigniederlassung belegen ist.

Artikel 9.

1. Der Besteuerung von Vermögenszuwächsen, Mehreinkommen oder Mehrerträgen werden in jedem der beiden Staaten nur die Zuwächse an solchen Vermögen, beziehungsweise solchen Einkommen (Erträgen) unterzogen, die nach den Bestimmungen der Artikel 1 bis 7 der Besteuerung in diesem Staate unterliegen.

2. Tritt eine die Abgabepflicht berührende Veränderung in den persönlichen Verhältnissen eines Abgabepflichtigen ein oder werden Vermögensgegenstände, die nach den Bestimmungen der Artikel 1 bis 7 in dem einen Staate steuerpflichtig sind, in solche Vermögensgegenstände umgewandelt, die nach diesen Bestimmungen in dem andern Staate steuerpflichtig sind, so gilt, soweit die Veränderung reicht, für die Feststellung des Zuwachses, in diesem andern Staate als Beginn des Veranlagungszeitraums der Zeitpunkt, in dem die Veränderung oder Umwandlung stattgefunden hat.

[1] Vol. IV, page 201 de ce Recueil.

[1] Vol. IV, page 201 of this Series.

[1] TRANSLATION.

No. 660. — TREATY BETWEEN GERMANY AND AUSTRIA FOR THE EQUAL DISTRIBUTION OF TAXES AT HOME AND ABROAD, AND IN PARTICULAR FOR THE PREVENTION OF DOUBLE TAXATION IN THE FIELD OF DIRECT TAXATION, WITH FINAL PROTOCOL AND TREATY CONCERNING LEGAL SAFEGUARDS AND LEGAL ASSISTANCE IN MATTERS OF TAXATION, SIGNED AT BERLIN, MAY 23, 1922.

The GERMAN REICH and the REPUBLIC OF AUSTRIA, being desirous of ensuring the equal distribution of taxes at home and abroad in the field of direct taxes and in particular of preventing double taxation, have concluded the following agreement.

For this purpose they appointed as Plenipotentiaries :

THE GERMAN REICH :

Dr. Gerhard KÖPKE, Head of Department in the Ministry for Foreign Affairs, and
M. Ernst PEIFFER, Geheimer Regierungsrat and Ministerialrat, and Director in the Reich Ministry of Finance ;

THE REPUBLIC OF AUSTRIA :

Dr. Otto GOTTLIEB-BILLROTH, Head of Section in the Federal Ministry of Finance, and
Dr. Paul GRÜNWALD-EHREN, Ministerialrat in the Federal Ministry of Finance ;

who, after communicating their full powers, found in good and due form, agreed upon the following provisions :

Article 1.

(1) Unless otherwise provided in the following articles, German or Austrian nationals shall only be called upon to pay direct taxes in the State in which they are domiciled, or, failing such domicile, in the State in which they are permanently resident.

(2) If a taxpayer has a domicile in both States :

(a) His income is only subject to taxation in each State in proportion to the period during which he resided in that State during the fiscal year. In this connection any period of residence in a State other than one of the two contracting States must be added to the period of residence in the State of which the taxpayer is a national. The liability to taxation is also determined by nationality in cases in which the taxpayer has not resided in either of the two States ;

(b) Taxes on capital must be levied in the State of which the taxpayer is a national ;

(c) As regards the Reich Emergency Contribution and the Extraordinary Capital Levy, the tax must be levied by the State in which the taxpayer has resided for by far

[1] Translated by the Secretariat of the League of Nations.

the longer period between January 1, 1919, and June 30, 1920. The question of double domicile must, in such cases, be taken into account if the taxpayer has a domicile at one of the said dates in both States and has a domicile at the other date at least in the State in whose favour such other date involves the levying of the tax. Residence for at least ten months shall be regarded as residence for by far the longer period. Any period during which the taxpayer resides outside the two contracting States shall be added to the period during which he resides in the State of which he is a national. In cases in which the period of residence in each of the two countries is the same or in which a taxpayer having a double domicile has not resided in either of the two contracting States, liability to taxation shall be determined by nationality.

As regards persons who are nationals of both or of neither of the States concerned, special agreements shall be made in respect of individual cases between the Finance Ministers of the two States.

(3) A domicile shall be considered to exist at the place where a person occupies a dwelling under circumstances which give good grounds for assuming that he intends to retain it.

Article 2.

(1) Landed estates and buildings and income derived therefrom shall only be subject to direct taxation in the State in which they are situated. This provision shall also apply in cases in which landed estates and buildings are employed for the purposes of an industrial undertaking carried on in the other State.

(2) The provisions of the preceding paragraph shall not apply to mortgages and income derived therefrom, which shall be regarded as capital and as income derived therefrom.

Article 3.

(1) Industrial undertakings (the exploitation of a productive undertaking or the exercise of a lucrative profession) and the income or profits derived therefrom shall only be subject to direct taxation in the State in which a business establishment for carrying on the undertaking is maintained.

(2) The term " business establishment " shall include : the manager's offices, branch establishments, workshops, offices where purchases or sales are effected, depots, branches and all other establishments maintained for the purpose of the carrying on of the industry by the owner himself or his partners, responsible agents or other permanent representatives.

(3) If an industrial or commercial enterprise possesses business establishments in both States, direct taxes shall only be levied in each State in proportion to the amount of business transacted in the establishments situated in that State. The Finance Ministers of the two States shall come to an agreement regarding the equitable apportionment of the income or profits derived from such undertakings.

(4) Partnerships in undertakings established in the form of companies (with the exception of mining shares (Kuxen), shares), founders' shares and other securities shall be regarded as lucrative undertakings.

(5) The foregoing provisions shall not apply to taxes on hawking and other itinerant trades.

Article 4.

In the case of income derived from the practice of science, art, letters, teaching or education or from the exercise of the professions of physician, lawyer, architect or engineer or of any other

liberal profession, the provisions of Article 3 shall only apply in so far as the permanent headquarters of the professional activity (professional establishment) are situated in the other State.

Article 5.

The provisions contained in Article 6 and 24 of the Austro-German Economic Agreement of September 1, 1920, shall in no way be affected by anything in the present Treaty.

Article 6.

Salaries or allowances granted for services rendered or earned in a profession in which an individual is or was formerly engaged (salaries, pensions, half-pay, allowances, etc.) and payable periodically from the public funds (State, provincial, district, communal funds, etc.) shall only be subject to direct taxation in the State in which the payment is effected.

Article 7.

The provisions of Article 2 and of Article 3, paragraphs 1 to 4, shall also apply *mutatis mutandis* to legal persons.

Article 8.

In all cases in which the German law on the tax on profits accruing from capital, dated March 29, 1920, or the laws of the Republic of Austria regarding the tax on incomes derived from investments provide that the tax on interest, dividends and other profits accruing from capital shall be levied at the source (by deduction) the right of imposing the tax shall belong solely to the State in whose territory it has to be deducted at the source, in accordance with the above-mentioned laws. If the main establishment is situated in one State and a branch establishment in another State, the tax on interest accruing from the business transacted by the branch establishment shall only be deducted at the source for the benefit of the State in which such branch establishment is situated.

Article 9.

(1) No increase of capital or excess profits or yield shall be subject in either of the two States to the tax on increase of capital, or on excess profits or yield, unless such increase is subject to taxation in the said State by virtue of the provisions of Articles 1-7.

(2) If a change affecting his fiscal obligations takes place in the personal circumstances of a taxpayer or if property which is liable to taxation in one State by virtue of the provisions of Articles 1-7 is transformed into property which, according to the same provisions, is liable to taxation in the other State, the commencement of the fiscal period for the purpose of calculating the increase of capital in the other State is determined, as regards the effects of the change, by the date on which the change or transformation took place.

Article 10.

(1) In calculating the excess earnings (excess profits) which are made by companies of the nationality of the country in which they are situated and which are subject to taxation by virtue

of the laws of the two States concerning the war tax (war levies and war profits taxes) the peace-time profits shall be determined in accordance with Article 17 of the German Law of June 21, 1916, on the war tax, Section 2 of paragraph 2, and paragraph 5 of the Imperial Decree of April 16, 1916, and in accordance with the same paragraphs of the law of February 16, 1918, by calculating the percentage of the original funds or capital which corresponds to the ratio between the total original and working capital of the company (including the reserves shown in the balance-sheet) and the fraction of the original and working capital (including the reserves shown in the balance sheet) employed in the other State.

(2) A deduction from the excess profits accruing in respect of shares or business interests, in accordance with the laws enumerated above shall also be made in respect of affiliated companies whose head offices are situated in the territory of the other State.

Article 11.

(1) The provisions of Articles 1, 2, 3 and 7 shall also apply to the assessment of the Reich Emergency Contribution in accordance with the German Law of December 31, 1919, and to the assessment of the Extraordinary Capital Levy in accordance with the Austrian Law of July 21, 1920.

(2) The taxes which have to be levied in both States shall be regarded as equivalent.

(3) The term " capital " shall not include partnerships in companies, with the exception of mining shares (Kuxen), shares, founders' shares and other securities.

Article 12.

(1) If under the laws of the two States a taxpayer in consequence of changes in his personal circumstances which have occurred between January 1 and June 30, 1920, is so placed, even if the preceding provisions of the present treaty are applied — that his property is subject both to the Reich Emergency Contribution and to the Capital Levy, each of the two States shall only subject to taxation one half of the value of the property in question at the terminal date concerned.

(2) The same provision shall apply *mutatis mutandis* in cases in which double taxation arises as a result :

(a) of a change in investments occurring during the period mentioned in paragraph 1 in consequence of the acquisition or alienation of property of the kind indicated in Articles 2 and 3 ;

(b) of a transfer of property in consequence of death or of a donation *inter vivos*.

Article 13.

The provisions of the present Treaty shall not be applicable in cases in which Articles 11 and 12 would involve exemption from or a reduction of the Austrian Capital Levy without at the same time involving liability to the Reich Emergency Contribution.

Article 14.

(1) The provisions of the Austrian laws on the taxation of inherited property the title to which has not been established shall not apply if the income or capital accruing to the heir from such inherited property is directly subject to taxation in Germany under the provisions of the present Treaty.

(2) Taxation levied on inherited property the title of which has not been established shall be repaid as soon as the conditions referred to in paragraph 1 are proved to exist and the heir applies for repayment.

Article 15.

The diplomatic, consular and other representatives of the two States, provided that they are officials by profession, together with officials attached to them and persons in their service or in the service of their officials, shall be exempt from direct taxation in the country to which they are accredited. Such exemption shall only apply in so far as the aforesaid persons are nationals of the country which they represent and do not engage in any lucrative occupation outside their official duties in the States to which they are accredited. Exemption does not apply to taxes to be levied in accordance with Articles 2, 3 and 6 or to be deducted at the source as specified in Article 8.

Article 16.

The provisions of Article 15 shall also apply to the employees of the Customs and Railway administrations of either of the two States or of their provinces, in cases in which such employees carry out their duties in a bureau of one of these administrations situated in the territory of the other State and are domiciled there for that reason, and to their relatives and domestic servants living with them, provided that such persons are nationals of the State which employs them.

Article 17.

(1) The Finance Ministers of the two States shall make special arrangements for the prevention of double taxation in cases which are not expressly provided for in the present Treaty and for obviating any harshness which might arise in the application of the said Treaty.

(2) The Finance Ministers of the two States shall be competent to conclude special agreements with a view to the application of the principles of the present Treaty to money taxes imposed upon a national of the other State by virtue of the principles which govern direct taxation, according to the municipal legislation of the State in question.

Article 18.

The present Treaty shall apply :

(a) in the German Reich :

to war taxes and war levies as from the beginning of the first year of war (war business year) ;

to the Reich Emergency Contribution as from the date of the coming into force of the law concerning the Reich Emergency Contribution; and further:

to the taxes on landed estates and industrial undertakings raised by the Reich or by the States as from the beginning of the fiscal year 1920 ;

(b) In the Austrian Republic :

to the war taxes (war profits taxes) as from the beginning of the first year of war (war business year) ;

to the Capital Levy as from the date of the coming into force of the law referred to ;

to all other taxes as from the beginning of the fiscal year 1920.

(2) Unless otherwise provided in paragraph 1, the agreements previously concluded between the two States for the prevention of double taxation shall, each in its own sphere, be applicable *mutatis mutandis* to taxes levied in former fiscal years.

Article 19.

(1) The present Treaty shall be ratified and the instruments of ratification shall be exchanged at Vienna as soon as possible. It shall come into force on the date of the exchange of the instruments of ratification and shall remain in force until it is denounced by one of the Contracting Parties, such denouncement to take place at least six months before the expiration of any calendar year. If it is denounced within the prescribed time-limit, the Treaty shall cease to be in force at the expiration of the calendar year in question.

(2) When the Treaty has been ratified, it shall be published in the official Statute Book of each of the two States.

In faith whereof, the plenipotentiaries of the two States have signed the present Treaty and have affixed their seals thereto.

BERLIN, *May* 23, 1922.

For the German Reich :

(Signed) GERHARD KÖPKE.
(Signed) ERNST PEIFFER.

For the Republic of Austria :

(Signed) Dr. OTTO GOTTLIEB-BILLROTH.
(Signed) Dr. PAUL GRÜNWALD-EHREN.

FINAL PROTOCOL.

On signing the Treaty concluded this day between the German Reich and the Republic of Austria for the adjustment of taxation at home and abroad, in particular for the prevention of double taxation in the field of direct taxation, the undersigned plenipotentiaries made the following joint declarations which shall form an integral part of the Treaty :

(1) The following shall be regarded as direct taxes for the purposes of the present Treaty :
In the German Reich, all existing and future taxes levied by the Reich and the Confederate States on income and capital, including the tax on profits accruing from capital (" Kapitalertragssteuer "), all present and future taxes levied by the States on landed property and industrial undertakings and all supplementary taxes to the taxes mentioned above.
In the Republic of Austria, all existing and future taxes on income, profits and capital levied on behalf of the Confederation, all taxes levied by the latter on its own behalf and on behalf of the provinces and communes and all supplementary taxes to the taxes mentioned above.

The principles laid down in the present Treaty regarding taxation of income, profits and capital shall also apply to taxes to be levied on excess profits or yield and on increase of capital.

The two Contracting Parties recognise that death duties do not fall within the category of direct taxes for the purposes of the present Treaty. Death duties will form the subject of a special treaty.

In cases of uncertainty, the question as to whether a tax falls within the categories indicated above will be settled by agreement between the Finance Ministers of the two States.

(2) The provision contained in paragraph 1 of Article 1 shall not prohibit the levying of taxes upon persons who, although they are not domiciled or habitually resident in one of the two States reside, nevertheless, in one of the said States for the purpose of engaging in a lucrative occupation.

(3) In applying paragraph 2 *a* of Article 1 the period of residence during the period in respect of which the taxable income (profits) is earned shall be substituted for the period of residence during the fiscal year, in cases in which the former period does not coincide with the fiscal year.

(4) The period of residence shall be calculated, for the purpose of paragraphs 2 *a* and *c* of Article 1, by full months of 30 days. A period of more than 15 days shall be regarded as a full month ; a period of 15 days or less shall not be counted.

(5) If Austria introduces a tax on capital it will be the duty of the Finance Ministers of the two States to conclude an agreement according to the provisions of paragraph 2 *b* of Article 1.

(6) It is agreed that students who reside in one of the Contracting States solely for the purposes of study shall not be liable in the State in which they reside as students to taxation in respect of money received by them from relatives domiciled in the other Contracting State, for purposes of maintenance and study, provided that by far the greater part thereof is used for these purposes.

(7) The provisions of the present Treaty shall not, from the fiscal point of view, prevent any profits which may arise from alienations or speculations and which have been acquired in consequence of a non-commercial alienation of the property mentioned in Article 2 from being dealt with according to the municipal laws of the two States.

(8) The question of the taxes to be levied on railway and navigation undertakings, the exploitation of which is carried on in the territories of the two States, shall be regulated by a special agreement between the Finance Ministers of the two States.

(9) The laws of the Contracting States regarding the levying of special taxes on directors' fees shall not be affected by the provisions of the present Treaty.

(10) Article 13 shall be applicable, in particular, in cases in which a taxpayer who, by virtue of Article 1 of the present Treaty, is liable to a tax on capital in Austria, has acquired since December 31, 1919, in the German Reich property falling within the categories described in Articles 2 and 3, unless it is found that such acquisition is the result of the transformation of other property of the same categories situated in the German Reich.

(11) The Contracting States propose, by means of a special treaty, to establish organisations for safeguarding the rights accruing to taxpayers in consequence of the present Treaty.

(12) It is agreed that any tax assessment already effected must be rectified in accordance with the provisions of the present Treaty, if the taxpayer so requests, within a period of two years from the coming into force of the present Treaty, or if the fiscal authorities themselves consider it necessary, within the limits of their legal competence, to make a rectification of this kind.

BERLIN, *May* 23, 1922.

For the German Reich :

(Signed) GERHARD KÖPKE.
(Signed) ERNST PEIFFER.

For the Republic of Austria :

(Signed) DR. OTTO GOTTLIEB-BILLROTH.
(Signed) DR. PAUL GRÜNWALD-EHREN.

No. 660

TREATY BETWEEN THE GERMAN REICH AND THE REPUBLIC OF AUSTRIA CONCERNING LEGAL SAFEGUARDS AND LEGAL ASSISTANCE IN MATTERS OF TAXATION.

Article 1.

Public taxes, in so far as they are levied by the German Reich for the Reich and the various States, by the Republic of Austria for the Federation, and for the Federation in conjunction with the provinces and communes, and by both Contracting Parties for other legal bodies, whether as additional taxes or as supplementary taxes leviable with the public taxes, shall be regarded as taxes within the meaning of the present Treaty. Customs duties and taxes on consumption shall, however, be excluded. The tax on business turnover and the luxury tax shall not be regarded as taxes on consumption for the purposes of this Treaty.

I. Legal Safeguards in Questions affecting Taxation.

Article 2.

The nationals of either of the two States shall be entitled to equality of treatment with the nationals of the other State, so far as taxation is concerned, in the territory of the other State and more particularly to the same safeguards in their dealings with the revenue authorities, revenue and administrative courts and other tribunals.

Legal persons, including companies and also partnerships, institutions, charitable foundations and all other organisations possessing property set aside for a particular purpose, which are not legal persons but which are liable to taxation as such, shall, if they are situated or have their registered offices in the territory of one of the two States and if they are legally constituted in accordance with the legislation of the said State, be entitled to the same treatment in matters of taxation (paragraph 1) in the territory of the other State as that which is accorded to similar taxpayers in the other State.

II. Legal Assistance in Matters of Taxation.

Article 3.

The two States undertake to give each other mutual administrative and legal assistance in all questions relating to taxation and in all cases of flight of capital and evasion of taxation, both in regard to the assessment and fixing of taxes and sureties, and in regard to the legal procedure for securing redress and recovery.

Article 4.

In matters affecting taxation, questions regarding the service of legal documents and the action to be taken as a result of applications for administrative and legal assistance shall, unless otherwise provided in the special stipulations with regard to recovery (Articles 11 to 13), be dealt with directly between the authorities of the two States.

The provincial Inland Revenue Offices (Landesfinanzämter) in the case of the German Reich, and the provincial Inland Revenue Departments (Finanzlandesdirektionen) in the case of the

Republic of Austria, shall be competent to deal direct with the receipt and transmission of applications for the service of documents and for other administrative and legal assistance.

Should the authority to which the application is made not be competent to deal with the matter by reason of its geographical situation, the application must be officially transmitted to the competent authority, and the authority making the application must be notified to that effect without delay.

Article 5.

The letter containing the application must specify the authority making the application, the name and profession (or status) of the parties concerned, and, in the case of the service of documents, the address of the addressee and the nature of the document to be served.

Article 6.

The competent authority of the State to which application is made shall be responsible for seeing that documents are duly forwarded. Except in the cases specified in paragraph 2, the authority concerned may restrict such action to effecting the service of the document by rtansmitting it to the addressee provided that the latter is willing to accept it.

If the State making application so desire, the document to be served shall be served in the form prescribed by the internal legislation of the State to which application is made for effecting service in similar cases.

Article 7.

Proof that the document has been served shall be furnished either by a dated and duly certified receipt from the addressee or by an affidavit from the State to which application is made, certifying the fact of such service and the manner and time.

Article 8.

The authority to whom an application is addressed must comply with it and must employ the same means of coercion as are applicable for enforcing an application made by the authority of the country to which the application is made or an application by an interested party for the same purpose. The procedure for dealing with applications shall be in conformity with the laws of the State to which application is made ; if, however, the authority making the application so desire, a special mode of procedure may be employed, provided that it does not contravene the legal code of the State to which application is made.

A means of coercion which may be lawful in the territory of the State to which an application is made shall not be employed, unless the State making such application would be in a position to use a similar means of coercion in the case of an analogous application being made to itself.

The authority making an application shall, if it so desire, be notified of the time and place of any action to be taken in respect of such application. The interested parties shall be entitled to be represented or to be present at any such proceedings, subject to the general regulations in force in the State to which the application is made.

Article 9.

No fees or charges of any kind shall be payable for carrying out requests for the service of documents or applications, with the exception, pending further arrangements, of compensation to persons collecting information or to experts and of sums payable to an executive agent for

assistance in the cases mentioned in Article 6, paragraph 2, or on account of the employment of a special mode of procedure in accordance with Article 8, paragraph 1.

Article 10.

The provisions of this Treaty shall be applicable to legal assistance in all procedure appertaining to recovery, unless otherwise provided in Articles 11 to 13.

Article 11.

In matters relating to taxation, dispositions (awards, decisions, orders) which are not appealable shall, upon application, be acknowledged and executed free of cost. An explicit statement must be made with regard to acknowledgment.

The Finance Minister of the German Reich and the Federal Minister of Finance of the Republic of Austria shall be competent to receive and transmit applications.

The dispositions referred to in paragraph 1 shall be put into execution in accordance with the legislation of the State in which execution is effected, without the parties concerned being heard.

An application for execution must be accompanied by a statement by the competent authority of the State making the application, to the effect that no appeal can lie against the disposition ; such authority must be certified competent by the authority of the State making the application specified in sub-paragraph 2 of paragraph 1.

Article 12.

Provisional security, in the form of the sequestration of property, may be required from nationals of the State to which an application is made, by virtue of executory dispositions against which an appeal may still be made. The person concerned shall be entitled to have such sequestration removed upon giving security, the nature and value of which must be specified in the application.

Article 13.

If application is made for a specified mode of execution or a specified type of security, the request shall be complied with, provided that such mode of execution or type of security is compatible with the law of the State making application and of the State to which application is made. Otherwise, the mode of execution and the type of security and the carrying out of the execution and security shall be in conformity with the law of the State to which application is made.

Article 14.

Administrative and legal assistance may be refused, if the State to which application for assistance is made considers such assistance likely to endanger its sovereign rights or safety.

Applications which involve the obtaining of information, statements or opinions, which are lawful in the territory of the State to which application is made, from persons who are not parties to the case in their capacity as taxpayers may be refused, if the State making application is unable under the terms of its national legislation to require similar information, statements or opinions. The same condition shall obtain in regard to applications made for the purpose of acquiring information upon material circumstances or legal relations, if the knowledge of such circumstances or relations is obtained in accordance with obligations to furnish information, statements or opinions which are not admissible in the territory of the State making application, and to other applications,

if they can only be complied with by disregarding the principle of commercial, business or industrial secrecy.

Article 15.

If an application is conceded either wholly or in part, the authority to whom such application is made must promptly notify the authority making application as to the manner in which the application has been dealt with.

If an application is not conceded, the authority to whom such application is made must promptly notify the fact to the authority making application, giving all reasons in support and information as to any circumstances with which he has become acquainted through other channels and which are of importance for any further action which is to be taken in the matter.

Article 16.

As regards all questions, information, statements and opinions and any other communications furnished to a State as the result of measures of legal assistance, the statutory regulations of such State regarding official reticence and secrecy shall be applicable.

III. Authentification of Documents.

Article 17.

Documents which are accepted, drawn up or authenticated by the revenue courts in one State may, if furnished with the seal or stamp of the court, be used in the territory of the other State in respect of matters relating to taxation without further authentication (legalisation).

The documents described above shall also include documents which are signed by the clerk to the court (record office of the court), if such signature is valid under the laws by which the court is governed.

Article 18.

Documents which are accepted, drawn up or authenticated by the head revenue official or by one of the senior revenue officials in one State, may, if furnished with the seal or stamp of such official, be used in the territory of the other State in matters relating to taxation, without further authentication (legalisation).

The two States shall publish a list of the officials in question ; the list may be modified or supplemented at any time by common agreement between the respective administrations.

IV. Final Clauses.

Article 19.

The two States undertake to conclude an agreement on mutual legal assistance in regard to offences against the revenue laws. The object of this agreement shall be to lay down regulations for mutual obligations in respect of extradition on account of premeditated defrauding of the revenue and of other premeditated offences against the laws on the flight of capital and the evasion of taxation. Such obligation shall apply both to persons against whom claims are preferred and to effects confiscated or declared escheated by a judgment having the force of law or decision without appeal given by a revenue authority.

Article 20.

The Finance Ministers of the two States shall be free to conclude other arrangements in conformity with the present Treaty. They may, in particular, agree upon provisions regarding the payment of sums received on account of executory proceedings and the fixing of a mean rate of exchange for the conversion of sums in regard to which executory proceedings are to be taken.

Article 21.

The present Treaty shall be ratified and the instruments of ratification shall be exchanged as soon as possible at Berlin. It shall come into force on the day on which it is ratified and shall continue in force until it is denounced by one of the Contracting Parties, such denouncement to take place at least s x months before the expiration of any calendar year. If it is denounced within the prescribed time-limit the Treaty shall cease to apply after the expiration of the calendar year in question.

Both texts of the Treaty are authentic.

When the Treaty has been ratified, it shall be published in the official Statute Book of each State.

In faith whereof the Plenipotentiaries of both States have signed the present Treaty and have affixed their seals thereto.

BERLIN, *May* 23, 1922.

For the German Reich :

(Signed) DR. GERHARD KÖPKE.

(Signed) ERNST PEIFFER.

For the Republic of Austria :

(Signed) DR. OTTO GOTTLIEB BILLROTH.

(Signed) DR. PAUL GRÜNWALD-EHREN.

FINAL PROTOCOL.

On signing the Treaty concluded this day between the German Reich and the Republic of Austria concerning legal safeguards for taxpayers and legal assistance in matters of taxation, the undersigned Plenipotentiaries made the following joint declarations which form an integral part of the Treaty itself :

(1) The Contracting Parties undertake, whenever the need arises, to conclude special conventions with regard to the " garnishing " of debts, when the debtor is on the territory of one of the States concerned and the " garnishee " is on the territory of the other State.

(2) In order to facilitate enqu ries into the manner in which they may give each other effective legal assistance, the Contracting Parties will forward to each other explanatory statements on the powers of revenue officials, in regard to which the fundamental principles of German and Austrian law, so far as applications for legal assistance are concerned, may be considered as in agreement. The explanatory statements must, more especially, give particulars :

(a) As to the information, statements, opinions and evidence which can be required from taxpayers or third parties ;

(b) As to the means of coercion and measures of security and execution which may lawfully be applied to taxpayers or third parties.

Pending the exchange and acknowledgment by both parties of the explanatory statements, there will be attached to each application for legal assistance a certificate issued by the provincial inland revenue office (provincial inland revenue department) to the effect that an analogous application would be permissible in accordance with the law of the State making the application. The certificate must be accompanied by a translation in the language of the State to which the application is made. (*Cf.* Article 5). Article 6, paragraph 3, of the present Treaty shall be applicable *mutatis mutandis* to such translations.

(3) The transmission of deeds cannot, as a rule, be called for. Exceptions to this rule shall be conditional upon agreement between the Finance Ministers of the two States ; an application for the forwarding of deeds should, however, only be made if they are urgently required in the interest of the State making the application. This provision shall not affect the power of either State to attach to its requests any deeds which may be of assistance in connection with further action in regard to such requests.

(4) If the regulations in force in the State to which an application is made require that the conditions, in accordance with which proceedings are quashed owing to the impossibility of recovering the taxes, must be stated, the authority to whom application is made will return the application to the authority who made it, together with a certificate that such conditions exist and all available documentary evidence thereof.

(5) The measures for legal safeguards and legal assistance which are agreed upon in the present Treaty shall apply to cases in respect of taxation and to acts which relate to an earlier date.

BERLIN, *May* 23, 1922.

For the German Reich :

(Signed) DR. GERHARD KÖPKE.
(Signed) ERNST PEIFFER.

For the Republic of Austria :

(Signed) DR. OTTO GOTTLIEB-BILLROTH.
(Signed) DR. PAUL GRÜNWALD-EHREN.