

N° 1741.

HONGRIE ET ITALIE

Convention pour éviter la double imposition et régler certaines autres questions en matière d'impôts directs, avec protocole final. Signés à Rome, le 25 novembre 1925.

HUNGARY AND ITALY

Convention for the Prevention of Double Taxation and the Settlement of other Questions connected with Direct Taxes, with Final Protocol. Signed at Rome, November 25, 1925.

¹ TRANSLATION.

No. 1741. — CONVENTION BETWEEN THE KINGDOM OF ITALY AND THE KINGDOM OF HUNGARY FOR THE PREVENTION OF DOUBLE TAXATION AND THE SETTLEMENT OF OTHER QUESTIONS CONNECTED WITH DIRECT TAXES. SIGNED AT ROME, NOVEMBER 25, 1925.

HIS MAJESTY THE KING OF ITALY and HIS MOST SERENE HIGHNESS THE REGENT OF HUNGARY, being desirous of preventing double taxation and settling other questions connected with direct taxes, have decided to conclude a Convention for this purpose and have therefore appointed as their Plenipotentiaries :

HIS MAJESTY THE KING OF ITALY :

His Excellency Benito MUSSOLINI, President of the Council and Minister for Foreign Affairs ;

HIS MOST SERENE HIGHNESS THE REGENT OF HUNGARY :

His Excellency Count Albert NEMES DE HIDVÉC, Hungarian Envoy Extraordinary and Minister Plenipotentiary at Rome ;

Dr. Alexander KNEPPO, Ministerial Councillor in the Hungarian Ministry of Finance.

The Plenipotentiaries having exchanged their full powers, found in good and due form, have agreed as follows ;

Article I.

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

For the purposes of the present Convention, direct taxes shall be taken to mean taxes which, under the legislation of each of the two States, are levied directly on income, gross or nett, or on total estate either on account of the two Contracting States, or of the Hungarian Comitats (*Várméyek*) or the Italian Provinces and Communes, even in the form of additional taxes. The present Convention shall not apply therefore to indirect taxes on transfer or articles of consumption.

In this Convention a distinction is drawn between the rules applicable to direct "impersonal" taxes on income (Articles 2 to 7) and direct "personal" taxes (Articles 8 to 10).

For the purposes of this Convention, "impersonal" taxes shall be taken to mean direct taxes levied in respect of single objects liable to taxation and in virtue of their economic connection with the territory of the State. "Personal" taxes shall be taken to mean direct taxes levied on the whole of the objects liable to taxation — income or property — in virtue of the fact that they belong to a taxable person and of the nationality, residence or sojourn of such person.

I. The following shall be regarded more particularly as impersonal taxes :

1. Under Hungarian legislation :

(a) *A földadó* (Land tax) ;

(b) *A házaadó* (Tax on buildings) ;

¹ Translated by the Secretariat of the League of Nations, for information.

(c) *Az általános kereseti adó* (General tax on income derived from movable property).

(d) *A társulati adó* (Tax on companies).

2. 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 ;

II. The following shall be regarded as personal taxes :

(1) Under the Hungarian legislation :

(a) *A jövedelemadó* (Tax on total income) ;

(b) *A vagyonadó* (Tax on total estate).

(2) Under the Italian legislation :

(a) The supplementary graduated tax on income ;

(b) The tax on total estate.

Article 2.

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

Article 3.

Impersonal taxes leviable on income derived from any kind of industrial or commercial activity shall be levied only 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 any 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 such portion of the income as is derived from the business transacted in the establishments situated in its territory.

For the purpose of determining the division of the income as between the two States in the cases referred to in paragraph 3 of the present Article, the fiscal authorities of the two contracting States may request the tax-payer to submit general balance-sheets, special balance-sheets or any other documents provided for under the legislation of the State concerned.

Article 4.

Impersonal taxes leviable on earned income, including income derived from the exercise of the liberal professions, shall be levied only by the State in whose territory the personal activities producing the income are carried on. A liberal profession shall be held to be exercised in a certain place only when it is habitually exercised there.

Impersonal taxes leviable on income derived from work, whether such income take the form of salaries, allowances, pensions, wages or other remuneration paid by the State, the Hungarian Comitats, the Provinces, Communes or other public corporate bodies regularly constituted in conformity with the internal legislation of the contracting States, shall be levied only by the State of which the tax-payer is a national.

Article 5.

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

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

(2) The tax leviable on interest paid in respect of loans contracted by the State, Provinces, Communes or other public corporate bodies regularly constituted in conformity with the internal legislation of the contracting States, and on interest on bonds issued by companies or other legal entities shall be levied only by the State of which the tax-payer is a national.

The rule laid down in paragraph (2) above shall apply also to the taxation of interest on savings-deposits and current-account deposits in banks, institutions or other enterprises conducting credit operations. If the undertaking possesses establishments in both contracting States, each State shall levy taxation on the interest on deposits in the establishments situated in its territory.

Article 6.

Impersonal taxes which are or may in future be imposed by the contracting States on directors' fees paid by companies shall be levied by the State in which the legal seat or actual business centre of the undertaking is situated.

Should the legal seat of the undertaking be situated in one State and the actual business centre in the other, the central fiscal authorities of the two States shall come to an agreement from time to time, for the equitable allocation of the directors' fees liable to taxation.

Article 7.

Impersonal taxes leviable on income derived from life annuities and taxes leviable on every kind of income not specified in the above Articles shall be levied only by the State in which the person deriving such income is domiciled.

Article 8.

Personal taxes leviable on the tax-payer'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.

(d) From work, including remuneration paid for 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, directors' fees, interest on bonds issued by public corporate bodies and companies, and interest on deposits in banks or other credit institutions, taxation shall be levied in the State in which the tax-payer has his domicile.

For the purposes of the present provision, domicile shall be taken to mean the place in which the tax-payer habitually resides in circumstances which warrant the presumption that he intends to continue to reside there.

Should the tax-payer possess a domicile in both of the contracting States, each state shall levy taxation in proportion to the respective periods of sojourn during the year taken as a basis for taxation. Sojourn outside both contracting States shall be reckoned in favour of the State of which the tax-payer is a national.

Should the tax-payer not possess a domicile in either of the contracting States, taxation shall be levied by the State in which he habitually resides. The expression "habitually resides" shall be taken to mean permanent sojourn in the State in circumstances such as to warrant the supposition that sojourn therein is not merely occasional.

Should the tax-payer habitually reside in neither of the contracting States, taxation shall be levied by the State of which he is a national.

For the purposes of the present Article, the domicile of corporate bodies — when the latter are subject to taxation levied on total income — shall be taken to be the place in which the corporate body has its legal seal.

Article 9.

Taxes on total estate, whether payable at regular intervals or as a single contribution, which are already or may be imposed in the contracting States, shall be levied by each State on such portion of the tax-payer's property as is situated in its territory.

When the estate consists of :

- (a) Immovable property,
- (b) Mortgage loans,
- (c) Industrial or commercial enterprises,

its existence in the territory of one of the Contracting States, so far as the levying of the tax on total estate is concerned, shall be determined according to the principles laid down in the preceding articles for impersonal taxes on income derived from such property.

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

Article 10.

The rules laid down in Article 9 of the present Convention with regard to the tax on total estate shall also apply to any tax on the increment of such estate which is already or may in future become leviable in either of the contracting States.

Article 11.

The diplomatic, consular and extraordinary representatives of each contracting State, when 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 provided that, within the territory of the State to which they are accredited, they do not exercise any profession, industry, or other employment for purposes of profit, outside their office or in addition to their official duties. Exemption shall not be extended to the taxes leviable on the property referred to in (a), (b) and (c) of Article 8 or the income derived therefrom, or to taxes levied at the source either by direct deduction or indirect deduction (*rivalsa*).

Article 12.

Should it be established that the action of the fiscal authorities of the contracting States has had the effect of subjecting the tax-payer to double taxation, the said person may lodge a claim on these grounds with 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 with the object of preventing such double taxation in an equitable manner.

Article 13.

In order to prevent 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 14.

The Contracting Parties undertake to entrust to the central fiscal authorities of the two States the equitable settlement of any other question that may arise, either as a result of the different principles applied in applying 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 total estate, and, in general, the settlement of any other question connected with direct taxation not specifically regulated by the present Convention, or any question pending when the Convention comes into force.

Article 15.

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 16.

The present Convention, drawn up in two original copies, in Italian and Hungarian, shall be ratified, and the instruments of ratification shall be exchanged at Rome as soon as possible. In case of dispute the Italian text shall be authentic.

The Convention shall come into force on January 1, 1927, and shall remain in force until denounced by one of the Contracting Parties.

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.

The Convention, when ratified, shall be published in each of the two States in the official Collection of Laws.

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

Done at Rome, November 25, 1925.

(Signed) Benito MUSSOLINI.

(Signed) NEMES.

(Signed) Dr. KNEPPO Sándor.

FINAL PROTOCOL.

At the moment of signing the Convention concluded on to-day's date between Italy and Hungary for the prevention of double taxation and the settlement of other questions connected with direct taxes, the undersigned Plenipotentiaries have made the following joint declarations, which shall form an integral part of the said Convention.

1. The direct taxes in force in the two contracting States which are enumerated in Article 1 of the Convention are intended to serve as examples, and do not constitute an exhaustive list.

Any doubtful cases that 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, brought up to date, of the direct taxes in force in each country.

2. It is agreed that the Hungarian impersonal taxation referred to in Article 1, Section 1, sub-section 1, (c) of the Convention shall, for the purposes of the Convention, include taxes levied on interest on bonds, and on interest on savings deposits or current account deposits which the fiscal legislation in force in Hungary regards as imposts (*It. tasse. Hung. illetékek*).

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, and also the carrying on of trades, except in so far as the latter may produce income classified in the Convention as income derived from work.

4. For the purposes of Articles 3 of the Convention, in addition to the seat 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 in the nature of permanent productive organisations, and permanent representatives, shall be regarded as "establishments".

5. 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 undertakings in the cases and for the purposes defined in paragraph 3 of Article 3.

6. Should there already exist or be in future established in one of the two States an undertaking which, although legally autonomous under civil law, is so intimately connected with or so closely dependent 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 first-mentioned undertaking to be regarded, under the fiscal legislation of the State in which it is situated, as an establishment of the undertaking in the other State, the rules laid down in Article 3, paragraphs 3 and 4, of the Convention shall apply.

7. For the purposes of Article 3, paragraph 4, of the Convention :

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

(b) "Special balance-sheets" shall be taken to mean the results of the activity of the establishments in the State levying the tax 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 activity of the establishments required to determine what part of their income is subject to taxation in the State levying the tax.

8. For the purposes of Article 4 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.

9. "Interest on savings deposits and current account deposits" shall, for the purposes of Article 5 of the Convention, be taken to mean interest derived from permanent investments of capital and not from current commercial accounts.

10. In the case of tax-payers who can prove that they have definitely transferred their domicile from one contracting State to the other, obligations in the matter of taxation connected with domicile or residence shall terminate in the first State as from the day on which the transfer took place.

11. The rules laid down in Article 9 of the Convention shall not be applicable to single levies on total estate in so far as the determinative date is prior to that of the present Convention, even should the taxes, in conformity with the legislation relating thereto, be at that time in process of payment.

12. With a view to avoiding any doubts that might arise, it is hereby declared that the provisions of Article 11 shall not affect the right to enjoy more extensive privileges or exemptions which, in virtue of the general rules of international law, are or may be granted to diplomatic and consular representatives.

13. The rule laid down in Article 12 of the Convention shall neither exclude nor limit any right to lodge a claim which is accorded to the tax payer under the internal legislation of the State levying the taxes.

14. It is understood that the power conferred on the fiscal authorities of the two contracting States under Article 13 is designed to permit of the application of the principles laid down in the Convention to any cases not provided for or not fully regulated by the Convention, and not to enable principles to be established other than those laid down in the Convention itself.

15. As regards the tax on inherited estate, the Contracting Parties reserve the right to conclude a separate agreement.

The present Protocol, which shall be held to have been approved 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 Hungarian, on Novembre 25, 1925.

In case of dispute, the Italian text shall be authentic.

(Signed) Benito MUSSOLINI.

(Signed) NEMES.

(Signed) Dr. KNEPPO Sándor.