

Agreement for Avoidance of Agreement for the Double Taxation

July 23, 1961

AGREEMENT BETWEEN THE GOVERNMENT OF INDIA AND THE GOVERNMENT OF THE REPUBLIC OF FINLAND FOR AVOIDANCE OF DOUBLE TAXATION OF INCOME

New Delhi

WHEREAS the Government of India and the Government of the Republic of Finland, DESIRE to conclude an Agreement for the avoidance of double taxation of income NOW, THEREFORE, it is hereby 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, the surcharge, imposed under the Indian Income-tax Act, 1922 (11 of 1922), (hereinafter referred to as "Indian Tax").

II.in Finland: the State income tax, the communal tax, the church tax, (hereinafter referred to as "Finnish tax").

2. The present Agreement shall also apply to any other taxes of a substantially similar character imposed in India or Finland subsequent to the date of signature of the present Agreement.

Article II

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

I.the terms "one of the territories" and "the other territory" mean India or Finland as the context requires;

II.the term "person" includes individuals, companies and all other entities which are treated as taxable units under the tax laws in force in the respective territories;

III.the term "company" means any entity which is treated as a body corporate or as a company for tax purposes;

IV.the term "tax" means Indian tax or Finnish tax, as the context requires;

V.the terms "resident of India" and "resident of Finland" mean, respectively, a person who is resident in India for the purposes of Indian tax and not resident in Finland for the purposes of Finnish tax, and a person who is resident in Finland for the purposes of Finnish tax and not resident in India for the purposes of Indian tax.

A company shall be regarded as resident in India if it is incorporated in India or its business is wholly managed and controlled in India; a company shall be regarded as resident in Finland if it is incorporated in Finland or its business is wholly managed and controlled in Finland;

VI.the terms "Indian enterprise" and "Finnish enterprise" mean, respectively, an industrial or commercial enterprise or undertaking carried on by a resident of India and an industrial or commercial enterprise or undertaking carried on by a resident of Finland; and the terms "enterprise of one of the territories" and "enterprise of the other territory" mean an Indian enterprise or a Finnish enterprise, as the context requires;

VII.the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on;

VIII.The term "fixed place of business" shall include a place of management, a branch, an office, a factory, a workshop, a warehouse, a mine, quarry or other place of extraction of natural resources.

I.An enterprise of one of the territories shall be deemed to have a fixed place of business in the other territory if it carries on in that other territory a construction, installation or assembly project or the like.

II.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 territory of purchase, shall not constitute a permanent establishment.

III.A person acting in one of the territories for or on behalf of an enterprise of the other territory shall be deemed to be a permanent establishment of that enterprise in the first mentioned territory, but only if:

IV.he has and habitually exercises in the first mentioned territory a general authority to negotiate and enter into contracts for or on behalf of the enterprise, unless the activities of the person are limited exclusively to the purchase of goods or merchandise for the enterprise, or

V.he habitually maintains in the first mentioned territory a stock of goods or merchandise belonging to the enterprise from which the person regularly delivers goods or merchandise for or on behalf of the enterprise, or

VI.he habitually secures orders in the first mentioned territory wholly or almost wholly for the enterprise itself or for the enterprise and other enterprises which are controlled by it or have a controlling interest in it.

A person from one of the territories who is present in the, other territory for not more than three months in the income year or the previous year, as the case may be, for the purpose of securing orders shall not be deemed to be habitually securing orders within the meaning of this subparagraph.

IX.A bonafide broker of a genuinely independent status who merely acts as an intermediary between an enterprise of one of the territories and a prospective customer in the other territory shall not be deemed to be a permanent establishment of the enterprise in the last-mentioned territory.

X.The fact that a company, which is a resident of one of the territories, has a subsidiary company which either is a resident of the other territory or carries on a trade or business in that other territory (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary company a permanent establishment of its parent company;

XI.the term "competent authority" means, in the case of India, the Central Government of the Ministry of Finance, Department of Revenue and, in the case of Finland, the Ministry of Finance.

2. In the application of the provisions of this Agreement in one of the territories any term not otherwise defined in this Agreement shall, unless the context otherwise requires, have the meaning which it has under the laws in force in that territory relating to the taxes which are the subject of this Agreement.

Article III

1. Tax shall not be levied in one of the territories-on the industrial or commercial profits of an enterprise of the other territory unless the profits are derived in the first-mentioned territory through a permanent establishment of the said enterprise situated in the first-mentioned territory. If profits are so derived, tax may be levied in the first-mentioned territory on the profits attributable to the said permanent establishment.

2. There shall be attributed to the permanent establishment of an enterprise of one of the territories situated in the other territory the industrial or commercial profits which it might be expected to derive in that other territory if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.

In any case, where the correct amount of profits attributable to a permanent establishment is incapable of determination or the ascertain ment thereof presents exceptional difficulties, the profits attributable to the establishment may be estimated on a reasonable basis.

In determining the industrial or commercial profits of a permanent establishment, there shall be allowed as deductions all expenses, wherever incurred, reasonably allocable to such permanent establishment, including executive and general administrative expenses so allocable.

3. The term "industrial or commercial profits" shall not include income in the form of rents, royalties, including rents and royalties for cinematographic films, fees for technical services, interest, dividends, capital gains, management charges, remuneration for labour or personal services or income from the operation of ships or aircraft.

Article IV

Where an enterprise of one of the territories carries on business with an enterprise of the other territory, and it appears to the taxation authorities of the first-mentioned territory that owing to the close connection between such enterprises conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises dealing at arm's length with one another, then any profits which would but for those conditions have accrued to one of the enterprises but by reason of those conditions have not so accrued may be included in the profits of that enterprise and taxed accordingly. In consequence the necessary rectifications shall be made concerning the income of the other enterprise.

Article V

1. Income derived from the operation of aircraft by an enterprise of one of the territories shall not be taxed in the other territory, unless the aircraft is operated wholly or mainly between places within that other territory.

2. Paragraph (1) shall likewise apply in respect of participations in pools of any kind by enterprises engaged in air transport.

Article VI

1. When a resident of India, operating ships, derives profits from Finland through such operations carried on in Finland, such profits shall be subject to tax in India as well as in Finland; but the tax so charged in Finland shall be reduced by an amount equal to fifty per cent, of the tax so charged, and the reduced amount of Finnish tax payable on the profits shall be allowed as a credit against any Indian tax charged in respect of such income.

2. When a resident of Finland, operating ships, derives profits from India through such operations carried on in India, such profits shall be subject to tax in Finland as well as in India; but the tax so charged in India shall be reduced by an amount equal to fifty per cent of the tax so charged, and the reduced amount of Indian tax payable on the profits shall be allowed as a credit against any Finnish tax charged on income accrued to or received by the resident of Finland during the year in which such reduced Indian tax was paid.

3. Paragraph (1) and (2) shall not apply to profits arising as a result of coastal traffic.

4. This article shall not, in the case of India, affect the provisions of Sections 44A and 44B of the Indian Income tax Act, 1922, relating to the assessment of profits from occasional shipping or tramp steamers. When an adjustment is to be made under Section 44C of the Indian Income tax Act, 1922, in the case of occasional shipping or tramp steamers, the provisions of paragraph (2) will apply.

Article VII

1. Royalties derived by a resident of one of the territories from sources in the other territory may be taxed only in that other territory.

2. In this Article, the term "royalty" means any royalty or other like amount received as consideration for the right to use copyrights, artistic or scientific works, cinematographic films, patents, models, designs, plans, secret processes - or formulae, trade-marks and other -like property or rights,- but -does not include any royalty or other like amount in respect of the operation of mines, quarries or other natural resources.

Article VIII

Amounts paid by an enterprise of one of the territories for technical services furnished by an enterprise of the other territory shall not be subject to tax by the first-mentioned territory except in so far as such amounts are attributable to activities actually performed in the first-mentioned territory. In computing the income so subject to tax, there shall be allowed as deductions the expenses incurred in the first-mentioned territory in connection with the activities performed in that territory.

Article IX

Dividends paid by a company which is resident of one of the territories to a resident of the other territory may be taxed only in the first-mentioned territory.

Article X

Interest on bonds, securities, notes, debentures or any other form of indebtedness, derived by a resident of one of the territories from sources in the other territory may be taxed only in that other territory.

Article XI

Income from immovable property may be taxed only in the territory in which the property is situated. For this purpose any rent or royalty or other income derived from the operation of a mine, quarry or any other extraction of natural resources shall be regarded as income from immovable property.

Article XII

Capital gains derived from the sale, exchange or transfer of a capital asset, whether movable or immovable, may be taxed only in the territory in which the capital asset is situated at the time of such sale, exchange or transfer.

For this purpose the situs of the shares of a company shall be deemed to be in the territory where the company is incorporated.

Article XIII

1. Remuneration - other than pensions and annuities paid in India for services rendered therein out of public funds of Finland shall not be taxed in India unless the payment is made to a national of India.
2. Remuneration other than pensions and annuities paid in Finland for services rendered therein out of public funds of India shall not be taxed in Finland unless the payment is made to a national of Finland.
3. The provisions of paragraphs (1) and (2) of this Article shall not apply to payments in respect of services in connection with any trade or business carried on by either of the Contracting Parties or political sub-divisions thereof for purposes of profit.
4. The provisions of paragraphs (1) and (2) of this Article shall also apply to remuneration other than pensions and annuities, paid by the Reserve Bank of India, the Public Railway Authorities and the Postal Administration of India and by Suomen Pankki, Valtion Rautatiet, Posti-ja Lennatinhallitus and Kansanelakelaitos (Bank of Finland, State Railways, Post and Telegraph Administration and National Pension Administration.)

Article XIV

Any pension or annuity derived by a resident of one of the territories from sources in the other territory may be taxed only in that other territory.

In this Article the term "Pension" means a periodic payment made in consideration of services rendered or by way of compensation for injuries received and the term "annuity" means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

Article XV

1. Profits or remuneration for professional services or for services as an employee (including services as a director) performed in one of the territories by an individual who is a resident of the other territory may be taxed in the territory in which such services are performed.
2. Notwithstanding anything contained in paragraph (1), an individual who is a resident of India shall not be taxed in Finland on remuneration for personal services, if
 - I. he is temporarily present in Finland for a period or periods not exceeding in the aggregate 183 days during the relevant income year, and,
 - II. the services are rendered for or on behalf of a resident of India, or for or on behalf of a permanent establishment in India of a Finnish enterprise, and
 - III. the remuneration as such is not deducted in computing the profits of an enterprise subject to Finnish tax.
3. Notwithstanding anything contained in paragraph (1), an individual who is a resident of Finland shall not be taxed in India on remuneration for personal services, if

I. he is temporarily present in India for a period or periods not exceeding in the aggregate 183 days during the relevant previous year", and

II. the services are rendered for or on behalf of a resident of Finland or for or on behalf of a permanent establishment in Finland of an Indian enterprise, and

III. the remuneration as such is not deducted in computing the profits of an enterprise chargeable to Indian tax.

4. Where an individual permanently or Predominantly performs services on ships or aircraft operated by an enterprise of one of the territories such services shall be deemed to be performed in that territory.

Article XVI

A professor or teacher from one of the territories, who receives remuneration for teaching, during a period of temporary residence not exceeding two years, at a university, college, school or other educational institution in the other territory, shall not be taxed in that other territory in respect of that remuneration.

Article XVII

An individual from one of the territories who is temporarily present in the other territory solely

5. as a student at a university, college or school in that other territory,
6. as a business or trade apprentice, or
7. as the recipient of a grant, allowance or award from a religious, charitable, scientific or educational organisation for the primary purposes of study or research, shall not be taxed in that other territory in respect of remittances from abroad for the purposes of his maintenance, education or training, or in respect of a scholarship.

Article XVIII

8. The laws in force in either of the territories will continue to govern the assessment and taxation of income in the respective territories except where express provision to the contrary is made in this Agreement.

Subject to the provision of Article VI, income from sources within India which under the laws of India and in accordance with this Agreement is subject to tax in India either directly or by deduction shall not be subject to Finnish tax.

Subject to the provision of Article VI, income from sources within Finland which under the laws of Finland and in accordance with this Agreement is subject to tax in Finland either directly or by deduction shall not be subject to Indian tax.

The rate of Indian tax to be imposed on residents of India, as well as the rate of Finnish tax to be imposed on residents of Finland may be calculated taking also into account the income of the person subject to taxation, which, according to this Agreement, is subject to tax in the other territory.

Article XIX

The competent authorities shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of the present Agreement. Any information so exchanged shall be

treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of the present Agreement. No information as aforesaid shall be exchanged by the competent authority of one of the territories which would disclose any trade, business, industrial or professional secret or any trade process to the authority of the other territory.

Article XX

Where a resident of one of the territories shows proof that the action of the taxation authorities of the other territory has resulted or will result in double taxation contrary to the provisions of the present Agreement, he shall be entitled to present his case to the competent authority of the territory of which he is a resident. Should the competent authority be satisfied that the claim ought to be pursued further, the competent authority shall endeavour to come to an agreement with the competent authority of the other territory with a view to avoiding double taxation.

Article XXI

9. The present Agreement shall be ratified by the Contracting Parties according to their own internal legislation.
10. The instruments of ratification shall be exchanged at Helsinki as soon as possible.
11. Upon exchange of the instruments of ratification, the present Agreement shall have effect :

I. in India, in respect of taxes for assessment years beginning on or after the 1st April of the year in which the exchange of instruments of ratification takes place,

II. in Finland in respect of taxes for income years beginning on or after the 1st January of the calendar year preceding that in which the exchange of instruments of ratification takes place.

Article XXII

This Agreement shall continue in effect indefinitely but either of the Contracting Parties may on or before the 30th of June in any calendar year following the calendar year in which the exchange of instruments of ratification takes place give to the other Contracting Party notice of termination and in such event this Agreement shall cease to have effect:

12. in India, in respect of taxes for the assessment years beginning on or after the 1st April of the second calendar year following that in which the notice is given,
13. in Finland, in respect of taxes for income years beginning on or after the 1st January of the calendar year next following that in which the notice is given.

IN WITNESS WHEREOF the undersigned duly authorised thereto have signed this Agreement.

DONE in duplicate at New Delhi on the 23rd June, 1961, in the English language.

For the Government of the Republic of Finland

Sd/- KAI SOMERTO
Charge d'Affaires a.i. of Finland.

For the Government of India

Sd/-Smt. TARKESHWARI SINHA
Deputy Minister of Finance.