

N° 1261.

ALLEMAGNE ET ITALIE

Convention pour éviter la double imposition et régler certaines autres questions en matière d'impôts directs, avec protocole final. Signée à Rome, le 31 octobre 1925.

GERMANY AND ITALY

Convention for the Avoidance of Double Taxation and the Settlement of other Questions connected with Direct Taxes, with Final Protocol. Signed at Rome, October 31, 1925.

¹ TRANSLATION.

No. 1261.— CONVENTION BETWEEN THE GERMAN REICH AND ITALY FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE SETTLEMENT OF OTHER QUESTIONS CONNECTED WITH DIRECT TAXES. SIGNED AT ROME, OCTOBER 31, 1925.

HIS MAJESTY THE KING OF ITALY and THE PRESIDENT OF THE GERMAN REICH, being desirous of avoiding double taxation and settling other questions connected with direct taxes, in order to harmonise the working of the two fiscal systems in their international aspects, have decided to conclude a convention for this purpose and have therefore appointed as their Plenipotentiaries :

HIS MAJESTY THE KING OF ITALY :

H. E. Benito MUSSOLINI, President of the Council and Minister for Foreign Affairs ;

THE PRESIDENT OF THE GERMAN REICH :

H. E. Baron Constantine VON NEURATH, German Ambassador at the Court of H. M. the King of Italy ;

Dr. Herbert DORN, Ministerial Councillor and Head of Department in the German Ministry of Finance ;

Who, having communicated their full powers found in good and due form, have agreed on the following Articles :

Article 1.

The object of the present Convention is to define rules for the levying of direct taxes.

For the purposes of the present Convention direct taxation is that which, in conformity with the legislation of each of the two States, is levied direct on income, gross or nett, or on personal capital, either on behalf of the two Contracting States or on behalf of the States of the German Reich (*Länder*) or the provinces and groups of provinces, communes and groups of communes even when in the form of " supplementary " taxation. The present Convention shall not, however, apply to indirect taxation on transfers and on articles of consumption.

In this Convention a distinction is drawn between the rules applicable to direct impersonal taxation on income (Articles 2 to 10) and direct " personal " taxation (Article 11).

For the purposes of this Convention direct taxation levied in respect of single objects liable to taxation, and on the basis of their economic connection with the territory of the State, shall be regarded as " impersonal " taxation. Direct taxation levied on the whole body of objects liable to taxation — income or property — and based on the fact that they belong to a single taxable person or on that person's nationality, residence or sojourn, shall be regarded as " personal " taxation.

¹ Translated by the Secretariat of the League of Nations.

In particular, the following shall be regarded as impersonal taxation.

1. Under Italian legislation :
 - (a) The land tax ;
 - (b) The tax on buildings ;
 - (c) The tax on income derived from movable property ;
 - (d) The tax on income derived from agricultural property.
2. Under German legislation :
 - (a) The " Einkommensteuer " (income tax) in so far as such taxation is levied without regard to the nationality, residence or sojourn of the person liable to taxation ;
 - (b) The " Körperschaftssteuer " (tax on corporate bodies) in so far as such taxation is levied without regard to the head office or the actual business centre of the undertaking ;
 - (c) The " Grundsteuern " (land taxes) ;
 - (d) The " Gebäudesteuern " (taxes on buildings) ;
 - (e) The " Gewerbesteuern " (taxes on industry) ;
 - (f) The " Hauszinssteuern " (taxes on rents).

Article 2.

Impersonal taxation leviable on income derived from immovable property shall be levied solely by the State in which the immovable property is situated.

Article 3.

Impersonal taxation leviable on income derived from any kind of industrial or commercial activity shall be levied solely by the State in whose territory the establishment of the undertaking in question is situated, even when the undertaking carries on business in the territory of the other Contracting State without possessing an establishment in that State.

For the purposes of the present Convention, an establishment shall be taken to mean a permanent productive organisation of the undertaking in which the business of the undertaking is wholly or partly carried on.

Should the undertaking possess establishments in both of the Contracting States, each State shall levy taxation on that portion of the income which is derived from the business transacted in the establishments situated in its territory.

For the purpose of determining the division of the income between the two States in the cases referred to in the third paragraph of the present Article, the fiscal authorities of the two Contracting States may request the taxpayer to submit general balance-sheets, special balance-sheets or any other documents provided for under the legislation of the State concerned.

Article 4.

Impersonal taxation leviable on income derived from maritime shipping enterprises shall be levied solely by the State in which the actual business centre of the enterprise is situated.

Article 5.

Impersonal taxation leviable on the dividends of commercial companies, treated not as income of the individual owners of the shares, but forming part of the whole industrial or commercial

yield of the company which distributes them, shall be levied according to the rules laid down in Articles 3 and 4 of the present Convention.

Should there exist, or in future be introduced, in either of the Contracting States any impersonal taxation other than that referred to in the preceding paragraph leviable on dividends *qua* income of the owner of the shares, and not *qua* part of the company's income, the tax shall be levied solely by the State in which the head office of the company is situated.

The rules laid down in this Article shall also apply to income derived from other transferable securities analogous to shares ; but not to income derived from other forms of participation in business undertakings, to which the rules laid down in Articles 3 and 4 of the present Convention shall continue to apply.

Article 6.

Impersonal taxation on directors' fees distributed by companies, which is or may in future be imposed by the Contracting States, shall be levied by the State in which the head office or real business centre of the undertaking is situated.

Should the head office of the undertaking be situated in one State and the actual business centre of the undertaking in the other State, the central fiscal authorities of the two States shall conclude an agreement from time to time with a view to an equitable allocation.

Article 7.

Impersonal taxation leviable on earned income, including income derived from the exercise of the liberal professions, shall be levied solely by the State in the territory of which the personal activities producing the income are carried on. A liberal profession shall be held to be exercised in a certain locality only when the profession in question is usually and habitually exercised in that locality.

Impersonal taxation leviable on income derived from past or present work, whether such income take the form of salaries, allowances, pensions, wages or other remuneration paid by the State, the provinces, communes or other public corporate bodies regularly constituted in accordance with the domestic legislation of the Contracting States, shall be levied solely by the State of which the debtor is a national.

Article 8.

Impersonal taxation leviable on income derived from the investment of funds shall only be levied by the State in which the investor is domiciled, except in the following cases :

(1) Taxation leviable on income derived from loans secured on mortgage shall be applied only by the State in which the immovable property is situated.

(2) Taxation leviable on interest paid in respect of loans contracted by the State, provinces, communes or other public corporate bodies regularly constituted in accordance with the domestic legislation of the Contracting States, and on interest on bonds issued by companies and other legal entities, shall be levied solely by the State of which the debtor is a national.

Article 9.

Should there exist or come to be levied in one or both of the Contracting States impersonal taxation on interest derived from savings deposits and current account deposits in banks,

institutions and other enterprises conducting credit operations, the taxation shall be applied solely by the State in which the undertaking has its establishment.

If the undertaking possesses establishments in both Contracting States, the State levying the impersonal taxation in question may levy it only on the interest on deposits in the establishments situated in its territory.

Article 10.

Impersonal taxation leviable on any kind of income not defined in the above Articles, including income derived from life annuities, shall be levied solely by the State in which the person deriving such income is domiciled.

Article 11.

Personal taxation leviable on the taxpayer's total income shall be levied by each of the Contracting States in accordance with the following rules :

(1) Income derived :

(a) From immovable property ;

(b) From mortgage loans ;

(c) From industry or commerce, including income derived from maritime shipping enterprises ;

(d) From labour, including remuneration of services by public corporate bodies, shall be subject to the rules laid down for these categories of income in the Articles referring thereto.

(2) On every other kind of income, including dividends on shares, and other transferable securities of the nature of shares, directors' fees, interest on loans issued by public corporate bodies and interest on bonds issued by companies or other legal entities, and interest on deposits in banks or other credit institutions, taxation shall be levied in the State in which the taxpayer has his residence.

Article 12.

Taxation on personal capital whether imposed at regular intervals in the form of a single levy, and on the increment of such capital which is already leviable or may become leviable in the Contracting States, shall be levied by each State on that portion of the taxpayer's property which is situated in the territory of that State.

When the personal capital consists of :

(a) Immovable property ;

(b) Mortgage loans ;

(c) Industrial or commercial enterprises including maritime shipping enterprises ;

its existence in the territory of one of the Contracting States as far as the levying of the tax on personal capital and on the increment of such capital is concerned shall be determined according to the principles laid down in the preceding articles for the impersonal taxation of income derived from such property.

In the case of every other kind of movable property including shares in companies, and other transferable securities of the nature of shares, loans issued by public corporate bodies, bonds issued by companies and other legal entities and deposits in banks and other credit institutions, the rules laid down for the taxation of total income shall apply.

Article 13.

For the purpose of the present Convention, residence shall be taken to mean the place in which the taxpayer habitually dwells in circumstances which warrant the presumption that he intends to continue to reside there.

Should the taxpayer possess, within the meaning of the present Convention, residence in both of the contracting States, the impersonal taxation leviable in respect of the income for which a rule is laid down in Article 8 and in Article 10 shall be levied solely by the State of which the taxpayer is a national. The same rule shall be observed when the taxpayer does not possess residence in either of the Contracting States.

Personal taxes — in so far as they are applied in connection with the taxpayer's residence in conformity with the present Convention — shall be levied in accordance with the following rules :

- (a) Should the taxpayer possess residence in both of the Contracting States, the personal taxation shall be levied by each State in proportion to the period during which the person has resided in the State during the fiscal year. Sojourn outside both Contracting States shall be reckoned in favour of the State of which the taxpayer is a national.
- (b) Should the taxpayer not possess residence in either of the Contracting States, the personal taxation shall be levied by the State in which the taxpayer in question usually and habitually sojourns. The expression "usually and habitually sojourns" shall be taken to mean permanent sojourn in the State under circumstances such as to warrant the supposition that sojourn therein is not occasional.
- (c) Should the taxpayer usually and habitually sojourn in neither of the Contracting States, taxation shall be levied by the State of which the taxpayer is a national.

For the purpose of the present Convention the residence of corporate bodies shall be taken to be the place in which the corporate body has its head office.

Article 14.

The diplomatic, consular and extraordinary representatives of each Contracting State in so far as they are *de carrière*, and also their office staff and persons in their service or in the service of their staff, shall be exempt from direct taxation in the State to which they are accredited.

Exemption shall be granted only if they are nationals of the State they represent and if within the territory of the State to which they are accredited and outside their offices or in addition to their official duties they exercise no profession, industry or other employment of profit. Exemption shall not be extended to the taxes leviable on the property referred to in (a), (b) and (c) of Article 11 or the income derived therefrom, nor to taxation levied at the source (deducted directly or indirectly (*di riva*lsa)).

Article 15.

Should it be established that the action of the fiscal authorities of the Contracting States has resulted in subjecting the taxpayer to double taxation, the latter may lodge a claim on these grounds against the State of which he is a national. If his claim is admitted, the central fiscal authorities of the State in question may come to an agreement with the central fiscal authorities of the other State in order to avoid such double taxation in an equitable manner.

Article 16.

In order to avoid double taxation in cases not expressly provided for in the present Convention and also in case of difficulty or doubt as to the interpretation or application of the Convention itself, the central fiscal authorities of the two Contracting States may conclude special agreements.

Article 17.

The Contracting Parties undertake to entrust to the central fiscal authorities of the two States, the equitable settlement of any other question which may arise, either as a result of the different principles applied in levying taxes in the respective States or owing to the time-limits which have been or may be prescribed under the laws of either State for the tax on personal capital, and in general, the settlement of any other question connected with direct taxation not specifically regulated by the present Convention.

Article 18.

The Contracting Parties undertake to assist each other reciprocally in levying and collecting direct taxes.

The manner in which such assistance is to be given shall be defined in a separate convention.

Article 19.

The present Convention, drawn up in two original copies in Italian and German, shall be ratified, and the instruments of ratification shall be exchanged at Rome as soon as possible.

The Convention shall come into force on January 1 of the year following that in which the ratifications are exchanged and shall remain in force so long as it has not been denounced by either of the Contracting Parties.

The denunciation must be notified at least eight months before the end of the calendar year ; when this condition has been complied with, the Convention shall cease to have effect as from January 1 of the following year.

In faith whereof the above-mentioned Plenipotentiaries have signed the present Convention and have affixed their seals thereto.

Done at Rome, on October 31, 1925.

Benito MUSSOLINI.

G. VON NEURATH.
DR. Herbert DORN.

FINAL PROTOCOL.

At the moment of signing the Convention concluded on this day's date between Italy and Germany for the avoidance of double taxation and for the international settlement of other questions connected with direct taxes, for the purpose of harmonising the working of the two fiscal systems, the undersigned Plenipotentiaries have made the following declarations, which shall form an integral part of the said Convention.

* * *

(1) The direct taxes in force in the two Contracting States enumerated in Article 1 of the Convention are intended to serve as examples and not as an exhaustive list.

Any doubts which may arise shall be settled by agreement between the central fiscal authorities of the two States.

The central fiscal authorities of the two States shall at the end of each year exchange a list, corrected to date, of the impersonal taxes in force in each country.

(2) The provisions of Article 2 of the present Convention shall apply both to income derived from the direct administration and enjoyment of immovable property, and also to income derived from rentals or the enjoyment of the immovable property in any other manner.

(3) The " industrial and commercial activity " referred to in Article 3 of the Convention shall be taken to include the activities of insurance, transport, trading, finance and credit companies, as well as the carrying on of trades, in so far as the latter do not produce income classified in the Convention as income derived from work.

(4) The rule laid down in section 2 of the present Final Protocol concerning income derived from immovable property shall apply in like manner to income derived from industrial and commercial enterprises.

(5) For the purposes of Article 3 of the Convention, in addition to the head office and actual business centre of the undertaking, branches, associated establishments and agencies; factories, workshops, laboratories; premises where purchases and sales are effected, warehouses and other business premises having the nature of a permanent productive organisation, and permanent representatives, shall be regarded as " establishments ".

(6) The central fiscal authorities of the two Contracting States shall conclude a special agreement to settle in an equitable manner the division of income derived from industrial or commercial enterprises in the cases defined in Article 3, third paragraph.

(7) Should there already exist or be in future established in one of the two States an undertaking which, although legally autonomous under the Civil law, is so intimately connected with or stands in a relationship of such dependence on, or possesses such unity of interests with, a legally autonomous undertaking in the territory of the other State as to render the two undertakings economically one and to cause the former undertaking to be regarded, in accordance with the fiscal legislation of the State in which it is situated, as an establishment of the undertaking existing in the other State, the rules laid down in Article 3, third and fourth paragraphs, of the Convention shall apply.

(8) For the purposes of Article 3, fourth paragraph, of the Convention :

(a) " General balance-sheets " shall be taken to mean the general results of an undertaking drawn up and published in accordance with the laws of the State in which the head office or actual business centre of the undertaking is situated ;

- (b) "Special balance-sheets" shall be taken to mean the working results of the establishments in the State which levies the tax and which are drawn up and published in accordance with the laws of that State ;
- (c) "Any other documents" shall be taken to mean any documents concerning the working of the establishments required to ascertain what part of their income is subject to taxation in the State which levies the tax.
- (g) The transferable securities referred to in Article 5, third paragraph of the Convention shall also include those which, under German legislation, are special securities of a nature similar to shares in business undertakings, and which consist of interests in mining enterprises (*Kuxo*) and user certificates (*Gemusscheine*).
- (10) For the purposes of Article 7 of the Convention, liberal professions shall be taken to mean scientific, artistic or literary occupations, teaching or education, and the professions of doctor, advocate, architect and engineer.
- (11) "Interest on savings deposits and deposits on current account" shall, for the purposes of Article 9 of the Convention, be taken to mean interest derived from stable investments of capital and not from current commercial accounts.
- (12) Students sojourning in one of the Contracting States solely for the purposes of study shall not be subject to taxation by that State on funds received by them from their parents living in the other State, provided such funds constitute the major portion of the money required for their maintenance and studies.
- (13) The rules laid down in Article 12 of the Convention shall not be applicable to single levies on personal capital in so far as and provided the determinative date is prior to the date of the present Convention, even should the taxes in conformity with the legislation relative thereto be at that time in course of payment.

The rule laid down in Article 12, first paragraph, sub paragraph (b), of the Convention concerning the treatment of mortgage loans shall not be applicable unless taxation on personal capital within the meaning of Article 12 exists in both of the Contracting States.

(14) In the case of tax-payers who prove that they have definitely transferred their residence from one Contracting State to the other, the right to levy taxation, in so far as taxation is connected with residence or sojourn, shall terminate in the first State as from the day on which the transfer of residence took place.

(15) In the case of persons who are nationals of both of the Contracting States and of persons who are nationals of neither of the Contracting States, the central fiscal authorities shall in each particular case come to an agreement whenever, within the meaning of Article 13 of the Convention, nationality is the decisive factor governing taxation.

(16) With a view to avoiding any doubts which may arise, it is hereby stated that the provisions of Article 14 shall not affect the right to enjoy any more extensive privileges or exemptions which, in conformity with the general rules of international law, are or may in future be granted to diplomatic and consular representatives.

(17) It is understood that the object of the option accorded under Article 16 to the fiscal authorities of the two Contracting States is to render possible the application of the principles laid down in the Convention to any case which may arise, and which has not been provided for or entirely regulated by the Convention, and that the object thereof is not to enable principles to be established other than those laid down in the Convention itself.

(18) As regards the tax on successions, the Contracting Parties reserve the right to conclude a separate agreement.

(19) In so far as the rules of the Convention refer, in the case of the German Reich, to taxes levied by its constituent States (*Länder*) they shall be subject, when necessary, to approval by the States concerned.

Should such approval not be accorded, the Convention shall also cease to be binding on the other Contracting Party.

The present Protocol, which shall be held to have been approved and confirmed by the Contracting Parties without further special ratification by the mere fact of their having exchanged the instruments of ratification of the Convention to which it refers, has been drawn up at Rome, in two original copies, in Italian and German, on October 31, 1925.

Benito MUSSOLINI.

C. VON NEURATH.
Dr. Herbert DORN.