

ALLEMAGNE ET SUÈDE

Convention en vue d'assurer la péréquation des impositions intérieure et extérieure et, notamment, d'éviter la double imposition en matière d'impôts directs, avec protocole final, signée à Berlin, le 25 avril 1928, et échange de notes y relatif de la même date.

GERMANY AND SWEDEN

Agreement for the Adjustment of Internal and External Taxation and in particular for the Prevention of Double Taxation in the matter of Direct Taxes, with Final Protocol, signed at Berlin, April 25, 1928, and Exchange of Notes relating thereto of the same Date.

TEXTE ALLEMAND. — GERMAN TEXT.

N^o 1844. — ABKOMMEN ¹ 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. GEZEICHNET IN BERLIN, AM 25. APRIL, 1928.

German and Swedish official texts communicated by the Swedish Minister for Foreign Affairs. The registration of this Agreement took place September 24, 1928.

DAS DEUTSCHE REICH und DAS KÖNIGREICH SCHWEDEN sind, um auf dem Gebiete der direkten Steuern die in- und ausländische Besteuerung in den beiden Staaten auszugleichen, insbesondere die Doppelbesteuerung zu vermeiden, übereingekommen, ein Abkommen über die Aufteilung des Besteuerungsrechtes zwischen den beiden Staaten hinsichtlich der verschiedenen Steuerquellen abzuschliessen.

Zu diesem Zwecke haben zu Bevollmächtigten ernannt :

DER DEUTSCHE REICHSPRÄSIDENT :

den Ministerialdirektor im Auswärtigen Amt, Dr. Herbert VON DIRKSEN, und
den Ministerialdirektor im Reichsfinanzministerium, Professor Dr. Herbert DORN,

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 :

Artikel 1.

1. Das gegenwärtige Abkommen soll Bestimmungen treffen, die sich auf die Erhebung der direkten Steuern beschränken.

2. Als direkte Steuern im Sinne des gegenwärtigen Abkommens gelten solche Steuern, die auf der Grundlage der Gesetzgebung jedes der beiden Staaten unmittelbar von den Einkünften (Reineinkünften oder Roheinkünften) oder von dem Vermögen erhoben, werden, sei es für Rechnung der vertragschliessenden Staaten oder der deutschen Länder, sei es für Rechnung der Provinzen oder Provinzialverbände, der Gemeinden oder Gemeindeverbände, auch soweit die Erhebung der Steuern in der Form von Zuschlägen erfolgt. Das gegenwärtige Abkommen bezieht sich daher nicht auf indirekte Steuern vom Verkehr und Verbrauch.

¹ The exchange of ratifications took place at Berlin, August 14, 1928.

¹ TRANSLATION.

No. 1844. — 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. SIGNED AT BERLIN, APRIL 25, 1928.

THE GERMAN REICH and THE KINGDOM OF SWEDEN, desirous of adjusting internal and external taxation in the two States in the special matter of direct taxes, and, in particular, of preventing double taxation, have decided to conclude an Agreement concerning the allocation of taxation as between the two States in respect of the various sources of taxation.

For this purpose they have appointed as their Plenipotentiaries :

THE PRESIDENT OF THE GERMAN REICH :

Dr. Herbert VON DIRKSEN, Director in the German Ministry of Foreign Affairs, and
Professor Herbert DORN, Director in the German Ministry of Finance ;

HIS MAJESTY THE KING OF SWEDEN:

M. E. AF WIRSÉN, Swedish Minister at Berlin,

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

Article 1.

1. The present Agreement shall regulate the collection of direct taxes only.

2. For the purpose of the present Agreement, taxes levied, in virtue of the laws of either State, directly on income (net or gross income), or on capital, whether on behalf of the Contracting States or the various German States, or on behalf of provinces, associations of provinces, communes or associations of communes, shall be regarded as direct taxes, even where they are collected in the form of supplementary taxes. The present Agreement is not, therefore, concerned with indirect taxes on commercial transactions or consumption.

3. In particular, the following shall be regarded as direct taxes :

(1) Under German law :

- (a) Income tax ;
- (b) Corporation tax ;
- (c) Tax on capital ;
- (d) Land taxes (*Grundsteuern*) ;
- (e) Taxes on building (*Gebäudesteuern*) ;

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

- (f) Taxes on trading licences (*Gewerbesteuern*) ;
- (g) Currency depreciation adjustment tax on buildings on landed property (rent taxes) — (*die Hauszinssteuern*).
- (2) Under Swedish law :
 - (a) State tax on income and capital (*statlig inkomst- och förmögenhetsskatt*) ;
 - (b) General communal tax (*allmän kommunalskatt*) ;
 - (c) Graduated communal tax (*kommunal progressivskatt*) ;
 - (d) Taxes and imposts levied according to the same principles as any of the Swedish taxes specified under (a) to (c) ;
 - (e) Communal taxes on forestry rights (*skogsaccis och skogswardsavgift*).

Article 2.

Income from immovable property shall be taxable only in the State in which the property is situated.

Article 3.

1. Income derived from the exercise of commerce, industry or any other form of business shall, without prejudice to the following provisions, be taxable only in that State in whose territory the undertaking has its business establishment (*Betriebsstätte*) ; the same shall also apply when the undertaking extends its activities to the territory of the other contracting State without possessing therein a business establishment.

2. For the purposes of the present Agreement, a business establishment is a permanent business installation of the undertaking, in which the activities of the said undertaking are carried on either wholly or in part.

3. Should the undertaking possess business establishments in both contracting States, each of the States shall tax the portion of the income derived from the activities of the business establishments situated in the territory.

4. Income derived from interests in an undertaking constituted as a business company shall be regarded as income derived from the exercise of an industry, with the exception of income derived from mining stock (*Kuxen*), shares, dividend warrants and other securities.

Article 4.

Income derived from the operations of maritime shipping and air navigation concerns shall be taxable only in the State in which the centre of management of the undertaking is situated.

Article 5.

Earned income, including income derived from the exercise of the liberal professions, shall, unless otherwise provided in Article 6, be taxable only in the State within whose territory the personal activity productive of the income is carried on. A person shall only be deemed to exercise a liberal profession in either of the two States when he carries on his professional activities from a fixed centre in that State.

Article 6.

Income payable in respect of past or present services rendered or work done, in the form of salary, pensions, wages or other fees and emoluments, by the central Government, a State (*Land*), a

a commune or another juridical person under public law duly constituted in accordance with the internal legislation of the contracting States, shall be taxable only in the debtor State.

Article 7.

1. Income derived from movable funded property shall only be taxable in the State in which the taxpayer has his domicile.
2. Where the tax on income accruing within the country from capital is collected in either of the two States by means of deductions (at the source), the right to make such fiscal deductions shall not be affected by the provisions of paragraph 1.

Article 8.

Any other form of income not specified in the preceding Articles, including life annuities, shall be taxable only in the State in which the taxpayer has his domicile.

Article 9.

The following provisions shall be valid for regularly recurring and non-recurring taxes on capital or capital increments which now exist or may hereafter be introduced in the contracting States :

- (1) In the case of capital consisting of :
 - (a) Immovable property, together with appurtenances ;
 - (b) Commercial and industrial undertakings or any other kind of business, including maritime shipping and air navigation concerns ;the taxes shall be collected in the State entitled, in virtue of the preceding Articles, to tax the income derived from such capital.
- (2) In the case of all other forms of capital, including claims secured on mortgages, the tax shall be collected in the State in which the taxpayer has his domicile.

Article 10.

1. For the purposes of the present Agreement, the taxpayer shall be considered to have a domicile at the place where he occupies a dwelling, under circumstances which give good grounds for assuming that he intends to retain it.
2. Should the conditions laid down in paragraph 1 be found to apply simultaneously in both States, the supreme financial authorities of the two States shall make special arrangements to meet the individual cases.
3. Should the conditions laid down in paragraph 1 be found to apply in neither of the two States, the taxpayer shall be considered to have his domicile at the place in which he has his permanent residence. For the purposes of the present provisions, a person shall be considered to have his permanent residence at the place where he resides under circumstances which furnish good grounds for assuming that it is not his intention to remain there merely temporarily. Should there be no permanent residence in either of the two States, the taxpayer shall be presumed to have a domicile in the State of which he is a national.
4. For the purposes of the present Agreement, the domicile of juridical persons shall be the place in which they have their seat. Nevertheless, the provisions of the Swedish laws on the place of taxation of undivided legacies shall not be affected.

Article 11.

The regulations of the Swedish laws concerning the taxation of undivided legacies shall not apply in so far as the successor is directly liable, in accordance with the provisions of the present Agreement, to taxation in Germany in respect of income or capital derived from the inheritance.

Article 12.

1. The following special provisions shall apply in the case of diplomatic, consular and special representatives of each of the contracting States :

Representatives who are permanent paid officials, and officials allotted to their offices, and persons employed by them or by their officials, shall only be liable to pay direct taxes in the State to which they are sent in respect of the income specified in Articles 2, 3 and 4 and the capital specified in Article 9, No. 1, or when the taxes are collected by means of deductions (at the source) ; in other cases taxation shall be reserved to the State which appoints them.

2. The special provisions of paragraph 1 shall, however, only apply in so far as the said persons are nationals of the State which appoints them and outside their official duties or functions do not engage in the States to which they are sent in the exercise of any profession, business or other regular gainful employment.

3. The provisions of the present Agreement shall apply to honorary consuls (*consules electi*) who are nationals only of the State which appoints them ; nevertheless, these consuls shall not be liable in the State to which they are accredited to direct taxation in respect of the official emoluments they receive as consuls.

Article 13.

In the event of a taxpayer proving that the measures taken by the financial authorities of the contracting States have resulted in his being subjected to double taxation, he may appeal to the State of which he is a national. If his objection is deemed to be warranted, the supreme financial authorities of the State in question may concert measures with the supreme financial authorities of the other State with a view to equitably avoiding double taxation.

Article 14.

The supreme financial authorities of the two contracting States may conclude special arrangements to abolish double taxation in cases not provided for in the present Agreement, as well as in difficult or doubtful cases in connection with the interpretation and application of the present Agreement.

Article 15.

The contracting States undertake to entrust their supreme financial authorities with the equitable decision of all other questions in the special matter of direct taxes which may arise owing to the different principles governing the collection of taxes in the two States, or, in general, those which may arise without having been expressly decided in the present Agreement.

Article 16.

The present Agreement shall first apply to taxes for the calendar year 1928 or for the financial years ending between March 1, 1928, and February 28, 1929.

Article 17.

The present Agreement, done in duplicate in German and in Swedish, shall be ratified, and, in the case of Sweden, by His Majesty the King of Sweden, with the approval of the Riksdag. The instruments of ratification shall be exchanged at Berlin as soon as possible. The Agreement shall come into force as from the exchange of the instruments of ratification and shall remain in force until denounced by either of the contracting States. Denunciation must take place at least eight months prior to the expiry of the calendar year. Where due notice is given, the Agreement shall apply for the last time to taxes levied in respect of the calendar year on whose expiry the denunciation takes effect and in respect of the business years ending not later than May 31 of the following year. If due notice is not given, the final dates mentioned in the preceding sentence shall be postponed by one year.

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

BERLIN, *April 25, 1928.*

(L. S.) V. DIRKSEN.

(L. S.) Dr. HERBERT DORN.

(L. S.) E. AF WIRSÉN.

FINAL PROTOCOL.

On signing the Agreement concluded this day 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 special matter of direct taxes, the undersigned Plenipotentiaries have jointly made the following declarations, which shall constitute an integral part of the Agreement.

1. The list of the direct taxes leviable in the two contracting States, as given in Article 1 of the Agreement, furnishes examples only and is not to be regarded as exhaustive.

Any doubtful points shall be settled by the supreme financial authorities of the two States in concert.

The supreme financial authorities of the two States shall, at the end of each year, communicate to each other lists of the direct taxes existing in each State at that time.

2. By communes [Article 1, paragraph (2)], shall be understood, in the Kingdom of Sweden communes both of the higher and lower categories.

3. Increment taxes which apply to increments in connection with a specific object and, in particular, landed property, shall also be regarded as taxes on commercial transactions within the meaning of Article 1, paragraph 2.

4. The provisions of Article 2 of the Agreement apply to income derived both from the direct administration and use of immovable property and to the income from letting, leasing and other forms of using such property, together with income derived from alienations of immovable property including the appurtenances sold therewith.

5. The provisions of No. 4 of the present Final Protocol relating to income derived from immovable property shall apply *mutatis mutandis* to income derived from the exercise of commerce, industry or other business, and to profits derived from the alienation of all or part of an undertaking, or of an object used in connection with the undertaking.

6. For the purposes of Article 3 of the Agreement, business establishments (*Betriebsstätte*) shall mean, in addition to the seat and the centre of management of the undertaking, the branches and affiliated companies, factories and workshops, agencies for purchase and sale, warehouses and other commercial establishments possessing the character of permanent business installations, together with permanent representatives.

It is agreed that the maintenance of business relations exclusively by means of a completely independent representative shall not constitute a business establishment in the sense of Article 3. The same shall apply in regard to the maintenance of a representative (*agent*) who, whilst permanently acting for individuals or companies of the one State within the territory of the other State, only negotiates business without being fully authorised to conclude transactions on behalf of the firm he represents.

7. The supreme financial authorities shall conclude a special agreement with a view to the equitable allocation of income derived from the exercise of commerce, industry and other business in the cases provided for in Article 3, paragraph 3.

8. It is agreed that, in accordance with the provisions of Article 3, paragraph 4, only those interests in undertakings constituted as business companies, regarding which documents are drawn up by which the exercise of the rights specified therein attaches to the possession of the documents, shall be excepted from the treatment provided for in Article 3.

Where an interest in a German limited liability company is established by a dividend warrant, this shall not be regarded as one of the afore-mentioned documents.

9. For the purposes of Article 5, liberal professions shall mean, in particular, scientific artistic, literary, teaching, or educational activities, and the activities of physicians, lawyers architects and engineers.

Article 5 shall not apply where a person employed in the one State resides merely temporarily in the territory of the other State for the purposes of his occupation, and receives his salary exclusively from his employer, who is taxable in the former State.

It is agreed that in Sweden imposts concerning special privileges and immunities (*bevillningsavgifter för Särskilda förmaner och rättigheter*), and in Germany the corresponding taxes on income derived from the temporary exercise of liberal professions within the country, shall not come within the scope of the present Agreement. This exception to the provisions of Article 5 of the Agreement shall apply so long as a tax corresponding to the above-mentioned impost is collected in Sweden.

10. It is agreed that each of the two States shall act in accordance with its own legislation in regard to income derived from claims secured on mortgages.

Bonds shall not be ranked as claims secured on mortgages even where they are secured on immovable property.

11. The Governments of the two contracting States shall, after Sweden has carried through a reform in regard to the taxation of share dividends, agree upon provisions for the prevention of double taxation in this further matter.

12. Students who reside in one of the contracting States solely for the purposes of study shall be exempt from taxation by this State in respect of the allowances which they receive from their relatives domiciled and taxable in the other State, provided that the said allowances constitute by far the greater part of the funds required by them for their maintenance and study.

13. In the case of taxpayers who prove that they have definitely transferred their domicile from one of the contracting States to the other, liability to taxation, in so far as it is based on domicile, shall cease in the former State as from the day on which the transfer is effected.

14. It is agreed that if, in cases of double domicile [(Article 10, paragraph 2)], the taxpayer's interests are centred in one place, that should be regarded as his domicile. If no agreement can be reached regarding the centre of his interests, his domicile shall be presumed to exist only in the State of which he is a national.

The supreme financial authorities shall make arrangements for individual cases in regard to persons who are nationals of both contracting States, whenever taxation is based, in virtue of Article 10 of the Agreement, on the nationality of the person concerned.

15. The supreme financial authorities may, to meet individual cases, make special arrangements or the prevention of double taxation in respect of those persons who are nationals of neither State. Nationals of those States which have concluded agreements for the prevention of double taxation with the two contracting States shall in this connection receive special consideration.

16. In order to remove any doubt, it is hereby declared that the provisions of Article 12 shall not affect the right to benefit by any more extensive exemptions which have been conferred, or which may hereafter be conferred, on diplomatic and consular officials in virtue of the general rules of international law.

Where, owing to any such more extensive exemptions, there is no liability to direct taxation in the State to which these officials are sent, the right of taxation shall be reserved to the State appointing them.

17. It is agreed that the provisions of the present Agreement shall also apply to those cases of double taxation which arose before the present Agreement came into force, and which have not as yet been finally settled.

18. The two contracting States reserve to themselves the right to conclude a special arrangement in regard to succession duties and the tax on non-recurring gifts.

19. Nothing in the present Agreement shall prevent the State in which the taxpayer has his domicile from taking into consideration, when making tax assessments, the income or capital exclusively reserved for taxation by the other State. This may be effected in one of two ways, first, by assessing the foreign income or capital independently in accordance with the internal laws, and deducting the tax thus assessed from the tax assessed on the total income or total capital; or secondly, by applying a fiscal rate higher than that appropriate for the income and capital taxable in the State of domicile in accordance with the present Agreement. In the latter case the tax may not, however, exceed the percentage of the income or capital which would result if the income and capital taxable in the other State in accordance with the present Agreement were also taxed in the State of domicile.

20. Objects which, in accordance with the principles of the present Agreement, are subject to restricted taxation in the one State, but are in general exempt from taxation in virtue of the domestic laws of this State, may be taxed by the other State with the consent of the former.

BERLIN, *April 25, 1928.*

V. DIRKSEN.
Dr. HERBERT DORN.
E. AF WIRSÉN.

FINAL PROTOCOL.

The undersigned, Baron A. Koskull, Swedish Chargé d'Affaires at Berlin, and Dr. George Martius, Vortragende Legationsrat in the German Ministry of Foreign Affairs, met to-day for the purpose of exchanging the instruments of ratification of the Fiscal Agreement between SWEDEN and GERMANY signed at Berlin on April 25, 1928, in conformity with Article 17 of the aforesaid Agreement.

The instruments in question, having been presented and found correct, were duly exchanged.

In faith whereof the undersigned have executed the present Protocol.

Done in duplicate at Berlin, in Swedish and German, on August 14, 1928.

G. MARTIUS.
Anders KOSKULL.

(a)

THE SWEDISH MINISTER AT BERLIN TO THE MINISTRY OF FOREIGN AFFAIRS
OF THE GERMAN REICH.

BERLIN, *April 25, 1928.*

MONSIEUR LE DIRECTOR,

With reference to the Agreement concluded to-day between Sweden and Germany for the adjustment of internal and external taxation, and, in particular, for the prevention of double taxation in the special matter of direct taxes, I am directed by my Government to make the following declaration :

So long as the Agreement remains in force, Sweden, in her relations with Germany, will treat income derived from forest exploitation in conformity with the principles applicable under the Agreement to income from immovable property, no matter whether such income accrues to the owner himself, or to a usufructuary or lessee or to any other person having rights of user in the forest in question.

During the same period, Sweden, in her relations with Germany, shall treat building works, the execution of which has continued or is expected to continue for more than twelve months, as permanent business establishments within the meaning of the Agreement.

I have the honour to be, etc.

E. AF WIRSÉN.

(b)

THE MINISTRY FOR FOREIGN AFFAIRS OF THE GERMAN REICH TO THE SWEDISH MINISTER AT BERLIN.

BERLIN, *April 25, 1928.*

MONSIEUR LE MINISTRE,

With reference to the Agreement concluded to-day between GERMANY and SWEDEN for the adjustment of internal and external taxation, and, in particular, for the prevention of double

taxation in the special matter of direct taxes, I am directed by my Government to make the following declaration :

So long as the Agreement remains in force, Germany, in her relations with Sweden, will treat income derived from forest exploitation, in conformity with the principles applicable under the Agreement to income from immovable property, irrespective of whether such income accrues to the owner himself, or to a usufructuary or lessee or to any other person having rights of user in the forest in question.

During the same period, Germany, in her relations with Sweden, shall treat building works the execution of which has continued or is expected to continue for more than twelve months, as permanent business establishments within the meaning of the Agreement.

I have the honour to be, etc.

V. DIRKSEN.