

N° 1097.

AUTRICHE ET HONGRIE

Traité en vue d'éviter la double imposition en matière de taxes successorales, avec protocole final, signés à Vienne, le 8 novembre 1924.

AUSTRIA AND HUNGARY

Treaty for the Avoidance of Double Taxation in respect of Death Duties, with Final Protocol, signed at Vienna, November 8, 1924.

¹ TRANSLATION.

No. 1097. — TREATY BETWEEN AUSTRIA AND HUNGARY FOR THE AVOIDANCE OF DOUBLE TAXATION IN RESPECT OF DEATH DUTIES, SIGNED AT VIENNA, NOVEMBER 8, 1924.

THE REPUBLIC OF AUSTRIA and THE KINGDOM OF HUNGARY, being desirous of avoiding double taxation in respect of death duties, have concluded the following Treaty.

For this purpose they appointed as their Plenipotentiaries :

THE REPUBLIC OF AUSTRIA :

Dr. Oskar WOLLHEIM, Chief of Section in the Federal Ministry of Finance ;
Dr. Alfred KEMPF, Councillor in the Federal Ministry for Finance ;

THE KINGDOM OF HUNGARY :

M. Constantin von MASIREVICH, Envoy Extraordinary and Minister Plenipotentiary at Vienna ;
Dr. Alexander KNEPPO, Councillor in the Royal Hungarian Ministry of Finance ;

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

Article 1.

(1) Immovable property, including accessories thereto, bequeathed by a national of one of the two States, shall be liable to death duties only within the State in which such property is situate.

(2) Rights to which the provisions of civil law referring to immovable property are applicable; rights of usufruct over immovable property and rights which are secured by, or constitute a charge upon, 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 laws of the State in which the object is situate. Any decision as to what constitutes accessories shall be taken in accordance with the laws of the State in which the immovable property is situate.

(4) Participation in an undertaking or in the property of a branch of an undertaking, so far as it is not derived from shares or mining shares (*Kuxen*), shall be liable to death duties only in that State in which the undertaking or the branch is situate.

Article 2.

(1) With regard to such portion of an estate bequeathed by a national of one of the two States as is not dealt with in accordance with Article 1, the following provisions shall apply :

(a) Such property shall in principle be subject to death duties in the State of which the testator or deviser was a national at the time of his death.

¹ Translated by the Secretariat of the League of Nations.

- (b) If, however, at the time of his death the testator or devisor had a domicile, or, failing such domicile, his permanent residence in the other State, that portion of the property bequeathed which is situate in such State shall be liable to death duties in that State, except in the case specified in paragraph (c).
 - (c) If at the time of his death the testator or devisor had his domicile in both States, the property bequeathed shall be liable to death duties only in the State of which the testator or devisor was a national.
 - (d) The method of dealing with property bequeathed by persons who were nationals of both States shall be the subject of a special agreement in each particular case between the Finance Ministers of the two States.
- (2) For the purposes of the present Treaty a domicile is the place where a person has a dwelling, provided that there is good reason to assume that it is his intention to continue to occupy such dwelling permanently.
- (3) For the purposes of the present Treaty a permanent residence is the place where a person resides, provided that there is good reason to assume that it is not his intention to remain merely temporarily at the place or in the country in question.

Article 3.

Questions as to where the property referred to in Article 2 is situate shall be decided as follows :

- (a) In the case of debts due to the estate, in accordance with the domicile or, in default of such, the permanent residence of the testator or devisor.
- (b) In the case of securities and bills payable to order (bills of exchange, money orders, etc.) in accordance with the place of their deposit at the time of the testator's or devisor's death.
- (c) In the case of rights which are entered in a book or register kept by the authorities for the registration of persons holding such rights, in accordance with the place in which such book or register is kept.

Article 4.

Legacies which do not relate to a definite object shall be taken from the property specified in Article 2, in so far as this property is sufficient, where necessary in proportion to the value of the parts of the property of this nature situate in the two States. If such property is insufficient to enable the said legacies to be paid in full, the balance shall be taken from the immovable property specified in Article 1, and if necessary in proportion to the value of the property of this nature situate in each of the two States.

Article 5.

(1) Debts and charges which encumber or are secured on the property specified in Article 1 shall be paid out of the proceeds of such property. Any portion of such debts and charges not thus met shall, if the testator or devisor was personally responsible for the debt, be taken from the property specified in Article 2.

(2) The provisions of Article 4 shall apply, *mutatis mutandis*, in the case of other debts and charges.

Article 6.

If, in accordance with the provisions of the present Treaty, property bequeathed is liable to death duties partly in the one and partly in the other State, the duty to be charged shall be estimated not on the value of the total property bequeathed, but only on the value of the property liable to duty in each of the two States.

Article 7.

For the purposes of the present Treaty, the following duties shall be considered death duties :

In the Republic of Austria :

Inherited property duty (*Erbgebühren*) ; supplementary inherited property duties (*Erbgebührenzuschläge*) ; estate duties (*Nachlassgebühren*), and fees levied in connection with the transfer of immovable property on death, together with any duties which may subsequently be substituted for them.

In the Kingdom of Hungary :

Inherited property duty and fees levied in connection with the transfer of immovable property on death, together with any duties which may subsequently be substituted for them.

Article 8.

The present Treaty, which has been drawn up in both German and Hungarian, shall be ratified, and the instruments of ratification shall be exchanged at Budapest as soon as possible. It shall enter into force on the day of the exchange of the instruments of ratification and shall apply to all cases in which the testator or devisor dies after that date.

The present Treaty shall remain in force unless denounced by one of the Contracting Parties at least six months before the expiration of a calendar year. If the denunciation has been duly notified, the Treaty shall cease to be valid as from the end of the calendar year in all cases in which the testator or devisor dies after the end of the calendar year referred to.

Both texts of the Treaty are authentic. When the Treaty is ratified the two authentic texts shall be published in each country in the official collection of laws.

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

VIENNA, November 8, 1924.

For the Republic of Austria :

(Signed) Dr. OSKAR WOLLHEIM.

(Signed) Dr. ALFRED KEMPF.

For the Kingdom of Hungary :

(Signed) MASIREVICH.

(Signed) Dr. KNEPPO.

FINAL PROTOCOL.

On signing the Treaty concluded this day between the Republic of Austria and the Kingdom of Hungary for the avoidance of double taxation in respect of death duties, the undersigned Plenipotentiaries made the following declarations, which shall form an integral part of the present Treaty.

(1) Nothing in this Treaty shall affect the right of either of the two States to apply its own legal regulations, more especially those which make liability to pay death duties dependent upon the person of the transferee, to any property which under the terms of the present Treaty is not liable to death duties in the other State.

(2) Doubtful cases which may arise in the execution of the present Treaty shall be decided by agreement between the Finance Ministers of the two States.

VIENNA, *November 8, 1924.*

For the Republic of Austria :

(Signed) Dr. OSKAR WOLLHEIM.

(Signed) Dr. ALFRED KEMPF.

For the Kingdom of Hungary :

(Signed) MASIREVICH.

(Signed) Dr. KNEPPO.