

No. 4878

**JAPAN
and
DENMARK**

Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (with Protocol). Signed at Copenhagen, on 10 March 1959

Official text: English.

Registered by Japan on 15 September 1959.

**JAPON
et
DANEMARK**

Convention tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu (avec Protocole). Signée à Copenhague, le 10 mars 1959

Texte officiel anglais.

Enregistrée par le Japon le 15 septembre 1959.

No. 4878. CONVENTION¹ BETWEEN JAPAN AND THE KINGDOM OF DENMARK FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME. SIGNED AT COPENHAGEN, ON 10 MARCH 1959

The Government of Japan and the Royal Government of Denmark,
Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,
Have appointed for that purpose as their respective Plenipotentiaries :

The Government of Japan :

Keiichi Tatsuke, Ambassador Extraordinary and Plenipotentiary of Japan in Copenhagen;

The Royal Government of Denmark :

Jens Otto Krag, Minister for Foreign Affairs;

Who, having communicated to one another their respective full powers, found in good and due form, have agreed upon the following Articles :

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 Denmark :

National income taxes and municipal income taxes (hereinafter referred to as " Danish tax ").

2. The present Convention shall also apply to any other tax on income or profit which has a substantially similar character to those referred to in the preceding paragraph and which may be imposed in either contracting State after 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.

¹ Came into force on 24 April 1959, the date of exchange of the instruments of ratification at Tokyo, in accordance with article XXII.

(b) The term “Denmark” means the Kingdom of Denmark, excluding the Faroe Islands and Greenland.

(c) The terms “one of the contracting States” and “the other contracting State” mean Japan or Denmark, as the context requires.

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

(e) The term “resident of Japan” means any individual who is resident in Japan for the purposes of Japanese tax and not resident in Denmark for the purposes of Danish tax and the term “resident of Denmark” means any individual who is resident in Denmark for the purposes of Danish tax and not resident in Japan for the purposes of Japanese tax.

(f) The terms “resident of one of the contracting States” and “resident of the other contracting State” mean a resident of Japan or a resident of Denmark, as the context requires.

(g) The term “Japanese corporation” means any corporation or other association having juridical personality or any association without juridical personality which has its head (or principal) office in Japan and the term “Danish corporation” means any body corporate managed and controlled in Denmark and which is not a Japanese corporation.

(h) The terms “corporation of one of the contracting States” and “corporation of the other contracting State” mean a Japanese corporation or a Danish corporation, as the context requires.

(i) The term “Japanese enterprise” means an industrial or commercial enterprise or undertaking carried on by a resident or corporation of Japan and the term “Danish enterprise” means an industrial or commercial enterprise or undertaking carried on by a resident or corporation of Denmark.

(j) The terms “enterprise of one of the contracting States” and “enterprise of the other contracting State” mean a Japanese enterprise or a Danish enterprise, as the context requires.

(k) The term “permanent establishment” when used with respect to an enterprise of one of the contracting States, means an office, branch, factory, warehouse or other fixed place of business, but 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. It may include the constant use of mere storage facilities but does not include the casual and temporary use of such facilities.

In this connection—

- (1) An enterprise of one of the contracting States shall not be deemed to have a permanent establishment in the other contracting State merely because it carries on business dealings in that other contracting State through a *bona*

fide broker, commission agent, or other independent agent acting in the ordinary course of his business as such;

- (2) The fact that an enterprise of one of the contracting States maintains in the other contracting State a fixed place of business exclusively for the purchase of goods or merchandise for that enterprise shall not of itself constitute that fixed place of business a permanent establishment of the enterprise; and
- (3) The fact that a corporation of one of the contracting States has a subsidiary corporation which is a corporation of the other contracting State or which carries on a trade or business in that other contracting State shall not of itself constitute that subsidiary corporation a permanent establishment of its parent corporation.

(l) The term " industrial or commercial profits " includes manufacturing, mercantile, agricultural, fishing, mining and insurance profits as well as profits from banking and security dealings, but does not include income in the form of dividends, interests, rents, or royalties as referred to in Article VI, paragraph 2 or remuneration for personal services.

(m) The term " competent authorities " in relation to a contracting State means the Minister of Finance of that contracting State or his authorized representative.

2. In the application of the provisions of the present Convention by either 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 tax.

Article III

1. The industrial or commercial profits of an enterprise of one of the contracting States shall not be subject to tax in the other contracting State unless the enterprise has a permanent establishment situated in that other contracting State. If it has such permanent establishment, tax may be imposed by that other contracting State on the entire income of that enterprise from sources within that other contracting State.

2. Where an enterprise of one of the contracting States has a permanent establishment situated in the other contracting State, there shall be attributed to that permanent establishment the industrial or commercial profits which it might be expected to derive in that other contracting State if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing on an independent basis with the enterprise of which it is a permanent establishment, and the profits so attributed shall be deemed to be income from sources within that other contracting State.

3. In determining the tax of one of the contracting States, no account shall be taken of the mere purchase of merchandise therein by an enterprise of the other contracting State for that enterprise.
4. Income derived from the sale of goods (excluding the kind of income mentioned in the following paragraph) shall be treated, for the purposes of application of the provisions of paragraph 1 above, as derived from the country in which such goods are sold.
5. Income derived from the sale by an enterprise in one of the contracting States of goods manufactured in the other contracting State in whole or in part by that enterprise shall be treated, for the purposes of application of the provisions of paragraph 1 above, as derived in part from the country in which the goods are manufactured and in part from the country in which the goods are sold.
6. The competent authorities of both contracting States may, consistent with the provisions of the present Convention, arrange details for the apportionment of industrial or commercial profits.

Article IV

Where :

- (a) an enterprise of one of the contracting States participates directly or indirectly in the managerial or financial control of an enterprise of the other contracting State, or
 - (b) the same individuals or corporations participate directly or indirectly in the managerial or financial control of an enterprise of one of the contracting States and an enterprise of the other contracting State,
- 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. Notwithstanding the provisions of Articles III and IV, profits which an enterprise of one of the contracting States derives from the operation of ships or aircraft registered
 - (a) in that contracting State or in the other contracting State, or
 - (b) in any third country which exempts from its tax profits derived from the operation of ships or aircraft registered in that other contracting State

shall be exempt from the tax of that other contracting State.

2. The present Convention shall not be construed to affect the arrangement between the Government of Japan and the Government of Denmark providing

for relief from double taxation on shipping profits effected by the exchange of notes at Tokyo dated October 15, 1927.¹

Article VI

1. The amount of tax imposed by one of the contracting States on royalty derived from sources within that contracting State by a resident or corporation of the other contracting State, not having a permanent establishment situated in the former contracting State, shall not exceed 15 per cent of the amount of such royalty.

2. The term "royalty" as used in the present Article means any royalty and other amount paid as consideration for using, or for the right to use, any copyright, patent, design, secret process and formula, trade-mark or other like property, and includes rentals and like payments in respect of motion picture films or for the use of industrial, commercial, or scientific equipment; but does not include any royalty and other amount paid in respect of the operation of a mine or quarry or of any other exploitation of natural resources.

3. Royalties for using, or for the right to use, in one of the contracting States, copyrights, patents, designs, secret processes and formulae, trademarks or other like property as well as motion picture films and industrial, commercial, or scientific equipment shall be treated as income from sources within that contracting State.

4. The amount of tax imposed by one of the contracting States on the income derived from sources within that contracting State from the sale of any copyright, patent, design, secret process and formula, trade-mark or other industrial invention as well as motion picture films (excluding such films as to which payment of royalty is inconceivable) by a resident or corporation of the other contracting State, not having a permanent establishment situated in the former contracting State, shall not exceed 15 per cent of the gross amount received.

5. Income derived from the sale of the property mentioned in the preceding paragraph shall be treated as income from sources within that contracting State in which such property is to be used.

Article VII

1. The amount of tax imposed by one of the contracting States on dividends paid by a corporation of that contracting State to a resident or corporation of the other contracting State, not having a permanent establishment situated in the

¹ League of Nations, *Treaty Series*, Vol. LXXI, p. 75, and Vol. LXXVIII, p. 506.

former contracting State, shall not exceed 15 per cent of the amount of such dividends.

2. Where a corporation of one of the contracting States derives profits or income from sources within the other contracting State, there shall not be imposed in that other contracting State any form of taxation on dividends paid by the corporation unless paid to a resident or corporation of that other contracting State, or any tax in the nature of undistributed profits tax on undistributed profits of the corporation, whether or not those dividends or undistributed profits represent, in whole or in part, profits or income so derived.

3. Dividends paid by a corporation of one of the contracting States shall be treated as income from sources within that contracting State.

Article VIII

1. The amount of tax imposed by one of the contracting States on any interest derived from sources within that contracting State by a resident or corporation of the other contracting State, not having a permanent establishment situated in the former contracting State, shall not exceed 15 per cent of the amount of such interest.

2. The term " interest " as used in the present Article means interest on bonds, securities, notes, debentures or any other form of indebtedness (including mortgages or bonds secured by real property).

3. Interest on

(a) bonds or debentures issued by one of the contracting States, including local governments thereof, or by a corporation of one of the contracting States, or

(b) deposits made in one of the contracting States

shall be treated as income from sources within that contracting State.

4. Interest on loans in connection with trade, business or other transactions carried on in one of the contracting States by

(a) a resident or corporation of that contracting State,

(b) an enterprise of the other contracting State, having a permanent establishment in the former contracting State

shall be treated as income from sources within the former contracting State.

Article IX

1. Salaries, wages, pensions or similar compensation paid by one of the contracting States in respect of services rendered to that contracting State in the discharge of governmental functions to any individual who is a national of that contracting State shall be exempt from tax in the other contracting State.
2. The provisions of the present Article shall not apply to salaries, wages, pensions or similar compensation paid in respect of services rendered in connection with any trade or business carried on by either of the contracting States for the purposes of profit.

Article X

1. An individual who is a resident of one of the contracting States shall be exempt from tax in the other contracting State on profits or remuneration for personal (including professional) services performed within that other contracting State in any taxable year if—
 - (a) he is present within that other contracting State for a period or periods not exceeding in the aggregate 183 days during that taxable year, and
 - (b) the services are performed for or on behalf of a resident or corporation of the former contracting State.
2. The provisions of the present Article shall not apply to the profits or remuneration of public entertainers such as theatre, motion picture, radio or television artists, musicians and professional athletes.

Article XI

A professor or teacher from one of the contracting States who visits the other contracting State for a period not exceeding two years for the purpose of teaching at a university or similar establishment for higher education in that other contracting State, shall be exempt from tax in that other contracting State in respect of remuneration for that teaching.

Article XII

A student or business apprentice from one of the contracting States, who is receiving full-time education or training in the other contracting State, shall be exempt from tax in that other contracting State on payments made to him from abroad for the purposes of his maintenance, education or training.

Article XIII

1. Where under the provisions of the present Convention a resident of Japan is entitled to exemption from, or reduction of, Danish tax, similar exemption or

reduction shall be applied to the undivided estate of a deceased person in so far as one or more of the beneficiaries is a resident of Japan.

2. Danish tax on the undivided estate of a deceased person shall, in so far as the income accrues to a beneficiary who is a resident of Japan, be in accordance with the provisions of Article XV allowed as a credit against Japanese tax payable in respect of that income.

Article XIV

1. For the purposes of the present Convention :

- (a) Income derived from real property (including gains derived from the sale, transfer or exchange of such property, but not including interest from mortgages or bonds secured by real property), and royalties in respect of the operation of mines, quarries, or other natural resources shall be treated as income derived from the country in which such real property, mines, quarries, or other natural resources are situated.
- (b) Income derived from the sale, transfer or exchange of ships or aircraft shall be treated as derived from the country where such ships or aircraft are registered.
- (c) Income derived from the sale, transfer or exchange of a permanent establishment belonging to an enterprise of one of the contracting States but situated in the other contracting State shall be treated as income derived from the contracting State where the permanent establishment is situated.
- (d) Capital gains derived from the sale, transfer or exchange of shares, bonds, debentures and similar assets shall be treated as derived from the country in which such assets are sold.
- (e) Salaries, wages, or similar compensation for labour or personal services as well as compensation for professional services shall be treated as income from sources within the country where are rendered the services for which such compensation is paid, and the services performed in ships or aircraft operated by an enterprise of one of the contracting States shall be deemed to be rendered in that contracting State.

2. Income, the source of which has not been determined by the provisions of the preceding paragraph of this Article or the preceding Articles of the present Convention, shall be deemed to be income from sources in that contracting State of which the recipient of the income is a resident or corporation.

Article XV

1. Japan, in determining Japanese tax on its resident (including an individual, who is resident in Japan for the purposes of Japanese tax but also resident in

Denmark for the purposes of Danish tax) or corporation may include in the basis upon which that tax is imposed all items of income taxable under the laws of Japan. The amount of Danish tax payable under the laws of Denmark and in accordance with the provisions of the present Convention, whether directly or by deduction, in respect of income from sources within Denmark and subject to the taxes of both contracting States shall, however, be allowed as a credit against Japanese tax payable in respect of that income, but in an amount not exceeding that proportion of Japanese tax which that income bears to the entire income subject to Japanese tax.

2. Denmark, in determining Danish tax on its resident (including an individual, who is resident in Denmark for the purposes of Danish tax but also resident in Japan for the purposes of Japanese tax) or corporation may include in the basis upon which that tax is imposed all items of income taxable under the laws of Denmark. The amount of Japanese tax payable under the laws of Japan and in accordance with the provisions of the present Convention, whether directly or by deduction, in respect of income from sources within Japan and subject to the taxes of both contracting States shall, however, be allowed as a credit against Danish tax payable in respect of that income, but in an amount not exceeding that proportion of Danish tax which that income bears to the entire income subject to Danish tax.

3. The foregoing provisions shall not, however, be construed to preclude the application of the provisions of Articles IX, XI and XII.

Article XVI

The competent authorities of both contracting States shall exchange such information available under their respective tax laws in the normal course of administration as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or for the administration of statutory provisions against tax avoidance in relation to the tax. Any information so exchanged shall be treated as secret and shall not be disclosed to any person other than those, including a court, concerned with the assessment and collection of the tax or the determination of appeal in relation thereto. No information shall be exchanged which would disclose any trade, business, industrial or professional secret or any trade process.

Article XVII

Any taxpayer, who shows that the action of the taxation authorities of either contracting State has resulted or will result in double taxation contrary to the pro-

of the present Convention, may lodge a claim with the competent authorities of the contracting State of which the taxpayer is a resident or corporation. Should the claim be deemed justified, such competent authorities shall undertake to come to an agreement with the competent authorities of the other contracting State with a view to avoidance of the double taxation in question.

Article XVIII

Should any difficulty or doubt arise as to the interpretation or application of the present Convention, or its relationship to Conventions between one of the contracting States and any third country, the competent authorities of the contracting States may settle the question by mutual agreement; it being understood, however, that this provision shall not be construed to preclude the contracting States from settling by negotiation through diplomatic channels any dispute arising under the present Convention.

Article XIX

1. The provisions of the present Convention shall not affect the right to benefit by any more extensive exemptions which have been conferred, or which may hereafter be conferred, on diplomatic and consular officials in virtue of the general rules of international law.
2. The provisions of the present Convention shall not be construed to restrict in any manner any exemption, deduction, credit or other allowance now or hereafter accorded by the laws of one of the contracting States in determining the tax of that contracting State.
3. The competent authorities of either contracting State may prescribe regulations necessary to interpret and carry out the provisions of the present Convention and may communicate with each other directly for the purpose of giving effect to the provisions of the present Convention.

Article XX

1. The nationals of one of the contracting States shall not be subjected in the other contracting State to any taxation or any requirement connected therewith which is other, higher or more burdensome than the taxation and connected requirements to which nationals of that other contracting State in the same circumstances are or may be subjected.
2. The enterprises of one of the contracting States shall not, while having permanent establishments in the other contracting State, be subjected in that other contracting State to any taxation or any requirement connected therewith

which is other, higher or more burdensome than the taxation and connected requirements to which enterprises of that other contracting State are or may be subjected.

3. Enterprises of one of the contracting States the capital of which is wholly or partly owned by one or more residents or corporations of the other contracting State shall not be subjected in the former contracting State to any taxation or any requirement connected therewith which is other, higher or more burdensome than the taxation and connected requirements to which other enterprises of the former contracting State, the capital of which is wholly or partly owned by one or more residents or corporations of that former contracting State, are or may be subjected.

4. The term "nationals" means all individuals possessing the nationality of either of the contracting States and all corporations and other associations (with or without juridical personality) deriving their status as such from the law in force in either of the contracting States.

5. In this Article, the term "taxation" means taxes of every kind.

6. Nothing contained in this Article shall be construed as obliging either of the contracting States to grant to nationals of the other contracting State not resident of the former contracting State those personal allowances, reliefs and reductions for tax purposes which are by law available only to resident of that former contracting State.

Article XXI

1. The present Convention may be extended in its entirety or with modifications to the territories of the Faroe Islands and Greenland if in these territories there are imposed taxes substantially similar in character to those which are the subject of the present Convention. The extension of the Convention and the modifications thereto shall be specified and agreed between the contracting Governments in notes to be exchanged for this purpose.

2. The termination of the present Convention under Article XXII shall, unless otherwise expressly agreed by both contracting Governments, terminate the application of the present Convention to any territory to which the Convention has been extended under this Article.

Article XXII

1. The present Convention shall be ratified and the instruments of ratification shall be exchanged at Tokyo as soon as possible.

2. The present Convention shall enter into force on the date of exchange of instruments of ratification and shall be applicable—

(a) In Japan :

As regards income derived during the taxable years beginning on or after the first day of January in the calendar year in which the exchange of instruments of ratification takes place.

(b) In Denmark :

As regards tax for any taxable year beginning on or after the first day of April in the calendar year in which the exchange of instruments of ratification takes place.

3. The present Convention shall continue effective for a period of five years and indefinitely after that period, but may be terminated by either of the contracting States at the end of the five-year period or at any time thereafter, provided that at least six months' prior notice of termination has been given and, in such event, the present Convention shall cease to be effective—

(a) In Japan :

As regards income derived during the taxable years beginning on or after the first day of January in the calendar year next following the expiration of the period indicated in the prior notice.

(b) In Denmark :

As regards tax for any taxable year beginning on or after the first day of April in the calendar year next following the expiration of the period indicated in the prior notice.

IN WITNESS WHEREOF the undersigned Plenipotentiaries have signed the present Convention.

DONE at Copenhagen in duplicate in the English language on the tenth day of March, one thousand nine hundred and fifty-nine.

For Japan :
Keiichi TATSUKE

For the Kingdom of Denmark :
J. O. KRAG

PROTOCOL

At the signing of the Convention between Japan and the Kingdom of Denmark for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income,¹ the undersigned Plenipotentiaries have agreed upon the following provisions which shall form an integral part of the said Convention :

With reference to the joint Danish, Norwegian and Swedish air traffic operation organization Scandinavian Airlines System (SAS), the provisions of Article V shall be applied to profits derived from the operation of aircraft by that organization, whether the aircraft be registered in Denmark, Norway or Sweden, but only to so much of the profits so derived as is allocable to the Danish partner of the organization in proportion to its share in that organization.

DONE at Copenhagen in duplicate in the English language on the tenth day of March, one thousand nine hundred and fifty-nine.

For Japan :
Keiichi TATSUKE

For the Kingdom of Denmark :
J. O. KRAG

¹See p. 56 of this volume.