No. 5259

SWEDEN
and
INDIA

Agreement for the avoidance of double taxation of income. Signed at Stockholm, on 30 July 1958

Official text: English.

Registered by Sweden on 22 July 1960.

SUÈDE
et
INDE

Convention tendant à éviter la double imposition en matière d'impôts sur le revenu. Signée à Stockholm, le 30 juillet 1958

Texte officiel anglais.

Enregistrée par la Suède le 22 juillet 1960.

No. 5259. AGREEMENT[1] BETWEEN THE ROYAL GOVERNMENT OF SWEDEN AND THE GOVERNMENT OF INDIA FOR THE AVOIDANCE OF DOUBLE TAXATION OF INCOME. SIGNED AT STOCKHOLM, ON 30 JULY 1958

Whereas the Royal Government of Sweden and the Government of India desire to conclude an Agreement for the avoidance of double taxation of income :

Now, therefore, it is hereby agreed as follows :

Article I

(1) The taxes which are the subject of the present Agreement are :

(*a*) in India :

the income tax,
the super tax,
the surcharge,

imposed under the Indian Incometax Act, 1922 (11 of 1922) hereinafter referred to as " Indian tax ");

(*b*) in Sweden :

(i) the State income tax, including coupon tax;
(ii) the tax on companies reducing share-capital (*utskiftningsskatten*);
(iii) the tax on companies on undistributed profits (*ersättningsskatten*);
(iv) the tax on public entertainers (*bevillningsavgifterna för särskilda förmåner och rättigheter*);
(v) the communal income tax (*kommunal inkomstskatt*); and
(vi) the sailors tax (*sjömansskatten*)

(hereinafter referred to as " Swedish tax ").

(2) The present Agreement shall also apply to any other taxes of a substantially similar character imposed in India or Sweden subsequent to the date of signature of the present Agreement.

Article II

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

(*a*) The terms " one of the territories " and " the other territory " mean Sweden or India as the context requires;

[1] Came into force on 23 January 1959, upon the exchange of the instruments of ratification at New Delhi, in accordance with article XX.

(*b*) the term " person " includes individuals, companies and all other entities which are treated as taxable units under the tax laws in force in the respective territories;

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

(*d*) the term " tax " means Swedish tax or Indian tax, as the context requires;

(*e*) the terms " resident of Sweden " and " resident of India " mean, respectively, a person who is resident in Sweden for the purposes of Swedish tax and not resident in India for the purposes of Indian tax, and a person who is resident in India for the purposes of Indian tax and not resident in Sweden for the purposes of Swedish tax.

A company shall be regarded as resident in Sweden if it is incorporated in Sweden or its business is wholly managed and controlled in Sweden; a company shall be regarded as resident in India if it is incorporated in India or its business is wholly managed and controlled in India.

(*f*) the terms " Swedish enterprise " and " Indian enterprise " mean, respectively, an industrial or commercial enterprise or undertaking carried on by a resident of Sweden and an industrial or commercial enterprise or undertaking carried on by a resident of India; and the terms " enterprise of one of the territories " and " enterprise of the other territory " mean a Swedish enterprise or an Indian enterprise, as the context requires;

(*g*) the term " permanent establishment " means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

(*aa*) The term " fixed place of business " shall include a place of management, a branch, an office, a factory, a workshop, a warehouse, a mine, quarry or other place of extraction of natural resources.

(*bb*) An enterprise of one of the territories shall be deemed to have a fixed place of business in the other territory if it carries on in that other territory a construction, installation or assembly project or the like.

(*cc*) The use of mere storage facilities or the maintenance of a place of business exclusively for the purchase of goods or merchandise and not for any processing of such goods or merchandise in the territory of purchase, shall not constitute a permanent establishment.

(*dd*) A person acting in one of the territories for or on behalf of an enterprise of the other territory shall be deemed to be a permanent establishment of that enterprise in the first-mentioned territory, but only if

1. he has and habitually exercises in the first-mentioned territory a general authority to negotiate and enter into contracts for or on behalf of the enterprise, unless the activities of the person are limited exclusively to the purchase of goods or merchandise for the enterprise, or

2. he habitually maintains in the first-mentioned territory a stock of goods or merchandise belonging to the enterprise from which the person regularly delivers goods or merchandise for or on behalf of the enterprise, or

3. he habitually secures orders in the first-mentioned territory wholly or almost wholly for the enterprise itself or for the enterprise and other enterprises which are controlled by it or have a controlling interest in it.

(*ee*) A broker of a genuinely independent status who merely acts as an intermediary between an enterprise of one of the territories and a prospective customer in the other territory shall not be deemed to be a permanent establishment of the enterprise in the last-mentioned territory.

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

(*h*) the term " competent authority " means in the case of India, the Central Government in the Ministry of Finance, Department of Revenue, and in the case of Sweden, the Minister of Finance or his authorized representative.

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

Article III

(1) Tax shall not be levied in one of the territories on the industrial or commercial profits of an enterprise of the other territory unless the profits are derived in the first-mentioned territory through a permanent establishment of the said enterprise situated in the first-mentioned territory. If profits are so derived, tax may be levied in the first-mentioned territory on the profits attributable to the said permanent establishment.

(2) There shall be attributed to the permanent establishment of an enterprise of one of the territories situated in the other territory 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.

If the information available to the taxation authority concerned is inadequate to determine the profits to be attributed to the permanent establishment, nothing

in this paragraph shall affect the application of the law of either territory in relation to the liability of the enterprise to pay tax on an amount determined by the exercise of a discretion or the making of an estimate by the taxation authority of that territory: Provided that such discretion shall be exercised or such estimate shall be made, so far as the information available to the taxation authority permits, in accordance with the principle stated in this paragraph.

(3) For the purposes of this Agreement the term " industrial or commercial profits " shall not include income in the form of rents, royalties, interest, dividends, management charges, remuneration for labour or personal services or income from the operation of ships or aircraft but shall include rents or royalties in respect of cinematographic films.

Article IV

Where an enterprise of one of the territories carries on business with an enterprise of the other territory, and it appears to the taxation authorities of the first-mentioned territory that owing to the close connection between such enterprises 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 dealing at arm's length with one another, 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. In consequence the necessary rectifications should be made concerning the income of the other enterprise.

Article V

(1) Income derived from the operation of aircraft by an enterprise of one of the territories shall not be taxed in the other territory, unless the aircraft is operated wholly or mainly between places within that other territory.

(2) Paragraph (1) shall likewise apply in respect of participations in pools of any kind by enterprises engaged in air transport.

Article VI

(1) When a resident of Sweden, operating ships, derives profits from India through such operations carried on in India, such profits shall be subject to tax in Sweden as well as in India; but the tax so charged in India shall be reduced by an amount equal to two thirds of the tax so charged, and the reduced amount of Indian tax payable on the profits shall be allowed as a credit against any Swedish tax charged on income accrued to or received by the resident of Sweden during the year in which such reduced Indian tax was paid.

(2) When a resident of India, operating ships, derives profits from Sweden through such operations carried on in Sweden, such profits shall be subject to tax in India as well as in Sweden; but the tax so charged in Sweden shall be reduced by an amount equal to two thirds of the tax so charged, and the reduced amount of Swedish tax payable on the profits shall be allowed as a credit against any Indian tax charged in respect of such income.

(3) Paragraphs (1) and (2) shall not apply to profits arising as a result of coastal traffic.

Article VII

Royalties derived by a resident of one of the territories from sources in the other territory may be taxed only in that other territory.

In this Article, the term " royalty " means any royalty or other like amount received as consideration for the right to use copyrights, artistic or scientific works, patents, models, designs, plans, secret processes or formulae, trademarks and other like property or rights, but does not include any royalty or other like amount in respect of the operation of mines, quarries or other natural resources, or in respect of cinematographic films.

Article VIII

Dividends paid by a company which is a resident of one of the territories to a resident of the other territory may be taxed only in the first-mentioned territory.

Article IX

Interest on bonds, securities, notes, debentures or any other form of indebtedness, derived by a resident of one of the territories from sources in the other territory may be taxed only in that other territory.

Article X

Income from immovable property may be taxed only in the territory in which the property is situated. For this purpose any rent or royalty or other income derived from the operation of a mine, quarry or any other extraction of natural resources shall be regarded as income from immovable property.

Article XI

Capital gains derived from the sale, exchange or transfer of a capital asset, whether movable or immovable, may be taxed only in the territory in which the capital asset is situated at the time of such sale, exchange or transfer.

Article XII

(1) Remuneration other than pensions and annuities paid in Sweden for services rendered therein out of public funds of India shall not be taxed in Sweden unless the payment is made to a national of Sweden.

(2) Remuneration other than pensions and annuities paid in India for services rendered therein out of public funds of Sweden shall not be taxed in India unless the payment is made to a national of India.

(3) The provisions of paragraphs (1) and (2) of this Article shall not apply to payments in respect of services in connection with any trade or business carried on by either of the Contracting Parties or political sub-divisions thereof for purposes of profit.

(4) The provisions of paragraphs (1) and (2) of this Article shall also apply to remuneration other than pensions and annuities, paid by the Reserve Bank of India, the Public Railways Authorities and the Postal Administration of India and by Sveriges Riksbank, statens järnvägar, postverket and televerket.

Article XIII

Any pension or annuity derived by a resident of one of the territories from sources in the other territory may be taxed only in that other territory.

In this Article the term " pension " means a periodic payment made in consideration of services rendered or by way of compensation for injuries received and the term " annuity " means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

Article XIV

(1) Profits or remuneration for professional services or for services as an employee (including services as a director) performed in one of the territories by an individual who is a resident of the other territory may be taxed only in the territory in which such services are performed.

(2) An individual who is a resident of India shall not be taxed in Sweden on profits or remuneration referred to in paragraph (1) if

(*a*) he is temporarily present in Sweden for a period or periods not exceeding in the aggregate 183 days during the relevant calendar year,

(*b*) the services are performed for or on behalf of a resident of India,

(*c*) the profits or remuneration are subject to Indian tax, and

(*d*) the profits or remuneration are not deducted in computing the profits of an enterprise chargeable to Swedish tax.

(3) An individual who is a resident of Sweden shall not be taxed in India on the profits or remuneration referred to in paragraph (1) if

(*a*) he is temporarily present in India for a period or periods not exceeding in the aggregate 183 days during the relevant previous year,

(*b*) the services are performed for or on behalf of a resident of Sweden,

(*c*) the profits or remuneration are subject to Swedish tax, and

(*d*) the profits or remuneration are not deducted in computing the profits of an enterprise chargeable to Indian tax.

(4) Where an individual permanently or predominantly performs services on ships or aircraft operated by an enterprise of one of the territories such services shall be deemed to be performed in that territory.

Article XV

A professor or teacher from one of the territories, who receives remuneration for teaching, during a period of temporary residence not exceeding two years, at a university, college, school or other educational institution in the other territory, shall not be taxed in that other territory in respect of that remuneration.

Article XVI

(1) An individual from one of the territories who is temporarily present in the other territory solely

(*a*) as a student at a university, college or school in that other territory,

(*b*) as a business apprentice, or

(*c*) as the recipient of a grant, allowance or award for the primary purpose of study or research from a religious, charitable, scientific or educational organisation,

shall not be taxed in that other territory in respect of remittances from abroad for the purposes of his maintenance, education or training, or in respect of a scholarship.

(2) An individual from one of the territories who is present in the other territory solely as a student at a university, college or school in that other territory or as a business apprentice, shall not be taxed in that other territory for a period not exceeding three consecutive years of assessment in respect of remuneration from employment in such other territory, provided that

(*a*) the remuneration constitutes earnings necessary for his maintenance and education, and

(*b*) the said remuneration does not exceed 4,000 Swedish crowns in the year of assessment or the equivalent thereof in the currency of India as the case may be.

Article XVII

(1) The laws in force in either of the territories will continue to govern the assessment and taxation of income in the respective territories except where express provision to the contrary is made in this Agreement.

(2) Subject to the provision of Article VI, income from sources within Sweden which under the laws of Sweden and in accordance with this Agreement is subject to tax in Sweden either directly or by deduction shall not be subject to Indian tax.

(3) Subject to the provision of Article VI, income from sources within India which under the laws of India and in accordance with this Agreement is subject to tax in India either directly or by deduction shall not be subject to Swedish tax.

(4) The graduated rate of Swedish tax to be imposed on residents of Sweden and the graduated rate of Indian tax to be imposed on residents of India may be calculated as though income which under this Agreement is not subjected to Swedish or Indian tax, as the case may be, were included in the amount of the total income.

Article XVIII

The competent authorities shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of the present Agreement. 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 taxes which are the subject of the present Agreement. No information as aforesaid shall be exchanged by the competent authority of one of the territories which would disclose any trade, business, industrial or professional secret or any trade process to the authority of the other territory.

Article XIX

Where a resident of one of the territories shows proof that the action of the taxation authorities of the other territory has resulted or will result in double taxation contrary to the provisions of the present Agreement, he shall be entitled to present his case to the competent authority of the territory of which he is a resident. Should the competent authority be satisfied that the claim ought to be pursued further, the competent authority shall endeavour to come to an agreement with the competent authority of the other territory with a view to avoiding double taxation.

Article XX

(1) The present Agreement shall be ratified by the Contracting Parties. Ratification by His Majesty the King of Sweden shall be subject to the consent of the Riksdag.

(2) The instruments of ratification shall be exchanged at New Delhi as soon as possible.

(3) Upon exchange of the instruments of ratification, the present Agreement shall have effect—

(*a*) in India, for any year of assessment, beginning on or after the 1st April, 1959,

(*b*) in Sweden :

as respects the State income tax and the communal income tax on income which is assessed in or after the calendar year beginning on 1st January, 1959, being income for which preliminary tax is payable during the period 1st March, 1958, to 28th February, 1959, or any succeeding period;

as respects coupon tax on dividends payable on or after 1st January, 1958;

as respects the tax on public entertainers which is levied on or after 1st January, 1958;

as respects sailors tax on income payable on or after 1st January, 1958; and

as respects the other Swedish taxes which are levied on or after 1st January, 1959.

Article XXI

This Agreement shall continue in effect indefinitely but either of the Contracting Parties may on or before the 30th day of June in any calendar year after 1961 give to the other Contracting Party notice of termination, and in such event this Agreement shall cease to be effective—

(*a*) in India, for any year of assessment beginning on or after the 1st April in the second calendar year following such written notice of termination,

(*b*) in Sweden :

as respects the State income tax and the communal income tax on income for which preliminary tax is payable after the last day of February in the calendar year next following that in which the notice is given;

as respects coupon tax on dividends payable on or after 1st January in the calendar year next following that in which the notice is given;

as respects the tax on public entertainers which is levied on or after 1st January in the calendar year next following that in which the notice is given;

as respects sailors tax on income payable on or after 1st January in the calendar year next following that in which the notice is given; and

as respects the other Swedish taxes which are levied in or after the second calendar year following that in which the notice is given.

IN WITNESS WHEREOF the undersigned duly authorized thereto have signed this Agreement and have affixed thereto their seals.

DONE in duplicate at Stockholm on July 30, 1958 in the English language.

For the Royal Government of Sweden :
Östen UNDÉN
[L.S.]

For the Government of India :
I. S. CHOPRA
[L.S.]