No. 5820

DENMARK
and
INDIA

Agreement (with exchange of notes) for the avoidance of double taxation of income. Signed at Copenhagen, on 16 September 1959

Official text: English.

Registered by Denmark on 23 August 1961.

DANEMARK
et
INDE

Convention (avec échange de notes) tendant à éviter la double imposition en matière d'impôts sur le revenu. Signée à Copenhague, le 16 septembre 1959

Texte officiel anglais.

Enregistré par le Danemark le 23 août 1961.

No. 5820. AGREEMENT[1] BETWEEN THE GOVERNMENTS OF INDIA AND DENMARK FOR THE AVOIDANCE OF DOUBLE TAXATION OF INCOME. SIGNED AT COPENHAGEN, ON 16 SEPTEMBER 1959

Whereas the Governments of India and Denmark 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 :

(*a*) 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" ;

(*b*) In Denmark :

National income taxes and communal income taxes hereinafter referred to as "Danish tax".

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

Article II

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

(*a*) The term "Denmark" means the kingdom of Denmark excluding the Faroe Islands and Greenland ;

(*b*) The terms "one of the territories" and "the other territory" mean Denmark or India as the context requires ;

[1] Came into force on 9 March 1960, upon the exchange of the instruments of ratification at New Delhi, with retroactive effect from 1 April 1959, in accordance with article XX.

(*c*) The term "person" includes natural persons, companies and all other entities which are treated as taxable units under the tax laws in force in the respective territories ;

(*d*) The term "company" means any entity which is treated as a body corporate or as a company for tax purposes ;

(*e*) The term "tax" means the Danish tax or Indian tax, as the context requires ;

(*f*) The terms "resident of Denmark" and "resident of India" mean, respectively, a person who is resident in Denmark for the purposes of Danish tax and not resident in India for the purposes of Indian tax, and a person who is resident in India for the purposes of Indian tax and not resident in Denmark for the purposes of Danish tax.

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

(*g*) The terms "Danish enterprise" and "Indian enterprise" mean, respectively, an industrial or commercial enterprise or undertaking carried on by a resident of Denmark and an industrial or commercial enterprise or undertaking carried on by a resident of India ; and the terms "enterprise of one of the territories" and "enterprise of the other territory" mean a Danish enterprise or an Indian entreprise, as the context requires ;

(*h*) The term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on ;

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

(*bb*) 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.

(*cc*) 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.

(*dd*) 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 in the first-mentioned territory, if

1. 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

2. 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
3. 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.

(*ee*) A 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 in that other territory where such activities do not involve securing of orders within the meaning of sub-paragraph (*dd*) 3. above.

(*ff*) 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.

(*i*) The term "competent authority" means in the case of India, the Central Government in the Ministry of Finance, Department of Revenue, or its authorized representative, and in the case of Denmark, the Minister of Finance or his authorized representative.

(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) Subject to the provisions of paragraph (3) below, tax shall not be levied in one of the territories on the industrial or commercial profits of an enterprise of the other territory unless 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 ascertainment thereof

presents exceptional difficulties, the profits attributable to the establishment may be estimated on a reasonable basis.

(3) For the purposes of this Agreement the term "industrial or commercial profits" shall not include income in the form of rents, royalties, interest, dividends, management charges, remuneration for labour or personal services or income from the operation of ships or aircraft but shall include rents or royalties in respect of cinematographic films.

Article IV

Where —

(*a*) An enterprise of one of the territories participates directly or indirectly in the management, control or capital of an enterprise of the other territory, or

(*b*) The same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the territories and an enterprise of the other territory, and

in either case 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, then any profits which but for those conditions would 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.

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