No. 9716

JAPAN
and
BRAZIL

Convention for the avoidance of double taxation with respect to taxes on income (with exchange of notes). Signed at Tokyo on 24 January 1967

Authentic texts of the Convention: Japanese, Portuguese and English.

Authentic text of the exchange of notes: English.

Registered by Japan on 16 July 1969.

JAPON
et
BRÉSIL

Convention tendant à éviter la double imposition en matière d'impôts sur le revenu (avec échange de notes). Signée à Tokyo le 24 janvier 1967

Textes authentiques de la Convention: japonais, portugais et anglais.

Texte authentique de l'échange de notes: anglais.

Enregistrée par le Japon le 16 juillet 1969.

CONVENTION[1] BETWEEN JAPAN AND THE UNITED STATES OF BRAZIL FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME

The Government of Japan and the Government of the United States of Brazil,

Desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income,

Have agreed as follows:

Article 1

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

(*a*) In the case of the United States of Brazil, the federal income tax (hereinafter referred to as "Brazilian tax");

(*b*) In the case of Japan, the income tax and the corporation tax (hereinafter referred to as "Japanese tax").

(2) This Convention shall also apply to taxes substantially similar to those covered by paragraph (1) which are introduced in either Contracting State after the date of signature of this Convention.

Article 2

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

(*a*) The term "Brazil" means the United States of Brazil;

(*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 Brazil, as the context requires;

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

(*e*) The term "person" includes an individual, a company and any other body of persons;

[1] Came into force on 31 December 1967, i.e. the thirtieth day after the date of the exchange of the instruments of ratification, which took place at Rio de Janeiro on 1 December 1967, in accordance with article 27 (2).

(*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 " competent authority " in relation to a Contracting State means the Minister of Finance of that Contracting State or his authorized representative.

(2) As regards the application of this Convention by a 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 the taxes to which this Convention applies.

Article 3

(1) For the purposes of this Convention, 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 Convention.

Article 4

(1) For the purposes of this 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) The term " permanent establishment " includes especiallv ·

a) a place of management ;

b) a branch ;

c) an office ;

d) a workshop ;

e) a factory ;

f) a warehouse ;

g) a mine, quarry or other place of extraction of natural resources ;

h) a building site or construction or assembly project which exists for more than six months.

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

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

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

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

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

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

(*a*) 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; or

(*b*) maintains in that Contracting State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf of the enterprise, consecutive to a contract previously concluded by the enterprise without specifying either the quantity to be delivered, or the date and the place of delivery.

(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.

(7) An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it carries on

business which consists in whole or in part of providing in that other Contracting State the services of public entertainers referred to in Article 15.

Article 5

(1) The profits of an enterprise of a Contracting State shall be taxable only in that Contracting State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other Contracting State but only so much of them as is attributable to that permanent establishment.

(2) Where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

(3) In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred.

(4) No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

(5) For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

(6) Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 6

Where

a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or