No. 9721

JAPAN
and
CEYLON

Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (with protocol). Signed at Colombo on 12 December 1967

Authentic texts: Japanese, Sinhala and English.

Registered by Japan on 16 July 1969.

JAPON
et
CEYLAN

Convention tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu (avec protocole). Signée à Colombo le 12 décembre 1967

Textes authentiques: japonais, cinghalais et anglais.

Enregistrée par le Japon le 16 juillet 1969.

CONVENTION[1] BETWEEN THE GOVERNMENT OF JAPAN AND THE GOVERNMENT OF CEYLON FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of Japan and the Government of Ceylon,

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 Japan:

the income tax and the corporation tax (hereinafter referred to as " Japanese tax ");

(*b*) In Ceylon:

the income tax (hereinafter referred to as " Ceylon 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 Japan or Ceylon subsequently to the date of signature of the present Convention.

Article II

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

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

(*b*) the terms " one of the territories " and " the other territory " mean Japan or Ceylon, as the context requires:

(*c*) the term " Contracting State " means Japan or Ceylon, as the context requires;

[1] Came into force on 22 September 1968, the thirtieth day after the date of the exchange of the instruments of ratification, which took place at Tokyo on 23 August 1968, in accordance with article XX (2).

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

(*e*) the term " person " includes any body of persons, corporate or not corporate;

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

(*g*) the terms " resident of Japan " and " resident of Ceylon " mean respectively any person who is resident in Japan for the purposes of Japanese tax and not resident in Ceylon for the purposes of Ceylon tax, and any person who is resident in Ceylon for the purposes of Ceylon tax and not resident in Japan for the purposes of Japanese tax. A company shall be regarded as resident in Japan if it has its head or main office in Japan and is not managed and controlled in Ceylon and is not incorporated under the laws of Ceylon; a company shall be regarded as resident in Ceylon if either it is incorporated under the laws of Ceylon or its business is managed and controlled in Ceylon, and in either case it does not have its head or main office in Japan;

(*h*) the terms " Japanese enterprise " and " Ceylon enterprise " mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of Japan and an industrial or commercial enterprise or undertaking carried on by a resident of Ceylon; and the terms " enterprise of one of the territories " and " enterprise of the other territory " mean a Japanese enterprise or a Ceylon enterprise, as the context requires;

(*i*) the term " industrial or commercial profits " includes profits from the business of agriculture, fishing, mining, banking, insurance, dealing in investments, and profits from rents or royalties in respect of cinematograph films, but does not include income in the form of dividends, interest, rents, royalties (other than rents or royalties in respect of cinematograph films), management charges, or remuneration for personal services;

(*j*) the term " permanent establishment " when used with respect to an enterprise of one of the territories means a branch, management, factory or other fixed place of business, an agricultural or farming estate, a mine, quarry or any other place of natural resources subject to exploitation, and a construction or assembly project or the like the duration of which exceeds 183 days; it does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of the enterprise or has a stock of merchandise from which he regularly fills orders on its behalf.

In this connection

(*aa*) an enterprise of one of the territories shall not be deemed to have a permanent establishment in the other territory merely because it carries on business dealings in that other territory through a bona fide broker, general commission agent or any other agent of a genuinely independent status, where such persons are acting in the ordinary course of their business as such;

(*bb*) the fact that an enterprise of one of the territories maintains in the other territory a fixed place of business or any agent exclusively for the purchase of goods or merchandise shall not of itself constitute that fixed place of business or that agent a permanent establishment of the enterprise;

(*cc*) the fact that a company which is a resident of one of the territories has a subsidiary company which is a resident of the other territory or which 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.

(*k*) the term " competent authorities " means in the case of Japan the case of Japan the Minister of Finance or his authorized representatives; and in the case of Ceylon the Commissioner of Inland Revenue.

(2) In the application of the provisions of the present Convention in one of the territories any term not otherwise defined in the present 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 the present Convention.

Article III

(1) The industrial or commercial profits of an enterprise of one of the territories shall not be subject to tax in the other territory unless the enterprise carries on a trade or business in that other territory through a permanent establishment situated therein. If it carries on a trade or business in that other territory through a permanent establishment situated therein, tax may be imposed on those profits in that other territory but only on so much of them as is attributable to that permanent establishment; provided that nothing in this paragraph shall affect the ascertainment of profits

from the business of insurance in accordance with the provisions of the law of Ceylon at the date of signature of the present Convention.

(2) Where an enterprise of one of the territories carries on a trade or business in the other territory 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 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; provided that nothing in this paragraph shall affect the computation of the profits derived by a Japanese enterprise from the production of tea or other agricultural product in Ceylon in accordance with the provisions of the law of Ceylon at the date of signature of the present Convention.

(3) No portion of any profits arising to an enterprise of one of the territories shall be attributed to a permanent establishment situated in the other territory by reason of the mere purchase of goods or merchandise within that other territory by the enterprise.

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 would but for those conditions 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) When a resident of Japan, operating ships or aircraft, derives profits from Ceylon through such operations carried on in Ceylon, such profits may be subject to tax in Japan as well as in Ceylon; but the tax so chargeable in Ceylon shall be reduced by an amount equal to 50 per cent thereof.