

N° 2804.

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## HONGRIE ET POLOGNE

Convention tendant à éviter la double imposition en matière de contributions directes. Signée à Varsovie, le 12 mai 1928.

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## HUNGARY AND POLAND

Convention for the Prevention of Double Taxation in the matter of Direct Taxes. Signed at Warsaw, May 12, 1928.

<sup>1</sup> TRADUCTION. — TRANSLATION.

No. 2804. — CONVENTION <sup>2</sup> BETWEEN THE KINGDOM OF HUNGARY AND THE REPUBLIC OF POLAND FOR THE PREVENTION OF DOUBLE TAXATION IN THE MATTER OF DIRECT TAXES. SIGNED AT WARSAW, MAY 12, 1928.

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*French official text communicated by the Polish Delegate accredited to the League of Nations and the Resident Minister Head of the Hungarian Delegation accredited to the League of Nations. The registration of this Convention took place September 8, 1931.*

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HIS SERENE HIGHNESS THE REGENT OF HUNGARY and HIS EXCELLENCY THE PRESIDENT OF THE REPUBLIC OF POLAND, being desirous of preventing double taxation in the matter of direct taxes, have decided to conclude a Convention on that subject and have appointed their Plenipotentiaries for this purpose :

THE PRESIDENT OF THE REPUBLIC OF POLAND :

Dr. Tadeusz JACKOWSKI, Director of the Political and Economic Department in the Ministry of Foreign Affairs, and M. August FRANTZ, Inspector to the Ministry of Finance ;

THE REGENT OF HUNGARY :

H. E. Alexandre BELITSKA, Envoy Extraordinary and Minister Plenipotentiary of Hungary in Warsaw, and M. Alexandre KNEPPO, Counsellor in the Ministry of Finance at Budapest ;

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

*Article 1.*

The object of the present Convention is to lay down rules for the levying of direct taxes, both impersonal and personal, by one State only.

For the purposes of the present Convention, direct taxes shall be held to mean those taxes which, under the legislation of each of the two Contracting States, are levied direct on income, gross or net, or on the total estate of the taxpayer, either on account of one of the two Contracting States or of autonomous organisations, even if the said taxes were levied in the form of additional duties (" centimes additionnels ").

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<sup>1</sup> Traduit par le Secrétariat de la Société des Nations, à titre d'information.

<sup>1</sup> Translated by the Secretariat of the League of Nations, for information.

<sup>2</sup> The exchange of ratifications took place at Budapest July 22, 1931.

I. The following shall be regarded as impersonal taxes for the purposes of the present Convention :

- (1) Under Polish law :
  - (a) Land tax ;
  - (b) Taxes on urban immovable properties and on certain buildings in rural communes ;
  - (c) House tax ;
  - (d) Building-Land tax ;
  - (e) Industrial profits tax ;
  - (f) Tax on capital and on annuities.
- (2) Under Hungarian law :
  - (a) Land tax ;
  - (b) Tax on building land ;
  - (c) Tax on industrial and commercial profits ;
  - (d) Company tax.

II. The following shall be regarded as personal taxes for the purposes of the present Convention :

- (1) Under Polish law :
  - (a) Income tax ;
  - (b) Tax on total estate.
- (2) Under Hungarian law :
  - (a) Income tax ;
  - (b) Tax on total estate.

The above enumeration of direct taxes in force in the two Contracting States is only given as an example.

The central financial authorities of the two Contracting States shall communicate to each other at the end of each year a list of the impersonal and personal taxes in force in each of the two Contracting States.

Taxes on interest due on debentures, savings deposits and current accounts which are regarded as taxes under Hungarian law shall be included in the categories of Hungarian impersonal taxes referred to in Sub-division I, (2) (c).

#### *Article 2.*

The tax on gross income from immovable property may only be levied by the State in which the immovable property is situated.

#### *Article 3.*

The tax on gross income derived from any kind of industrial and commercial enterprise shall be levied by the State in whose territory an undertaking has an establishment for the purpose of carrying on business in that territory, even when the undertaking in question extends its activities to the territory of the other Contracting State without possessing an establishment in that State for the purpose of carrying on its business.

Insurance and transport establishments, and institutions whose object is banking operations, shall also be regarded as industrial and commercial undertakings.

For the purposes of the present Convention, an establishment in which the undertaking carries on business shall be taken to mean any permanent organisation of an undertaking in which the

business of the undertaking is wholly or partly carried on. The following should more particularly be included under the term "establishments"; the seats of undertakings, the real centres of management, branches, subsidiary establishments, factories, workshops, offices, where purchases or sales are effected, storehouses, depots and all industrial or commercial installations maintained for the purpose of carrying on the business of the undertaking by the owner of the undertaking himself, by his authorised representatives, or by other permanent agents. The term "establishments" should also be held to include all permanent representatives of the said undertakings.

If a single undertaking possesses establishments in the territories of both Contracting States, it shall only be taxed in each of the territories of the two States on the gross income from the business activities of the establishment which is situated on the territory of the State in question. For the purpose of determining the division of the said gross income as between the two Contracting States, the financial authorities of the two Contracting States may require taxpayers to produce their general statements of accounts, special accounts and any other documents provided for under the legislation of the respective Contracting States. Should it not be possible to use these accountancy documents, the central financial authorities of the two Contracting States shall consult together with a view to taking measures to ensure a fair and equitable division of the income.

The words "general statements of account" shall be held to mean statements containing the general results of the undertaking which are kept and published in accordance with the laws of the State in which the seat of the said undertaking is situated. The words "special accounts" shall be held to mean the accounts which include the results of the management of the establishment situated in the State levying the tax in question and which are kept and published in accordance with the laws of that State. The words "any other documents" shall be held to mean all documents connected with the management of the establishment which are necessary for the purpose of determining the gross revenue of the said establishment situated on the territory of the State levying the tax.

The Contracting Parties agree that the levying of the State tax on industrial and commercial profits, which is provided for by the Polish law of July 15, 1925 (Legal Journal No. 79, div. 550), including the additional taxes ("*centimes additionnels*") levied in the form of trading taxes on persons engaged in industrial pursuits and on pedlars and itinerant traders, is not contrary to the principles of the present Convention.

The purchase of native raw materials, agricultural and forestry products, live-stock, poultry, and miscellaneous goods, in so far as it takes place in the territory of one of the two Contracting States, either for future sale in the territory itself or for purposes of export, shall be liable to taxation in the State in whose territory the purchase was made, even if the purchaser does not maintain any establishment for that purpose in the said territory.

#### Article 4.

The impersonal tax on the gross income derived from work, and particularly from the exercises of independent professions, shall only be levied by the State in the territory of which the activities constituting the source of the income are carried on. Only the place at which the independent profession is constantly, and not merely temporarily, carried on shall be regarded as the place at which an independent profession is exercised. In particular, the following shall be regarded as independent professions: occupations in the domains of science, fine arts, letters, instruction or education, and the profession of doctor, dentist, assistant doctor, veterinary surgeon, barrister, notary, architect and engineer.

Periodical salaries or allowances payable by the public funds (State, national, district, municipal, communal, etc.) and granted in return for present or past services or professional activities, such as salaries, retiring pensions, grants, etc., shall only be subject to the tax in the State in the territory of which these payments are made.

*Article 5.*

The impersonal tax on gross income from the investment of floating capital, and particularly on gross income from transferable securities, savings deposits and current accounts, should be levied by the State in the territory of which the domicile of the "debtor" is situated.

Should the undertaking which accepts savings deposits of current accounts possess establishments in the territory of both Contracting States, each State shall levy the tax on the interest due on the deposits accepted by the establishment situated in its territory. Nevertheless, the tax on gross income derived from claims and rights secured by mortgage shall be levied by the State in whose territory the immovable property is situated.

*Article 6.*

The tax on directors' fees paid by companies shall be levied by the State in whose territory the seat of the company in question is situated. Should, however, the centre of management be situated in the other State, only the latter State shall have the right to levy the tax.

*Article 7.*

The impersonal tax on various forms of gross income not enumerated in the above Articles shall be levied by the State in whose territory the person receiving such revenue is domiciled.

*Article 8.*

The personal tax on the taxpayers' total income shall be levied by each of the Contracting States in accordance with the following rules :

(1) Income tax derived :

- (a) From immovable property ;
- (b) From claims and rights secured by mortgage ;
- (c) From industrial and commercial undertakings ;
- (d) From work (including remuneration payable by public funds),

shall be levied according to the principles laid down in Articles 2 to 5.

(2) On other kinds of income, and particularly on income derived from dividends, directors' fees, interest on transferable securities and on deposits in banks, the tax shall be levied by the State in whose territory the person receiving such income is domiciled.

Should the taxpayer possess a domicile in both Contracting States, the personal tax shall be levied upon each of them in proportion to the length of his stay during the fiscal year.

The period of the taxpayer's stay outside both Contracting States shall be reckoned in favour of the State of which he is a national.

*Article 9.*

The permanent tax on total estate shall be levied by each of the Contracting States exclusively on such portion of the property as is situated in its territory.

In particular, when the estate consists of immovable property, claims and rights secured by mortgage, and industrial and commercial undertakings, the taxation thereof shall be effected in

accordance with the principle laid down in Articles 2, 3 and 5 of the present Convention concerning the taxation of gross revenue derived from the same.

The principles laid down in Article 8 of the present Convention concerning taxation of total income shall apply to every other kind of movable property and particularly to transferable securities and the various bank deposits.

The above-mentioned principles shall also apply to the single extraordinary capital levy, should the same be introduced in the Contracting States after the coming into force of the present Convention.

The provisions of the present Convention shall not apply to the single extraordinary capital levy imposed before the coming into force of the present Convention, even if the payments have not yet fallen due in accordance with the law.

#### Article 10.

The principles laid down in Article 9 of the present Convention with regard to the taxation on total estate shall also apply to the tax on the increment of total estate should such a tax be introduced in either of the Contracting States.

#### Article 11.

For the purposes of the present Convention, the domicile of the taxpayer shall be taken to mean the place in which he has an abode, provided that, in view of the circumstances, it may be assumed that he intends to retain it as a permanent dwelling, or the place where he resides if there is reason to assume, in view of the circumstances, that it is not his intention to reside there only temporarily.

For the purposes of the present Convention, the domicile of a corporation shall be taken to be its seat, or, failing such, the place at which its centre of management is situated.

#### Article 12.

Diplomatic, consular and special representatives of the two Contracting States, when they are officials *de carrière*, and also officials attached to them and persons in their service or in the service of their officials, shall be exempt from direct taxes in the State to which they are accredited.

This exemption shall be granted to these persons only if they are nationals of the State they represent and provided that within the State to which they are accredited they do not carry on any gainful occupations outside their official duties.

Nevertheless, the exemption in question shall not extend to the tax leviable on the part or parts of the total estate referred to in paragraph 2 of Article 9, nor to taxes on gross revenue or the total net income from such sources.

The above provisions shall not affect the right to enjoy more extensive privileges or exemptions provided for by the existing laws of the two Contracting States.

#### Article 13.

Should the taxpayer be of opinion that the taxation levied on him is contrary to the provisions of the present Convention, he may submit a claim with regard to the matter to the competent authorities of the State of which he is a national, even should such a claim not be allowed by the legislation of the said State.

The claim must be submitted within one year from the date on which the order for payment is served.

Should the central financial authorities of the State of which the taxpayer is a national recognise that the grounds of the claim in question are well founded, they shall arrange with the central financial authorities of the other State with a view to fixing just and equitable taxation.

*Article 14.*

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

*Article 15.*

The Contracting States agree to assist each other in the assessment of the taxes covered by the present Convention and in the collection of such taxes and the serving of the necessary notices.

The Government of the two Contracting States may conclude a special agreement in respect of the procedure to be followed.

*Article 16.*

The present Convention shall be ratified and the instruments of ratification shall be exchanged at Budapest as soon as possible. It shall come into force on the thirtieth day from the date of the exchange of the instruments of ratification, and shall apply to those taxes the payment of which, in accordance with the rules in force in each of the two Contracting States, falls due after December 31, 1927.

The present Convention shall remain in force until it is denounced by either Contracting State, such denunciation to be notified at least six months before the expiration of the calendar year.

If it is denounced within the prescribed period, the Convention shall cease to be operative on the expiration of the calendar year in question for all cases in which the payment of the tax falls due after that date.

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

Done in duplicate at Warsaw on May 12, 1928.

(L. S.) JACKOWSKI, *m. p.*

(L. S.) BELITSKA, *m. p.*

(L. S.) TRANTZ, *m. p.*

(L. S.) KNEPPO, *m. p.*