

No. 7485

**JAPAN
and
AUSTRIA**

Convention for the avoidance of double taxation with respect to taxes on income. Signed at Vienna, on 20 December 1961

Official text: English.

Registered by Japan on 25 November 1964.

**JAPON
et
AUTRICHE**

Convention tendant à éviter la double imposition en matière d'impôts sur le revenu. Signée à Vienne, le 20 décembre 1961

Texte officiel anglais.

Enregistrée par le Japon le 25 novembre 1964.

No. 7485. CONVENTION¹ BETWEEN JAPAN AND THE REPUBLIC OF AUSTRIA FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME. SIGNED AT VIENNA, ON 20 DECEMBER 1961

Japan and the Republic of Austria, desiring to conclude a Convention to avoid double taxation with respect to taxes on income, have agreed as follows :

Article I

1. The taxes which are the subject of the present Convention are :

(a) in Japan :

- (i) the income tax,
- (ii) the corporation tax,
(hereinafter referred to as “ Japanese tax ”);

(b) in Austria :

- (i) the income tax (*Einkommensteuer*),
- (ii) the corporation tax (*Körperschaftsteuer*),
- (iii) the contribution from income for the promotion of residential building and for the equalization of family burdens (*Beitrag vom Einkommen zur Förderung des Wohnbaues und für Zwecke des Familienlastenausgleiches*),

(hereinafter referred to as “ Austrian tax ”).

2. The present Convention shall also apply to any other taxes on income or profits which have 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

As used in the present Convention :

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

(b) The term “ Austria ” means the Republic of Austria.

¹ Came into force on 4 April 1963, the date of the exchange of the instruments of ratification at Tokyo, in accordance with article XXIV (2).

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

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

(e) The term “ competent authorities ” means, in the case of Japan, the Minister of Finance or his authorized representatives; and, in the case of Austria, the Federal Ministry of Finance.

Article III

As used in the present Convention :

(a) 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 which does not have its headquarters (*Sitz*) in Austria, or the business of which is not wholly managed and controlled in Austria; and, the term “ Austrian corporation ” means any body corporate or any entity treated as a body corporate for tax purposes which has its headquarters (*Sitz*) in Austria, or the business of which is wholly managed and controlled in Austria and which does not have its head or principal office in Japan.

(b) The term “ resident of Japan ” means any individual who is resident in Japan for the purposes of Japanese tax and not resident (*Wohnsitz* or *gewöhnlicher Aufenthalt*) in Austria for the purposes of Austrian tax, and any Japanese corporation, and, the term “ resident of Austria ” means any individual who is resident (*Wohnsitz* or *gewöhnlicher Aufenthalt*) in Austria for the purposes of Austrian tax and not resident in Japan for the purposes of Japanese tax, and any Austrian corporation.

(c) The terms “ corporation of one of the Contracting States ” and “ corporation of the other Contracting State ” mean a Japanese corporation or an Austrian corporation, as the context requires.

(d) 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 Austria, as the context requires.

(e) The term “ Japanese enterprise ” means an industrial or commercial enterprise or undertaking carried on by a resident of Japan; and, the term “ Austrian enterprise ” means an industrial or commercial enterprise or undertaking carried on by a resident of Austria.

(f) The terms “ enterprise of one of the Contracting States ” and “ enterprise of the other Contracting State ” mean a Japanese enterprise or an Austrian enterprise, as the context requires.

Article IV

1. As used in the present Convention, the term “ permanent establishment ” means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

2. A permanent establishment shall include especially :

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, quarry or other place of extraction of natural resources;
- (g) a construction, installation or assembly project which is carried on for more than twelve months.

3. The term “ permanent establishment ” shall not be deemed to include :

- (a) the use of facilities solely for the purpose of storage, display or delivery 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, display or delivery;
- (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 for collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

4. A person acting in one of the Contracting States for or on behalf of an enterprise of the other Contracting State—other than an agent of an independent status to whom the provisions of paragraph 5 of this Article apply—shall be deemed to be a permanent establishment in the former Contracting State if he has, and habitually exercises in the former Contracting State, an authority to conclude contracts for or on behalf of such enterprise, unless the activities of such person are limited exclusively to the purchase of goods or merchandise for or on behalf of such enterprise.

5. 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 in that other Contracting State through a broker, general

commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.

6. The fact that a corporation being a resident of one of the Contracting States controls or is controlled by a corporation 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 corporation a permanent establishment of the other.

Article V

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 VI

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 carries on a trade or business in that other Contracting State through a permanent establishment situated therein. If it carries on a trade or business in that other Contracting State as aforesaid, tax may be imposed on those profits in the other Contracting State, but only on so much of them as is attributable to that permanent establishment.

2. Where an enterprise of one of the Contracting States carries on a trade or business in the other Contracting State through a permanent establishment situated therein, there shall be attributed to that permanent establishment the industrial or commercial profits which it might be expected to derive in that other 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. Such industrial or commercial profits will in principle be determined on the basis of the separate accounts pertaining to that permanent establishment. In determining the industrial or commercial profits of the permanent establishment, there shall be allowed as deductions all expenses which are reasonably allocable to the permanent establishment, including executive and general administrative expenses so allocable.

3. In determining the profits of a permanent establishment, no account shall be taken of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

4. The provisions of paragraph 1 of this Article shall not be construed as preventing one of the Contracting States from separately imposing pursuant to the present Convention and in conformity with the laws of that Contracting State, tax on income (e.g. dividends, interest, royalties or income from immovable property) derived from sources within that Contracting State by a resident of the other Contracting State if such income is not attributable to a permanent establishment situated in that former Contracting State.

5. 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 VII

Where

- (a) an enterprise of one of the Contracting States participates directly or indirectly in the management or financial control of an enterprise of the other Contracting State, or
- (b) the same individuals or corporations participate directly or indirectly in the management 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 except 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 VIII

1. Notwithstanding the provisions of Article VI, profits which an enterprise of one of the Contracting States derives from the operation of ships or aircraft shall be exempt from tax in the other Contracting State.

2. In respect of the operation of ships or aircraft, a Japanese enterprise shall be likewise exempt from business tax (*Gewerbesteuer*) in Austria, and an Austrian enterprise shall be likewise exempt from enterprise-tax in Japan.

Article IX

1. The rate of tax imposed by one of the Contracting States on dividends paid by a corporation being a resident of that Contracting State to a resident of the other Contracting State shall not exceed 20 per cent of such dividends. However, such rate of tax shall not exceed 10 per cent if the resident of the

other Contracting State receiving the dividends is a corporation which holds or owns more than 50 per cent of the entire share capital of the corporation paying the dividends during a period of twelve months immediately before the end of the accounting period for which the distribution of profits takes place. Tax may, however, be deducted at the full rate from such dividends but any tax deducted in excess of the before-mentioned rates shall be refunded on a claim being made.

2. Where a corporation being a resident 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 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. The provisions of paragraph 1 of this Article shall not apply where a resident of one of the Contracting States has a permanent establishment in the other Contracting State and such dividends are attributable to that permanent establishment; in such event such dividends as are attributable to that permanent establishment shall be deemed as industrial or commercial profits to which the provisions of paragraphs 1 to 3 of Article VI of the present Convention are applicable.

4. If any of the rates of tax on the profits of corporations are altered in either Contracting State, especially if as a result of a change in the Japanese law the difference between the rate of tax on undistributed profits and that on distributed profits exceeds 10 per cent, the competent authorities of the two Contracting States shall consult each other without delay in order to determine whether it is necessary for these reasons to amend the provisions of paragraph 1 of this Article.

Article X

1. The rate of tax imposed by one of the Contracting States on interest derived from sources within that Contracting State by a resident of the other Contracting State shall not exceed 10 per cent of such interest. Tax may, however, be deducted at the full rate from such interest but any tax deducted in excess of 10 per cent shall be refunded on a claim being made.

2. The term "interest" as used in this Article means interest on bonds, securities, notes, debentures or any other form of indebtedness.

3. The provisions of paragraph 1 of this Article shall not apply where a resident of one of the Contracting States has a permanent establishment in the other Contracting State and such interest is attributable to that permanent

establishment; in such event such interest as is attributable to that permanent establishment shall be deemed as industrial or commercial profits to which the provisions of paragraphs 1 to 3 of Article VI of the present Convention are applicable.

Article XI

1. The rate of tax imposed by one of the Contracting States on royalties derived from sources within that Contracting State by a resident of the other Contracting State shall not exceed 10 per cent of such royalties.

2. The term "royalty" as used in this 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 (including films for use in connection with television) 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 a quarry or in respect of any other exploitation of natural resources.

3. The rate of tax imposed by one of the Contracting States on gains from the alienation of any copyright, patent, design, secret process and formula, trade-mark or industrial invention as well as motion picture films (including films for use in connection with television) derived from sources within that Contracting State by a resident of the other Contracting State shall not exceed 10 per cent of the gross amount received.

4. The provisions of paragraphs 1 and 3 of this Article shall not apply where a resident of one of the Contracting States has a permanent establishment in the other Contracting State and such royalties or gains are attributable to that permanent establishment; in such event such royalties or gains as are attributable to that permanent establishment shall be deemed as industrial or commercial profits to which the provisions of paragraphs 1 to 3 of Article VI of the present Convention are applicable.

Article XII

1. (a) Salaries, wages, pensions or similar remuneration paid by the Government of Japan or any local government or government agency of Japan, or paid out of funds to which the Government of Japan or any local government or government agency of Japan contributes, to any individual in respect of services

rendered in the discharge of official functions shall be exempt from Austrian tax, unless the individual is a national of Austria.

(b) Salaries, wages, pensions or similar remuneration paid by Austria, its political subdivisions or any other public body corporate of Austria, or paid out of funds created by Austria, its political subdivisions or any other public body corporate of Austria, to any individual in respect of services rendered in the discharge of official functions shall be exempt from Japanese tax, unless the individual is a national of Japan or a person who has been admitted to Japan for permanent residence therein.

2. The provisions of paragraph 1 of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by any of the legal entities mentioned therein for the purpose of profit.

Article XIII

1. Profits derived from professional services or other independent activities of a similar character exercised in one of the Contracting States by an individual who is a resident of the other Contracting State shall not be subject to tax in the former Contracting State unless he has a fixed base regularly available to him in that former Contracting State for the purpose of performing his activities. If he has such a fixed base, such part of that income as is attributable to that fixed base may be taxed in that former Contracting State.

2. Subject to the provisions of paragraph 1 of Article XII of the present Convention, salaries, wages and similar remuneration from an employment derived by an individual who is a resident of one of the Contracting States shall not be subject to tax in the other Contracting State unless the employment is exercised in that other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Contracting State.

3. Notwithstanding the provisions of paragraph 2 of this Article, an individual who is a resident of one of the Contracting States shall be exempt from tax in the other Contracting State on remuneration arising from the exercise of an employment within that other Contracting State in any taxable year, if

(a) he is present within that other Contracting State for not longer than a total of 183 days during that year, and

- (b) he exercises the employment for or on behalf of a resident of the former Contracting State and is paid for it by that resident, and
- (c) the remuneration is not deducted from the profits of a permanent establishment or a fixed base which the employer has in that other Contracting State.

4. Notwithstanding the provisions of paragraphs 1 and 3 of this Article the profits or remuneration of public entertainers such as theatre, motion-picture, radio or television artists, musicians and athletes may be taxed in the Contracting State in which the activity is performed.

5. Where an individual performs services as an employee on ships or aircraft operated by an enterprise of one of the Contracting States, such services shall be deemed to be exercised in that Contracting State.

Article XIV

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 XV

1. A student or business apprentice from one of the Contracting States, who receives 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 solely for the purposes of his maintenance, education or training.

2. The same exemption shall apply to income which a student or business apprentice from one of the Contracting States derives from an employment which he exercises in the other Contracting State for the purposes of practical training for not longer than a total of six months in any taxable year.

Article XVI

1. Notwithstanding the provisions of paragraph 2 of Article XIII of the present Convention, pensions derived by an individual who is a resident of one of the Contracting States shall be exempt from tax in the other Contracting State.

2. The provisions of paragraph 1 of this Article shall not apply to pensions of the kind referred to in paragraph 1 of Article XII of the present Convention,

and other pensions in the nature of social security paid by the Government of Japan or any local government or government agency of Japan, or paid out of funds to the source of which the Government of Japan or any local government or government agency of Japan contributes, or paid by the Austrian social security institutions.

Article XVII

1. Income from immovable property (including gains derived from the sale or exchange of such property) may be taxed in the Contracting State in which the immovable property is situated. Royalties or other amounts paid in respect of the operation of a mine or a quarry or in respect of any other exploitation of natural resources shall be regarded as income from immovable property.

2. Ships and aircraft shall not be regarded as immovable property.

Article XVIII

1. Profits or gains derived from the alienation of capital assets (other than gains or income referred to in paragraph 3 of Article XI and paragraph 1 of Article XVII of the present Convention) in one of the Contracting States by a resident of the other Contracting State shall be exempt from tax in that former Contracting State.

2. Notwithstanding the provisions of paragraph 1 of this Article :

- (a) profits or gains derived from the alienation of a permanent establishment or a fixed base situated in one of the Contracting States or from the alienation of capital assets (excluding ships or aircraft) pertaining to such permanent establishment or fixed base may be taxed in that Contracting State; in such event those profits or gains are deemed as attributable to that permanent establishment or fixed base;
- (b) profits or gains derived from the alienation of shares of a corporation being a resident of one of the Contracting States may be taxed in that Contracting State, if
 - (i) the alienator of such shares holds or owns at least 25 per cent of the entire share capital of such corporation, and
 - (ii) the total of such alienated shares during the taxable year amounts to at least 5 per cent of the entire share capital of such corporation;
- (c) profits or gains derived by an individual being a resident of one of the Contracting States from the alienation of personal property in the other Contracting State during his stay in that other Contracting State may be taxed in that other Contracting State.

Article XIX

1. Japan, in determining its tax on a resident of Japan, may include in the basis upon which that tax is imposed all items of income taxable under the laws of Japan. The amount of Austrian tax payable by the resident of Japan under the laws of Austria and in accordance with the provisions of the present Convention, whether directly or by deduction, in respect of income from sources within Austria 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 (or the entire income subject to Japanese tax, whichever is the lesser) bears to the entire income subject to Japanese tax.

2. Austria, in determining its tax on a resident of Austria may include in the basis upon which that tax is imposed all items of income taxable under the laws of Austria. The amount of Japanese tax payable by the resident of Austria 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 Austrian tax payable in respect of that income, but in an amount not exceeding that proportion of Austrian tax which that income (or the entire income subject to Austrian tax, whichever is the lesser) bears to the entire income subject to Austrian tax.

3. The provisions of paragraphs 1 and 2 of this Article shall be likewise applicable to any individual who is a resident of Japan for the purposes of Japanese tax and is a resident of Austria for the purposes of Austrian tax, and to any body corporate or any entity treated as a body corporate for tax purposes which has its head or principal office in Japan and which has its headquarters (*Sitze*) in Austria or the business of which is wholly managed and controlled in Austria.

4. The provisions of paragraphs 1, 2 and 3 of this Article shall not affect the exemption from tax in Japan or Austria granted by paragraph 1 of Article XII, Article XIV and Article XV of the present Convention.

Article XX

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 XXI

1. Where a taxpayer shows to the satisfaction of the competent authorities of the Contracting State of which he is a national or of which he is a resident that he has received a treatment in the other Contracting State which is not in accordance with the provisions of the present Convention, such competent authorities shall consult with the competent authorities of the other Contracting State with a view to the avoidance of such treatment.

2. Should any difficulty or doubt arise as to the interpretation or application of the present Convention the competent authorities of both Contracting States may settle the question by mutual agreement.

Article XXII

1. 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.

2. 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 these purposes.

Article XXIII

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 income, profits and capital of an enterprise of one of the Contracting States, the capital of which is wholly or partly owned by a resident of the other Contracting State shall not be subjected in the former Contracting State to any taxation which is other, higher or more burdensome than the taxation to which

other enterprises of that former Contracting State in the same circumstances are or may be subjected in respect of the like income, profits and capital.

3. In this Article the term “nationals” means :

- (a) in relation to Japan, all individuals possessing the nationality of Japan and all corporations and other associations (with or without juridical personality) deriving their status as such from the laws in force in Japan;
- (b) in relation to Austria, all Austrian nationals and all legal persons, partnerships, associations and other entities deriving their status as such from the laws in force in Austria.

Article XXIV

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 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.

Article XXV

The present Convention shall continue in effect indefinitely but either of the Contracting States may at any time after a period of five years from the date on which the present Convention enters into force on or before the 30th day of June in any calendar year give to the other Contracting State, through the diplomatic channel, written notice of termination and in such event, the present Convention shall cease to be effective as regards income derived during the taxable years beginning on or after the first day of January in the calendar year next following that in which the notice has been given.

IN WITNESS WHEREOF the undersigned Plenipotentiaries have signed the present Convention and have affixed their seals thereto.

DONE at Vienna, in duplicate, in the English language, on the 20th day of December, 1961.

For Japan :
Fujio UCHIDA

For the Republic of Austria :
Dr. Josef STANGELBERGER
Dr. Otto WATZKE