

N° 3785.

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**ALLEMAGNE ET SUÈDE**

Convention en vue d'éviter la double imposition en matière d'impôts sur les successions, et protocole final. Signés à Berlin, le 14 mai 1935.

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**GERMANY AND SWEDEN**

Convention for the Avoidance of Double Taxation in the Matter of Succession Duties, and Final Protocol. Signed at Berlin, May 14th, 1935.

TEXTE ALLEMAND. — GERMAN TEXT.

N<sup>o</sup> 3785. — ABKOMMEN <sup>1</sup> ZWISCHEN DEM DEUTSCHEN REICH UND DEM KÖNIGREICH SCHWEDEN ZUR VERMEIDUNG DER DOPPEL-BESTEuerung AUF DEM GEBIETE DER ERBSCHAFTSTEUERN. GEZEICHNET IN BERLIN, AM 14. MAI 1935.

*German and Swedish official texts communicated by the Swedish Minister for Foreign Affairs. The registration of this Convention took place November 30th, 1935.*

DAS DEUTSCHE REICH und DAS KÖNIGREICH SCHWEDEN haben, von dem Wunsche geleitet, auf dem Gebiete der Erbschaftsteuern die Doppelbesteuerung zu vermeiden, das nachstehende Abkommen abgeschlossen.

Zu diesem Zwecke haben zu Bevollmächtigten ernannt :

DER DEUTSCHE REICHSKANZLER :

Den Ministerialdirektor im Auswärtigen Amt, Richard MEYER, und  
Den Ministerialdirektor im Reichsfinanzministerium, Professor Dr. Otto HEDDING,

SEINER 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) Unbewegliches Nachlassvermögen eines Angehörigen eines der beiden Staaten einschliesslich Zubehör ist den Erbschaftsteuern nur in dem Staate unterworfen, in dem das unbewegliche Vermögen liegt.

(2) Berechtigungen, auf welche die Vorschriften des bürgerlichen Rechts über Grundstücke Anwendung finden, sowie Nutzungsrechte an unbeweglichem Vermögen sind dem unbeweglichen Vermögen gleich zu achten.

(3) Für die Frage, ob ein Vermögensgegenstand [Absatz (1) und (2)] als unbeweglich anzusehen ist, sind die Gesetze des Staates massgebend, in dem der Gegenstand liegt. Was als Zubehör anzusehen ist, richtet sich nach dem Rechte des Staates, in dem sich das unbewegliche Vermögen befindet.

*Artikel 2.*

(1) Nachlassvermögen eines Angehörigen eines der beiden Staaten aus Unternehmen von Handel, Industrie oder sonstigem Gewerbe jeder Art einschliesslich der Unternehmen der Seeschifffahrt und der Luftfahrt wird wie folgt behandelt :

a) Hat das Unternehmen nur in einem der beiden Staaten eine Betriebsstätte, so ist das Vermögen den Erbschaftsteuern nur in diesem Staat unterworfen.

<sup>1</sup> The exchange of ratifications took place at Stockholm, November 18th, 1935.

<sup>1</sup> TRANSLATION.

No. 3785. — CONVENTION BETWEEN THE GERMAN REICH AND THE KINGDOM OF SWEDEN FOR THE AVOIDANCE OF DOUBLE TAXATION IN THE MATTER OF SUCCESSION DUTIES. SIGNED AT BERLIN, MAY 14TH, 1935.

THE GERMAN REICH and THE KINGDOM OF SWEDEN, being desirous of preventing double taxation in the matter of succession duties, have concluded the following Convention.

To this end they have appointed as their Plenipotentiaries :

THE CHANCELLOR OF THE GERMAN REICH :

Monsieur Richard MEYER, Ministerial Director at the Ministry of Foreign Affairs, and  
Dr. Otto HEDDING, Ministerial Director at the Finance Ministry ;

HIS MAJESTY THE KING OF SWEDEN :

Monsieur E. AF WIRSÉN, Swedish Minister in Berlin ;

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

*Article 1.*

1. Immovable property and accessories thereto left by a national of one of the two States shall be liable to succession duties only within the State in which such property is situate.

2. Rights which are governed by the provisions of the Civil Code referring to landed estate and rights of usufruct over immovable property shall be regarded as equivalent to immovable property.

3. The question whether any object (paragraphs 1 and 2) is to be regarded as immovable property shall be settled in conformity with the legislation of the State in which the object is situate. Any question as to what constitutes accessories shall be decided in accordance with the laws of the State in which the immovable property is situate.

*Article 2.*

1. Property left by a national of one of the two States in commercial, industrial or other business undertakings of all kinds, including maritime shipping and air navigation undertakings, shall be subject to the following rules :

(a) If the undertaking has a business establishment in only one of the two States, the property shall be liable to succession duties in that State alone.

(b) If the undertaking has a business establishment in both States, the property shall be liable to succession duties in each State in so far as it belongs to the business establishment situated in that State.

<sup>1</sup> Translated by the Secretariat of the League of Nations, for information.

2. Immovable property belonging to a business undertaking of the kind mentioned in paragraph 1 shall be dealt with in accordance with Article 1.

#### Article 3.

1. The following provisions shall apply to property left by a national of one of the two States not covered by Articles 1 or 2 :

(a) If the deceased at the time of his death had his domicile in only one of the two States, such property shall be liable to succession duty in that State alone.

(b) If the deceased at the time of his death had a domicile in both States, such property shall be liable to succession duty only in the State in which the supreme financial authorities of the two States agree that his interests were centred. If agreement cannot be reached regarding such centre, the deceased shall be considered to have been domiciled only in the State of which he was a national at the time of his death ; if the deceased was a national of both States at the time of his death, the supreme financial authorities of the two States shall agree upon special provisions regarding each particular case.

(c) In all other cases the property in question shall only be liable to succession duty in the State of which the deceased was a national at the time of his death ; the provision contained in the second half of the second sentence of paragraph (b) shall be applicable *mutatis mutandis*.

2. For the purposes of the present Convention, the term " domicile " shall mean the place in which a person has an abode in circumstances which justify the assumption that he intends to reside there.

#### Article 4.

1. Debts which stand in an economic relationship with the property mentioned in Articles 1 or 2 or which are secured on such property shall be deducted from the value of such property. Other debts shall be deducted from the value of the property to be dealt with under Article 3.

2. If, in the particular case in question, property of the kind mentioned in Articles 1 or 2 is liable to taxation in both States, debts which stand in an economic relationship with property of this kind liable to taxation in one of the two States or secured on such property shall first be deducted from the value of such property. Any balance not covered in this way shall be deducted from the value of other property liable to taxation in that State. If there is no other property liable to taxation in that State, or if a balance remains even after such deduction, such balance shall be deducted from the value of the property liable to taxation in the other State.

3. If a balance remains after the application of the second sentence of paragraph 1, the provisions of the second and third sentences of paragraph 2 shall be applicable *mutatis mutandis*.

#### Article 5.

If a succession or inheritance is liable to taxation partly in one State and partly in the other, the Contracting States may nevertheless take as basis the value of the total succession or inheritance in calculating the rate of taxation.

#### Article 6.

With a view to the avoidance of double taxation in cases not regulated by the present Convention or arising out of its application, as well as in cases of difficulties or doubts regarding the interpretation and application of the present Convention, the supreme financial authorities of the two Contracting States may agree to special arrangements.

*Article 7.*

For the purposes of the present Convention, the following shall be regarded as succession duties :

In the German Reich :

The succession duty, in so far as acquisitions by inheritance or bequest (*Zweckzuwendung*) are subject thereto, and any duties which may hereafter be substituted therefor ;

In Sweden :

The succession duty and any duties which may hereafter be substituted therefor.

*Article 8.*

1. The present Convention, done in duplicate in German and Swedish, shall be ratified, in the case of Sweden by His Majesty the King of Sweden with the consent of the Riksdag. The instruments of ratification shall be exchanged as soon as possible at Stockholm. The Convention shall come into force on the day following the exchange of the instruments of ratification, and shall apply in all cases in which the person leaving the property dies after that date.

2. The present Convention shall remain in force until denounced by either of the Contracting States. Denunciation must take place at least eight months before the end of a calendar year. If denounced within the period laid down, the Convention shall cease to be operative on the expiration of the current calendar year, and if not denounced within the period laid down, on the expiration of the next calendar year, for all cases in which the person owning the property dies after the close of the said year.

In faith whereof the Plenipotentiaries of the two States have signed the present Convention.

BERLIN, *May 14th*, 1935.

R. MEYER.  
Otto HEDDING.  
E. AF WIRSÉN.

## FINAL PROTOCOL.

On proceeding to sign the Convention between the German Reich and the Kingdom of Sweden for the avoidance of double taxation in the matter of succession duties concluded on to-day's date, the undersigned Plenipotentiaries have made the following identical declarations, which shall form an integral part of the Convention :

(1) It is agreed that as regards claims secured on mortgages, each of the two States shall apply its own legislation.

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

(2) It is agreed that estate of the kind mentioned in Article 1 which is not situate in either of the two States, and estate of the kind mentioned in Article 2 which does not belong to an establishment in either of the two States, shall be dealt with in accordance with Article 3.

(3) It is agreed that participations in undertakings constituted in the form of companies, with the exception of mining stock (*Kuxen*), shares, dividend warrants, and other securities, and of participations in limited liability companies, shall be dealt with in the

same way as the property of commercial, industrial or other business undertakings of all kinds mentioned in Article 2, paragraph 1.

(4) It is further agreed that in determining the scope of the term " business establishment " for the purposes of Article 2, paragraph 1, the provisions of the Convention concluded between the Contracting States on April 25th, 1928, for the adjustment of internal and external taxation and in particular for the prevention of double taxation in the matter of direct taxes (Article 3, Final Protocol, No. 6) shall be applied.

(5) It is agreed that debts (Article 4) may only be deducted from the value of fideicommissa, German hereditary estates (*Erbhöfe*) and similar inalienable property in so far as they constitute a charge or are secured on such property.

(6) It is agreed that the taxes which may hereafter be imposed in lieu of the succession taxes at present levied in the two States which are mentioned in Article 7 shall also include death duties and shall not include taxes on gifts.

(7) The present Convention shall not affect the immunities which are or may hereafter be granted to diplomatic or consular officials in virtue of the general rules of international law. If in virtue of such immunities they are not liable to succession taxes in their country of residence, the right of taxation shall be reserved to the State appointing them.

BERLIN, *May 14th*, 1935.

R. MEYER.  
Otto HEDDING.  
E. AF WIRSÉN.