No. 7485

JAPAN
and
AUSTRIA

Convention for the avoidance of double taxation with respect to taxes on income. Signed at Vienna, on 20 December 1961

Official text: English.

Registered by Japan on 25 November 1964.

JAPON
et
AUTRICHE

Convention tendant à éviter la double imposition en matière d'impôts sur le revenu. Signée à Vienne, le 20 décembre 1961

Texte officiel anglais.

Enregistrée par le Japon le 25 novembre 1964.

No. 7485. CONVENTION[1] BETWEEN JAPAN AND THE REPUBLIC OF AUSTRIA FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME. SIGNED AT VIENNA, ON 20 DECEMBER 1961

Japan and the Republic of Austria, desiring to conclude a Convention to avoid double taxation with respect to taxes on income, have agreed as follows :

Article I

1. The taxes which are the subject of the present Convention are :

(*a*) in Japan :

(i) the income tax,

(ii) the corporation tax,

(hereinafter referred to as " Japanese tax ");

(*b*) in Austria :

(i) the income tax (*Einkommensteuer*),

(ii) the corporation tax (*Körperschaftsteuer*),

(iii) the contribution from income for the promotion of residential building and for the equalization of family burdens (*Beitrag vom Einkommen zur Förderung des Wohnbaues und für Zwecke des Familienlastenausgleiches*),

(hereinafter referred to as " Austrian tax ").

2. The present Convention shall also apply to any other taxes on income or profits which have a substantially similar character to those referred to in the preceding paragraph and which may be imposed in either Contracting State after the date of signature of the present Convention.

Article II

As used in the present Convention :

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

(*b*) The term "Austria " means the Republic of Austria.

[1] Came into force on 4 April 1963, the date of the exchange of the instruments of ratification at Tokyo, in accordance with article XXIV (2).

(*c*) The terms " one of the Contracting States " and " the other Contracting State " mean Japan or Austria, as the context requires.

(*d*) The term " tax " means Japanese tax or Austrian tax, as the context requires.

(*e*) The term " competent authorities " means, in the case of Japan, the Minister of Finance or his authorized representatives; and, in the case of Austria, the Federal Ministry of Finance.

Article III

As used in the present Convention :

(*a*) 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 which does not have its headquarters (*Sitz*) in Austria, or the business of which is not wholly managed and controlled in Austria; and, the term " Austrian corporation " means any body corporate or any entity treated as a body corporate for tax purposes which has its headquarters (*Sitz*) in Austria, or the business of which is wholly managed and controlled in Austria and which does not have its head or principal office in Japan.

(*b*) The term " resident of Japan " means any individual who is resident in Japan for the purposes of Japanese tax and not resident (*Wohnsitz* or *gewöhnlicher Aufenthalt*) in Austria for the purposes of Austrian tax, and any Japanese corporation, and, the term " resident of Austria " means any individual who is resident (*Wohnsitz* or *gewöhnlicher Aufenthalt*) in Austria for the purposes of Austrian tax and not resident in Japan for the purposes of Japanese tax, and any Austrian corporation.

(*c*) The terms " corporation of one of the Contracting States " and " corporation of the other Contracting State " mean a Japanese corporation or an Austrian corporation, as the context requires.

(*d*) The terms " resident of one of the Contracting States " and " resident of the other Contracting State " mean a resident of Japan or a resident of Austria, as the context requires.

(*e*) The term " Japanese enterprise " means an industrial or commercial enterprise or undertaking carried on by a resident of Japan; and, the term " Austrian enterprise " means an industrial or commercial enterprise or undertaking carried on by a resident of Austria.

(*f*) The terms " enterprise of one of the Contracting States " and " enterprise of the other Contracting State " mean a Japanese enterprise or an Austrian enterprise, as the context requires.

Article IV

1. As used in the present Convention, the term " permanent establishment " means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

2. A permanent establishment shall include especially :

(*a*) a place of management;
(*b*) a branch;
(*c*) an office;
(*d*) a factory;
(*e*) a workshop;
(*f*) a mine, quarry or other place of extraction of natural resources;
(*g*) a construction, installation or assembly project which is carried on for more then twelve months.

3. The term " permanent establishment " shall not be deemed to include :

(*a*) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
(*b*) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
(*c*) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
(*d*) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
(*e*) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

4. A person acting in one of the Contracting States for or on behalf of an enterprise of the other Contracting State—other than an agent of an independent status to whom the provisions of paragraph 5 of this Article apply—shall be deemed to be a permanent establishment in the former Contracting State if he has, and habitually exercises in the former Contracting State, an authority to 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.

5. An enterprise of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other Contracting State through a broker, general

commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.

6. The fact that a corporation being a resident of one of the Contracting States controls or is controlled by a corporation which is a resident of the other Contracting State, or which carries on business in that other Contracting State (whether through a permanent establishment or otherwise), shall not of itself constitute either corporation a permanent establishment of the other.

Article V

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

Article VI

1. The industrial or commercial profits of an enterprise of one of the Contracting States shall not be subject to tax in the other Contracting State unless the enterprise carries on a trade or business in that other Contracting State through a permanent establishment situated therein. If it carries on a trade or business in that other Contracting State as aforesaid, tax may be imposed on those profits in the other Contracting State, but only on so much of them as is attributable to that permanent establishment.

2. Where an enterprise of one of the Contracting States carries on a trade or business in the other Contracting State through a permanent establishment situated therein, there shall be attributed to that 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. Such industrial or commercial profits will in principle be determined on the basis of the separate accounts pertaining to that permanent establishment. In determining the industrial or commercial profits of the permanent establishment, there shall be allowed as deductions all expenses which are reasonably allocable to the permanent establishment, including executive and general administrative expenses so allocable.

3. In determining the profits of a permanent establishment, no account shall be taken of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.