

No. 27502

**JAPAN
and
INDIA**

Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (with exchanges of notes). Signed at New Delhi on 7 March 1989

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

Authentic text of the exchange of notes: English

Registered by Japan on 10 August 1990.

**JAPON
et
INDE**

Convention tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu (avec échanges de notes). Signée à New Delhi le 7 mars 1989

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

Texte authentique de l'échange de notes : anglais

Enregistrée par le Japon le 10 août 1990.

CONVENTION¹ BETWEEN THE GOVERNMENT OF JAPAN AND
THE GOVERNMENT OF THE REPUBLIC OF INDIA 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 the Republic of India,
Desiring to conclude a new Convention for the avoidance of double taxation
and the prevention of fiscal evasion with respect to taxes on income,
Have agreed as follows:

Article 1

This Convention 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 Convention are:

(a) In Japan:

(i) The income tax; and

(ii) The corporation tax

(Hereinafter referred to as "Japanese tax");

(b) In India: the income-tax including any surcharge thereon (hereinafter referred to as "Indian tax").

2. This Convention shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Convention in addition to, or in place of, those referred to in paragraph 1. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws within a reasonable period of time after such changes.

Article 3

1. For the purposes of this Convention, unless the context otherwise requires:

(a) The term "Japan", when used in a geographical sense, means all the territory of Japan, including its territorial sea, in which the laws relating to Japanese tax are in force, and all the area beyond its territorial sea, including the seabed and subsoil thereof, over which Japan has jurisdiction in accordance with international law and in which the laws relating to Japanese tax are in force;

(b) The term "India" means the territory of India including the territorial sea and any other maritime zone in which India has sovereign rights according to the Indian law and in accordance with international law;

(c) The terms "a Contracting State" and "the other Contracting State" mean Japan or India, as the context requires;

¹ Came into force on 29 December 1989, i.e., the thirtieth day following the exchange of the instruments of ratification, which took place at Tokyo on 29 November 1989, in accordance with article 28 (2).

(d) The term “tax” means Japanese tax or Indian tax, as the context requires;

(e) The term “person” includes an individual, 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:

(i) In respect of Japan: all individuals possessing the nationality of Japan and all juridical persons created or organized under the laws of Japan and all organizations without juridical personality treated for the purposes of Japanese tax as juridical persons created or organized under the laws of Japan;

(ii) In respect of India:

(aa) All individuals possessing the nationality of India;

(bb) All legal persons, partnerships and associations deriving their status as such from the laws in force in India;

(i) The term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State, and

(j) The term “competent authority” means:

(i) In Japan, the Minister of Finance or his authorized representative;

(ii) In India, the Central Government in the Ministry of Finance, Department of Revenue, or their authorized representative.

2. As regards the application of this Convention by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State concerning the taxes to which this Convention applies.

Article 4

1. For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the laws of that Contracting State, is liable to tax therein by reason of his domicile, residence, place of head or main office 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 of the Contracting States 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 5

1. For the purposes of this Convention, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term “permanent establishment” includes especially:

- (a) A place of management;
- (b) A branch;
- (c) An office;
- (d) A factory;
- (e) A workshop;
- (f) A mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) A warehouse in relation to a person providing storage facilities for others;
- (h) A farm, plantation or other place where agriculture, forestry, plantation or related activities are carried on;
- (i) A store or other sales outlet; and
- (j) An installation or structure used for the exploration of natural resources, but only if so used for a period of more than six months.

3. A building site of construction, installation or assembly project constitutes a permanent establishment only if it lasts more than six months.

4. An enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it carries on supervisory activities in that Contracting State for more than six months in connection with a building site of construction, installation or assembly project which is being undertaken in that Contracting State.

5. Notwithstanding the provisions of paragraphs 3 and 4 an enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it provides services or facilities in that Contracting State for more than six months in connection with the exploration, exploitation or extraction of mineral oils in that Contracting State.

6. Notwithstanding the provisions of the preceding paragraphs of this Article, the term “permanent establishment” shall be deemed not to include:

- (a) The use of facilities solely for the purpose of storage or display 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 or display;
- (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 of collecting information, for the enterprise;
- (e) The maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character.

7. Notwithstanding the provisions of paragraphs 1 and 2, where a person — other than an agent of an independent status to whom paragraph 8 applies — is acting in a Contracting State on behalf of an enterprise of the other Contracting

State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State, if

(a) He has and habitually exercises in that Contracting State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to those mentioned his activities are limited to those mentioned in paragraph 6 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph;

(b) He has no such authority, but habitually maintains in the first-mentioned Contracting State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise; or

(c) He habitually secures orders in the first-mentioned Contracting State, wholly or almost wholly for the enterprise itself or for the enterprise and other enterprises controlling, controlled by, or subject to the same common control as that enterprise.

8. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that Contracting State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

9. 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 either company a permanent establishment of the other.

Article 6

1. Income derived by a resident of a Contracting State from immovable property situated in the other Contracting State may be taxed in that other Contracting State.

2. The term “immovable property” shall have the meaning which it has under the laws 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 naturel resources; ships and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7

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 that