# No. 7935

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# AUSTRIA
# and
# INDIA

## Convention for the avoidance of double taxation with respect to taxes on income (with exchange of notes). Signed at New Delhi, on 24 September 1963

*Official text: English.*

*Registered by Austria on 23 September 1965.*

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# AUTRICHE
# et
# INDE

## Convention tendant à éviter la double imposition en matière d'impôts sur le revenu (avec échange de notes). Signée à New Delhi, le 24 septembre 1963

*Texte officiel anglais.*

*Enregistrée par l'Autriche le 23 septembre 1965.*

# No. 7935. CONVENTION[1] BETWEEN THE REPUBLIC OF AUSTRIA AND THE REPUBLIC OF INDIA FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME. SIGNED AT NEW DELHI, ON 24 SEPTEMBER 1963

The Republic of Austria and the Republic of India, desiring to conclude a Convention for the avoidance of 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 Austria :

(i) the *Einkommensteuer* (income tax) ;
(ii) the *Körperschaftsteuer* (corporation tax) ;
(iii) the *Beitrag vom Einkommen zur Förderung des Wohnbaues und für Zwecke des Familienlastenausgleiches* (Contribution from income for the promotion of residential building and for the equalisation of family burdens) ;
(hereinafter referred to as "Austrian tax") ;

*b*) In India :

(i) the income-tax,
(ii) the super-tax and
(iii) the surcharge
imposed under the Income-tax Act, 1961 (43 of 1961) ;
(hereinafter referred to as "Indian tax").

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

*Article II*

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

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

[1] Came into force on 5 April 1965, the date of the exchange of the instruments of ratification at Vienna, 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 under the Austrian law or as a company under the Indian law for tax purposes ;

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

*e*) the terms "resident of Austria" and "resident of India" mean, respectively, a person who is resident (*Wohnsitz* or *gewöhnlicher Aufenthalt*) in Austria for the purposes of Austrian 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 (*Wohnsitz* or *gewöhnlicher Aufenthalt*) in Austria for the purposes of Austrian tax. A company shall be regarded as resident in Austria if it is incorporated in Austria or its business is wholly managed and controlled in Austria ; 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 "Austrian enterprise" and "Indian enterprise" mean, respectively, an industrial or commercial enterprise or undertaking carried on by a resident of Austria 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 an Austrian 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 "permanent establishment" 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, and a permanent sales exhibition.

*bb*) An enterprise of one of the territories shall be deemed to have a permanent establishment 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 of that enterprise 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, exclusively or almost exclusively, 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 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 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.

*h*) the term "competent authority" means, in the case of Austria, the Federal 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 Convention in one of the territories any term not otherwise defined in this Convention 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 Convention.

*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 ascertainment of the correct amount of profits attributable to a permanent establishment presents exceptional difficulties, the profits attributable to the permanent establishment may be estimated on a reasonable basis.

(3) The provisions of paragraph (1) of this Article shall not be construed as preventing the taxation in one of the territories in pursuance of the present Convention and in conformity with the laws of that territory of income (e.g. dividends, interest, capital gains, fees for technical services, income from the operation of aircraft, rents or royalties or income from immovable property) derived from sources therein by a resident of the other territory even if such income is not attributable to a permanent establishment situated in that former territory.

*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.

(3) Income derived from the operation of aircraft by an Indian enterprise shall likewise not be subjected to business tax (*Gewerbesteuer*) in Austria.

*Article VI*

(1) Royalties derived by a resident of one of the territories from sources in the other territory may be taxed only in that other territory.