

N° 4000.

ALLEMAGNE ET FINLANDE

Convention en vue d'éviter la double imposition en matière d'impôts directs, et protocole final. Signés à Helsinki, le 25 septembre 1935.

GERMANY AND FINLAND

Convention for the Prevention of Double Taxation in the Matter of Direct Taxes, and Final Protocol. Signed at Helsinki, September 25th, 1935.

¹ TRANSLATION.

No. 4000. — CONVENTION BETWEEN THE GERMAN REICH AND THE REPUBLIC OF FINLAND FOR THE PREVENTION OF DOUBLE TAXATION IN THE MATTER OF DIRECT TAXES. SIGNED AT HELSINKI, SEPTEMBER 25TH, 1935.

THE CHANCELLOR OF THE GERMAN REICH and THE PRESIDENT OF THE REPUBLIC OF FINLAND, being desirous of preventing double taxation in the matter of direct taxes, have decided to conclude a Convention and have appointed for this purpose as their Plenipotentiaries :

THE CHANCELLOR OF THE GERMAN REICH :

Professor Otto HEDDING, Ministerial Director ;

THE PRESIDENT OF THE REPUBLIC OF FINLAND :

M. Eemil Leander AIRILA, Administrative Councillor ;

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

Article 1.

(1) The present Convention lays down provisions which relate only to the levying of direct taxes.

(2) For the purpose of the present Convention, direct taxes shall be taken to mean taxes levied in virtue of the laws of each of the two States directly on income (net or gross income) or on capital, whether on behalf of the contracting States or the several States of the Reich, or on behalf of provinces, associations of provinces, communes or associations of communes, even where the taxes are collected in the form of supplementary imposts.

(3) In particular, the following shall be regarded as direct taxes :

1. Under German law :

(a) Income tax ;

(b) Corporation tax ;

(c) Tax on capital ;

(d) Land taxes (*Grundsteuern*) ;

(e) House taxes (*Gebäudesteuern*) ;

(f) Taxes on commercial occupations ;

(g) Taxes to compensate for currency depreciation in regard to property which has been built on (*Hauszinssteuern*).

2. Under Finnish law :

(a) Income and capital tax ;

(b) Communal tax ;

(c) Taxes and duties levied on the same basis as any of the above Finnish taxes.

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

Article 2.

(1) Income derived from immovable property shall be taxable only in the State where such property is situate.

(2) Income derived from claims secured by mortgage shall be assimilated to income derived from immovable property.

Article 3.

(1) Income derived from commerce and industrial businesses and all other forms of business shall, without prejudice to the following provisions, be taxed only in the State in whose territory the undertaking has its business establishment (*Betriebsstätte*); the same shall apply even if the undertaking extends its operations to the territory of the other State, without possessing a business establishment therein.

(2) For the purposes of the present Convention, a business establishment (*Betriebsstätte*) is a permanent business installation of the undertaking in which the operations of that undertaking are carried on, either wholly or in part.

(3) Should the undertaking possess business establishments in both contracting States, each State shall tax only the income derived from the operations of the business establishments situated in its territory.

(4) Income from interests in a company shall be treated as income from businesses, with the exception of mining stock (*Kuxe*), shares, share certificates and other securities.

Article 4.

Profits derived from shipping or air navigation undertakings shall be taxed only in the State in which the place of management of the concern is situate.

Article 5.

(1) Earned income, including income derived from the exercise of liberal professions, shall, unless otherwise provided in Article 6, be taxed only in the State within whose territory the personal activity productive of the income is carried on.

(2) A person shall only be deemed to exercise a liberal profession in either of the two States if he carries on his professional activities from a fixed centre in that State.

(3) The fees of the members of a board of directors not acting as managers shall be taxed only in the State in which the place of management of the concern paying the fees is situate.

Article 6.

Income payable in respect of past or present services rendered or work done in the form of salary, pension, wages, or other emoluments, by the Central Government, a German State, a province, a commune or another juridical person under public law duly constituted in accordance with the municipal law of the contracting States, shall be taxed only in the State in which the debtor happens to be.

Article 7.

(1) Income derived from transferable securities shall, without prejudice to the provisions of Article 2, paragraph (2), be taxed only in the State in which the taxpayer has his domicile.

(2) Where the tax on income accruing within the country from capital is collected in either of the two States by means of deduction (at the source), the right to make such fiscal deductions shall not be affected by the provisions of paragraph (1).

Article 8.

Any income not specified in the preceding Articles, including life annuities, shall be taxed only in the State in which the taxpayer has his domicile.

Article 9.

The following provisions shall apply to regular taxes or special levies on capital or increase in capital which already exist in the contracting States or may be introduced therein :

(1) In so far as the capital consists of :

(a) Immovable property (including appurtenances) ;

(b) Claims secured by mortgage ;

(c) Commercial and industrial businesses and all other forms of business, including shipping and air navigation undertakings ;

the tax shall be levied in the State which is entitled, in virtue of the provisions of the present Convention, to tax the income on such capital.

(2) In the case of all other kinds of capital, the tax shall be levied in the State in which the taxpayer has his domicile.

Article 10.

(1) For the purposes of the present Convention, the taxpayer shall be deemed to have his domicile at the place where he has a dwelling under circumstances which furnish good grounds for assuming that it is his intention to remain there.

(2) If the taxpayer has a domicile in both contracting States, taxes shall be levied in each of them in proportion to the period spent there during the fiscal year. Any period spent in a third country shall be reckoned to the account of the State of which the taxpayer is a national.

(3) If the taxpayer has no domicile in either State, the taxes shall be levied in the State in which he has his permanent residence. A person shall be deemed to have his permanent residence at the place where he resides under circumstances which furnish good grounds for assuming that it is not his intention to remain there merely temporarily. If the taxpayer has no permanent residence in either State, taxes shall be levied in the State of which he is a national.

(4) For the purposes of the present Convention, the domicile of juristic persons shall be the place where they have their centre of management. In the case of open successions under Finnish law, the domicile shall be the place where the person leaving the property was domiciled at the time of his death.

Article 11.

The provisions of Finnish law regarding the taxation of open successions shall not be applicable in so far as the heir or legatee may, in virtue of the provisions of the present Convention, be directly taxed in Germany in respect of the income or capital derived from the succession.

Article 12.

(1) The following special provisions shall be applicable to the diplomatic, consular and special representatives of the contracting States :

Representatives who are officials *de carrière*, as well as the officials attached to them and the persons in their service or in the service of their officials, shall only be subject to direct taxation in the country to which they are accredited in respect of the types of income referred to in Articles 2, 3 and 4 and the property referred to in Article 9, No. (1), or when the tax is deducted at the source ; in other cases taxation is reserved to the State which accredits them.

(2) Nevertheless, the special provisions of paragraph (1) only apply in so far as the persons mentioned are nationals of the State accrediting them and do not exercise, apart from their duties or service, any other profession, business or regular lucrative activity in the State to which they are accredited.

(3) The provisions of the present Convention, apart from paragraphs (1) and (2) of the present Article, apply to honorary consuls who only possess the nationality of the country which accredits them ; nevertheless, these consuls shall not be subject to direct taxation in the country to which they are accredited in respect of the official salary they receive in remuneration for their consular duties.

Article 13.

If a taxpayer shows that the measures taken by the revenue authorities of the contracting States have led in his case to double taxation, he may forward a protest to the State of which he is a national. If the protest is regarded as justified, the chief revenue authority of such State shall be authorised to arrange with the chief revenue authority of the other State with a view to finding an equitable remedy.

Article 14.

The chief revenue authorities of the two contracting States may conclude special arrangements for the avoidance of double taxation in cases not regulated in the present Convention, and in cases in which the interpretation or application of the present Convention gives rise to difficulties or doubts.

Article 15.

The contracting States undertake to entrust their chief revenue authorities with the task of finding a just settlement for any other question which may arise in the matter of direct taxation owing to the divergence of the principles governing taxation in the two States, and in general for all questions not specifically settled in the present Convention.

Article 16.

The present Convention shall be applied for the first time to taxation for the calendar year 1936 as regards income in so far as such income was received in the calendar year 1935 or a financial period ending in the calendar year 1935, and to the Finnish capital tax based on the situation as at December 31st, 1935.

Article 17.

The present Convention, done in duplicate in German and Finnish, shall be ratified and the instruments of ratification shall be exchanged as soon as possible at Berlin. It shall come into force at the beginning of the calendar year following the exchange of the instruments of ratification,

and shall continue in force until it is denounced by either contracting State, such denunciation to take place at least three months before the expiration of any calendar year. If it is duly denounced as described above, the Convention shall cease to apply after the expiration of the calendar year in question.

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

HELSINKI, *September 25th*, 1935.

(L. S.) E. L. AIRILA.

(L. S.) O. HEDDING.

FINAL PROTOCOL.

On signing the Convention concluded this day between the German Reich and the Republic of Finland for the prevention of double taxation in the matter of direct taxes, the undersigned Plenipotentiaries have agreed on the following identical declarations, which shall form an integral part of the Convention :

1. The list of direct taxes in force in the two contracting States contained in Article 1 of the Convention merely furnishes examples and is not exhaustive.

Any doubtful points shall be settled by the chief revenue authorities of the two States acting in concert.

The chief revenue authorities of the two States shall exchange as often as necessary an up-to-date schedule of the direct taxes leviable in each State.

2. The Convention does not apply to indirect taxes on traffic and consumption.

3. The provisions of the Convention do not apply to persons who have not paid the German tax on the flight of capital (*Reichsfluchtsteuer*) due by them.

The Convention further does not apply to persons who do not fulfil the conditions laid down for the payment of the German tax on the flight of capital merely on account of the fact that they have a domicile or habitual residence in Germany within the meaning of German fiscal law.

4. The provision of Article 2 of the Convention shall apply to income derived from the direct administration and use of immovable property and from letting, leasing and any other form of using such property ; it shall also apply to income derived from alienations of immovable property, including the appurtenances alienated therewith.

5. Income derived from the cutting of timber in the party's own forests or in the forests of another party, and the transport of such timber to the port of export, shall also be regarded as income derived from immovable property.

6. The provision contained in paragraph 4 of the present Final Protocol which refers to income derived from immovable property shall also apply, *mutatis mutandis*, to income derived from commerce and industrial businesses and all other forms of business, and to profits realised by the alienation in whole or in part of a business or of an article employed in the business.

7. The term " business establishment " (*Betriebsstätte*) in the sense of Article 3 of the Convention shall include not only the head offices of the undertaking and the place where it has its management but also its branches and subsidiary establishments, factories

and works, buying and selling offices, warehouses and other commercial premises of the nature of permanent business installations, as also permanent agencies.

The term "business establishment" (*Betriebsstätte*) in the sense of Article 3 of the Convention shall also include workshops set up for constructions the period of execution of which has exceeded twelve months or will probably exceed such period.

It is agreed that the maintenance of business relations exclusively by means of a completely independent representative shall not constitute a business establishment (*Betriebsstätte*) in the sense of Article 3. The same shall apply in regard to the maintenance of a representative (agent) who, whilst permanently acting for individuals or companies of the one State in the territory of the other State, only negotiates business, without having full power to conclude transactions on behalf of the firm he represents.

8. The chief revenue authorities shall conclude a special agreement for the fair apportionment of the income derived from commerce, industrial businesses or any other form of business in the cases provided for in Article 3, paragraph (3).

9. The term "liberal professions" in the sense of Article 5 of the Convention includes, in particular, scientific, artistic, literary, pedagogic or educational activities, as well as the activities of doctors, lawyers, architects and engineers.

10. Article 5 shall not apply in cases in which a person employed in one State resides temporarily for reasons of service in the territory of the other State, and draws his pay exclusively from an employer subject to taxation in the first State.

11. Students residing in one of the contracting States solely for the purposes of their studies shall not be taxed in such State on any allowances they may receive from relatives who are resident and subject to taxation in the other State, provided that such allowances constitute the major portion of the funds necessary for their maintenance and studies.

12. When a taxpayer proves that he has permanently transferred his domicile or habitual residence from one contracting State to another, he shall cease to be liable in the first State to the taxes attaching to domicile or permanent residence as from the end of the month in which the transfer takes place.

13. The chief revenue authorities may conclude in each case special agreements for preventing the double taxation of persons not possessing the nationality of either State. Special consideration shall be given to the nationals of States which have concluded conventions with the two contracting States for the prevention of double taxation.

14. To avoid any possible doubt it is hereby declared that the provision of Article 12 does not affect the right to benefit from more extensive exemptions which are or may hereafter be granted to diplomatic and consular officials in virtue of the general rules of international law.

In so far as, in virtue of these more extensive exemptions, such officials are not subject to direct taxation in the State to which they are accredited, the State which accredits them reserves its right of taxation.

15. The contracting States reserve the right to conclude a special agreement on the tax on successions and gifts.

HELSINKI, *September 25th*, 1935.

(L. S.) E. L. AIRILA.

(L. S.) O. HEDDING.