

ALLEMAGNE ET POLOGNE

Accord concernant le transfert des litiges administratifs, des affaires de répartition d'impôts et des affaires de contentieux administratif, ainsi que des procédures de recours en matière d'impôts du Reich ou de l'Etat, et en matière d'impôts ecclésiastiques dans le territoire plébiscitaire de Haute-Silésie, signé à Posen le 26 août 1922.

GERMANY AND POLAND

Agreement regarding the transfer of cases relating to administrative disputes, allocation of taxes and administrative decisions in the Upper Silesian plebiscite area, and also regarding the transfer of legal recourse proceedings in matters of Imperial and State taxation and church dues, signed at Posen August 26, 1922.

TEXTE POLONAIS. — POLISH TEXT.

No. 656. — NIEMIECKO-POLSKI UKŁAD¹ W PRZEDMIOCIE PRZEJĘCIA ADMINISTRACYJNYCH SPRAW SPORNYCH, SPRAW DOTYCZĄCYCH ROZDZIAŁU PODATKÓW ORAZ ADMINISTRACYJNYCH SPRAW UCHWAŁOWYCH, JAKO TEŻ PRZEWODÓW NA SKUTEK ŚRODKÓW PRAWNYCH W SPRAWACH PODATKÓW RZESZY, PODATKÓW PAŃSTWOWYCH I W SPRAWACH PODATKÓW KOŚCIELNYCH, NA GÓRNOŚLĄSKIM OBSZARZE PLEBISCYTOWYM, PODPISANY DNIA 26 SIERPNI 1922 R.

German and Polish official texts, communicated by the German Consul at Geneva². The registration of this agreement took place July 18, 1924.

Rząd Niemiecki i Rząd Polski, powodowane życzeniem unormowania zgodnie z interesem ludności obu stron dalszego prowadzenia administracyjnych spraw spornych, spraw dotyczących rozdziału podatków oraz administracyjnych spraw uchwałowych, jak również przewodów na skutek środków prawnych w sprawach podatków Rzeszy, podatków państwowych i w sprawach podatków kościelnych, zgodziły się wejść w tym przedmiocie w układy i w tym celu zamianowały swymi pełnomocnikami :

RZĄD NIEMIECKI :

Posła Dr. Paul ECKARDT,
Prezydenta Policji Dr. Gottfried SCHWENDY.

RZĄD POLSKI :

Wiceministra D-ra Zygmunta SEYDĘ.

Pełnomocnicy, po wzajemnem przedłożeniu sobie swych pełnomocnictw i uznaniu ich za wystawione w dobrej i należytej formie, zgodzili się na następujące postanowienia :

I.

ADMINISTRACYJNE SPRAWY SPORNE.

Artykuł 1.

1. Administracyjne przewody sporne (§§ 61 do 114 pruskiej ustawy o ogólnej administracji kraju z dnia 30. lipca 1883 r. — zbiór ustaw pruskich strona 195 — ustępy 2 i 3 § 192a i § 194a ogólnej ustawy górniczej dla państw pruskich z dnia 24. czerwca 1865 r. w brzmieniu ustaw z

¹ The exchange of ratifications took place at Berlin, June 8, 1923.

² See foot-note vol. II, page 60 of this Series.

¹ TRANSLATION.

No. 656. — GERMAN-POLISH AGREEMENT REGARDING THE TRANSFER OF CASES RELATING TO ADMINISTRATIVE DISPUTES, ALLOCATION OF TAXES AND ADMINISTRATIVE DECISIONS IN THE UPPER SILESIAN PLEBISCITE AREA, AND ALSO REGARDING THE TRANSFER OF LEGAL RECOURSE PROCEEDINGS IN MATTERS OF IMPERIAL AND STATE TAXATION AND CHURCH DUES, SIGNED AT POSEN, AUGUST 26, 1922.

The GERMAN and POLISH GOVERNMENTS, desiring in the interest of the respective populations to settle the question of the continuation of such cases relating to administrative disputes, the allocation of taxes and administrative decisions, and also of such legal recourse proceedings in matters of Imperial and State taxation and church dues as are affected by the partition of Upper Silesia, have decided to conclude an Agreement on these matters and for this purpose have appointed as their plenipotentiaries :

THE GERMAN GOVERNMENT :

Dr. Paul ECKARDT, Minister plenipotentiary ;
Dr. Gottfried SCHWENDY, Chief Commissioner of Police (Polizeipräsident) ;

THE POLISH GOVERNMENT :

Dr. Zygmunt SEYDA, Under-Secretary of State.

The plenipotentiaries, having communicated their full powers, which were found in good and due form, agreed to the following provisions :

I.

CASES RELATING TO ADMINISTRATIVE DISPUTES.

Article 1.

(1) Proceedings with regard to administrative disputes (paragraphs 61-114 of the Prussian law regarding the general administration of the State, dated July 30, 1883. Prussian Statute-Book, p. 195, paragraph 192a, sub-paragraphs 2 and 3 and paragraph 194a of the Public Mines Law for the Prussian States, dated June 24, 1865, as set forth in the Statutes of July 14, 1905. Prussian Statute-Book, p. 307, July 28, 1909. Prussian Statute-Book, p. 677, and August 6, 1921. Prussian Statute-Book, p. 486) in the Upper Silesian plebiscite area, pending at the time of the transfer to Poland of sovereignty over that part of the Upper Silesian plebiscite area which has become Polish, and in regard to which no final judgment had been given at the time of the

¹ Translated by the Secretariat of the League of Nations.

coming into force of this Agreement, shall be continued by such German or Polish authorities as would be competent, had the proceedings been instituted only after the transfer of the ceded territory.

(2) Any such proceedings relating to administrative disputes pending in a higher Court shall be continued before the corresponding higher Court.

Article 2.

Cases relating to administrative disputes shall, provided the proceedings are to be continued in accordance with Article 1 by another authority, be transferred *ex officio* by the authorities before whom the proceedings are pending to the new competent authority, together with all records and other relevant documents. No claim shall be made for repayment by either party of any costs incurred in respect of the previous proceedings. The costs of transmitting documents will be borne by the authority forwarding the documents.

Article 3.

(1) Government authorities, municipal authorities, or other public corporate bodies, which are parties to proceedings relating to administrative disputes shall be replaced by such Government authorities, municipal authorities or other public corporate bodies as would be competent if the proceedings had not been instituted until after the transfer of the ceded territory to Poland.

(2) When one of the parties is an official representing the public interest (paragraph 74, sub-paragraph 3 of the law regarding the general administration of the State of July 30, 1883) he shall immediately withdraw from the proceedings if he is an alien as regards the authorities which, in accordance with Article 1, are now competent to deal with the case. The appointment of a new representative shall be left to such authorities as would be competent to make the appointment if the legal proceedings had been instituted after the partition.

Article 4.

The two Contracting Parties mutually undertake to execute all judgments in proceedings relating to administrative disputes which acquired the force of law before the transfer of sovereignty or were legally valid in cases relating to administrative disputes pending at the time of the transfer of sovereignty, when claims for the reimbursement of fees, charges or dues of any description were founded on such judgments.

Article 5.

(1) In proceedings relating to administrative disputes which are to be transferred in accordance with Article 2, the two Contracting Parties undertake to give each other legal assistance as regards the hearing of witnesses and experts, the lending of relevant documents or the supplying of certified true copies of extracts from these documents, and the communication of official information.

(2) Application for legal assistance shall be made through the general transfer commissioners of the two Parties. The authorities shall receive no payment for their services, but sums actually spent will be refunded.

II.

CASES RELATING TO THE ALLOCATION OF TAXES.

Article 6.

Proceedings relating to the allocation of taxes (paragraph 71 of the Prussian municipal taxes law of July 14, 1893 — Prussian Statute-Book, p. 152 —) in which communes or districts (Kreise) of the Upper Silesian plebiscite area are interested parties, and in which, at the time of the transfer of sovereignty, final judgment had not been pronounced, shall, in so far as the cases dealt with refer exclusively to communes or districts in the part of Upper Silesia which has become Polish, be continued by such Polish authorities as would be competent if the proceedings had not been instituted until after the transfer of the ceded territory to Poland.

Article 7.

(1) If in addition to communes or unions of communes in Polish Upper Silesia, German communes or districts are also parties to proceedings relating to the allocation of taxes which are still pending, such proceedings shall be continued by the authorities who were dealing with the proceedings at the time of the transfer of sovereignty.

(2) If, however, the total amount of the income tax in respect of which the taxpayer is assessed by the German communes or districts concerned is greater than the total amount of income tax claimed by the Polish communes or districts concerned, and if at the time of the transfer of sovereignty the proceedings were pending before an authority which in the meantime has become Polish, these proceedings shall be continued, not by the latter authorities, but by such German authorities as are competent in respect of the German communes or districts concerned. Conversely, proceedings shall be continued by the corresponding Polish authority.

Article 8.

Article 1, sub-paragraph 2, and Articles 2, 4 and 5 shall apply *mutatis mutandis*; Article 2 with the proviso that cases relating to the allocation of taxes shall be handed over to the Voivodship in Kattowitz if the transfer has to be made from a German to a Polish authority, and to the Regierungspraesident (Governor of the province) in Oppeln, if the transfer has to be made from a Polish to a German authority. The above-mentioned officials shall pass on these cases to the authorities which, in accordance with this Agreement, are qualified to continue the proceedings, after they have appointed or caused to be appointed the competent authorities in the case provided for in paragraph 58 of the general law regarding the Administration of the State of July 30, 1883.

Article 9.

Any settlement of accounts between communes and unions of communes necessitated by the execution of proceedings relating to the allocation of taxes shall be reserved. If necessary, a special agreement shall be concluded to deal with these matters.

III.

ADMINISTRATIVE DECISION PROCEDURE (Beschlussverfahren).

Article 10.

The provisions of Articles 1 to 5 shall apply *mutatis mutandis* to proceedings in respect of administrative decisions (paragraphs 115-126 of the law regarding the general administration of the State, dated July 30, 1883, and also paragraph 142 of the General Mines Law for the Prussian States, dated June 24, 1865, in conjunction with paragraph 150 of the law relating to the competence of the administrative authorities and administrative court authorities of August 1, 1883 — Prussian Statute-Book, p. 237).

IV.

LEGAL RECOURSE PROCEEDINGS PENDING IN MATTERS OF IMPERIAL AND STATE TAXATION.

Article 11.

The provisions of Articles 1 to 3 and of Article 5 shall apply *mutatis mutandis* to legal recourse proceedings pending in matters of Imperial and State taxation if the assessments were made during the occupation period.

Article 12.

The local competence of the authorities qualified to give decisions shall be determined in the case of individuals by the domicile of the latter or, failing such domicile, their place of residence, and in the case of legal persons by the seat of the administration at the time of the transfer of sovereignty.

Article 13.

When judgments in the legal recourse proceedings specified in Article 11 provide for a reduction of, or exemption from, Imperial or State taxes, each of the two Contracting Parties shall pay such amounts as have to be reimbursed in accordance with the decisions of its authorities. No statement of accounts shall be drawn up between the two Parties.

V.

LEGAL RECOURSE PROCEEDINGS PENDING IN RESPECT OF CASES RELATING TO CHURCH DUES.

Article 14.

The provisions of Articles 1 to 5 shall apply to pending legal recourse proceedings in cases relating to church dues, and, if the question is one of the allocation of taxes, the provisions of Articles 6 to 8 shall apply *mutatis mutandis*.

VI.

FINAL PROVISIONS.

Article 15.

(1) All proceedings, which in accordance with this Convention are to be continued by authorities other than those which had previously dealt with them, shall be considered as suspended as from the date of the transfer of sovereignty in the ceded territory (June 15, 1922) until the expiration of one month after the coming into force of this Agreement.

(2) In cases coming within the scope of this Agreement in respect of which the transfer of sovereignty has led to a change in the competence of the authorities dealing with them, the time limits prescribed for legal recourse of every description (protests, applications for oral pleadings, bringing of actions, appeals, re-hearings, applications for the reopening of proceedings, complaints, applications for a hearing *in pleno*, etc.), shall be regarded as suspended for the period specified in sub-paragraph 1 above. If, however, during the period in which the time limit was suspended, but otherwise within the period prescribed for legal recourse, legal recourse in a case of the nature described above was instituted before the authority competent prior to the transfer of sovereignty, the time limit shall be regarded as having been observed. After the period of suspension has expired, all legal recourse must be instituted before the authorities now competent to deal with such cases.

Article 16.

The present Agreement shall be ratified and the instruments of ratification shall be exchanged as soon as possible. The Agreement shall come into force with the exchange of the instruments of ratification.

Done in duplicate, in the German and Polish languages, at Posen, on August 25, 1922.

(Signed) Dr. PAUL ECKARDT.

(Signed) Dr. GOTTFRIED SCHWENDY.

(Signed) Dr. ZYGMUNT SEYDA.