No. 7488

JAPAN
and
FEDERATION OF MALAYA

Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (with exchange of notes). Signed at Kuala Lumpur, on 4 June 1963

Official text: English.

Registered by Japan on 25 November 1964.

JAPON
et
FÉDÉRATION DE MALAISIE

Convention tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu (avec échange de notes). Signée à Kuala-Lumpur, le 4 juin 1963

Texte officiel anglais.

Enregistrée par le Japon le 25 novembre 1964.

No. 7488. CONVENTION[1] BETWEEN JAPAN AND THE FEDERATION OF MALAYA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME. SIGNED AT KUALA LUMPUR, ON 4 JUNE 1963

The Government of Japan and the Government of the Federation of Malaya,

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion 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 the Federation of Malaya :
The income tax (hereinafter referred to as " Federation tax ").

(*b*) In Japan :
The income tax and the corporation tax (hereinafter referred to as " Japanese tax ").

2. The present Convention shall also apply to any other taxes of a substantially similar character to those referred to in the preceding paragraph imposed in either Contracting State after the date of signature of the present Convention.

Article II

1. In the present Convention, unless the context otherwise requires :

(*a*) The term " Federation " means the Federation of Malaya.

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

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

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

[1] Came into force on 21 August 1963, the date of the exchange of the instruments of ratification at Tokyo, in accordance with article XVIII (2).

(*e*) The term " Japanese corporation " means a company or any other kind of juridical person created under the law of Japan or any organisation without juridical personality treated for the purposes of Japanese tax as a juridical person created under the law of Japan and the business of which is not managed and controlled in the Federation; and the term " Federation corporation " means any company the business of which is managed and controlled in the Federation and which does not have its head or main office in Japan.

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

(*g*) The term " resident of Japan " means any individual who is resident in Japan for the purposes of Japanese tax and not resident in the Federation for the purposes of Federation tax and any Japanese corporation; and the term " resident of the Federation " means any Federation corporation and any other person who is resident in the Federation for the purposes of Federation tax and not resident in Japan for the purposes of Japanese tax.

(*h*) 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 the Federation, as the context requires.

(*i*) The terms " Japanese enterprise " and " Federation enterprise " mean, respectively, an industrial, mining, commercial, plantation, or agricultural enterprise or undertaking carried on by a resident of Japan and an industrial, mining, commercial, plantation, or agricultural enterprise or undertaking carried on by a resident of the Federation.

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

(*k*) The terms " profits of a Japanese enterprise " and " profits of a Federation enterprise " do not include rents or royalties in respect of motion picture films or of mines, oil wells, quarries or other places of extraction of natural resources, or income in the form of dividends, interest, rents, royalties, or capital gains, or fees or other remuneration derived from the management, control or supervision of the trade, business, or other activity of another enterprise or concern, or remuneration for labour or personal services, or profits derived from the operation of ships or aircraft.

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

(ii) A permanent establishment shall include especially—

(*aa*) a place of management;

(*bb*) a branch;

(*cc*) an office;

(*dd*) a factory;

(*ee*) a workshop;

(*ff*) a mine, oil well, quarry or other place of extraction of natural resources;

(*gg*) a building site or construction or assembly project which exists for more than six months;

(iii) The term " permanent establishment " shall not be deemed to include—

(*aa*) the use of facilities solely for the purpose of storage, display, or delivery of goods or merchandise belonging to the enterprise;

(*bb*) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display, or delivery;

(*cc*) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(*dd*) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;

(*ee*) 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.

(iv) An enterprise of one of the Contracting States shall be deemed to have a permanent establishment in the other Contracting State if

(*aa*) it carries on supervisory activities in that other Contracting State for more than six months in connection with a construction, installation, or assembly project which is being undertaken in that other Contracting State;

(*bb*) it carries on a business which consists of providing the services of public entertainers referred to in paragraph 3 of Article X in that other Contracting State.

(v) A person acting in one of the Contracting States on behalf of an enterprise of the other Contracting State—other than an agent of independent status to whom paragraph (vi) applies—shall be deemed to be a permanent establishment in the former Contracting State if

(*aa*) he has, and habitually exercises in that former Contracting State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or

(*bb*) he maintains in that former Contracting State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf of the enterprise.

(vi) 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 independent status, where such persons are acting in the ordinary course of their business.

(vii) The fact that a corporation of one of the Contracting States controls or is controlled by a corporation which is a corporation 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.

(*m*) The term " taxation authorities " means, in the case of Japan, the Minister of Finance or his authorised representative; and in the case of the Federation, the Minister of Finance or his authorised representative.

2. In the application of the provisions of the present Convention by one of the Contracting States, 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 the taxes which are the subject of the present Convention.

Article III

Where the present Convention provides (with or without other conditions) that income from sources in one of the Contracting States shall be exempted from tax, or taxed at a reduced rate, by that Contracting State if it is subject to tax in the other Contracting State, and under the law in force in that other Contracting State the said income is subject to tax by reference to the amount thereof which is remitted to or received in that other Contracting State and not by refer-