No. 9715

JAPAN
and
FEDERAL REPUBLIC OF GERMANY

Agreement for the avoidance of double taxation with respect to taxes on income and to certain other taxes (with exchange of notes). Signed at Bonn on 22 April 1966

Authentic texts : Japanese, German and English.

Registered by Japan on 16 July 1969.

JAPON
et
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE

Convention tendant à éviter la double imposition en matière d'impôts sur le revenu et de certains autres impôts (avec échange de notes). Signée à Bonn le 22 avril 1966

Textes authentiques : japonais, allemand et anglais.

Enregistrée par le Japon le 16 juillet 1969.

AGREEMENT[1] BETWEEN JAPAN AND THE FEDERAL REPUBLIC OF GERMANY FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND TO CERTAIN OTHER TAXES

Japan and the Federal Republic of Germany,

Desiring to conclude an Agreement for the avoidance of double taxation with respect to taxes on income and to certain other taxes,

Have agreed as follows:

Article 1

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

Article 2

(1) The taxes which are the subject of this Agreement are:

In the Federal Republic of Germany:

a) the income tax;
b) the corporation tax; and
c) the trade tax

(hereinafter referred to as "German tax").

In Japan:

a) the income tax;
b) the corporation tax;
c) the local inhabitant taxes; and
d) the enterprise tax

(hereinafter referred to as "Japanese tax").

(2) This Agreement shall also apply to any other taxes of a character substantially similar to those referred to in the preceding paragraph and introduced in either Contracting State after the date of signature of this Agreement.

[1] Came into force on 9 June 1967, i.e., the thirtieth day after the date of the exchange of the instruments of ratification, which took place at Tokyo on 10 May 1967, in accordance with article 29 (2).

(3) The provisions of this Agreement in respect of taxation of income or profits shall likewise apply to the German trade tax and to the Japanese local inhabitant taxes and the Japanese enterprise tax, computed on a basis other than income or profits.

Article 3

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

a) the term "Federal Republic" means the Federal Republic of Germany, and, when used in a geographical sense, the territory in which the Basic Law for the Federal Republic of Germany is in force;

b) the term "Japan", when used in a geographical sense, means all the territory in which the laws relating to Japanese tax are in force;

c) the terms "a Contracting State" and ,, the other Contracting State" mean Japan or the Federal Republic, as the context requires;

d) the term "tax" means Japanese tax or German tax, as the context requires;

e) the term "person" includes a company and any other body of persons;

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

g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

h) the term "nationals" means:

1. in respect of the Federal Republic: all Germans in the meaning of Article 116 paragraph 1 of the Basic Law for the Federal Republic of Germany and all legal persons, partnerships and associations deriving their status as such from the law in force in the Federal Republic;

2. in respect of Japan: all individuals possessing the nationality of Japan and all juridical persons created or organized under the law of Japan and all organizations without juridical personality treated for the purposes of Japanese tax as juridical persons created or organized under the law of Japan;

i) the term " competent authority " means, in the case of Japan, the Minister of Finance or his authorized representative, and, in the case of the Federal Republic, the Federal Minister of Finance.

(2) As regards the application of this Agreement in a Contracting State any term not otherwise defined in this Agreement shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes to which this Agreement applies.

Article 4

(1) For the purposes of this Agreement, the term ,, resident of a Contracting State " means any person who, under the law of that Contracting State, is liable to taxation therein by reason of his domicile, residence, place of head or main office, place of management or any other criterion of a similar nature.

(2) Where by reason of the provisions of paragraph 1 a person is a resident of both Contracting States, then the competent authorities shall determine by mutual agreement the Contracting State of which that person shall be deemed to be a resident for the purposes of this Agreement.

Article 5

(1) For the purposes of this Agreement, the term " permanent establishment " means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

(2) The term " 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 building site or construction or assembly project which exists for more than 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 a Contracting State on behalf of an enterprise of the other Contracting State — other than an agent of an independent status to whom paragraph 5 applies — shall be deemed to be a permanent establishment in the first-mentioned Contracting State if he has, and habitually exercises in that 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.

(5) An enterprise of a Contracting State 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 company which is a resident of a Contracting State controls or is controlled by a company 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 for either company a permanent establishment of the other.

Article 6

(1) Income from immovable property may be taxed in the Contracting State in which such property is situated.

(2) The term "immovable property" shall be defined in accordance with the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting immovable property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources ; ships and aircraft shall not be regarded as immovable property.