

N° 3784.

ALLEMAGNE ET SUÈDE

Convention concernant l'aide administrative et judiciaire en matière fiscale, et protocole final, signés à Berlin, le 14 mai 1935, et échange de notes y relatif de la même date.

GERMANY AND SWEDEN

Convention regarding Administrative and Legal Assistance in Matters of Taxation, and Final Protocol, signed at Berlin, May 14th, 1935, and Exchange of Notes relating thereto of the same Date.

TEXTE ALLEMAND. — GERMAN TEXT.

N^o 3784. — VERTRAG¹ ZWISCHEN DEM DEUTSCHEN REICH UND DEM KÖNIGREICH SCHWEDEN ÜBER AMTS- UND RECHTSHILFE IN STEUERSACHEN. GEZEICHNET IN BERLIN, AM 14. MAI 1935.

German and Swedish official texts communicated by the Swedish Minister for Foreign Affairs. The registration of this Convention took place November 30th, 1935.

DAS DEUTSCHE REICH und DAS KÖNIGREICH SCHWEDEN sind übereingekommen, einen Vertrag über Amts- und Rechtshilfe in Steuersachen abzuschliessen.

Zu diesem Zwecke haben zu Bevollmächtigten ernannt :

DER DEUTSCHE REICHSKANZLER :

den Ministerialdirektor im Auswärtigen Amt, Richard MEYER, und
den Ministerialdirektor im Reichsfinanzministerium, Professor Dr. Otto HEDDING,

SEINE MAJESTÄT DER KÖNIG VON SCHWEDEN :

den Schwedischen Gesandten in Berlin, E. AF WIRSÉN,

die, nachdem sie ihre Vollmachten geprüft und in guter und gehöriger Form befunden haben, über folgende Bestimmungen übereingekommen sind :

I. ANWENDUNGSGEBIET DES VERTRAGES.

Artikel I.

(1) Als Steuern im Sinne dieses Vertrages gelten

a) die Steuern, auf welche das Abkommen² zwischen dem Deutschen Reich und dem Königreich Schweden zur Ausgleichung der in- und ausländischen Besteuerung, insbesondere zur Vermeidung der Doppelbesteuerung auf dem Gebiete der direkten Steuern vom 25. April 1928 Anwendung findet,

b) andere öffentliche Abgaben, soweit sie für Rechnung der vertragschliessenden Staaten oder der deutschen Länder oder in der Form von einheitlich mit den unter *a)* und *b)* erwähnten Steuern und Abgaben zu erhebenden Zuschlägen oder Beiträgen für Rechnung anderer juristischen Personen des öffentlichen Rechts erhoben werden, sowie alle Steuern auf den Wertzuwachs.

(2) Ausgeschlossen sind jedoch Zölle und Verbrauchsabgaben ; die Umsatz- und Luxussteuern gelten für den Anwendungsbereich dieses Vertrages nicht als Verbrauchsabgaben.

¹ The exchange of ratifications took place at Stockholm, November 18th, 1935.

² Vol. LXXXI, page 281, of this Series.

¹ TRANSLATION.

No. 3784. — CONVENTION BETWEEN THE GERMAN REICH AND THE KINGDOM OF SWEDEN REGARDING ADMINISTRATIVE AND LEGAL ASSISTANCE IN MATTERS OF TAXATION. SIGNED AT BERLIN, MAY 14TH, 1935.

THE GERMAN REICH and THE KINGDOM OF SWEDEN have agreed to conclude a Convention regarding administrative and legal assistance in matters of taxation.

To this end, they have appointed as their Plenipotentiaries :

THE CHANCELLOR OF THE GERMAN REICH :

Monsieur Richard MEYER, Ministerial Director at the Foreign Office, and
Dr. Otto HEDDING, Ministerial Director at the Reich Ministry of Finance ;

HIS MAJESTY THE KING OF SWEDEN :

Monsieur E. AF WIRSÉN, Swedish Minister at Berlin ;

Who, having communicated their full powers, found to be in good and due form, have agreed upon the following provisions :

I. SCOPE OF THE CONVENTION.

Article I.

1. For the purposes of the present Convention, the term taxes shall be held to include :

(a) The taxes falling within the scope of the Agreement between the German Reich and the Kingdom of Sweden for the Adjustment of Internal and External Taxation and, in particular, for the Prevention of Double Taxation in the Matter of Direct Taxes of April 25th, 1928,

(b) Other public imposts collected on behalf of the Contracting States or of any of the German States, or surtaxes or contributions collected on behalf of other juristic persons under public law on the same basis and at the same time as the taxes and imposts referred to under (a) and (b), together with all taxes on the appreciation of values.

2. Duties and taxes on consumption shall nevertheless be excluded ; for the purposes of the present Convention, the turnover and luxury taxes shall not be deemed to be taxes on consumption.

II. PROCEDURE IN REGARD TO ADMINISTRATIVE AND LEGAL ASSISTANCE
IN THE MATTER OF TAXATION.

Article II.

Both States undertake to afford each other administrative and legal assistance in all matters of taxation, both as regards the ascertainment and fixing of taxes and sureties, and as regards legal remedies and the recovery of taxes.

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

Article III.

1. In questions concerning taxation, the authorities of the two States may correspond direct with one another regarding requests for administrative and legal assistance, including the service of documents.

2. In the German Reich the regional financial authorities (*Landesfinanzämter*) and in the Kingdom of Sweden the chief provincial authority (*Länsstyrelserna*) shall be competent to proceed to the direct transmission and receipt of requests for the service of documents and all other requests for administrative and legal assistance.

3. If the authority applied to is not competent *ratione loci*, it shall transmit the request automatically to the competent authority and shall immediately notify the applicant authority that it has done so.

Article IV.

Failing agreement to the contrary, requests shall be made in the official language of the State applied to or shall be accompanied by a translation in that language. The request shall specify the applicant authority, the name and vocation (status) of the parties concerned and, where a document has to be served, the address of the recipient and the nature of the document.

Article V.

1. The competent authority of the State applied to shall be responsible for the service of the document. Except in the cases arising under paragraph 2 of this Article, the competent authority may limit its action to handing over the document to the recipient if the latter agrees to accept it.

2. If the applicant State so requests, the document shall be served in the manner prescribed for the service of documents in similar cases by the internal laws of the State applied to, provided always that the document is drawn up in the official language of the State applied to or is accompanied by a translation in that language.

Article VI.

Evidence of service shall be furnished either by a dated and legalised receipt given by the recipient or by a certificate from the authority of the State applied to, testifying to the fact, the manner and the date of service.

Article VII.

1. The authority to which a request for administrative or legal assistance is addressed is bound to comply therewith and to employ for that purpose the same measures of compulsion as would be employed in complying with a similar request from the authorities of its own State. The request shall, moreover, be executed in accordance with the procedure prescribed by the laws of the State applied to; nevertheless, if the authority making application so requests, a special procedure may be employed, provided that it is not incompatible with the laws of the State applied to.

2. Measures of compulsion which are permissible in the territory of the State applied to may not be employed if the applicant State is unable to employ measures of the same kind in the case of a similar request.

3. The applicant authority shall, if it so desires, be informed of the time and place of the proceedings to be undertaken in pursuance of the request. The interested parties are entitled to be represented at or to attend the proceedings, in conformity with the general regulations governing such cases in the State applied to.

Article VIII.

No fees or charges of any description shall be collected for giving effect to requests for administrative and legal assistance, including the service of documents ; nevertheless, this provision shall not, in the absence of agreement to the contrary, apply to payments made to witnesses or experts, the expenses caused by the employment of an execution authority in cases arising under Article V, paragraph 2, or by the employment of a special procedure in accordance with Article VII, paragraph 1, or the costs of legal proceedings instituted before the ordinary courts of law with a view to giving effect to requests for administrative and legal assistance.

Article IX.

Except as otherwise provided in Articles X and XI, the provisions of the present Convention shall apply to legal assistance in proceedings for the recovery of taxes.

Article X.

1. Executory decrees (judgments, decisions, orders) in matters of taxation, with the exception of attachment orders, shall, on application being made by the highest authority of the financial administration of one State to the corresponding authority of the other State, be recognised and executed free of charge. The recognition must be expressly pronounced.

2. The decrees referred to in paragraph 1 shall be executed in accordance with the laws of the State in which execution is to take place, without the parties being heard.

3. A request for execution must be accompanied by a declaration from the competent authority of the applicant State to the effect that the decree is executory ; the fact that the said authority is competent must be certified by the highest authority of the financial administration of the applicant State.

4. Falling agreement to the contrary, the mandatory portion of the decree must be accompanied by a translation in the official language of the State applied to.

5. The declaration and the certificate in accordance with paragraph 3 must be accompanied by a translation in the official language of the State applied to.

Article XI.

A request for a particular form of execution shall as far as possible be complied with if such form of execution is admissible under the laws of the applicant State and of the State applied to ; in other respects, the form and nature of the execution shall, in accordance with Article X, paragraph 2, be governed by the laws of the State applied to.

Article XII.

1. Administrative and legal assistance for the enforcement of claims for taxation shall be granted solely against persons who are nationals of the applicant State only. Such assistance shall nevertheless be granted against other persons if the taxation claimed fell due at a time when the person concerned was a national of the applicant State and of that State alone. Should the request be for the service of documents or for information regarding circumstances within the knowledge of the authority applied to, administrative and legal assistance shall be granted irrespective of the nationality of the persons against whom the claims for taxation are to be enforced.

2. A request for administrative and legal assistance may be refused if the State applied to considers that compliance therewith would be likely to compromise its sovereignty or safety.

3. A request made with a view to procuring information, indications or opinions which could be lawfully obtained by the authorities of the State applied to from persons who are not parties

to the question as taxpayers may be refused if the applicant State would not be able, under its own laws, to demand similar information, indications or opinions. The same rule applies to requests for information regarding points of fact or legal relations, where a knowledge of such facts or relations is only obtainable in virtue of legal obligations which make it incumbent on the persons concerned to supply information, indications or opinions, but which do not exist in the territory of the applicant State. The rule further applies to requests which could only be complied with by the violation of commercial, manufacturing or professional secrets.

Article XIII.

1. If the request is wholly or partly complied with, the applicant authority shall be immediately notified of the manner in which the request was dealt with.

2. If the request is not complied with, the applicant authority shall immediately be notified of the refusal, and shall be informed of the grounds therefor and of any other circumstances which have become known and may be of importance for subsequent action in the matter.

Article XIV.

Enquiries, information, indications and opinions, and all other communications forwarded under the arrangements for administrative and legal assistance, shall be governed by the legal regulations of the State concerned regarding administrative and professional secrecy.

III. LEGALISATION OF DOCUMENTS.

Article XV.

1. Documents drawn up, issued or certified by the financial courts of either State shall not require legalisation for use in matters of taxation in the territory of the other State, provided that the seal or stamp of the court has been affixed thereto.

2. Such documents shall include those signed by the registrar of the court, provided that such signature is sufficient under the laws of the State to which the court belongs.

Article XVI.

1. Documents drawn up, issued or certified by the highest or one of the higher authorities of the financial administration of either State and bearing the seal or stamp of such authority shall not require legalisation for use in matters of taxation in the territory of the other State.

2. The two States shall communicate a list of the authorities coming within the scope of the foregoing clause. Such lists may, with the consent of the two Parties, be modified or added to at any time through administrative channels.

IV. FINAL PROVISIONS.

Article XVII.

The highest authorities of the financial administrations of both States may conclude further agreements in pursuance of the present Convention. In particular, they may agree upon provisions regarding the treatment of money payments of other kinds in connection with taxation, the transfer of sums resulting from measures of execution and the fixing of an average rate for the conversion of amounts giving rise to measures of execution.

Article XVIII.

The present Convention, which is done in two copies in German and in Swedish, shall be ratified ; in the case of Sweden it shall be ratified by His Majesty the King of Sweden, with the assent of the Riksdag. The instruments of ratification shall be exchanged as soon as possible at Stockholm. The Convention shall come into force on the date of the exchange of the instruments of ratification, and shall continue to apply until it is denounced by either Contracting State. Denunciation shall be notified at least four months before the end of a calendar year. If denounced with the necessary notice, the Convention shall expire at the end of the same calendar year. Should sufficient notice not have been given, the Convention shall expire at the end of the following calendar year.

In faith whereof the Plenipotentiaries of the two States have signed the present Convention.

BERLIN, *May 14th*, 1935.

R. MEYER.

Otto HEDDING.

E. AF WIRSÉN.

FINAL PROTOCOL.

On proceeding to sign the Convention concluded this day between the German Reich and the Kingdom of Sweden regarding administrative and legal assistance in matters of taxation, the undersigned Plenipotentiaries have made the following identical declarations, which are to be regarded as an integral part of the Convention.

(1) In order to facilitate consideration of the question of effective reciprocity in the granting of legal assistance, the Contracting States shall exchange statements setting forth the powers of their financial authorities, in regard to which the principles of German and Swedish law in the matter of administrative and legal assistance may be assumed to be in agreement. The statements shall include more particularly :

(a) The information, indications, opinions and proof which may be required of taxpayers or third persons ;

(b) The measures of constraint, conservation and execution which may be applied to taxpayers or third persons.

So long or in so far as the statements shall not have been exchanged and recognised by both States or if the request concerns measures not provided for in the statements, administrative and legal assistance shall be granted provided always that reciprocity may be assumed, that compliance with the request is not contrary to the laws of the State applied to, and that there is no special reason for refusing the request under the terms of the Convention. In this respect reciprocity shall be held to exist if a certificate of the higher authorities of the financial administration of the applicant State is attached to each request for administrative and legal assistance officially stating that such a request could be complied with under the laws of the applicant State ; failing agreement to the contrary, the certificate shall be made out in the official language of the State applied to or shall be accompanied by a translation in that language.

(2) Failing agreement to the contrary, the translations provided for in the present Convention shall be certified correct either by the authority responsible for the transmission of the request or by a sworn or officially appointed interpreter of the applicant State or of the State applied to.

(3) The transmission of official documents may not as a rule be demanded. Exceptions to this rule may only be made by agreement between the highest authorities of the

financial administrations of the two States. Requests for the transmission of official documents shall, however, only be made when the applicant State has urgent reasons for requiring them. This provision does not, however, affect the right of either State to transmit official documents with its request in order to facilitate the execution of the latter.

(4) Administrative and legal assistance shall not be granted for the enforcement of tax claims against heirs or others succeeding to the property of a deceased person should the amount of the claim exceed the amount or value of the property thus acquired at the time of its acquisition.

(5) Should it be established that an attempt at collection will be without effect, the request shall be returned to the applicant authorities together with a certificate to that effect and any available documents in support.

(6) The documents mentioned in Article XVI, paragraph 1, of the Convention shall include those drawn up, issued or certified by a competent official of the administrations referred to.

(7) The administrative and legal assistance agreed to in the present Convention shall not be granted for the enforcement of claims prior to January 1st of the year in which the Convention shall come into force.

(8) Any doubts or difficulties as to the interpretation and application of the present Convention shall be disposed of by agreement between the highest authorities of the financial administrations of the two States.

(9) Requests for administrative and legal assistance which reach the authorities of the State applied to before the expiry of the present Convention shall be carried out in accordance with the provisions of the Convention ; nevertheless, requests for execution shall only be complied with if the executory decree shall have been duly recognised before the expiry of the Convention.

BERLIN, *May 14th*, 1935.

R. MEYER.
Otto HEDDING.
E. AF WIRSÉN.

EXCHANGE OF NOTES.

I.

MINISTRY OF FOREIGN AFFAIRS.
V. 6811 I.

BERLIN, *May 14th*, 1935.

MONSIEUR LE MINISTRE,

In connection with the Convention signed this day between the German Reich and the Kingdom of Sweden regarding administrative and legal assistance in matters of taxation, I am instructed by my Government to make the following declaration :

(1) In regard to requests for administrative and legal assistance in matters of taxation, it is assumed that in the following cases the principles of German and Swedish law are in agreement and therefore that the effective reciprocity which, under the terms of the Convention, is a prerequisite for the granting of administrative and legal assistance is deemed to exist :

(a) When information regarding the income or assets of any natural or juristic person is desired and when the information is to be obtained from :

(aa) A joint stock company, a joint stock company *en commandite* or a German mining company (*Berggewerkschaft*) regarding dividends, earnings or

other distributions of profits, including bonus shares allotted in connection with shares (*Aktien*), mining shares (*Kuxe*) or stock (*Anteilscheine*) in the possession of the taxpayer ;

(*bb*) An insurance undertaking, regarding the amounts of annuities of at least 200 crowns per annum or a corresponding amount in Reichsmarks ;

(*cc*) An employer, regarding wages and other remuneration of a person in his employ, including pensions ;

(*b*) If execution is applied for.

(2) During such time as a treaty for avoiding double taxation in the matter of taxes on donations shall not have been concluded between the two States, collection by means of administrative and legal assistance may be refused in cases in which there is double taxation in this matter on the part of the two States. The same rule shall apply in cases in which double taxation is not precluded by the treaties regarding double taxation in force between the two States.

(3) As a general rule, requests for execution by way of administrative and legal assistance shall only be made when the taxpayer's total liability in regard to which execution is requested amounts to not less than the sum agreed upon by the highest authorities of the financial administrations of both countries.

(4) For the purpose of the enforcement of tax claims through administrative and legal assistance, a request for the opening of bankruptcy proceedings shall only be made if the highest authority of the financial administration of the State applied to has, on the proposal of the corresponding authority of the applicant State, expressly concurred therein. The same rule shall apply to the initiation of proceedings in the ordinary courts.

(5) It is understood that the State applied to shall be responsible as towards the applicant State for sums of money collected by its own authorities or officials.

I have the honour to be, etc.

(Signed) R. MEYER.

Monsieur C. E. Th. af Wirsén,
Royal Swedish Minister.

II.

ROYAL SWEDISH LEGATION,
BERLIN.

BERLIN, *May 14th*, 1935.

SIR,

In connection with the Convention signed this day between the Kingdom of Sweden and the German Reich regarding administrative and legal assistance in matters of taxation, I am instructed by my Government to make the following declaration :

(1) In regard to requests for administrative and legal assistance in matters of taxation, it is assumed that in the following cases the principles of German and Swedish law are in agreement and therefore that the effective reciprocity which, under the terms of the Convention, is a prerequisite for the granting of administrative and legal assistance is deemed to exist :

(*a*) When information regarding the income or assets of any natural or juristic person is desired and when the information is to be obtained from :

(*aa*) A joint stock company, a joint stock company *en commandite* or a German mining company (*Berggewerkschaft*) regarding dividends, earnings or other distributions of profits, including bonus shares allotted in connection with shares (*Aktien*), mining shares (*Kuxe*) or stock (*Anteilscheine*) in the possession of the taxpayer ;

(bb) An insurance undertaking, regarding the amounts of annuities of at least 200 crowns per annum or a corresponding amount in Reichsmarks ;

(cc) An employer, regarding wages and other remuneration of a person in his employ, including pensions ;

(b) If execution is applied for.

(2) During such time as a treaty for avoiding double taxation in the matter of taxes on donations shall not have been concluded between the two States, collection by means of administrative and legal assistance may be refused in cases in which there is double taxation in this matter on the part of the two States. The same rule shall apply in cases in which double taxation is not precluded by the treaties regarding double taxation in force between the two States.

(3) As a general rule, requests for execution by way of administrative and legal assistance shall only be made when the taxpayer's total liability in regard to which execution is requested amounts to not less than the sum agreed upon by the highest authorities of the financial administrations of both countries.

(4) For the purpose of the enforcement of tax claims through administrative and legal assistance, a request for the opening of bankruptcy proceedings shall only be made if the highest authority of the financial administration of the State applied to has, on the proposal of the corresponding authority of the applicant State, expressly concurred therein. The same rule shall apply to the initiation of proceedings in the ordinary courts.

(5) It is understood that the State applied to shall be responsible as towards the applicant State for sums of money collected by its own authorities or officials.

I have the honour to be, etc.

(Signed) E. AF WIRSÉN.

Monsieur Richard Meyer,
Ministerial Director at the German Ministry
of Foreign Affairs.