

N° 2296.

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## AUTRICHE 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. Signés à Budapest, le 25 juin 1928.

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## AUSTRIA AND HUNGARY

Treaty regarding Judicial Protection and Assistance between the Courts and Authorities of the two Parties in Matters of Taxation, with Final Protocol. Signed at Budapest, June 25, 1928.

<sup>1</sup> TRADUCTION.

N<sup>o</sup> 2296. — TRAITÉ ENTRE LA RÉPUBLIQUE D'AUTRICHE ET LE ROYAUME DE HONGRIE CONCERNANT LA PROTECTION JUDICIAIRE ET LE CONCOURS RÉCIPROQUE DES TRIBUNAUX ET DES AUTORITÉS DES DEUX PAYS EN MATIÈRE D'IMPÔTS. SIGNÉ A BUDAPEST, LE 25 JUIN 1928.

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LA RÉPUBLIQUE D'AUTRICHE et LE ROYAUME DE HONGRIE, animés du désir de régler la protection judiciaire des ressortissants de la République d'Autriche dans le Royaume de Hongrie et des ressortissants du Royaume de Hongrie dans la République d'Autriche, ainsi que l'obligation qui incombe aux autorités administratives et judiciaires des deux Etats de se prêter un concours réciproque en matière d'impôts, ont conclu le traité suivant :

Ils ont, à cet effet, désigné pour leurs plénipotentiaires :

LA RÉPUBLIQUE D'AUTRICHE :

M. le D<sup>r</sup> Rudolf EGGER, conseiller au Ministère fédéral des Finances ;

LE ROYAUME DE HONGRIE :

M. Frantz KÖLBIG, conseiller au Ministère des Finances royal de Hongrie.

Les plénipotentiaires, après avoir échangé leurs pleins pouvoirs et les avoir reconnus en bonne et due forme, sont convenus de ce qui suit :

*Article premier.*

Sont réputés impôts au sens du présent traité, les taxes publiques perçues dans la République d'Autriche pour le compte de la Confédération, pour le compte de cette dernière en participation avec les Pays et les communes, et pour le compte des Pays, des districts et des communes ; celles perçues dans le Royaume de Hongrie pour le compte de l'Etat, des comitats et des communes, et celles qui, dans les deux pays, sont recouvrées en même temps que les taxes précitées sous forme de taxes additionnelles ou de contributions pour le compte d'autres institutions de droit public. Sont exceptés, toutefois, les droits de douane et les impôts de consommation ; l'impôt sur le chiffre d'affaires et la taxe de luxe ne sont pas considérés comme impôts de consommation au point de vue de l'application de ce traité.

*Article II.*

Les ressortissants de l'un des deux Etats jouiront, en matière d'impôts, par devant les autorités de l'autre Etat, du même traitement fiscal et de la même protection judiciaire que les ressortissants de ce dernier Etat.

*Article III.*

Les deux Etats s'engagent à se prêter un concours administratif et judiciaire réciproque dans toutes les affaires fiscales, aussi bien pour la procédure d'imposition et les mesures conservatrices que pour la procédure de recours et le recouvrement.

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<sup>1</sup> Traduit par le Secrétariat de la Société des Nations, à titre d'information.

<sup>1</sup> TRANSLATION.

No. 2296. — TREATY BETWEEN THE REPUBLIC OF AUSTRIA AND THE KINGDOM OF HUNGARY REGARDING JUDICIAL PROTECTION AND ASSISTANCE BETWEEN THE COURTS AND AUTHORITIES OF THE TWO PARTIES IN MATTERS OF TAXATION. SIGNED AT BUDAPEST, JUNE 25, 1928.

THE REPUBLIC OF AUSTRIA and THE KINGDOM OF HUNGARY, being desirous of laying down regulations regarding the legal protection to be afforded to nationals of the Austrian Republic in the Kingdom of Hungary and to Hungarian nationals in the Austrian Republic as well as regarding the obligation of the authorities of the two States to afford each other administrative and legal assistance in matters of taxation, have concluded the following Treaty :

For this purpose they have appointed as their Plenipotentiaries :

THE AUSTRIAN REPUBLIC :

Dr. Rudolf EGGER, Ministerial Councillor in the Federal Ministry of Finance ;

THE KINGDOM OF HUNGARY :

M. Frantz KÖLBIG, Ministerial Councillor in the Royal Hungarian Ministry of Finance.

The Plenipotentiaries, having communicated their full powers, found in good and due form, have agreed as follows :

*Article I.*

For the purpose of the present Treaty, taxes shall be held to mean public taxes levied in the Austrian Republic on account of the Federation or on account of the latter conjointly with the Provinces and communes, or on account of the Provinces, districts and communes ; those levied in the Kingdom of Hungary on account of the State, the Comitats and the communes, and those which, in the two States, are levied simultaneously with the aforesaid taxes in the form of supplementary duties or imposts, on account of other corporate bodies at public law. They shall not, however, include Customs duties and taxes on consumption ; the tax on business turn-over and the luxury tax shall not be regarded as taxes on consumption for the purposes of the present Treaty.

*Article II.*

The nationals of either State shall enjoy the same treatment in matters of taxation and the same legal protection on the part of the authorities of the other State as are accorded to that State's own nationals.

*Article III.*

The two States undertake to give each other mutual administrative and legal assistance in all matters of taxation both in regard to the procedure of assessing and guaranteeing taxes and in regard to the procedure of redress and to the recovery of taxes.

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

*Article IV.*

1. In matters of taxation, the service of documents and the action to be taken as are sult of requests for administrative and legal assistance shall, subject to the special stipulations with regard to execution (Articles XI to XIII), be dealt with in direct communications between the authorities of the two States.

2. In the Austrian Republic, the provincial financial authorities, and in the Kingdom of Hungary, the Finance Department, shall be competent to proceed to the direct transmission of requests for the service of documents and for administrative and legal assistance and to receive the same.

3. Should the authority to which application is made not be locally competent to deal with the matter, the request must be transmitted without further formality to the competent authority, and the authority making the request shall be notified to that effect without delay.

*Article V.*

1. Requests shall be drawn up in the official language of the State making application, and if made by the authorities of the Kingdom of Hungary, shall be accompanied by a German translation.

2. The request shall specify the authority making application, the name and profession (or status) of the parties concerned, and, in the case of the service of documents, the address of the recipient and the nature of the document to be served.

*Article VI.*

1. Service shall be effected by the competent authority of the State applied to. Such authority except in the cases provided for in Paragraph 2, may limit its action to effecting service by the transmission of the document to the recipient if he is willing to accept it.

2. If the State making the request so desires, the document to be served shall be served in the form prescribed by the municipal law of the State applied to for the service of similar documents ; in the case of requests made by Hungary, the document to be served must be accompanied by a German translation.

3. The head of the department responsible for transmitting the request shall certify correct the translation provided for in the foregoing paragraph or shall certify that the translation was made by a sworn translator.

*Article VII.*

Proof of service shall be furnished either by a dated and legalised receipt from the recipient or by a certificate from the authority of the State applied to, setting forth the fact, the manner and the date of such service.

*Article VIII.*

1. The authority to whom the request is addressed shall give effect to it by the use of the same compulsory measures as it would employ in giving effect to an application made by the authority of the State applied to or a request for the same purpose by an interested party. The procedure for dealing with requests shall be in conformity with the laws of the State applied to ; nevertheless, if the authority making the application so desires, a special form of procedure may be employed provided that it is not incompatible with the law of the State applied to.

2. Compulsory measures which are permissible in the territory of the State applied to shall not be employed unless the State making such application is in a position to employ like measures in the case of a similar request being made to it.

3. The authority making a request shall, if it so desires, be notified of the time and place of the official proceedings to be taken in respect of such request. The interested parties shall be entitled to be represented or to be present at any such proceedings, in conformity with the general regulations in force in the State applied to.

#### *Article IX.*

No fees or charges of any kind shall be payable for giving effect to requests for service or applications with the exception, subject to any agreements to the contrary, of sums paid to persons giving evidence or to experts and also of the expenditure incurred on account of the employment of an execution officer in the cases mentioned in Article VI, paragraph 2, or through the use of a special form of procedure in accordance with Article VIII, paragraph 1, or of expenditure involved by a procedure of execution which is not recoverable from the person liable.

#### *Article X.*

Unless otherwise provided in Articles XI to XIII, the provisions of this Treaty shall apply to legal co-operation in all matters relating to the procedure of execution.

#### *Article XI.*

1. In matters relating to taxation, executory and final orders (decisions, awards, decrees) shall, upon application, be acknowledged and executed free of cost, with the exception of orders the sole object of which is to guarantee a claim (Article XII). The acknowledgment must be expressly declared. In the Austrian Republic, the Federal Minister of Finance, and in the Kingdom of Hungary, the Hungarian Minister of Finance, shall be competent to make out and receive requests for execution. The acknowledgment and execution of executory claims of the applicant State shall take place in virtue of an executory and final order or a certificate indicating the arrears of taxation. In both States the Minister of Finance is responsible for the acknowledgment.

2. The orders mentioned in Paragraph 1 shall be executed by the administrative authorities or the Court in accordance with the legislation of the State in which execution is sought without the parties concerned being heard. The execution of claims made by the applicant State shall be effected in the State applied to according to the same procedure and by the same authorities as are available for the execution of the State's Federation's own claims in respect of taxes. In the Austrian Republic the Court legally competent to authorise the execution of claims based on foreign titles and in Hungary the authorities appointed for that purpose, shall be competent to grant judicial execution. The Court shall adopt the same procedure as that laid down for authorising the execution of claims based on inland titles.

3. The request for execution must be accompanied by a statement from the competent authority of the applicant State to the effect that the order has become executory and final; the competence of such authority must be certified by the Minister of Finance of the applicant State.

4. The terms of the order and the statement, and certificate to be given under Paragraph 3 must, if the request emanates from a Hungarian authority, be accompanied by a German translation.

5. The Minister of Finance of the applicant State shall attest the accuracy of the translation or certify that it was made by a sworn translator.

*Article XII.*

1. Provisional surety may be applied for in virtue of executory orders which have not yet become final, or of executory orders of attachment. This shall be effected by way of distress, and may be authorised without requiring proof of danger, to the estimated amount of the claim until the date upon which, under the terms of this Treaty, the claim becomes executory in the State to which application is made. The person concerned shall be entitled to have such attachment removed upon giving security, the nature and value of which must be specified in the application. Article XI shall apply by analogy.

2. The State applied to shall be entitled to refuse to enforce the provisions contained in 1 if the person liable is a national of that State and is regularly domiciled or permanently resident therein, except in the case of fiscal claims made against a taxpayer in respect of a time when he had not yet acquired the nationality of the State to which application is made.

*Article XIII.*

If application is made for a special form of execution or of security, the request shall be complied with, provided that such form of execution or security is compatible with the law of the applicant State and of the State applied to. For the rest, the nature of the execution or the security and the carrying out of the same shall be governed by the law of the State applied to.

*Article XIV.*

1. 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.

2. Requests which involve the obtaining of permissible information, statements or opinions, in the territory of the State to which application is made, from persons who are not parties in the case in their capacity as taxpayers, may be refused if the State making application is unable, under the terms of its national law, to call for similar information, statements or opinions. The same shall apply to requests made for the purpose of acquiring information regarding material circumstances or legal relations, if the knowledge of such circumstances or relations is obtained solely on the strength of obligations to furnish information, statements or opinions which are not admissible in the territory of the applicant State, and, further, to other requests if they can only be complied with by divulging commercial, business or industrial secrets.

*Article XV.*

1. If a request is complied with, either wholly or in part, the authority to whom such application is made must immediately notify the applicant authority as to the manner in which the request has been dealt with.

2. If a request is not complied with, the authority to whom such application is made must immediately notify the fact to the applicant authority, giving all reasons for refusal and mentioning such circumstances as may have come to light in any other way and may be of importance for the continuing of the case.

*Article XVI.*

The statutory regulations of each State regarding official and professional secrecy shall be applicable to all enquiries, information, statements and opinions and any other communications furnished to that State with a view to rendering legal assistance.

*Article XVII.*

The Ministers of Finance of the two States shall, after previous consultation and agreement, lay down uniform detailed measures for the execution of the present Treaty : they may conclude further agreements for the purposes of the present Treaty, and more especially agree upon provisions concerning the transfer of the sums derived from measures of execution, and the conversion of sums in respect of which measures of execution have to be applied.

*Article XVIII.*

1. The present Treaty, which has been drawn up in German and Hungarian, shall be ratified and the instruments of ratification shall be exchanged as soon as possible at Vienna. 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 either of the Contracting Parties, such denunciation to take place at least six months before the expiration of any calendar year. If duly denounced as described above, the Treaty shall cease to apply on the expiration of the calendar year in which it was denounced.

2. Both texts of the Treaty are authentic. When the Treaty has been 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 affixed their seals thereto.

BUDAPEST, *June 25, 1928.*

*For the Austrian Republic :*  
(L. S.) (Signed) Dr. Rudolf EGGER.

*For the Kingdom of Hungary :*  
(L. S.) (Signed) KÖLBIG Ferenc.

## FINAL PROTOCOL.

On signing the Treaty concluded between the Austrian Republic and the Kingdom of Hungary concerning legal protection and co-operation between the courts and authorities of the two Parties in matters of taxation, the Plenipotentiaries of the two Parties have made the following concordant declarations, which shall form an integral part of the Treaty :

1. In so far as agreement concerning the principles of law in the two States has not been recognised by an exchange of declarations, every request for legal assistance must be accompanied by a certificate issued by the supreme financial authority of the State making application, officially certifying, that, under the law of that State, an analogous request would be complied with. The Hungarian certificate must be accompanied by a German translation (cf. Article V). Article VI, paragraph 3, of this Treaty shall apply by analogy to the translation.

2. In principle the transmission of documents cannot be demanded. Exceptions shall only be made with the consent of the Finance Ministers of both States ; requests for the transmission of documents shall, however, only be made if important interests of the State making application so require. Each State shall retain the right to forward with its requests any documents belonging to it which may be of use in the execution of the requests.

3. If the conditions are such as to necessitate the withdrawal of a request on account of the impossibility of recovering the tax in accordance with the regulations in force in the State to which application is made, the authority applied to shall return the request to the authority which made it, enclosing therewith a certificate attesting the existence of such conditions and any available documentary evidence.

4. Legal protection and assistance shall in principle also be granted in the case of fiscal claims based upon facts relating to the past. No request shall, however, be made for recovery or guarantees in respect of claims dating prior to January 1, 1923.

5. At the request of the financial authority of the State making application, representatives of the authority making application shall be admitted to proceedings resulting from a request for legal assistance. They must refrain from all intervention in the official proceedings, but shall be entitled to address any requests, with a view to securing the object of the application, to the authority conducting the official proceedings; they shall be bound to observe official secrecy. The legal procedure shall be conducted according to the general regulations.

6. In cases of mutual assistance given with a view to ascertaining facts which, in accordance with special treaty agreements, will enable a division to be made, for purposes of taxation of the income, or of the profits derived from business undertakings carried on in both States, the finance Ministers of the two States may jointly arrange for a simplification of the communications between the authorities of the two States.

BUDAPEST, *June 25, 1928.*

*For the Austrian Republic :*  
*(Signed)* Dr. Rudolf EGGER.

*For the Kingdom of Hungary :*  
*(Signed)* KÖLBIG Ferenc.