

N° 3304.

AUTRICHE ET POLOGNE

Traité en vue d'éviter la double imposition en matière d'impôts directs et de régler l'assistance judiciaire en matière fiscale, avec protocole final. Signés à Vienne, le 22 avril 1932.

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AUSTRIA AND POLAND

Treaty for the avoidance of Double Taxation in the Field of Direct Taxes and to provide for Judicial Assistance in connection with Fiscal Matters, and Final Protocol. Signed at Vienna, April 22, 1932.

TEXTE ALLEMAND. — GERMAN TEXT.

N^o 3304. — VERTRAG¹ ZWISCHEN DER REPUBLIK ÖSTERREICH UND DER REPUBLIK POLEN, ZUR VERMEIDUNG DER DOPPEL-BESTEuerung AUF DEM GEBIETE DER DIREKTEN STEUERN, SOWIE ÜBER RECHTSHILFE IN ABGABENSACHEN. GEZEICHNET IN WIEN, AM 22. APRIL 1932.

German and Polish official texts communicated by the Polish Delegate accredited to the League of Nations. The registration of this Treaty took place December 12, 1933.

DIE REPUBLIK OESTERREICH
und

DIE REPUBLIK POLEN

haben, von dem Wunsche geleitet, auf dem Gebiete der direkten Steuern die Doppelbesteuerung zu vermeiden, sowie die Rechtshilfe in Abgabensachen anzubahnen, beschlossen, einen Vertrag abzuschliessen. Zu diesem Zwecke haben als Bevollmächtigte ernannt :

DER BUNDESPRÄSIDENT DER REPUBLIK OESTERREICH :

Herrn Dr. Alfred KEMPF, Sektionschef im Bundesministerium für Finanzen in Wien
und Herrn Dr. Rudolf EGGER, Ministerialrat im Bundesministerium für Finanzen,

DER PRÄSIDENT DER REPUBLIK POLEN :

Herrn Juliusz ŁUKASIEWICZ, ausserordentlichen Gesandten und bevollmächtigten Minister der Republik Polen in Wien und
Herrn Edward WERNER, Abteilungsvorstand im Finanzministerium in Warschau.

Die Bevollmächtigten haben, nachdem sie sich ihre Vollmachten mitgeteilt und diese als richtig befunden haben, folgendes vereinbart :

Artikel 1.

1) Gegenstand dieses Vertrages sind :

a) insoweit die Bestimmungen der Artikel 2-12 in Betracht kommen, die vom Staate (Bunde) und von sonstigen öffentlich-rechtlichen Gebietskörperschaften erhobenen gegenwärtigen und zukünftigen direkten Steuern vom Ertrag, Einkommen, Vermögen und vom Gewerbebetriebe (Berufsbeschäftigung) sowie Zuschläge aller Art zu den erwähnten Steuern,

b) insoweit die Bestimmungen des Artikels 13 in Betracht kommen, die vom Staate (Bunde) und sonstigen öffentlich-rechtlichen Gebietskörperschaften erhobenen öffentlichen

¹ The exchange of ratifications took place at Warsaw, November 7, 1933.

¹ TRANSLATION.

No. 3304. — TREATY BETWEEN THE REPUBLIC OF AUSTRIA AND THE POLISH REPUBLIC, FOR THE AVOIDANCE OF DOUBLE TAXATION IN THE FIELD OF DIRECT TAXES AND TO PROVIDE FOR JUDICIAL ASSISTANCE IN CONNECTION WITH FISCAL MATTERS. SIGNED AT VIENNA, APRIL 22, 1932.

THE REPUBLIC OF AUSTRIA and THE POLISH REPUBLIC, being desirous of avoiding double taxation in the field of direct taxes, as also of providing for judicial assistance in connection with fiscal matters, have resolved to conclude a Treaty, and for this purpose have appointed as their Plenipotentiaries :

THE FEDERAL PRESIDENT OF THE REPUBLIC OF AUSTRIA :

Dr. Alfred KEMPF, Chief of Section at the Federal Ministry of Finance at Vienna, and
Dr. Rudolf EGGER, Ministerial Counsellor at the Federal Ministry of Finance ;

THE PRESIDENT OF THE POLISH REPUBLIC :

M. ŁUKASIEWICZ, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Poland at Vienna,
M. Edward WERNER, Director of Department at the Ministry of Finance at Warsaw ;

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

Article 1.

I. This Treaty concerns :

(a) For the purpose of Articles 2 to 12, all present or future direct taxes levied by the Polish State or Austrian Confederation and all or any other territorial public law corporate units on profits, income, capital or the exercise of a business or trade (professional occupation), together with all supplements or additions to such taxes.

(b) For the purpose of Article 13, all public dues levied by the Polish State or Austrian Confederation and all or any other territorial public law corporate units, together with all supplements or additions levied in conjunction with such dues, other than Customs duties and duties on consumption : for which purpose taxes on turnover and luxuries shall not be regarded as duties on consumption ².

2. All questions as to whether a particular due falls within one or other of the categories of dues mentioned above shall be determined by agreement between the Finance Ministers of the two countries.

3. The provisions of paragraph 1 a shall apply to Austrian and Polish nationals, the question of their application to other tax-payers being left for decision by agreement between the Finance

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

² In the German text " for which purpose the Tax on Turnover and Luxuries (*Umsatz- und Luxussteuer*) shall not count as a duty on consumption ".

Ministers of the two countries in each particular case. The provisions of paragraph 1 *b* shall apply to all tax-payers irrespective of nationality.

Article 2.

1. Profits, income from immovable property, including profits or income from leased agricultural or forest properties, shall be subject to direct taxation only in the State in which the property is situate.

2. The same principle shall apply equally to mortgages or similar claims secured on landed properties.

3. The provisions of paragraphs (1) and (2) shall apply equally to profits or income earned in the exercise of a trade or industry.

Article 3.

1. Trades and industries, including banking, insurance and transport undertakings other than air transport undertakings, and profits or income derived therefrom, shall be subject to direct taxation only in the State in which a business establishment is maintained for the conduct of the undertaking.

2. The term "business establishment" (*Betriebsstätte*) shall be taken to mean the head office, branch establishments, workshops or factories, offices, places of purchase or sale, permanent warehouses or other permanent establishments for the conduct of the business by the owner or his partners or permanent representatives.

3. If one and the same undertaking has business establishments in each of the two Contracting States, it shall be subject to direct taxation in each State only in proportion to the volume of business done by the establishment situate in that State.

4. The Finance Ministers of the two States may issue agreed regulations for the equitable apportionment of the profits or income derived from such undertakings.

5. Participations in undertakings in the form of companies, other than participations in the form of stocks or shares in mining companies (*Gewerkschaften*), share companies (*Aktiengesellschaften*) and commandite share companies (*Kommanditgesellschaften auf Aktien*), shall count as profit-earning undertakings.

6. The Polish Government shall have the right to tax directly purchases of raw materials, agricultural or forest products, domestic animals, poultry and other articles, where such purchases are effected, without the maintenance of a business establishment, as "trade purchases" (*skup zawodowy*) within the meaning of the Polish Law concerning the State Tax on Commercial Occupations (*podatek przemysłowy*) as amended by the Finance Minister's Proclamation of January 27, 1932 (*Dziennik Ustaw Rzeczypospolitej Polskiej*, No. 17, item 110) with a view to resale or export. Taxation in Austria in accordance with the preceding paragraphs shall not be affected thereby.

7. Air transport undertakings shall be subject to taxation only in the State in which the centre of effective management of the undertaking is situate.

Article 4.

Professional or other activities including the liberal professions, and profits or income derived therefrom, shall be subject to direct taxation only in the State in which such activities are carried on from a permanent centre. If there are permanent centres in both States, the provisions of Article 3, paragraphs 3 and 4, shall be applicable, *mutatis mutandis*.

Article 5.

1. Emoluments (salaries, wages or other remuneration of labour), which are paid in respect of an existing service or wage relationship, shall be subject to direct taxation only in the State in which the remunerated activity is carried on : if such activity extends to both States or to a number of States, the recipient of the emoluments shall be taxable in the State in which he is domiciled. Retired pay, pensions and the like, which are paid in respect of a post service or wage relationship, shall be subject to taxation only in the State in which the recipient is domiciled. In cases of double domicile the provisions of Article 8, paragraph 2, shall be applicable.

2. Salaries and pensions of any kind, which are paid out of the funds of territorial public law corporate units, shall be subject to direct taxation only in the State from which they are derived.

Article 6.

The special tax on directors' fees and all or any other emoluments, not being income received in respect of a service or wage relationship, which are paid to the members of the representative managing bodies of share companies or other corporations (*Ertragsteuer von Tantiemen*) (*podatek od przychodu z tantiem*) shall accrue exclusively to the State, in which the effective management of the corporation paying the fees or emoluments is situate.

Article 7.

The tax on income from capital and annuities (*Kapitalertrags- oder Rentensteuer*) (*podatek od Kapitałów lub rent*), derived from the investment of movable capital assets and, in particular, interest and income from invested savings, uncharged claims, bonds and debentures, deposits on deposit or current account and securities of any kind, shall accrue exclusively to the State in whose territory the obligor has his domicile or, if a legal person, his seat of effective management.

Article 8.

1. Where the provisions of preceding articles are not applicable, Austrian and Polish nationals shall be subject to direct taxation only in the State in which they have their domicile (*Wohnsitz*) or, in default of domicile, their residence (*Aufenthalt*).

2. If there is a domicile in both States, the tax-payer shall be taxable in each State only in respect of that part of the amount taken as the basis of assessment which corresponds to the proportion of the total period for which the tax is assessed during which he resided in the State concerned. Residence in a third State during the period for which the tax is assessed shall count as residence in the State of which the tax-payer is a national. Should one of the domiciles in question be the sole domicile of the tax-payer's family, at least one-half of the amount taken as the basis of assessment shall be taxable in the State in which such domicile is situate. In the case of persons domiciled in third States as well as in the Contracting States special arrangements may be made by the Finance Ministers in each particular instance. Legacies in abeyance shall be taxable by the State of which the testator was a national.

3. Domicile (*Wohnsitz*) for the purpose of this Treaty shall mean any habitation occupied under conditions which imply an intention to retain it continuously.

Article 9.

The principles applicable under preceding Articles to the taxation of income shall apply, *mutatis mutandis*, to the current tax on property (*Vermögenssteuer*) (*podatek majatkowy*).

Article 10.

1. The preceding provisions shall be applicable, *mutatis mutandis*, to legal persons, their centre of effective management being taken as equivalent to the domicile of physical persons.

2. The taxation of legal persons on profits of the kind specified in Article 2 shall not thereby be affected, provided such profits do not accrue to a business establishment in the other State.

Article 11.

The present Treaty does not concern the taxation of hawking or peddling or trading at fairs, which is left in both States to internal legislation.

Article 12.

To avoid double taxation in cases not explicitly governed by this Treaty, and to eliminate questions as to the interpretation of particular provisions of the Treaty and difficulties in the execution thereof, and further with a view to uniformity of procedure in individual cases, the Finance Ministers of the two States shall concert together for the issue of appropriate instruction conforming with the spirit of the Treaty.

Article 13.

In the apportionment of public dues the two States shall afford each other mutual legal assistance in connection with assessment and appeal proceedings as well as in connection with the service of documents. They shall further afford each other mutual legal assistance in connection with the collection of public dues. The issue of executory provisions and, in particular, provisions with regard to the extent of the judicial assistance to be afforded in connection with the collection of public dues, the instruments and agents to be employed, and the transfer of the proceeds of executions and conversion of the sums to be collected, is reserved for special agreement between the Finance Ministers of the two States.

Article 14.

1. This Treaty shall be ratified, and the instruments of ratification shall be exchanged at Warsaw at the earliest possible date.

2. The Treaty shall come into force 14 days after the exchange of the instruments of ratification, and shall be applicable to taxes relating to the period on and after January 1, 1932.

3. This Treaty shall remain in force so long as it is not denounced by one of the Contracting Parties: should it be denounced not less than six months before the close of a calendar year, it shall

cease to be in force in the next calendar year : if denounced less than six months before the close of a calendar year, it shall cease to be in force in the next calendar year but one.

In faith whereof the Plenipotentiaries have signed the present Treaty in Vienna this twenty-second day of April, one thousand nine hundred and thirty-two, in two identic copies in Polish and German respectively, both texts being equally authentic.

For the Republic of Austria :

Dr. Alfred KEMPF.

Dr. Rudolf EGGER.

For the Polish Republic :

J. ŁUKASIEWICZ.

Edward WERNER.

FINAL PROTOCOL

In proceeding to sign the Treaty this day concluded between the Republic of Austria and the Polish Republic to avoid double taxation in the case of direct taxes and to provide for legal assistance in connection with fiscal matters, the undersigned Plenipotentiaries are agreed as follows :

If in the Polish Republic the present commercial tax on turnover (*podatek przemysłowy od obrotu*) should be replaced by a turnover tax (*podatek od obrotu*) based on the principle of lump sum payments with compensatory imposition on import, such new tax shall not come within the scope of this Treaty.

VIENNA, *April 22, 1932.*

J. ŁUKASIEWICZ.

Edward WERNER.

Dr. Alfred KEMPF.

Dr. Rudolf EGGER.