

N° 3492.

**AUTRICHE
ET TCHÉCOSLOVAQUIE**

Traité en vue d'éviter la double imposition en matière de successions, et protocole final. Signés à Vienne, le 11 février 1922.

**AUSTRIA
AND CZECHOSLOVAKIA**

Treaty for the Prevention of Double Taxation in the Matter of Succession Duties, and Final Protocol. Signed at Vienna, February 11th, 1922.

TEXTE TCHÉCOSLOVAQUE. — CZECHOSLOVAK TEXT.

N^o 3492. — SMLOUVA¹ UJEDNANÁ MEZI ČESKOSLOVENSKOU REPUBLIKOU A REPUBLIKOU RAKOUSKOU K TOMU, ABY BYLO ZAMEZENO DVOJÍ ZDANĚNÍ POZŮSTALOSTÍ, PODEPSANÁ VE VÍDNI, DNE 11. ÚNORA 1922.

Textes officiels allemand et tchécoslovaque communiqués par le délégué permanent de la République tchécoslovaque auprès de la Société des Nations. L'enregistrement de ce traité a eu lieu le 17 septembre 1934.

ČESKOSLOVENSKÁ REPUBLIKA a REPUBLIKA RAKOUSKÁ, přejíce si, aby bylo zamezeno dvojí zdanění pozůstalostí, ujednaly následující smlouvu.

Za tou příčinou byli jmenováni zmocněnci :

ČESKOSLOVENSKOU REPUBLIKOU

odborový přednosta v ministerstvu financí Dr. Alfred NESVEDA.

REPUBLIKOU RAKOUSKOU

odborový přednosta ve spolkovém ministerstvu financí Dr. Max SALZER.

Zmocněnci, vyměnivše si své plné moci a shledavše je správnými, dohodli se takto :

SMLOUVA MEZI ČESKOSLOVENSKOU REPUBLIKOU A REPUBLIKOU RAKOUSKOU, UJEDNANÁ K TOMU, ABY BYLO ZAMEZENO DVOJÍ ZDANĚNÍ POZŮSTALOSTÍ.

Článek I.

1. Nemovité pozůstalostní jmění po příslušnících toho kterého z obou států jest podrobeno dávkám pozůstalostním jen v tom státě, v kterém leží.

2. To platí také o věcech movitých, které jsou příslušenstvím věci nemovité ; co má býti pokládáno za příslušenství, řídí se zákony toho státu, v kterém jest jmění nemovité. V ostatních směrech se otázka, má-li býti věc pokládána za movitou či nemovitou, řídí zákony toho státu, v kterém věc leží.

3. Používá-li se ustanovení odstavce 1., jsou práva poživací a užívací na věcech nemovitých postavena na roveň jmění nemovitému. Práva, která zatěžují věci nemovité, a podíly na podniku nebo na jmění pobočného závodu nějakého podniku, není-li podílové právo spojeno s majetnictvím akcií nebo kuksů, jsou podrobena pozůstalostním dávkám jen v tom státě, v kterém věci nemovité, podnik nebo pobočný závod leží.

¹ L'échange des ratifications a eu lieu à Prague, le 4 novembre 1922.

TEXTE ALLEMAND. — GERMAN TEXT.

N^o 3492. — VERTRAG¹ ZWISCHEN DER REPUBLIK ÖSTERREICH UND DER TSCHECHOSLOVAKISCHEN REPUBLIK ZUR VERMEIDUNG DER DOPPELBESTEuerung VON NACHLÄSSEN. GEZEICHNET IN WIEN, AM 11. FEBRUAR 1922.

German and Czechoslovak official texts communicated by the Permanent Delegate of the Czechoslovak Republic accredited to the League of Nations. The registration of this Treaty took place September 17th, 1934.

DIE REPUBLIK ÖSTERREICH und DIE TSCHECHOSLOVAKISCHE REPUBLIK haben, von dem Wunsche geleitet, die Doppelbesteuerung von Nachlässen zu vermeiden, den nachstehenden Vertrag geschlossen.

Zu diesem Zwecke wurden als Bevollmächtigte ernannt :

VON SEITE DER REPUBLIK ÖSTERREICH :

der Sektionschef im Bundesministerium für Finanzen Dr. Max SALZER.

VON SEITE DER TSCHECHOSLOVAKISCHEN REPUBLIK :

der Sektionschef im Finanzministerium Dr. Alfred NESVEDA.

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

VERTRAG ZWISCHEN DER REPUBLIK ÖSTERREICH UND DER TSCHECHOSLOVAKISCHEN REPUBLIK ZUR VERMEIDUNG DER DOPPELBESTEuerung VON NACHLÄSSEN.

Artikel 1.

1. Unbewegliches Nachlassvermögen nach Angehörigen eines der beiden Staaten unterliegt den Verlassenschaftsabgaben nur in dem Staate, in dem es gelegen ist.

2. Dies gilt auch für bewegliche Sachen, die das Zugehör einer unbeweglichen Sache bilden ; was als Zugehör anzusehen ist, richtet sich nach den Gesetzen des Staates, in dem sich das unbewegliche Vermögen befindet. Im Übrigen sind für die Frage, ob eine Sache als beweglich oder unbeweglich anzusehen ist, die Gesetze des Staates massgebend, in dem die Sache gelegen ist.

3. Bei Anwendung der Bestimmungen des Absatzes 1 sind Fruchtgenuss und Gebrauchsrechte an unbeweglichen Sachen dem unbeweglichen Vermögen gleichzuhalten. Rechte, die auf unbeweglichen Gütern lasten, und Anteile an einem Unternehmen oder an dem Vermögen einer Zweigniederlassung eines Unternehmens unterliegen, sofern das Anteilsrecht nicht an den Besitz von Aktien oder Kuxen geknüpft ist, den Verlassenschaftsabgaben nur in jenem Staate, in welchem die unbeweglichen Güter, das Unternehmen oder die Zweigniederlassung gelegen sind.

¹ The exchange of ratifications took place at Prague, November 4th, 1922.

¹ TRANSLATION.

No. 3492. — TREATY BETWEEN THE REPUBLIC OF AUSTRIA AND THE CZECHOSLOVAK REPUBLIC FOR THE PREVENTION OF DOUBLE TAXATION IN THE MATTER OF SUCCESSION DUTIES. SIGNED AT VIENNA, FEBRUARY 11TH, 1922.

THE REPUBLIC OF AUSTRIA and THE CZECHOSLOVAK REPUBLIC, actuated by the desire to prevent the double taxation of property passing on death, have concluded the Treaty set out hereinafter.

For this purpose, they appointed as their Plenipotentiaries :

THE REPUBLIC OF AUSTRIA :

Dr. MAX SALZER, Chief of Section in the Federal Ministry of Finance ;

THE CZECHOSLOVAK REPUBLIC :

Dr. Alfred NESVEDA, Chief of Section in the Ministry of Finance ;

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

TREATY BETWEEN THE REPUBLIC OF AUSTRIA AND THE CZECHOSLOVAK REPUBLIC FOR THE PREVENTION OF DOUBLE TAXATION IN THE MATTER OF SUCCESSION DUTIES.

Article 1.

1. Immovable property passing by death to nationals of one of the two States shall be liable to succession duties only within the State in which such property is situated.

2. The above provision shall also apply to movable property consisting of accessories or appurtenances attached to immovable property. The decision as to what constitutes accessories or appurtenances shall be taken in accordance with the laws of the State in which the immovable property is situated. Moreover, the question whether any article is to be regarded as movable or immovable property shall be settled in conformity with the laws of the State in which the article is situated.

3. Under the terms of paragraph 1, rights to the usufruct and use of immovable property shall be considered as immovable property. Rights which constitute charges upon immovable property and part possession of a concern or of the property belonging to a branch of a concern shall, provided that such right of part possession is not connected with the possession of mining shares (*Kuxe*), or other shares, be liable to succession duties only within that State in which the immovable property, concern or branch is situated.

Article 2.

1. With regard to such property passing by death to nationals of one of the two States as is not to be dealt with in accordance with the terms of Article 1, the following provisions shall apply :

(a) Such property shall, under normal circumstances, be liable to succession duties within the State of which the deceased was a national at the time of his death.

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

(b) If, however, at the time of his death, the deceased had his domicile or, failing such domicile, his permanent residence within the other State, the property passing by death which is situated in such State shall be liable to succession duties in that State.

(c) Should the deceased at the time of his death have his domicile in both States, property passing by death shall be liable to succession duties only in the State of which he is a national.

(d) The method of dealing with property passing by death to persons who are nationals of both States shall be the subject of a special agreement in each particular case.

2. For the purpose of this Treaty, a domicile is the place where a person has a habitation, provided that there are good grounds for assuming that it is his intention to continue to occupy such habitation permanently. For the purposes of this Treaty, a permanent residence is the place where a person resides, provided that there is good ground for assuming that it is not his intention merely to remain temporarily at the place or within the country in question.

Article 3.

1. In applying the provisions of Articles 1 and 2, legacies which do not concern a definite object or rights in a definite object shall be dealt with as if they were to be paid in the first instance out of the property specified in Article 2 (in proportion, if necessary, to the whole of the property subject to succession duties in the two States), and shall be paid out of property to be dealt with in accordance with the terms of Article 1 only in respect of any remaining portion not covered by such property.

2. If in such a case property passing by death, of the nature specified in Article 1, is situated partly in one State and partly in the other, the legacies will be divided up in proportion to the total property.

Article 4.

1. Debts and charges falling exclusively upon a definite object included, according to the laws of the State in which the object is situated, in the property passing by death in such a manner that no claim in respect of such debts and charges may be made on the remainder of the property, shall only be taken into consideration when estimating the amount of the succession duties on this portion of the property passing by death.

2. If the liability for the debt or charge is not restricted in the manner described in paragraph 1 by the law of the country in which the object liable is situated, the portion of the debt not secured by the value of the object liable shall be estimated and deducted from the residue of the property passing by death. This arrangement shall apply more especially when in addition to the real liability the deceased has given personal security.

3. Other debts shall, in the first place, be deducted from the property mentioned in Article 2 and only such portion as may remain unsecured shall be allowed for and deducted when estimating the succession duties for the residue of the property passing by death; under such circumstances, if the property employed as security is liable (Article 1 or Article 2) to duties partly in the territory of one State and partly in the territory of the other, the provision contained in Article 3 regarding proportional distribution shall apply *mutatis mutandis*.

Article 5.

For the purposes of this Treaty, succession duties shall be defined as all duties levied in respect of transfers of property by reason of death in accordance with the fiscal regulations in force in the two States or in accordance with the provisions which have been substituted or which may subsequently be substituted therefor. The provisions of this Treaty shall not apply to the combined fee for the proceedings in connection with the legacy nor for the stamp duty required for a will.

Article 6.

The two Contracting Parties shall assist each other in determining the principles to be applied in assessing the duties dealt with in this Treaty and in exchanging the relevant documents. The agreement to settle the details of the execution of the Treaty will form the subject of an exchange of notes between the two Governments.

Article 7.

1. Articles 1 to 6 of this Treaty shall apply to all property inherited after October 31st, 1918.

2. If the legal measures laying down the succession duties should not have come into force on the date on which this Treaty comes into operation, the necessary rectification in the assessment of the duties shall be made on their own initiative by the officials concerned. If not, the rectification shall only take place if the party concerned shall request such rectification within a period of three years after the coming into force of this Treaty.

Article 8.

1. Duties and fees in respect of property inherited before November 1st, 1918, shall, provided the demand for payment of these sums has not already been made to the person liable to pay these duties, be dealt with by the State in the territory of which the office mentioned in the demand for payment as the place at which payment should be made is situated. There shall be no transfer to the funds of the other State of the additional succession duties laid down in the case of such property passing by death.

2. In cases other than those mentioned in paragraph 1, property inherited before November 1st, 1918, shall as a general rule be subject to succession duties in the State within the territory of which that office is situated which was qualified to assess the fees under the provisions which were in force at the date on which the property was inherited.

3. If, however, movable or immovable property was situated at the time of the inheritance within the present territory of the other Contracting State, this State shall have the right to levy succession duties on such property. In this connection, the decision of the question as to the territory in which a thing is situated shall be made in accordance with such legal provisions regarding the payment of succession duties as were in force in the territory in question at the date on which the property was inherited.

4. If the succession duties in respect of property passing by death have been assessed or are being assessed under the provisions of paragraph 2 and also under the provisions of paragraph 3, the duties assessed under paragraph 2 shall not be collected or, in the event of their having already been paid, they shall be refunded, provided the party concerned makes a claim to this effect and produces evidence to show that the duties assessed in the other State have been imposed in accordance with the law. The claim shall be submitted not later than three years after the coming into force of this Treaty.

Article 9.

1. This Treaty, which has been drawn up in German and in Czechoslovak, shall be ratified, and the instruments of ratification shall be exchanged as soon as possible at Prague. 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 denunciation not to take place later than six months before the expiration of any calendar year. If it is duly denounced as described above, the Treaty shall cease to apply to any property inherited after the expiration of the calendar year in which the Treaty was denounced.

2. Both texts of the Treaty are authentic. When the Treaty is ratified, the two authentic texts will be published in each country in the official statute book.

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

VIENNA, *February 11th*, 1922.

For the Czechoslovak Republic :
(L. S.) Dr. Alfred NESVEDA.

For the Austrian Republic :
(L. S.) Dr. Max SALZER.

FINAL PROTOCOL.

On signing the Treaty concluded this day between the Republic of Austria and the Czechoslovak Republic for the Prevention of Double Taxation in the Matter of Succession Duties, the undersigned Plenipotentiaries made the following joint declarations which are to be read as part of the present Treaty :

I. Should the legal system of " land debt " (*Grundschild*), which is already in operation in the German Reich, be subsequently introduced into one of the two Contracting States, the Contracting Parties hereby declare that they agree to include " land debts " which are a charge upon immovable property among the rights specified in Article 1, paragraph 3, of the Treaty.

II. If, in conformity with the present Treaty, property passing by death is not to be liable to succession duties exclusively in the territory of one of the Contracting States, only the value of the property liable to succession duties in the State concerned shall be taken into account in determining the rate of the succession duties to be levied.

VIENNA, *February 11th*, 1922.

For the Czechoslovak Republic :
(L. S.) Dr. Alfred NESVEDA.

For the Austrian Republic :
(L. S.) Dr. Max SALZER.