

AUTRICHE ET HONGRIE

Traité en vue d'assurer la compensation des impositions intérieure et extérieure et, notamment, d'éviter la double imposition en matière d'impôts directs, ainsi qu'en vue de régler le concours réciproque des tribunaux et des autorités des deux Parties en matière d'impôts, avec protocole final, signés à Vienne, le 8 novembre 1924.

AUSTRIA AND HUNGARY

Treaty for the Adjustment of Taxation, at home and abroad, in particular for the Prevention of Double Taxation in the Field of Direct Taxation, and for the Regulation of Collaboration between the Courts and Authorities of the two Parties, in Cases connected with Taxation, with Final Protocol, signed at Vienna, November 8, 1924.

¹ TRANSLATION.

No. 1096. — TREATY BETWEEN AUSTRIA AND HUNGARY FOR THE ADJUSTMENT OF TAXATION AT HOME AND ABROAD, IN PARTICULAR FOR THE PREVENTION OF DOUBLE TAXATION IN THE FIELD OF DIRECT TAXATION, AND FOR THE REGULATION OF COLLABORATION BETWEEN THE COURTS AND AUTHORITIES OF THE TWO PARTIES, IN CASES CONNECTED WITH TAXATION, SIGNED AT VIENNA, NOVEMBER 8, 1924.

THE REPUBLIC OF AUSTRIA and THE KINGDOM OF HUNGARY, being desirous of ensuring the equal adjustment of taxes at home and abroad in the field of direct taxation, and in particular of preventing double taxation, and of facilitating the provision of mutual legal assistance in fiscal matters, have concluded the following Treaty.

For this purpose they appointed as their Plenipotentiaries :

THE REPUBLIC OF AUSTRIA :

M. Egon SCHWANBERG, Ministerialrat in the Austrian Federal Finance Ministry,
Dr. Rudolf EGGER, Ministerialrat in the Austrian Federal Finance Ministry;

THE KINGDOM OF HUNGARY :

M. Konstantin VON MASIREVICH, Envoy Extraordinary and Minister Plenipotentiary,
Dr. Alexander KNEPPO, Ministerial Councillor in the Royal Hungarian Finance Ministry;

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

Article I.

(1) Unless otherwise provided in the following Articles, Austrian or Hungarian 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) This principle shall likewise apply to other persons, so far as the fiscal sovereignty of the two Contracting States is concerned.

(3) If a taxpayer has a domicile in both States, the tax shall be levied in the State in which he has resided for definitely the longest period during the term in respect of which the tax has to be assessed. If his sojourn in one Contracting State has not been notably longer than in the other, he shall be taxed in the State of which he is a national. However, if he possesses the nationality of both the Contracting States or if he is not a national of either, he shall be liable to taxation in each State in respect of one-half of the assessable amount. As regards persons who possess an additional domicile outside the Contracting States, special arrangements shall be made in individual cases between the Finance Ministers of the two States.

¹ Translated by the Secretariat of the League of Nations.

(4) 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.

Landed property and mortgages, and the revenue derived therefrom, shall only be liable to direct taxation in the State in which the landed property is situated.

Article 3.

(1) Productive undertakings (or lucrative professions) and the income derived therefrom shall only be subject to direct taxation in the State in which a business establishment for carrying on the undertaking (or profession) 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 by 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 State in whose territory the head office of the enterprise is situated shall be entitled to collect taxes on a certain minimum portion of the total profits. 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 (in particular, partnerships in public trading companies, founders' shares in limited liability companies), with the exception of mining shares (Kuxen), shares, founders' shares and other securities, shall, be regarded as productive 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 or 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 (office, consulting room, etc.) are situated in the other State.

Article 5.

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

Article 6.

(1) The provisions of Articles 1, 2 and 3 shall also apply, *mutatis mutandis*, to legal persons. In the case of such persons the head office, or, in the absence of such, the centre of management and control, shall be considered as the place of domicile.

(2) The right to impose the tax on profits (corporation and company taxes), to which bodies corporate are liable upon income derived from real estate or mortgages, and upon profits on investments taxable by deduction at the source, shall not be affected by the foregoing provisions.

Article 7.

Where the laws of the Contracting States provide that the tax levied on income from capital paid out of public funds (*i.e.*, from Federal, State, provincial, municipal or other public funds), or that interest or dividends on bonds issued by corporations (including vouchers, "Kassenscheine"), or savings bank deposits accepted by the said corporations, or interest, bearing deposits lodged with credit institutes or banks shall be taxed at the source by deduction; the right of imposing such tax shall belong solely to the State in whose territory the debtor resides. 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 8.

The special tax on directors' percentages shall be levied in the State in which the head office of the undertaking which pays such percentages is established.

Article 9.

No excess profits (or yield) shall be subject in either of the two States to the tax on excess profits or excess yield unless such increases in profits or yield is liable to tax in the said State in accordance with the rules set forth above.

Article 10.

(1) The provisions of Articles 1, 2, 3 and 6 shall also apply to the assessment of the Austrian Extraordinary Capital Levy and of the Hungarian Redemption of Capital tax (*Vermögensablösung*).

(2) The capital shall only be subject to the levy in the State which possesses an unrestricted right to impose taxation under Articles 1 and 6.

(3) The term "capital" as used in paragraph 2 shall not include mortgages or partnerships in companies with the exception of mining shares (*Kuxen*), shares, founders' shares and other securities.

Article 11.

The provisions of Articles 1, 2, 3 or 6 shall be applicable, *mutatis mutandis*, to the recurrent taxation of capital.

Article 12.

The diplomatic, consular or other representatives of the two States, provided that they are officials by profession, together with the 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 employment of profit outside their

official duties in the States to which they are accredited. The exemption shall not apply to the capital and income referred to in Articles 2 and 3, or to the taxes and imposts to be deducted at the source as specified in Articles 7 and 8.

Article 13.

The provisions of Article 12 shall also apply to the employees of the Customs and Railway Administrations of either of the two States or of their autonomous provinces, in cases in which such employees carry out their duties in the office of one of these Administrations situated in the territory of the other State and are domiciled there solely 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 14.

(1) Shipping undertakings on the Danube shall not be liable to taxes on profits arising out of their shipping business except in the State in which the head office of the undertaking is situated.

(2) Shipping undertakings, for the purposes of the preceding paragraph, shall be held to include business operations directly connected with the transport of persons and goods and the upkeep of the necessary installations in the places at which the vessels call (offices at which freight contracts may be concluded, installations for loading cargo, etc.).

Article 15.

With a view to preventing hardships which might arise from the application of the present Treaty, or which are not removed by the Treaty, the Finance Ministers of the High Contracting Parties are authorised to conclude agreements with a view to modifying or amplifying its provisions; this applies in particular to cases which might arise in respect of the capital levy (the tax known as Redemption of Capital) on account of the difference between the decisive dates fixed, or of double domicile.

Article 16.

The two States shall afford each other assistance in connection with the computation of the taxes which form the subject of the present Treaty, both in the procedure for assessment and appeals and in the serving of demand notices in regard to taxes. They shall also afford each other mutual legal assistance in the collection of taxes. The Finance Ministers of the two States, after agreeing on the main lines of their action, shall take the necessary executive measures to give effect to this provision, in particular measures regarding the extent of the legal assistance to be afforded in the collection of taxes, and the machinery and the authorities through which such action is to be taken, as also in regard to the transfer of the sums recovered by execution and the conversion of the sums thus collected.

Article 17.

(1) The nationals of each State shall receive the same treatment in fiscal matters, and the same judicial protection, from the authorities of the other Contracting State as are accorded to the nationals of the last-named State.

(2) The nationals of either Contracting State shall not be taxed by the other Contracting State at a higher rate than the nationals of the last-named State. If a national of either of the

Contracting States should be liable, under the terms of the present Treaty, to direct taxation in the other Contracting State, though not domiciled therein, he shall not be liable on that ground to taxation above the normal rate.

Article 18.

The present Treaty shall be applicable to all direct taxes (including the Capital Levy in Austria and the Redemption of Capital tax in Hungary) in respect of the period commencing January 1, 1919.

Article 19.

(1) The present Treaty, which has been drawn up in German and Hungarian, must be ratified and the instruments of ratification must be exchanged as early as possible at Budapest. It shall come into force on the date on which the instruments of ratification are exchanged and shall remain in force until it is denounced. Either Contracting State shall be entitled to denounce this Treaty. If it is denounced before July 1 in any year, it shall cease to be valid as from the commencement of the following year; and, if denounced at any other time, it shall cease to be valid as from the commencement of the second calendar year after the date of denunciation.

(2) Both texts of the present Treaty shall be authentic. The Treaty shall, after ratification, be published in the official code of laws of each State in both the authentic texts.

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

Done at VIENNA, November 8, 1924.

For the Republic of Austria :

(Signed) SCHWANBERG.

(Signed) DR. RUDOLF EGGER.

For the Kingdom of Hungary :

(Signed) MASIREVICH.

(Signed) DR. KNEPPO SÁNDOR.

FINAL PROTOCOL.

On signing the Treaty concluded this day between the Republic of Austria and the Kingdom of Hungary for the adjustment of taxation at home and abroad, in particular for the prevention of double taxation in the field of direct taxation, and for legal assistance in fiscal matters, the undersigned Plenipotentiaries made the following joint declarations which shall form an integral part of the Treaty :

Paragraph I. (1) The following shall be regarded as direct taxes for the purposes of the present Treaty : In the Republic of Austria all existing and future taxes on income, profits and capital levied on behalf of the Federation, or levied by the latter both on its own behalf and on that of the provinces and communes, or levied by the provinces (communes), as also all supplementary additions to the taxes mentioned above ;

In the Kingdom of Hungary, all existing and future taxes on income, profits and capital levied on behalf of the State and on behalf of the communes, as also all taxes supplementary to the taxes mentioned above.

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

Paragraph II. Residence for definitely the longest period, for the purpose of Article 1 of the Treaty, shall be held to mean residence for at least two-thirds of the decisive term.

Paragraph III. The provisions of paragraph (1), Article 1 shall not preclude the levying of taxes upon persons who, although they are not domiciled or habitually resident in one of the Contracting States, reside nevertheless in one of the said States for the purpose of engaging in an employment of profit.

Paragraph IV. 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 they are mainly dependent on such sums.

Paragraph V. Any profits which may arise from alienations and speculations, and which have been acquired by a non-commercial alienation of the property mentioned in Article 2, shall be taxed in conformity with the domestic legislation of the two countries.

Paragraph VI. Sequestrations imposed on property, which are still in existence and which are incompatible with the present Treaty, shall be raised.

Paragraph VII. It is agreed that any taxation already effected must be rectified in accordance with the provisions of the present Treaty, if the tax-payer so requests, within a period of six months 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.

Paragraph VIII. Generally speaking, no refund shall be made of amounts collected, under the Redemption of Capital tax, from individuals or legal persons having their head offices (or domiciles) in the territories of the Kingdom of Hungary which have been ceded to Austria. Nevertheless, the Finance Minister of the two States shall come to an agreement by an exchange of notes in regard to the restitution of securities issued outside Hungary which the above-mentioned persons have had to surrender in virtue of an assessment subsequent to December 5, 1921, or which were actually taken over by the Royal Hungarian State after that date but in virtue of an earlier assessment.

Paragraph IX. The question of the taxes to be levied on railway undertakings, the exploitation of which is carried on in the territories of both States, shall be regulated by a special arrangement between the Finance Ministers of the two States.

Paragraph X. The Finance Ministers of the two States shall deal directly with one another in questions concerning the application of the present Treaty. They may also agree to allow the financial authorities of the two States to correspond directly with one another on such matters.

Done at VIENNA, November 8, 1924.

For the Republic of Austria :

(Signed) SCHWANBERG.

(Signed) DR. RUDOLF EGGER.

For the Kingdom of Hungary :

(Signed) MASIREVICH.

(Signed) DR. KNEPPO SÁNDOR.