

N° 4239.

HONGRIE ET SUÈDE

Convention pour éviter les doubles impositions en matière d'impôts directs, et protocole final. Signés à Budapest, le 17 juin 1936.

HUNGARY AND SWEDEN

Convention for the Avoidance of Double Taxation in the Matter of Direct Taxes, and Final Protocol. Signed at Budapest, June 17th, 1936.

¹ TRADUCTION. — TRANSLATION.

No. 4239. — CONVENTION ² BETWEEN THE KINGDOM OF HUNGARY AND THE KINGDOM OF SWEDEN FOR THE AVOIDANCE OF DOUBLE TAXATION IN THE MATTER OF DIRECT TAXES. SIGNED AT BUDAPEST, JUNE 17TH, 1936.

French official text communicated by the Swedish Minister for Foreign Affairs and by the Head of the Royal Hungarian Delegation to the League of Nations. The registration of this Convention took place January 1st, 1938.

HIS MAJESTY THE KING OF SWEDEN and HIS SERENE HIGHNESS THE REGENT OF HUNGARY, being desirous of preventing double taxation in the case of direct taxes, have decided to conclude a Convention and have appointed for that purpose as their Plenipotentiaries :

HIS MAJESTY THE KING OF SWEDEN :

M. Ulf Torsten UNDÉN, Envoy Extraordinary and Minister Plenipotentiary ;

HIS SERENE HIGHNESS THE REGENT OF HUNGARY :

Baron Gabriel APOR, Envoy Extraordinary and Minister Plenipotentiary, Permanent Substitute of the Royal Minister for Foreign Affairs of Hungary, and
Dr. Alexandre KNEPPO, Head of Ministerial Department ;

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

Article 1.

The present Convention shall be applicable to nationals of the Kingdom of Sweden and of the Kingdom of Hungary and to Swedish and Hungarian legal entities.

Article 2.

The object of the present Convention is the establishment of rules relating to direct taxes. For the purposes of the present Convention, direct taxes shall be deemed to mean taxes which, under the law of either of the two States, are levied direct on income (net or gross) or property, whether for account of the contracting States or for account of provinces, counties or communes thereof.

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

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

² The exchange of ratifications took place at Stockholm, December 2nd, 1937. Came into force January 1st, 1938.

The following taxes shall be deemed to be direct taxes under Swedish law :

- (a) The State tax on income and property ;
- (b) The general communal tax ;
- (c) The graduated communal tax ;
- (d) Taxes and charges levied on the same basis as any one of the taxes mentioned above in sub-paragraphs (a) to (c).

The following taxes (including the surtaxes relating thereto) shall be deemed to be direct taxes under Hungarian law :

- (a) The land tax ;
- (b) The tax on house property ;
- (c) The tax on industrial and commercial profits ;
- (d) The tax on companies and the tax on directors' percentages ;
- (e) The income tax ;
- (f) The tax on capital.

These Hungarian taxes shall include charges intended as taxation of dividends and of interests from bonds, ranking as such under Hungarian law.

Article 3.

Unless otherwise provided in the present Convention, income and property shall be taxable only in the contracting State in which the taxpayer has his fiscal domicile.

For the purposes of the present Convention, the fiscal domicile of individuals shall be deemed to be their normal place of residence, that is to say, their permanent home or, if they have no permanent home in either contracting State, the place in which they permanently reside. Permanent residence of a taxpayer in one of the two States shall be deemed, for the purposes of the present Convention, to mean residence in any given place in the said State in circumstances which warrant the presumption that such residence is not intended to be temporary only.

Every taxpayer not having a permanent home or not residing permanently in one of the two contracting States, who is nevertheless subjected to double taxation in the said States, shall be deemed, for the purposes of the present Convention, to have his fiscal domicile in that one of the two States of which he is a national.

For the purposes of the present Convention, the fiscal domicile of legal entities shall be deemed to be the place in which they have their seat, without prejudice, however, to the laws of either State concerning the place of taxation of the undivided estates of deceased persons.

Article 4.

Income from immovable property shall be taxable only in that one of the two States in which such property is situate.

Article 5.

Unless otherwise provided hereinafter, income derived from commercial, industrial or other activities in connection with an establishment situate in either of the two States shall be taxable only in such State. Should there be establishments in both States, each State shall tax that portion of the income which is derived from the establishment situate within its own territory.

An establishment shall be deemed to mean a place in which special plant has been erected or special arrangements made for permanent operation in connection with the enterprise concerned, such as the place in which the enterprise has its management, offices, branches, permanent agencies, factories, works, buying or selling offices, warehouses, mines, quarries or any other natural resources employed for business purposes.

Income from participations in enterprises, other than income derived from mining shares (*Kuxe*) or other shares, partnership shares or similar securities, shall also rank as income derived from business activities.

Article 6.

Income from air navigation undertakings, the effective centre of management of which is in the territory of either of the two States, shall be taxable only in such State.

Article 7.

Income from the exercise of the liberal professions shall be taxable only by the State in whose territory the activity from which the income is derived is exercised. That place only in which the liberal profession concerned is exercised constantly and not merely occasionally shall be deemed to be the place of exercise of the said profession. The following shall in particular be regarded as liberal professions : scientific, artistic, literary, pedagogical or educational occupations and the professions of doctor, lawyer, architect and engineer.

Article 8.

Salaries of public officials or Government employees of one of the two contracting States, whose functions are exercised in the other State, shall be taxable only in the State by which the said salaries are payable.

Public pensions shall also be taxable in the State by which they are payable.

Article 9.

Directors' fees shall be taxable only in that one of the two States in whose territory the activities in respect of which such income is payable are exercised.

Article 10.

When in either of the two States dividends or interest on bonds are taxable by deduction (at the source), the right to resort to such deduction shall not be affected by any provision of Article 3 above.

Article 11.

Capital consisting of immovable property situated in either of the two States, or of movable effects appertaining thereto, shall be taxable only in the State in question.

Capital consisting of commercial, industrial or other enterprises shall be taxable only in the State which is entitled under the present Convention to tax the income from such capital.

Article 12.

The special provisions hereinafter following shall apply to diplomatic representatives and consular representatives *de carrière* of either of the two contracting States, and to other representatives of like standing. The said representatives, being officials *de carrière*, and the employees attached to their official posts, together with persons in their service or in the service of their employees, shall not be liable to direct taxation in the State to which they are accredited or appointed, save in respect of income of the kind specified in Articles 4, 5, 6, 7 and 9 and capital of the kind specified in Article 11, or income in the case of which tax is deducted (at the source) under Article 10. In all other respects, they shall be taxable by the State by which they are accredited or appointed.

Honorary consuls, who are nationals only of the State by which they are appointed, shall not be subject in the State to which they are appointed to direct taxation of the emoluments which

they receive in respect of the exercise of their consular functions. Such emoluments shall be taxable only by the State by which the said consuls are appointed.

Article 13.

The State in which the taxpayer is deemed to have his fiscal domicile shall be entitled, in assessing the tax, to apply the same rate as would have been applicable, if the income and capital taxable under the provisions of the present Convention had been taxable in the former State.

Article 14.

If a taxpayer proves that the action of the revenue authorities of the two contracting States has resulted in his being subjected to double taxation, he shall be entitled to lodge a claim with the State of which he is a national. Should his claim be upheld, the supreme revenue authority of the latter State may come to an agreement with the supreme revenue authority of the other State with a view to an equitable avoidance of the double taxation in question.

Such claims must as a general rule be lodged within two years of the year in which the taxation is levied.

Article 15.

In the event of difficulties or doubt arising as to the interpretation or application of the present Convention, the supreme revenue authorities of the two contracting States may make special arrangements in the matter.

Article 16.

The contracting States shall leave it to their respective supreme revenue authorities to arrive at an equitable settlement of any other question in respect of direct taxes which may arise in connection with differences in the principles governing the collection of taxes in either of the two States or in any other connection, as to which the present Convention contains no specific stipulations.

Article 17.

The present Convention shall be ratified with the consent, as regards Sweden, of the Riksdag. The instruments of ratification shall be exchanged at Stockholm as soon as possible.

The present Convention shall come into force on the first day of the month following the date of exchange of the instruments of ratification. It shall apply to income accruing after the date of the entry into force of the Convention and to capital becoming liable to taxation after that date.

The present Convention may be abrogated as from January 1st of any given year, if denounced not less than eight months beforehand.

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

Done at Budapest in duplicate, in French, the 17th day of June, 1936.

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

(L. S.) UNDÉN, *m. p.*

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

FINAL PROTOCOL.

In proceeding to sign the Convention for the Avoidance of Double Taxation in the Matter of Direct Taxes, concluded this day between the Kingdom of Sweden and the Kingdom of Hungary, the undersigned Plenipotentiaries are agreed as to the following provisions, which shall form an integral part of the Convention.

1. In the case of taxpayers who are not nationals of either of the two contracting States, the supreme revenue authorities of the said States may make special arrangements as required for the avoidance of double taxation. In this connection, regard shall be had in particular to the case of taxpayers who are nationals of States which have concluded Conventions for the avoidance of double taxation with both the contracting States.

2. The list of direct taxes in Article 2 of the Convention is illustrative only and not exhaustive.

Cases of doubt as to the taxes to which the Convention applies shall be settled by joint agreement between the supreme revenue authorities of the two States.

The supreme revenue authorities of the two States shall communicate to one another, whenever necessary, a list of the direct taxes in force in their respective States.

3. The term "communes" in the present Convention shall be understood to apply both to the higher and to the lower category of communes.

4. "Direct taxes" for the purposes of the present Convention shall not be deemed to include taxes on increments, business turnover, transport or consumption, special taxes on lottery winnings or winnings from games, death or gift duties or, in Sweden, taxes on special rights or privileges (*bevillningsavgifter för särskilda förmåner och rättigheter*) or corresponding taxes in Hungary.

5. Where the undivided estate of a deceased person is taxable in one of the contracting States, the heirs to such estate in the other State shall not be taxable in respect of either the income or the capital thereof.

6. The provision contained in Article 4 shall apply to income derived from the direct operation or enjoyment of immovable property and from the leasing, farming or any other form of enjoyment of such property, and income from alienation transactions, such income being obtained through the cession of immovable property, including the movable effects thereof.

Income from immovable property shall be deemed to include income from the exploitation of forests on the property of the exploiting party or on the property of others, and income derived by the exploiting party from the transport of felled timber to the port of exportation and its sale within the country, and from the processing of the timber at places within the country other than the seat of an establishment.

7. The provisions of Article 5 shall apply to income derived from the direct operation of an enterprise and to income derived from the assignment thereof to others, and to the profit derived from the total or partial cession of the enterprise or of objects used in connection therewith.

8. Yards used for building work, the execution of which has exceeded or is held to be likely to exceed twelve months, shall rank as establishments for the purposes of the present Convention.

The mere fact of an enterprise established in one of the two contracting States having a branch in the other contracting State, or doing business with the other contracting State solely through a wholly independent representative, or through a representative (agent) acting permanently for the enterprise in question in the second of the two

contracting States, but acting purely in the capacity of an intermediary without power to take binding decisions on behalf of the said enterprise, shall not be deemed to imply the existence of an establishment in the second contracting State.

9. When an enterprise established in one of the two contracting States has a dominant participation in the management or capital of an enterprise established in the other contracting State, or when both enterprises are owned or controlled by the same interests, and as the result of such situation there exist in their commercial or financial relations conditions different from those which would have arisen between independent enterprises, any item of profit or loss which should normally have appeared in the accounts of one enterprise, but which has been in this manner diverted to the other enterprise, may be restored to the accounts of such former enterprise, and the requisite adjustments made accordingly in the income of the other enterprise.

10. The supreme revenue authorities of the two contracting States may conclude a special agreement with a view to the equitable allocation of income from the exercise of industrial, commercial or other activities in the cases to which Article 5, paragraph 1, relates.

11. In the event of any question arising as to the meaning of the expression " similar securities " in the last paragraph of Article 5, the supreme revenue authorities of the two States may conclude a special agreement on the subject.

12. Students who reside in one of the contracting States solely for purposes of study shall be exempt from taxation by such State in respect of any remittances for their maintenance and studies which they receive from their relations domiciled and taxable in the other State.

13. In order to remove any uncertainty, it is agreed that the provisions of Article 12 shall not affect the right to enjoy any more extensive exemptions which have been or may hereafter be accorded to diplomatic or consular officials in virtue of the general rules of international law.

When, as a result of such extended exemptions, the officials in question are immune from direct taxation in the State to which they are accredited or appointed, they shall continue to be taxable by the State by which they are accredited or appointed.

The right to apply certain higher rates of taxation to which Article 13 refers in the case of the persons specified in Article 12, paragraph 1, shall continue to rest with the State by which such persons are accredited or appointed.

14. Each of the two States shall be free to require proof, when necessary, of the existence of double taxation within the meaning of the present Convention.

Done at Budapest in duplicate, in French, this 17th day of June, 1936.

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

(L. S.) UNDÉN, *m. p.*

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