

No. 4880

**JAPAN
and
PAKISTAN**

Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (with exchange of notes). Signed at Tokyo, on 17 February 1959

Official text: English.

Registered by Japan on 15 September 1959.

**JAPON
et
PAKISTAN**

Convention tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu (avec échange de notes). Signée à Tokyo, le 17 février 1959

Texte officiel anglais.

Enregistrée par le Japon le 15 septembre 1959.

No. 4880. CONVENTION¹ BETWEEN JAPAN AND PAKISTAN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME. SIGNED AT TOKYO, ON 17 FEBRUARY 1959

The Government of Japan and the Government of Pakistan,
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 :

Mr. Aiichiro Fujiyama, Minister for Foreign Affairs of Japan and

The Government of Pakistan :

Dr. Omar Hayat Malik, Ambassador Extraordinary and Plenipotentiary of Pakistan to Japan,

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 Pakistan :

The income-tax, the super-tax and the business profits tax (hereinafter referred to as "Pakistan tax");

(b) In Japan :

The income-tax and the corporation tax (hereinafter referred to as "Japanese 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 which may be imposed by 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 "Pakistan" means the Provinces of Pakistan and the Federal Capital;

¹ Came into force on 14 May 1959, the date of the exchange of the instruments of ratification at Karachi, in accordance with article XXI.

(b) The term “Japan”, when used in a geographical sense, means all the territory in which the laws relating to Japanese tax are enforced;

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

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

(e) The term “Pakistan company” means a body corporate or any other entity which is treated as a body corporate under the tax laws of Pakistan whose business is managed and controlled in Pakistan but does not include a Japanese corporation as defined in clause (f) below.

A Pakistan company shall be regarded as resident in Pakistan if its business is managed and controlled in Pakistan;

(f) The term “Japanese corporation” means a corporation or other association having juridical personality or any association without juridical personality which has its head (or principal) office in Japan;

(g) The term “resident of Japan” means an individual, who is resident in Japan for the purposes of Japanese tax and not resident in Pakistan for the purposes of Pakistan tax, and the term “resident of Pakistan” means an individual or any other taxable entity, other than a Pakistan company, that is resident in Pakistan for the purposes of Pakistan tax and not resident in Japan for the purposes of Japanese tax;

(h) 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 Pakistan, as the context requires;

(i) The terms “corporation of one of the contracting States” and “corporation of the other contracting State” mean a Japanese corporation or a Pakistan company, as the context requires;

(j) The term “Japanese enterprise” means an industrial or commercial enterprise or undertaking carried on in Japan by a resident of Japan or a Japanese corporation, and the term “Pakistan enterprise” means an industrial or commercial enterprise or undertaking carried on in Pakistan by a resident of Pakistan or a Pakistan company;

(k) The terms “enterprise of one of the contracting States” and “enterprise of the other contracting State” mean a Japanese enterprise or a Pakistan enterprise, as the context requires;

(l) The term “industrial or commercial profits” includes manufacturing, mercantile, fishing, mining, financial and insurance profits, but does not include income in the form of dividends, interest, rents or royalties, or remuneration for personal services;

(m) The term “ permanent establishment ”, when used with respect to an enterprise of one of the contracting States, means any fixed place of business, such as an office, a branch, a factory or a warehouse, where the business of the enterprise is carried on, but does not include the casual and temporary use of mere storage facilities. It includes a mine, a quarry or any other place of natural resources, subject to exploitation. It also includes an agent or employee of an enterprise of one of the contracting States if such an agent or employee has and habitually exercises a general authority to negotiate and conclude contracts on behalf of the enterprise or has a stock of merchandise in the other contracting State from which he regularly fills orders on its behalf.

In this connection—

- (i) 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;
- (ii) 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 the other contracting State shall not of itself constitute that subsidiary corporation a permanent establishment of its parent corporation;

(n) The term “ competent authorities ” means, in the case of Japan, the Minister of Finance or his authorised representatives, and, in the case of Pakistan, the Central Board of Revenue or their authorised representatives.

(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 the tax.

Article III

(1) The industrial or commercial profits of an enterprise of one of the contracting States shall not be subject to the 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, the tax may be imposed by that other contracting State upon the entire income of that enterprise from sources within that other contracting State.

(2) Where the 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.

(3) In determining the industrial or commercial profits of a permanent establishment, there shall be allowed as deductions all expenses wherever incurred, reasonably allocable to such permanent establishment, including executive and general administrative expenses so allocable.

(4) The industrial or commercial profits derived from the sale of goods other than the goods referred to in paragraph (5) below by an enterprise in one of the contracting States shall, for the purposes of the application of this Article, be treated—

- (a) in Pakistan, as derived in part from the country in which such goods are purchased and in part from the country in which such goods are sold, and
- (b) in Japan, as derived from the country in which such goods are sold.

(5) The industrial or commercial profits derived from 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, for the purposes of the application of this Article, be treated 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 the 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 or other entities 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

Notwithstanding the provisions of Article III and Article IV of the present Convention, income which an enterprise of one of the contracting States derives from the operation of aircraft registered—

- (a) in either contracting State, or
- (b) in any third country which exempts (i) that enterprise and (ii) an enterprise of the other contracting State from its tax on earnings derived from the operation of aircraft registered in the respective States

shall be exempt from the tax of that other contracting State, unless the aircraft is operated wholly or mainly between places within that other contracting State.

Article VI

(1) Where a Japanese corporation or a group of Japanese corporations, being a public company or a group of public companies, as the case may be, owns not less than one-third of the voting shares of a Pakistan company engaged in an industrial undertaking, the rate of Pakistan super-tax on dividends paid to the Japanese corporation by the Pakistan company shall be reduced by one anna in the rupee (i.e. 6.25 per cent), if the recipient of the dividends has no permanent establishment in Pakistan.

(2) The provisions of section 23-A of the Pakistan Income Tax Act relating to the compulsory distribution of profits shall not apply to the income of a Pakistan company more than one-third voting shares of which are owned by a Japanese corporation or a group of Japanese corporations, being a public company or a group of public companies, as the case may be, if the Pakistan company is engaged in an industrial undertaking and its profits are retained in Pakistan for its industrial development and expansion in Pakistan.

(3) Where a Pakistan company or a group of Pakistan companies owns not less than one-third of the voting shares of a Japanese corporation, the rate of Japanese tax on dividends paid to the Pakistan company by the Japanese corporation shall not exceed 15 per cent, if the recipient of the dividends has no permanent establishment in Japan.

(4) 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 any undistributed profits of the corporation whether or not these dividends or undistributed profits represent, in whole or in part, profits or income so derived.

(5) Dividends paid by a Japanese corporation shall be treated as income derived from sources within Japan and dividends paid by a Pakistan company shall be treated as income derived from sources within Pakistan.

(6) The term “ public company ”, as used in paragraphs (1) and (2) of the present Article, means in relation to any year of assessment—

- (a) a company which does not restrict the right to transfer its shares, which does not prohibit the issue of its shares to the public or the sale of its shares on a stock exchange and of which shares carrying more than 50 per cent of the voting power were held at any time during the previous year by not less than six persons; or
- (b) a company all of whose shares were held at the end of the previous year by one or more public companies as defined in clause (a) of this paragraph; or
- (c) a company more than 50 per cent of whose shares were held at the end of the previous year by either of the contracting Governments.

(7) The term “ industrial undertaking ”, as used in the present Article, means an undertaking falling under any of the classes mentioned below which is set up or commenced after the present Convention comes into force or the shares of which are acquired by an enterprise of the other contracting State after that date :

- (a) the manufacture of goods or materials or the subjection of goods or materials to any process which results in substantially changing their original condition;
- (b) ship-building;
- (c) electricity, hydraulic power, gas and water supply;
- (d) mining including the working of an oil-well or any other source of mineral deposits;
- (e) printing;
- (f) any other undertaking which may be declared to be an “ industrial undertaking ” by the competent authorities for the purposes of the present Article.

Article VII

(1) Royalties paid as consideration for using, or for the right to use, copyrights, patents, designs, secret processes and formulae, trademarks or other like property and royalties or rentals in respect of motion picture films and films for use in connection with television in one of the contracting States shall be treated as income from sources within that contracting State and shall be taxable by that contracting State.

(2) Notwithstanding the provisions of paragraph (1) of the present Article, royalties or rentals mentioned therein derived from sources within one of the contracting States, by a resident or a corporation of the other contracting State, not having a permanent establishment in the former contracting State, shall be exempt from the tax of the former contracting State.

(3) Where any royalty or rental exceeds a fair and reasonable consideration in respect of the rights for which it is paid, the exemption provided by the present Article shall apply only to so much of the royalty or rental as represents such fair and reasonable consideration.

Article VIII

(1) The Government of one of the contracting States shall be exempt from the tax of the other contracting State with respect to interest on loans or dividends received by that Government from sources within that other contracting State.

(2) The Export and Import Bank of Japan and the State Bank of Pakistan shall be exempt from the tax of the other contracting State with respect to interest on loans or dividends from sources within Pakistan and Japan respectively.

(3) Any financial institution owned by one of the contracting States shall be exempt from the tax of the other contracting State with respect to interest on loans or dividends received by that institution from sources within that other contracting State.

Article IX

(1) Salaries, wages, pensions or similar remuneration 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 (other than an individual who has been admitted to the other contracting State for permanent residence therein) shall be exempt from the tax of the other contracting State.

(2) The provisions of the present Article shall not apply to salaries, wages, pensions or similar remuneration 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) Salaries, wages and similar remuneration for personal (including professional) services shall be treated as income from sources within the State in which such services are rendered and shall be taxable by that State.

(2) Notwithstanding the provisions of paragraph (1) of the present Article, a resident of one of the contracting States shall be exempt from the tax of the other contracting State on such remuneration in either of the following two cases :

- (a) If (i) he is present within the other contracting State for a period or periods not exceeding in the aggregate 183 days during a taxable year, and
- (ii) the services are performed for, or on behalf of, a resident or a corporation of that contracting State of which he is a resident; or
- (b) If (i) he is present within the other contracting State for a period or periods not exceeding in the aggregate 90 days during a taxable year, and
- (ii) the services are performed in the exercise of a liberal profession, and
- (iii) the remuneration received for such services does not exceed 750,000 Yen or its equivalent sum in Pakistan rupees at the official rate of exchange.

(3) The provisions of paragraph (2) 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 purposes of teaching at a university, college, school or other educational institution shall be exempt from the tax of the other contracting State in respect of remuneration for that teaching.

Article XII

(1) A resident of one of the contracting States who is temporarily present in the other contracting State solely—

- (a) as a student at a recognised university, college or school in that other contracting State, or
- (b) as a recipient of a grant, allowance or award for the primary purpose of study or research from a governmental, religious, charitable, scientific, literary or educational organization

shall be exempt from the tax of that other contracting State with respect to :

- (i) remittances from abroad for the purposes of his maintenance, education, study or research;
- (ii) the grant, allowance or award; and

(iii) remuneration for personal services in that other contracting State not exceeding, in any taxable year, 360,000 Yen or its equivalent sum in Pakistan rupees at the official rate of exchange.

(2) A resident of one of the contracting States who is an employee of, or under contract with, an enterprise of that contracting State or an organization referred to in paragraph (1) (b) of the present Article and who is temporarily present in the other contracting State for a period not exceeding one year solely to acquire technical, professional or business experience from a person other than that enterprise or organization, shall be exempt from the tax of that other contracting State on remuneration for his services directly related to the acquisition of such experience (including remuneration received from abroad) if the amount thereof does not exceed, in any taxable year, 1,000,000 Yen or its equivalent sum in Pakistan rupees at the official rate of exchange.

(3) A resident of one of the contracting States who is temporarily present in the other contracting State under arrangements with the Government of that other contracting State or any agency or instrumentality thereof solely for the purpose of training, study or orientation shall be exempt from the tax of that other contracting State on remuneration for his services directly related to such training, study or orientation (including remuneration, if any, received from abroad) if the amount thereof does not exceed, in any taxable year, 1,000,000 Yen or its equivalent sum in Pakistan rupees at the official rate of exchange.

(4) The benefits of paragraph (1), (2), or (3) shall not be cumulative.

Article XIII

(1) Interest on—

- (a) bonds or debentures issued by one of the contracting States, including local Governments thereof, or by a corporation or other entity of one of the contracting States, or
- (b) deposits made in one of the contracting States, or
- (c) loans in connection with trade, business or other transactions carried on in one of the contracting States

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

(2) Income derived from real property situated in one of the contracting States by a resident or corporation of the other contracting State shall be treated as income derived from sources within the former contracting State and shall be taxable by that contracting State.

(3) The term "interest" means interest on bonds, securities, notes, debentures or any other form of indebtedness (including mortgages or bonds secured by real property) and the term "income derived from real property" means income of whatever nature derived from real property (including royalties in respect of the operation of mines, quarries or other natural resources).

Article XIV

(1) Pakistan, in determining Pakistan tax on its residents (including an individual, who is resident in Pakistan for the purposes of Pakistan tax and also resident in Japan for the purposes of Japanese tax) or Pakistan companies may include in the basis upon which that tax is imposed all items of income taxable under the laws of Pakistan. 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 Pakistan tax payable in respect of that income, but in an amount not exceeding that proportion of Pakistan tax which that income bears to the entire income subject to Pakistan tax.

(2) Japan, in determining Japanese tax on its residents (including an individual who is resident in Japan for the purposes of Japanese tax and also resident in Pakistan for the purposes of Pakistan tax) or Japanese corporations may include in the basis upon which that tax is imposed all items of income taxable under the laws of Japan. The amount of Pakistan tax payable under the laws of Pakistan and in accordance with the provisions of the present Convention, whether directly or by deduction, in respect of income from sources within Pakistan and subject to 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.

Article XV

(1) The competent authorities of the 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 the 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 persons other than those concerned with the assessment and collection of the tax or the determination of appeal in relation thereto or a court of law, in accordance

with the laws of the respective contracting States. No information shall be exchanged which would disclose any trade, business, industrial or professional secret or any trade process.

(2) Each of the contracting States may collect the tax imposed by the other contracting State (as though such tax were the tax of the former State) as will ensure that the exemptions, reduced rates of tax or any other benefit granted under the present Convention by that other contracting State shall not be enjoyed by persons not entitled to such benefits.

Article XVI

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 provisions of the present Convention, may lodge a claim with the competent authorities of the contracting State of which the taxpayer is a resident or a 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 XVII

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 negotiations through diplomatic channels any dispute arising under the present Convention.

Article XVIII

(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 XIX

(1) The nationals of one of the contracting States shall not be subjected in the other contracting State to the tax or any requirement connected therewith which is higher or more burdensome than the tax and connected requirements to which nationals of that other contracting State in the same circumstances are or may be subjected and, in the case of individuals, shall be allowed such personal allowances as are admissible to the nationals (as defined in paragraph (2) (a) of the present Article) of the other contracting State in similar circumstances.

(2) The term “ nationals ”, as used in the present Article, means :

- (a) all individuals possessing the nationality of the respective contracting States; and
- (b) all corporations and other legal entities deriving their status as such from the laws in force in the respective contracting States.

Article XX

(1) The present Convention may be extended, either in its entirety or with modifications, to any territory for whose international relations either contracting State is responsible and which imposes taxes substantially similar in character to those which are the subject of the present Convention and any such extension shall take effect from such date and subject to such modifications and conditions (including conditions as to termination) as may be specified and agreed between the contracting Governments in notes to be exchanged for this purpose.

(2) The termination in respect of Japan or Pakistan 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 XXI

(1) The present Convention shall be ratified and the instruments of ratification shall be exchanged at Karachi 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 Pakistan, in respect of the “ previous years ” or the “ chargeable accounting periods ” (as defined by the tax laws of Pakistan) 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 Japan, in respect of 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.

Article XXII

The present Convention shall continue in effect indefinitely but either of the contracting States may, on or before the 30th day of June in any calendar year not earlier than five years from the date on which the present Convention enters into force, give to the other contracting State written notice of termination and, in such event, the present Convention shall cease to be effective—

- (a) In Pakistan, in respect of the “previous years” or the “chargeable accounting periods” (as defined by the tax laws of Pakistan) beginning on or after the first day of January in the calendar year next following that in which the notice is given.
- (b) In Japan, in respect of the taxable years beginning on or after the first day of January in the calendar year next following that in which the notice is given.

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

DONE at Tokyo in duplicate in the English language on the seventeenth day of February, one thousand nine hundred and fifty-nine.

For Japan :
Aiichiro FUJIYAMA

For Pakistan :
Omar Hayat MALIK

EXCHANGE OF NOTES

I

Tokyo, February 17, 1959

Monsieur l'Ambassadeur,

With reference to the Convention between Japan and Pakistan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income,¹ I have the honour to confirm, on behalf of the Government of Japan, that the following understanding has been reached between our two Governments :

¹ See p. 128 of this volume.

With respect to the treatment of taxation on income from interest on loans made by a bank or any other organization of one of the contracting States to an enterprise of the other contracting State, the two contracting States agree to enter into negotiations as early as possible before the end of the year 1959 with a view to finding mutually acceptable ways and means of encouraging and facilitating the making of loans by a bank or any other organization of one of the contracting States to an enterprise of the other contracting State.

I have further the honour to request Your Excellency to be good enough to confirm the foregoing, on behalf of the Government of Pakistan, and to suggest that this Note and Your Excellency's reply to that effect should be regarded as constituting an agreement between the two Governments on this matter.

I avail myself of this opportunity to renew to Your Excellency, Monsieur l'Ambassadeur, the assurance of my highest consideration.

Aiichiro FUJIYAMA

His Excellency Dr. Omar Hayat Malik
Ambassador Extraordinary and Plenipotentiary of Pakistan
to Japan

II

Tokyo, February 17, 1959

Excellency,

I have the honour to acknowledge receipt of Your Excellency's Note of today's date, which reads as follows :

[*See note I*]

I have further the honour to confirm the foregoing understanding, on behalf of the Government of Pakistan, and to agree that Your Excellency's Note and this reply should be regarded as constituting an agreement between the two Governments on this matter.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

Omar Hayat MALIK

His Excellency Mr. Aiichiro Fujiyama
Minister for Foreign Affairs of Japan
