

No. 5507

**JAPAN
and
INDIA**

**Agreement (with Protocol) for the avoidance of double
taxation in respect of taxes on income. Signed at New
Delhi, on 5 January 1960**

Official text: English.

Registered by Japan on 3 January 1961.

**JAPON
et
INDE**

**Convention (avec Protocole) tendant à éviter la double
imposition en matière d'impôts sur le revenu. Signée
à New Delhi, le 5 janvier 1960**

Texte officiel anglais.

Enregistrée par le Japon le 3 janvier 1961.

No. 5507. AGREEMENT¹ BETWEEN JAPAN AND INDIA
FOR THE AVOIDANCE OF DOUBLE TAXATION IN
RESPECT OF TAXES ON INCOME. SIGNED AT NEW
DELHI, ON 5 JANUARY 1960

The Government of Japan and the Government of India,
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 Japan :

Dr. Shiroshi Nasu, Ambassador Extraordinary and Plenipotentiary of Japan
to India

The Government of India :

Dr. B. Gopala Reddi, Minister for Revenue and Civil Expenditure of the
Government of 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 :

(a) 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").

(b) 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 para-
graph (1) of this Article and which may be imposed by either Contracting State
after the date of signature of the present Agreement.

¹ Came into force on 13 June 1960, the date of the exchange of the instruments of ratification
at Tokyo, in accordance with article XVI.

Article II

(1) In the present Agreement, unless the context otherwise requires :

(a) (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.

(b) The terms “ one of the Contracting States ” and “ the other Contracting State ” mean Japan or India, as the context requires.

(c) The term “ tax ” means Japanese tax or Indian tax, as the context requires.

(d) 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; and 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.

(e) 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; and 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.

(f) The terms “ corporation of one of the Contracting States ” and “ corporation of the other Contracting State ” mean a Japanese corporation or an Indian corporation, as the context requires.

(g) The term “ Japanese enterprise ” means an industrial or commercial enterprise or undertaking carried on by a resident of Japan; and the term “ Indian enterprise ” means an industrial or commercial enterprise or undertaking carried on by a resident of India.

(h) The terms “ enterprise of one of the Contracting States ” and “ enterprise of the other Contracting State ” mean a Japanese enterprise or an Indian enterprise, as the context requires.

(i) The term “ permanent establishment ” means a fixed place of business in which the business of an enterprise is carried on;

(i) 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;

- (ii) 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;
- (iii) 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;
- (iv) 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
 - A. 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
 - B. 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
 - C. 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;
- (v) 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 a case where such activities do not involve securing of orders within the meaning of paragraph (iv) C above;
- (vi) 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.
- (j) The term "competent authorities" means, in the case of Japan, the Minister of Finance, or his authorised representatives, and, in the case of India, the Central Government in the Ministry of Finance, Department of Revenue, or its 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 such permanent establishment, the profits attributable thereto may be subjected to tax in that other Contracting State.

(2) Where an enterprise of one of the Contracting States has a permanent establishment situated in the other Contracting State, there shall be attributed to such permanent establishment the industrial or commercial profits which it might be expected to derive in that other Contracting State, if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing on an independent basis with the enterprise of which it is a permanent establishment.

(3) 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.

(4) In a case where the ascertainment of the correct amount of the industrial or commercial profits of a permanent establishment presents difficulties, such profits may be reasonably estimated with reference to the extent to which the activities of such permanent establishment have contributed to earning of profits.

(5) The term "industrial or commercial profits" as used in this Article shall not include income in the form of dividends, interest, rents, royalties and similar payments as referred to in paragraph (e) of Article X, capital gains, remuneration for personal services, or fees for technical services as referred to in paragraph (k) of Article X.

(6) The competent authorities of both Contracting States may, consistent with the provisions of the present Agreement, arrange details for the apportionment of industrial or commercial profits.

Article IV

Where :

- (a) an enterprise of one of the Contracting States participates directly or indirectly in the managerial or financial control of an enterprise of the other Contracting State, or