No. 6051

FINLAND
and
INDIA

Agreement for the avoidance of double taxation of income. Signed at New Delhi, on 23 June 1961

Official text: English.

Registered by Finland on 24 January 1962.

FINLANDE
et
INDE

Convention tendant à éviter la double imposition des revenus. Signée à New Delhi, le 23 juin 1961

Texte officiel anglais.

Enregistrée par la Finlande le 24 janvier 1962.

No. 6051. AGREEMENT[1] BETWEEN THE REPUBLIC OF FINLAND AND THE REPUBLIC OF INDIA FOR THE AVOIDANCE OF DOUBLE TAXATION OF INCOME. SIGNED AT NEW DELHI, ON 23 JUNE 1961

Whereas the Government of the Republic of Finland and the Government of India 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 Finland :
the State income tax,
the communal tax,
the church tax,
(hereinafter referred to as "Finnish tax") ;

(*b*) 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").

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

Article II

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

(*a*) the terms "one of the territories" and "the other territory" mean Finland or India as the context requires ;

[1] Came into force on 29 December 1961, upon the exchange of the instruments of ratification at Helsinki, in accordance with article XXI.

(*b*) 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 ;

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

(*d*) the term "tax" means Finnish tax or Indian tax, as the context requires ;

(*e*) the terms "resident of Finland" and "resident of India" mean, respectively, a person who is resident in Finland for the purposes of Finnish 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 Finland for the purposes of Finnish tax.

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 ; 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 ;

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

(*g*) 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, 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 maintance of a place of business exclusively for the purchase of goods or merchandise and not for any processing of 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 of that enterprise in the first-mentioned territory, but only 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.

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 sub-paragraph.

(*ee*) A bona fide 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.

(*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 the other territory (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary company a permanent establishment of its parent company ;

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

(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 indepen-

dent 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.

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 or 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.