

N° 1857.

ESPAGNE ET ITALIE

Convention portant réglementation du
régime fiscal des sociétés. Signée
à Madrid, le 28 novembre 1927.

SPAIN AND ITALY

Agreement regulating the Fiscal
Treatment of Companies. Signed
at Madrid, November 28, 1927.

TEXTE ESPAGNOL. — SPANISH TEXT.

Nº 1857. — CONVENIO¹ ENTRE ESPAÑA E ITALIA SOBRE EL TRATO FISCAL DE LAS COMPAÑIAS FIRMADO. EN MADRID, EL 28 DE NOVIEMBRE DE 1927.

Italian and Spanish official texts communicated by the Italian Minister for Foreign Affairs. The registration of this Agreement took place October 18, 1928.

SU MAJESTAD EL REY DE ITALIA y SU MAJESTAD CATÓLICA EL REY DE ESPAÑA, animados del deseo de concertar por separado un Convenio que regule el trato fiscal que debe aplicarse en los territorios de cada una de las Altas Partes contratantes a las Compañías domiciliadas en los territorios de la otra, han nombrado con este objeto sus Plenipotenciarios :

SU MAJESTAD EL REY DE ITALIA :

al Excmo Señor Noble Giuseppe MEDICI DE LOS MARQUÉS DEL VASCELLO, Embajador de S. M. el Rey de Italia ;

SU MAJESTAD CATÓLICA EL REY DE ESPAÑA :

al Excmo Señor Teniente General D. Miguel PRIMO DE RIVERA y ORBANEJA, Marqués de Estella, Presidente de Su Consejo de Ministros y Su Ministro de Estado, Grande de España, condecorado con la Gran Cruz Laureada de la Real y Militar Orden de San Fernando, Caballero Gran Cruz de las Ordenes de San Hermenegildo, del Mérito Militar, del Mérito Naval, de San Mauricio y San Lázaro de Italia, etcétera, etc., Su Gentilhombre de Cámara con Ejercicio y Servidumbre,

Los cuales, después de haberse comunicado sus plenos poderes respectivos, hallados en buena y debida forma, han convenido lo siguiente :

Art. 1.

Las Sociedades de toda clase, civiles, comerciales, industriales, financieras y de seguros, constituidas según las leyes de uno de los dos países contratantes, así como sus filiales, sucursales y agencias, no estarán sujetas en el territorio del otro a derechos, gravámenes, impuestos generales o locales de cualquier denominación, distintos o más elevados de los que se perciban de las Sociedades del país.

Art. 2.

En lo que concierne a los impuestos sobre el capital, rentas o beneficios, cada una de las Altas Partes contratantes no gravará a las Sociedades de la otra, así como a sus filiales, sucursales o agencias, más que por la parte del activo social que tengan investido en su territorio, de los bienes que en el

¹ The exchange of ratifications took place at San Sebastian, September 10, 1928.

¹ TRANSLATION.

No. 1857. — AGREEMENT BETWEEN SPAIN AND ITALY REGULATING THE FISCAL TREATMENT OF COMPANIES. SIGNED AT MADRID, NOVEMBER 28, 1927.

HIS MAJESTY THE KING OF ITALY and HIS CATHOLIC MAJESTY THE KING OF SPAIN, being desirous of concluding an Agreement regulating the fiscal treatment to be accorded in the territory of each of the High Contracting Parties to companies domiciled in the territory of the other, have appointed as their Plenipotentiaries for this purpose :

HIS MAJESTY THE KING OF ITALY :

His Excellency the Noble Giuseppe MEDICI DEI MARCHESI DEL VASCCELLO, Ambassador of His Majesty the King of Italy ;

HIS CATHOLIC MAJESTY THE KING OF SPAIN :

His Excellency Lieutenant-General Don Miguel PRIMO DE RIVERA, Marquis of Estella, President of the Council of Ministers and Minister for Foreign Affairs, Grandee of Spain, Grand Cross with laurels of the Royal and Military Order of St-Ferdinand, Knight Grand Cross of the Orders of St. Hermenegild, of military Merit, of Naval Merit ; of the Italian Order of Saints Maurice and Lazarus, etc., etc., his Gentleman-in-Waiting *con Ejercicio y Servidumbre*;

Who, having communicated to each other their full powers, found in good and due form, have agreed as follows :

Article 1.

Civil, commercial, industrial, financial and insurance companies of every kind constituted in accordance with the laws of one of the two Contracting Parties, as well as their subsidiary enterprises, branches and agencies, shall not be required, in the territory of the other Party, to pay any general or local duties, charges or taxes of any nature other or higher than those which are, or in future may be levied on companies of the country itself.

Article 2.

In levying taxes on capital and income, neither of the High Contracting Parties may tax companies of the other Party or their subsidiary enterprises, branches or agencies except in respect of that part of their assets which the companies hold invested in its territory, the property they possess therein, their bills in circulation therein, the income they earn therein and the business they transact therein ; nor shall the Contracting Parties apply rates of taxation higher than those applied in the case of the country's own companies.

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

Article 3.

In view of the foregoing Articles, banks of Italian nationality shall not, in Spain, be required to pay the tax levied under Article 4, Tariff 3, clause 2, paragraph *b*) of the Law concerning the taxation of income derived from movable wealth, as modified on September 22, 1922. This rule shall apply in cases in which this tax has been definitively paid on the date of the signing of this Agreement.

Article 4.

In the evaluation of income or capital taxable under the provisions of Article 2, each of the High Contracting Parties shall follow its own laws and rules.

If the laws of either of the High Contracting Parties stipulate, for any kind of company, that the amount of taxation to be paid by companies of the other Contracting Party possessing establishments in the territory of the former must be calculated on the basis of a percentage of the company's total income or capital, this percentage shall be determined according to the following rules :

(*a*) In the case of Deposit Banks, the percentage shall not exceed the ratio between the total amount of the current accounts — at sight or at notice — and the bank deposits which the Bank possesses in the territory in which the tax is levied, and the total amount of the Bank's general current accounts and banking deposits, under whatever heading of the balance sheet the latter may be included, if the authorities of the country which levies the tax consider that they are, from an economic point of view, to be regarded, in whole or in part, as such deposits.

The expression "Deposit Bank" shall, for the purposes of this clause, be taken to mean a bank the principal "liabilities" transactions of which consist, according to its general balance sheet, of deposits and current accounts withdrawable at sight or at six months notice, and of which the most important "assets" transactions consist of the discounting of bills of exchange, commercial promissory notes and loans which can all be called in on demand or at six months notice, and investments in public funds.

(*b*) In the case of Insurance Companies, the percentage should not as a general rule exceed the ratio between the premiums collected in the territory in which the tax is to be paid, and the total premiums collected by the Companies.

(*c*) In other cases, the percentage should be determined by comparing the capital or the assets, or the general business turnover, or the income, or the volume of purchases or sales, or any combination of these factors; in any case, however, the percentage shall not exceed the ratio between the figures for each of these factors, or the combination of factors which may be taken, calculated in the territory in which the tax is to be paid, and the corresponding figures for the total transactions of the company.

Article 5.

For the purposes of the preceding Article, companies or their subsidiary enterprises, branches, or agencies must submit to the authorities of the country to which the taxes are due all documents which, according to the laws and regulations, have to be submitted by companies of the country itself, within the periods laid down in these laws and regulations.

Moreover, companies or their subsidiary enterprises, branches and agencies may be called upon by the authorities in question to submit, within a period of not less than twenty days, a declaration indicating the total or partial figures in respect of the country which levies the taxes, for the factor or factors referred to in (*a*), (*b*) and (*c*) of the previous Article, on which the calculations for the determination of the taxable capital or income are to be based.

Article 6.

Should a company fail to submit, within the periods and in the form stipulated by the laws and regulations of the country and by the provisions of the present Agreement, the documents and particulars which it is required to submit in virtue of these provisions, or should it make false declarations or hinder the work of the authorities in verifying statements and documents, the administrative authorities shall calculate the percentage referred to in Article 4 on the basis of such figures as they may consider equitable.

Article 7.

The provisions of the present Agreement, apart from those contained in Article 3, shall be applied by the Spanish authorities in calculating the taxes on capital or income, to Italian companies established in Spain, and to the subsidiary enterprises, branches and agencies of these companies, whose percentage was not published by the Administration in the "*Gaceta de Madrid*" previous to June 1, 1927. If the percentage has already been published by the Administration, this percentage shall be regarded as final.

Article 8.

If the laws of one of the High Contracting Parties do not allow a right of appeal against the calculation of the percentages of capital or income made by the authorities according to the rules laid down in Article 4, the percentage must be communicated in the legal or usual form to the companies concerned.

The latter, if they consider that certain factors which they hold to be important have not been taken into account in making the evaluation, or if they disagree on any other grounds with the evaluation communicated to them, may lodge a claim with the Minister of Finance within thirty days from the date of notification. At the request of the companies this time limit may be extended to sixty days as from the date on which notification was received.

The Minister of Finance shall, with the assistance of any experts he may desire to consult, and after hearing the arguments of the companies concerned, take a decision from which there shall be no further appeal. Until this decision has been reached or until the above time-limits have elapsed without the company making appeal, the evaluation shall not become legally operative.

In order to be able to avail themselves of the remedy referred to in this Article, companies must have duly submitted the declarations and documents requested by the authorities in conformity with the laws and regulations of the country and the provisions of the present Agreement within the time limits and in the form prescribed.

If either of the High Contracting Parties allows a procedure for evaluations made by the authorities other than that specified in the present Article, such procedure shall be followed in the case of any claims submitted.

Article 9.

The present Agreement, drawn up in two original copies, one in Italian and the other in Spanish, both of which shall be authentic, shall be ratified and the ratifications shall be exchanged at Madrid.

It shall come into force eight days after the exchange of ratifications and shall remain in force for twelve months after it has been denounced by either of the High Contracting Parties.

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

Done at Madrid on November 28, 1927. Year VI.

(L. S.) Giuseppe MEDICI DEL VASCELLO. (L. S.) Miguel PRIMO DE RIVERA.