

## **Agreement for Avoidance of Double Taxation**

January 05, 1960

### **AGREEMENT BETWEEN THE GOVERNMENT OF INDIA AND THE GOVERNMENT OF JAPAN FOR THE AVOIDANCE OF DOUBLE TAXATION IN RESPECT OF TAXES ON INCOME**

#### **New Delhi**

The Government of India and the Government of Japan,

Desiring to conclude an Agreement for the Avoidance of Double Taxation in respect of Taxes on Income, Have appointed for that purpose as their respective Plenipotentiaries,

- The Government of India  
Dr. B. Gopala Reddi, Minister for Revenue and Civil Expenditure of the Government of India.
- The Government of Japan  
Dr. Shiroshi Nasu, Ambassador Extraordinary and Plenipotentiary of Japan to India.

Who, having communicated to one another their respective full powers, found in good and due form,

Have agreed as follows :

#### **Article I**

1. The taxes which are the subject of the present Agreement are

I. In India : The income tax, the super tax and the surcharge, imposed under the Indian Income-tax Act, 1922 (11 of 1922) (hereinafter referred to as "Indian tax").

II. In Japan : The income tax and the corporation tax (hereinafter referred to as "Japanese tax").

2. The present Agreement shall also apply to any other taxes on income or profits which has a substantially similar character to those referred to in paragraph (1) of this Article and which may be imposed by either Contracting State after the date of signature of the present Agreement.

#### **Article II**

1. In the present Agreement, unless the context otherwise requires

I.(i) The term "India", when used in a geographical sense, means all the territory in which the laws relating to Indian tax are in force.

(ii) The term "Japan", when used in a geographical sense, means all the territory in which the laws relating to Japanese tax are in force.

II. The terms "one of the Contracting States" and "the other Contracting State" mean India or Japan, as the context requires.

III. The terms "tax means Indian tax or Japanese tax, as the context requires.

IV. The term "Indian corporation" means any entity treated as a company for the purposes of Indian tax which is incorporated in India or the business of which is wholly managed and controlled in India and which does not have its head or principal office in Japan; and the term "Japanese corporation" means any corporation or other association having juridical personality or any association without

juridical personality which has its head or principal office in Japan and the business of which is not wholly managed and controlled in India.

V. The term "resident of India" means any natural person or any entity other than an Indian corporation which is treated as a taxable unit for the purposes of Indian tax, being resident in India for the purposes of Indian tax and not being resident in Japan for the purposes of Japanese tax, and any Indian corporation; and the term "resident of Japan" means any individual being resident in Japan for the purposes of Japanese tax and not being resident in India for the purposes of Indian tax, and any Japanese corporation.

VI. The term "corporation of one of the Contracting States" and "corporation of the other Contracting State" mean an Indian, corporation or a Japanese corporation, as the context requires.

VII. The term "Indian enterprise" means an industrial or commercial enterprise or undertaking carried on by a resident of India; and the term "Japanese enterprise" means an industrial or commercial enterprise or undertaking carried on by a resident of Japan.

VIII. The term "enterprise of one of the Contracting States" and "enterprise of the other Contracting State" mean an Indian enterprise or a Japanese enterprise, as the context requires.

The term "Permanent establishment" means a fixed place of business in which the business of an enterprise is carried on :

1. the term "fixed place of business" shall include a branch, an office, a factory, a workshop, a warehouse and a mine, a quarry or other place of extraction of natural resources;

2. An enterprise of one of the Contracting States shall be deemed to have a fixed place of business in the other Contracting State if it carries on in that other Contracting State a construction, erection or assembly project or the like;

3. The use of mere storage facilities or the maintenance of a place of-business exclusively for the purchase of goods or merchandise and not for any processing of such goods or merchandise in the country. where such purchase takes place shall not constitute a permanent establishment;

4. A person acting in one of the Contracting States for or on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment in the former Contracting State, if

I. the person has and habitually exercises in the former Contracting State a general authority to negotiate and conclude contracts for or on behalf of such enterprise, unless the activities of such person are limited exclusively to the purchase of goods or merchandise for or on behalf of such enterprise, or

II. the person habitually maintains in the former Contracting State a stock of goods or merchandise belonging to such enterprise from which such person regularly delivers goods or merchandise for or on behalf of such enterprise, or

III. the person habitually secures orders in the former Contracting State, exclusively or almost exclusively, for the enterprise itself or for such enterprise and other enterprises which are controlled by it or have a controlling interest in it;

5. A broker, a commission agent or other agent of genuinely independent status who merely acts as an intermediary between an enterprise of one of the Contracting States and a prospective customer in the other Contracting State shall not be deemed to be a permanent establishment in

that other Contracting State in case where such activities do not involve securing of orders within the meaning of paragraph (iv) C above;

6. The fact that a corporation of one of the Contracting States has a subsidiary corporation which is a corporation of the other Contracting State or which carries on a trade or business in that other Contracting State shall not of itself constitute that subsidiary corporation a permanent establishment of its parent corporation. In this paragraph, the term "corporation" refers to a corporation with juridical personality.

The term "competent authorities" means, in the case of India, the Central Government in the Ministry of Finance, Department of Revenue, or its authorised representatives, and ' in the case of Japan, the Minister of Finance, or his authorised representatives.

(2) In the application of the provisions of the present Agreement by either Contracting State, any term not otherwise defined in the present Agreement shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to tax.

### **Article III**

1. The industrial or commercial profits (excluding the profits derived from the operation of ships or aircraft) of an enterprise of one of the Contracting States shall not be subjected to tax in the other Contracting State unless the enterprise has a permanent establishment situated in that other Contracting State. If it has

2. Salaries, wages, pensions or similar remuneration paid by the Government of Japan or any local authority of Japan, or paid out of funds to which the Government of Japan or any local authority of Japan contributes to an individual who is a national of Japan (other than an individual who has been admitted to India for permanent residence therein) in respect of services rendered to such Government or local authority shall not be subjected to tax in India.

I. The provisions of paragraph (1) of this Article shall not apply to salaries, wages, pensions or similar remuneration paid in respect of services rendered in connection with any trade or business carried on by such governments or local authorities for the purposes of profit.

### **Article VII**

Remuneration paid to an individual who is resident in one of the Contracting States for personal services performed within the other Contracting State shall not be subjected to tax in that other Contracting State, if

1. he is present within that other Contracting State for a period or periods not exceeding in the aggregate 183 days during any taxable year or "previous year", as the case may be,

2. the services are performed for or on behalf of a resident of the former Contracting State, and

3. the remuneration is not deducted in computing the profits of an enterprise chargeable to tax in that other Contracting State.

### **Article VIII**

An individual who is resident in one of the Contracting States at the beginning of a visit to the other Contracting State and who at the invitation of the Government of the other Contracting State, or of a university, a college, a school or other educational institution in that other Contracting State, visits

that other Contracting State for a period not exceeding two years for the purpose of teaching or engaging in research at such educational institution in that other Contracting State, shall not be subjected to tax in that other Contracting State on the remuneration for such teaching or research.

#### **Article IX**

1. An individual who is resident in one of the Contracting States at the beginning of a visit to the other Contracting State and is temporarily present in that other Contracting State :

I.as a student at a recognised university, college or school in that other Contracting State,

II.as a recipient of grant, allowance or award for the primary purpose of study or research from a governmental, religious, charitable, scientific, literary or educational organisation, or

III.as a business apprentice, shall not be subjected to tax in that other Contracting State on remittances from abroad for the purposes of his maintenance, education, study or research;

(ii) the grant, allowance or award; and

(iii) remuneration for personal services in that other Contracting State not exceeding the sum of 360,000 yen or its equivalent sum in Indian currency, during any taxable year or "previous year", as the case may be.

In this paragraph, the term "business apprentice" means an individual having a little or no technical, professional or business experience.

2. An individual who is resident in one of the Contracting States at the beginning of a visit to the other Contracting State and is temporarily present in that other Contracting State for a period not exceeding twelve months as an employee of, or under contract with, an enterprise of the former Contracting State, or an organisation referred to in paragraph (1) (b) above, solely to acquire technical, professional or business experience from a person other than such enterprise or organisation, shall not be subjected to tax in that other Contracting State on the remuneration for such period, received from abroad, or paid in that other Contracting State, for his services directly related to the acquisition of such experiences, if the amount thereof does not exceed the sum of 1,000,000 Yen or its equivalent sum in Indian currency, during any taxable year or "previous year", as the case may be.

3. An individual who is resident in one of the Contracting States at the beginning of a visit to the other Contracting State and is temporarily present in that other Contracting State under arrangements with a government in that other Contracting State or in any agency thereof solely for the purpose of training, study or orientation shall not be subjected to tax in that other Contracting State on remuneration, received from abroad, or paid in that other Contracting State for his services directly related to such training, study or orientation, if the amount thereof does not exceed the sum of 1,000,000 Yen or its equivalent sum in Indian currency, during any taxable year or "previous year" as the case may be.

4. The benefits of paragraph (1), (2), or (3) of this Article shall not be cumulative.

#### **Article X**

For the purposes of the present Agreement

1. The industrial or commercial profits other than those mentioned in paragraph (b) below derived from the sale of goods or merchandise shall be treated as derived in part from the country

in which such goods or merchandise are purchased and in part from the country in which such goods or merchandise are sold.

2. The industrial or commercial profits derived by an enterprise from the sale in one of the Contracting States of goods manufactured or produced in the other Contracting State in whole or in part by such enterprise shall be treated as derived in part from the country in which such goods are manufactured or produced and in part from the country in which such goods are sold.

3. (i) Interest on bonds or debentures issued by a government or a local authority or a corporation of one of the Contracting States, or on deposits made in one of the Contracting States shall be treated as income from sources within that Contracting State.

(ii) Interest on loans made to a government or a local authority or a resident of one of the Contracting States shall be treated as income from sources within that Contracting State.

(iii) Interest on loans made to a branch or other establishment in one of the Contracting States of an enterprise of the other Contracting State shall be treated as income from sources within the former Contracting State.

4. As regards dividends : (i) On the part of India, dividends declared in India shall be treated as income from sources within India.

5. On the part of Japan, dividends paid by a Japanese Corporation shall be treated as income from sources within Japan.

6. Royalties and similar payments paid as consideration for the use of, or for the right to use, in one of the Contracting States, 'any copyrights, artistic or scientific works or equipments, patents, designs, secret processes and formulae, trade-marks, cinematographic films (including films for use in connection with television) and other like properties and fees for technical services rendered in that connection, shall be treated as income from sources within that Contracting State.

7. Profits or gains derived from the sale, transfer or exchange of the property mentioned in paragraph (e) above shall be treated as income from sources within the Contracting State in which such property is to be used.

8. Income derived from immovable property (including profits or gains derived from the sale, transfer or exchange of such property), and royalties in respect of the operation of mines, quarries, or other places of extraction of natural resources shall be treated as income from sources within the Contracting State in which such immovable property, mines, quarries, or other places of extraction of natural resources are situated.

9. Profits or gains derived from the sale, transfer or exchange of ships or aircraft shall be treated as income from sources within the Contracting State in which such ships or aircraft are registered.

(i) Profits or gains (excluding industrial or commercial profits) derived from the sale ' transfer or exchange of movable property (excluding shares, bonds, debentures and similar assets ) of a branch or other establishment in one of the Contracting States of an enterprise of the other Contracting State shall be treated as income from sources within the former Contracting State.

10. Salaries, wages, or similar remuneration or personal services as well as remuneration for professional services shall be treated as income from sources within the Contracting State in which are rendered the services for which such remuneration is paid, and the services performed in ships or aircraft operated by an enterprise of one of the Contracting States shall be deemed to be rendered in that Contracting State.

## **ANNEXURE**

Notification No. [65/32/58-IT], dated 13-6-1960.

G.S.R. 682-Whereas the annexed agreement for the avoidance of double taxation of income between the Government of India and the Government of Japan has been ratified and the Instruments of Ratification exchanged, as required by Article XVI of the said Agreement:

Now, therefore, in exercise of the powers conferred by Section 49A of the Indian Income-tax Act, 1922 (11 of 1922), the Central Government hereby directs that all provisions of the said Agreement shall be given effect to in the Union of India.

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