

N° 1104.

ALLEMAGNE ET HONGRIE

Traité concernant la protection judiciaire et le concours réciproque des tribunaux et des autorités des deux pays, en matière d'impôts, avec Protocole final, signé à Berlin, le 6 novembre 1923.

GERMANY AND HUNGARY

Treaty concerning Legal Protection and Collaboration of the Courts and Authorities of the Two Parties, in cases connected with Taxation, with Final Protocol, signed at Berlin, November 6, 1923.

¹ TRANSLATION.

No. 1104. — TREATY BETWEEN GERMANY AND HUNGARY CONCERNING LEGAL PROTECTION AND COLLABORATION OF THE COURTS AND AUTHORITIES OF THE TWO PARTIES, IN CASES CONNECTED WITH TAXATION, SIGNED AT BERLIN, NOVEMBER 6, 1923.

THE KINGDOM OF HUNGARY and THE GERMAN REICH, being desirous of ensuring legal protection for nationals of the Kingdom of Hungary in Germany and of nationals of Germany in the Kingdom of Hungary, and of ensuring mutual official and legal assistance from the authorities of both States in matters of taxation,

Have concluded the following Treaty.

For this purpose they have appointed as their Plenipotentiaries :

THE KINGDOM OF HUNGARY :

Dr. Gustav EMICH VON EMÖKE, Envoy Extraordinary and Minister Plenipotentiary,

Dr. Alexander KNEPPO, Ministerial Councillor at the Royal Hungarian Ministry of Finance ;

THE GERMAN REICH :

Baron Ago VON MALTZAN, Under-Secretary of State for Foreign Affairs,

Dr. Herbert DORN, Director at the Ministry of Finance of [the] Reich and [Ministerial Councillor,

Who, having exchanged their [full powers, found [to be in good [and [due form, have agreed as follows :

Article I.

The following shall be regarded as taxes for the purpose of the present Treaty ; public taxes levied in the Kingdom of Hungary on behalf of the State, and in the German Reich on behalf of the Reich and the States, as also all supplementary or additional taxes levied, in either country conjointly with the above-mentioned public taxes, on behalf of other public bodies recognised by law. Customs duties and taxes on consumption shall not, however, be included ; the tax on business turnover and the luxury tax shall not be regarded as taxes on consumption for the purposes of the present Treaty.

I. LEGAL PROTECTION IN RESPECT OF TAXATION.

Article II.

(1) Nationals of either State shall be entitled, in the territory of the other State, to the same treatment in regard to fiscal matters as the nationals of the last-named State, and more particularly

¹ Translated by the Secretariat of the League of Nations.

to the same protection in their dealings with the revenue authorities, the courts of law, and the revenue or administrative tribunals.

(2) Legal persons — including companies and partnerships, institutions, charitable foundations and other property set aside for a particular purpose, which are not legal persons but which are liable to taxation as such — shall, if their head offices are situated in the territory of one of the two States and if they are legally constituted in accordance with the legislation of that State, be entitled to the same treatment in fiscal matters (paragraph 1) in the territory of the other State as is accorded to similar tax-paying institutions in the last-named State.

II. LEGAL ASSISTANCE IN MATTERS RELATING TO TAXATION.

Article III.

The two States undertake to afford each other mutual administrative and legal assistance in all questions relating to taxation and in all cases of flight of capital and evasion of taxation, both in regard to the assessment and fixing of taxes and sureties, and also in regard to the legal procedure for redress and to the collection of taxes.

Article IV.

(1) In cases connected with taxation, the service of legal documents and the action to be taken as a result of applications for administrative or legal assistance shall, unless otherwise provided in the special stipulations regarding recovery (Articles XI to XIII), be dealt with directly between the authorities of the two States.

(2) For the Kingdom of Hungary, the Directorate of Finance and the Inspector of Taxes in Budapest, and for the German Reich, the inland revenue offices of the various States shall be competent to deal directly with the transmission or the receipt of applications for the service of documents and other applications for administrative and legal assistance.

(3) Should the authorities to whom application is made not be competent for the locality in question, they shall duly transmit the application to the authorities who are competent, and shall notify such action immediately to the authority which made the application

Article V.

Applications made out by the authorities of the Kingdom of Hungary shall be in the national language (official language) and shall be accompanied by a translation in German; applications made out by the authorities of the German Reich shall be in the official language. The letter containing the application shall specify the authority making the application, the name and profession (or status) of the parties concerned, and, where service of the document is required, the address of the person on whom it has to be served and the nature of the document.

Article VI.

(1) The competent authority of the State to which application is made shall be responsible for service of documents. Except in the cases specified in paragraph 2, the said authority may restrict such action to causing the document to be delivered to the person to whom it is addressed, should the latter be willing to receive it.

(2) Should the State making the application express a wish to that effect, the document shall be served according to the forms prescribed, in similar cases, by the internal legislation of the State

to which application is made ; applications emanating from Hungary must, however, be accompanied by a German translation of the document to be served.

(3) Unless otherwise agreed upon, the translations prescribed in the previous paragraph shall be certified as correct by the principal official of the department which transmits the application.

Article VII.

Proof of service of documents shall be furnished either by a dated and duly certified receipt from the addressee or by a certificate from the authorities of the State to which application is made, attesting the fact of such service of documents and giving the manner and the date.

Article VIII.

(1) The authority to which application is made must comply with it and must employ the same means of coercion for that purpose as would be used for enforcing a demand made by the authority of the State to which application is made, or for enforcing an application by an interested party for the same purpose. The procedure for service shall be that prescribed by the legislation of the State to which application is made ; if, however, the authority making the application so desire, a special mode of procedure may be employed, provided that it is not incompatible with the legislation of the State to which application is made.

(2) A form of coercion which would be lawful in the territory of the State to which the application is made shall not be employed unless the State making the application would be in a position to use a similar means of coercion if a similar application were addressed to itself.

(3) Should the authorities making the application so request, they shall be notified of the time and place of the action taken in pursuance of such application. The interested parties shall be entitled to be represented or to be present at such proceedings, subject to the general regulations in force in the State to which the application is made.

Article IX.

No fees or charges of any kind shall be payable for carrying out requests for the service of documents or of demands, with the exception — in the absence of any agreement to the contrary — of compensation to persons who furnish evidence or to experts, and of sums payable to an executive agent for assistance in the cases specified in Article VI, paragraph 2, or on account of the employment of a special procedure as provided in Article VIII, paragraph 1.

Article X.

The provisions of the present Treaty shall apply to legal assistance in all procedure pertaining to recovery, unless otherwise provided in Articles XII and XIII.

Article XI.

(1) In matters relating to taxation, orders which are not appealable (decisions, judgments, orders) shall upon application — which must be made by the chief revenue authority of one State to the corresponding authority in the other State — be recognised and executed free of charge. The fact of their recognition must be explicitly stated.

(2) The orders referred to in paragraph 1 shall be executed in accordance with the legislation of the State in which execution is effected, without the parties concerned being heard.

(3) An application for execution must be accompanied by a declaration from the competent authority of the State making the application, to the effect that the decision is no longer appealable. The competence of the said authority must be certified by the highest revenue authority of the State preferring the application.

(4) When the application emanates from Hungary it shall be accompanied by a German translation of the passage of the order which contains the decision.

(5) The declaration and certificate referred to in paragraph 3, and the translation referred to in paragraph 4, shall be certified correct by the highest revenue authority of the State making the application or by a sworn translator of the State to which the application is made.

Article XII.

Provisional security, in the form of the sequestration of property, may be required from nationals of the State by which an application is made, by virtue of executory dispositions which are still open to appeal. The party concerned shall be entitled to have such sequestration removed upon giving security, the nature and value of which must be specified in the application. Article XI shall apply *mutatis mutandis*.

Article XIII.

If application is made for a specified mode of execution or a specified type of security, the request shall be complied with, provided that such mode of execution or type of security is compatible with the law of the State making application and of the State to which application is made. For the rest, the mode of execution and the type of security, and the method of enforcement, shall be in conformity with the law of the State to which application is made.

Article XIV.

(1) Administrative and legal assistance shall not be granted in proceedings against nationals of the State to which an application is made, if they have their domicile or permanent residence within the territory of that State. This provision shall not apply to requests for administrative and legal assistance in recovering claims for taxes for which the taxpayer was liable at a time when he was a national of the State making the application.

(2) Administrative and legal assistance may be refused if the State to which application for assistance is made considers such assistance likely to endanger its sovereignty or safety.

(3) Applications which involve the obtaining of information, statements or opinions, which might lawfully be demanded in the State to which application is made, from persons who are not parties to the case in their capacity as taxpayers, may be refused, if the State making application would be unable under its own national legislation to demand similar information, statements or opinions. The same condition shall be observed in regard to applications made for the communication of information concerning existing circumstances or legal relations, if the knowledge of such circumstances or relations has only been obtained as a result of an obligation to furnish information, statements or opinions which is not admissible in the territory of the State making application; this condition shall also be observed in regard to other applications which can only be complied with by disregarding the principle of commercial, business or industrial secrecy.

Article XV.

(1) If an application is conceded, either wholly or in part, the authority to whom such application is made must promptly notify the authority making application as to the action taken to give effect to the application.

(2) If an application is not conceded, the authority to whom such application is made must promptly notify the fact to the authority making application, giving all reasons in support, and information as to any circumstances with which he has become acquainted through other channels and which are of importance for any further action which is to be taken in the matter.

Article XVI.

The statutory regulations of such State regarding official reticence and secrecy shall be observed in regard to all enquiries, information, statements and opinions and any other communications furnished to a State as the result of measures of legal assistance.

III. AUTHENTICATION OF DOCUMENTS.

Article XVII.

(1) Documents relating to fiscal matters which have been accepted, drawn up or authenticated by the courts of law or the revenue or administrative tribunals in one State may, if furnished with the seal or stamp of the court, be used in connection with fiscal matters in the territory of the other State without further authentication (legalisation).

(2) The above provision shall also apply to documents which have been signed by the clerk to a court (registrar of the court), if such signature is sufficient under the laws of the State to which the court belongs.

Article XVIII.

(1) Documents which have been accepted, drawn up or authenticated by the principal revenue official or by one of the senior revenue officials in either State may, if furnished with the seal or stamp of such official, be used in the territory of the other State in matters relating to taxation, without further authentication (legalisation).

(2) The two Contracting States shall communicate to each other lists of the officials in question ; these lists may be modified or supplemented at any time by agreement between the two Administrations.

IV. FINAL CLAUSES.

Article XIX.

The two States undertake to conclude an agreement on mutual legal assistance in regard to offences against the revenue laws. The object of this agreement shall be to regulate the mutual obligations of the States in regard to extradition on account of premeditated frauds against the revenue and of premeditated offences against the laws on the export of capital and the evasion of taxation. Such obligations shall extend both to persons against whom claims are preferred and to effects confiscated or declared escheated by a definitive penal sentence or by a decision not open to appeal given by a revenue authority.

Article XX.

The chief revenue officials of the two States shall be free to conclude further arrangements in conformity with the present Treaty. They may in particular agree upon provisions regarding the transfer of sums received on account of executory proceedings and the fixing of the rate of exchange for the conversion of sums in regard to which executory proceedings are to be taken.

Article XXI.

(1) The present Treaty, which has been drawn up in Hungarian and German, shall be ratified and the instruments of ratification shall be exchanged as soon as possible in Budapest. It shall come into force on the day on which the instruments of ratification are exchanged, and shall continue in force until it is denounced by one of the Contracting Parties, such denunciation to take place at least six months before the expiration of any calendar year. If it is duly denounced as described above, the Treaty shall cease to apply after the expiration of the calendar year in question.

(2) Both texts of the Treaty are authentic. When the Treaty has been ratified, the two authentic texts will be published in each country in the official collection of laws.

(3) In faith whereof the Plenipotentiaries of both countries have signed the present Treaty and have affixed their seals thereto.

BERLIN, *November 6, 1923.*

(Signed) EMICH.

(Signed) MALTZAN.

(Signed) DR. KNEPPO SÁNDOR.

(Signed) DR. HERBERT DORN.

FINAL PROTOCOL.

On signing the Treaty concluded this day between the Kingdom of Hungary and the German Reich concerning legal protection and legal assistance in matters relating to taxation, the undersigned Plenipotentiaries made the following declarations, upon which they have agreed and which constitute an integral part of the present Treaty :

(1) The provisions of Article II, paragraphs 1 and 2, shall be interpreted as meaning that the taxpayers therein mentioned shall be placed on a footing of equality in respect of taxation, not merely theoretically, but also in practice.

(2) In order to assist in determining the extent to which mutual legal assistance can in practice be afforded, the Contracting Parties will furnish each other with explanatory statements concerning the powers of revenue officials in regard to which the fundamental principles of Hungarian and German law, so far as concerns applications for legal assistance, may be considered as in agreement. Pending the exchange and acceptance by both States of these explanatory statements, each separate application for legal assistance shall be accompanied by a certificate from the chief revenue authority of the State making the application, to the effect that an analogous application would be admissible under the laws of the latter State. The Hungarian certificate must be accompanied by a translation into German (See Article V). Article VI, paragraph 3, of the present Treaty shall be applicable, *mutatis mutandis*, to such translations.

(3) Applications for the transmission of documents cannot as a rule be accepted. Exceptions to this rule can only be allowed by agreement between the chief revenue authorities of the two Contracting Parties; applications for the forwarding of documents shall not, however, be made, unless such a step is urgently required in the interest of the State making the application. This provision shall not prejudice the right of either State to attach to its requests any documents belonging to itself which may be of assistance in the discharge of such applications.

(4) If the conditions are such that, under the regulations in force in the State to which an application is made, the proceedings have to be abandoned owing to the impossibility of recovering the taxes, the authority to whom application is made shall return the application to the authority who made it, together with a certificate that the aforesaid conditions exist and such documentary evidence thereof as is available.

(5) The measures for legal protection and legal assistance which are agreed upon in the present Treaty shall also apply to cases of taxation and to acts which relate to an earlier date.

(6) In so far as the regulations laid down in the present Treaty affect the taxes and authorities of the States of the German Reich, the consent of such States must be obtained, whenever it is requisite.

BERLIN, *November 6, 1923.*

(Signed) EMICH.

(Signed) Dr. KNEPPO SÁNDOR.

(Signed) MALTZAN.

(Signed) Dr. HERBERT DORN.
