

No. 7083

DENMARK
and
CEYLON

Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and property. Signed at Colombo, on 16 February 1963

Official texts: Danish, Sinhalese and English.

Registered by Denmark on 4 February 1964.

DANEMARK
et
CEYLAN

Convention tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu et sur la fortune. Signée à Colombo, le 16 février 1963

Textes officiels danois, cingalais et anglais.

Enregistrée par le Danemark le 4 février 1964.

No. 7083. CONVENTION¹ BETWEEN THE GOVERNMENT OF THE KINGDOM OF DENMARK AND THE GOVERNMENT OF CEYLON FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND PROPERTY. SIGNED AT COLOMBO, ON 16 FEBRUARY 1963

The Government of the Kingdom of Denmark and the Government of Ceylon, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and property, have agreed as follows :

Article I

(1) The taxes which are the subject of this Convention are :

(a) In Denmark :

National income taxes and communal income taxes, and national property tax

(hereinafter referred to as “ Danish tax ”).

(b) In Ceylon :

The income tax and expenditure tax, the profits tax and the wealth tax (hereinafter referred to as “ Ceylon tax ”).

(2) This Convention shall also apply to any other taxes of a substantially similar character imposed in Denmark or Ceylon subsequently to the date of signature of this Convention.

Article II

(1) In this Convention, unless the context otherwise requires :

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

(b) The terms “ one of the territories ” and “ the other territory ” mean Denmark or Ceylon, as the context requires;

¹ Came into force on 8 October 1963, the date of the exchange of the instruments of ratification at New Delhi, in accordance with article XIX.

(c) The term “competent authority” means, in the case of Denmark, the Minister of Finance or his authorised representative and in the case of Ceylon, the Commissioner of Inland Revenue;

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

(e) The term “person” includes any individual, company and any body of persons, corporate or not corporate;

(f) The term “company” means any body corporate and any entity with juridical personality;

(g) The terms “resident of Denmark” and “resident of Ceylon” mean respectively any person who is resident in Denmark for the purposes of Danish tax and not resident in Ceylon for the purposes of Ceylon tax, and any person who is resident in Ceylon for the purposes of Ceylon tax and not resident in Denmark for the purposes of Danish tax; a company shall be regarded as resident in Denmark, if its business is managed and controlled in Denmark, or if it is incorporated under the laws of Denmark and not managed and controlled in Ceylon; a company shall be regarded as resident in Ceylon, if its business is managed and controlled in Ceylon, or if it is incorporated under the laws of Ceylon and not managed and controlled in Denmark;

(h) The terms “resident of one of the territories” and “resident of the other territory” mean a person who is a resident of Denmark or a person who is a resident of Ceylon, as the context requires;

(i) The terms “Danish enterprise” and “Ceylon enterprise” mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of Denmark and an industrial or commercial enterprise or undertaking carried on by a resident of Ceylon; and the terms “enterprise of one of the territories” and “enterprise of the other territory” mean a Danish enterprise or a Ceylon enterprise, as the context requires;

(j) The term “industrial or commercial profits” includes, in particular, profits from the business of agriculture, mining, banking, insurance, life insurance or dealing in investments, and profits from rents or royalties in respect of cinematograph films, but does not include income in the form of dividends, interest, rents, royalties (other than rents or royalties in respect of cinematograph films), management charges, or remuneration for personal services;

(k) The term “permanent establishment” when used with respect to an enterprise of one of the territories means a branch, management, factory or other

fixed place of business, an agricultural or farming estate, a mine, quarry or any other place of natural resources subject to exploitation. It 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.

In this connection

- (i) An enterprise of one of the territories shall not be deemed to have a permanent establishment in the other territory merely because it carries on business dealings in that other territory through a bona fide broker acting in the ordinary course of his business as such;
- (ii) The fact that an enterprise of one of the territories maintains in the other territory a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute that fixed place of business a permanent establishment of the enterprise;
- (iii) The fact that a company which is a resident of one of the territories has a subsidiary company which is a resident of the other territory or which 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.

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

Article III

(1) The industrial or commercial profits of an enterprise of one of the territories shall not be subject to tax in the other territory unless the enterprise carries on a trade or business in that other territory through a permanent establishment situated therein. If it carries on a trade or business as aforesaid, tax may be imposed on those profits in that other territory, but only on so much of them as is attributable to that permanent establishment; provided that nothing in this paragraph shall affect the method of taxation of income from the business of insurance under the provisions of the law of either territory at the date of signature of this Convention.

(2) Where an enterprise of one of the territories carries on a trade or business in the other territory 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 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.

Provided that nothing in this paragraph shall affect the computation of the profits derived by a Danish enterprise from the production of tea or other agricultural product in Ceylon in accordance with the provisions of the law of Ceylon at the date of signature of this Convention.

(3) No portion of any profits arising to an enterprise of one of the territories shall be attributed to a permanent establishment situated in the other territory by reason of the mere purchase of goods or merchandise within that other territory by the enterprise.

Article IV

Where

(a) an enterprise of one of the territories participates directly or indirectly in the management, control or capital of an enterprise of the other territory, or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the territories and an enterprise of the other territory,

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) When a resident of Denmark, operating ships or aircraft, derives profits from Ceylon through such operations carried on in Ceylon, such profits shall be subject to tax in Denmark as well as in Ceylon; but the tax so charged in Ceylon shall be reduced by an amount equal to 50 per cent of the tax so charged, and the reduced amount of Ceylon tax payable on the profits shall be allowed as a credit against Danish tax charged in respect of such income.

(2) When a resident of Ceylon, operating ships or aircraft, derives profits from Denmark through such operations carried on in Denmark, such profits shall be subject to tax in Ceylon as well as in Denmark; but the tax so charged in Denmark shall be reduced by an amount equal to 50 per cent of the tax so

charged, and the reduced amount of Danish tax payable on the profits shall be allowed as a credit against Ceylon tax charged in respect of such income.

Article VI

(1) Dividends paid by a company which is a resident of Ceylon to a resident of Denmark shall be exempt from all Ceylon tax other than the Ceylon income tax on the company; and when the resident of Denmark is a company shall be exempt from all Ceylon tax other than the Ceylon tax on the company and the tax of an additional 6 per centum referred to in Sub-sections (a) and (b) of Section 53 C (1) of the Ceylon Income Tax Ordinance on companies whose shares are not movable property situated in Ceylon for the purposes of the law relating to Estate Duty; but the rate of this last mentioned additional tax shall not, in the case of companies which are residents of Denmark, exceed 6 per cent.

When the resident of Denmark is an individual, no refund of Ceylon tax deducted at source from such dividend will be allowed.

(2) Dividends paid by a company which is a resident of Denmark to a resident of Ceylon shall not be chargeable to tax in addition to the tax chargeable on the company, except at a rate not exceeding 5 per cent.

(3) Paragraphs (1) and (2) shall not apply where a resident of one of the territories has a permanent establishment in the other territory, and the dividends are attributable to that permanent establishment; in such event Article III of this Convention shall be applicable.

(4) Where a company which is a resident of one of the territories derives profits or income from sources within the other territory, there shall not be imposed in that other territory any form of taxation on dividends paid by the company to persons not resident in that other territory, or any form of taxation chargeable in connection with or in lieu of the taxation of dividends, or any tax in the nature of an undistributed profits tax on undistributed profits of the company, whether or not those dividends or undistributed profits represent, in whole or in part, profits or income so derived.

Article VII

(1) Any royalty or other amount which is payable as consideration for the use of, or for the privilege of using, any copyright or cinematograph films and which is derived from sources within one of the territories by a resident of the other territory shall be exempt from tax in that first mentioned territory.

(2) Any royalty or other amount which is payable as consideration for the use of, or for the privilege of using, any patents, designs or models, plans, secret processes or formulae, trade marks and other like property and rights, and which is derived from sources within one of the territories by a resident of the other territory may be subjected to tax in the first-mentioned territory as well as in the other territory. The tax so chargeable in the first-mentioned territory shall be reduced by 50%; in the other territory there shall be allowed as credit against the tax payable in that territory in respect of that income the amount of the tax levied in the first-mentioned territory, but in any case at least an amount of 75% of the tax levied in respect of that income in the other territory. There shall be treated as royalties all rents and similar payments received as consideration for the use of, or for the privilege of using, industrial, commercial or scientific equipment.

(3) This Article shall not apply where a resident of one of the territories has a permanent establishment in the other territory, and such items of income as are dealt with in this Article are attributable to that permanent establishment; in such event Article III of this Convention shall be applicable.

Article VIII

(1) Remuneration, including pensions, paid by one of the Contracting Governments to any individual for services rendered to that Contracting Government in the discharge of governmental functions shall be exempt from tax in the territory of the other Contracting Government, if the individual is not resident in that territory or (where the remuneration is not a pension) is resident in that territory solely for the purposes of rendering those services.

(2) The provisions of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the Contracting Governments for purposes of profit.

Article IX

(1) Profits or remuneration from professional services (including services as a director) or from an employment, earned by an individual who is a resident of one of the territories, shall not be subject to tax in the other territory unless the activities are performed in that territory.

(2) An individual who is a resident of Denmark shall be exempt from Ceylon tax on profits or remuneration in respect of personal (including professional) services performed within Ceylon in any year of assessment, if

(a) he is present within Ceylon for a period or periods not exceeding in the aggregate 183 days during that year, and

(b) the services are performed for or on behalf of a resident of Denmark, and

(c) the profits or remuneration are subject to Danish tax.

(3) An individual who is a resident of Ceylon shall be exempt from Danish tax on profits or remuneration in respect of personal (including professional) services performed within Denmark in any year of assessment, if

(a) he is present within Denmark for a period or periods not exceeding in the aggregate 183 days during that year, and

(b) the services are performed for or on behalf of a resident of Ceylon, and

(c) the profits or remuneration are subject to Ceylon tax.

(4) The provisions of paragraphs (2) and (3) of this Article shall not apply to the profits or remuneration of public entertainers such as theatre, motion picture, radio or television artistes, musicians and professional athletes.

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

Article X

(1) Any pension (other than a pension to which Article IX applies) or annuity derived from sources within one of the territories by an individual who is a resident of the other territory shall be exempt from tax in the first-mentioned territory.

(2) 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 XI

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 be exempt from tax in that other territory in respect of that remuneration.

Article XII

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 such 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 the other territory in respect of remittances from abroad for the purposes of his maintenance, education or training, in respect of a scholarship, and in respect of any amount representing remuneration for services rendered in that other territory, provided such services are in connection with his studies or training or are necessary for the purposes of his maintenance.

Article XIII

Property being :

- (a) immovable property,
- (b) property of industrial or commercial enterprises,
- (c) stocks, shares, debentures and mortgages, or
- (d) other property,

may be subjected to wealth or property tax only in that territory where, under this Convention and according to the laws of that territory, income from such property may be subjected to tax.

Provided that the property of an enterprise operating ships or aircraft may be subjected to wealth or property tax only in that territory in which the enterprise is situated.

Article XIV

(1) Income from sources within Denmark which under the laws of Denmark and in accordance with this Convention is subject to tax in Denmark either directly or by deduction shall be exempt from Ceylon tax, in all cases when in this Convention has not been otherwise prescribed.

(2) Income from sources within Ceylon which under the laws of Ceylon and in accordance with this Convention is subject to tax in Ceylon either directly or by deduction shall be exempt from Danish tax, in all cases when in this Convention has not been otherwise prescribed.

(3) The graduated rate of Danish tax to be imposed on residents of Denmark and the graduated rate of Ceylon tax to be imposed on residents of

Ceylon may be calculated as though income exempted under this Convention were included in the amount of the total income.

Article XV

The competent authorities of the Contracting Governments 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 this Convention or for the prevention of fraud or for the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of this Convention. 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 this Convention. No information as aforesaid shall be exchanged which would disclose any trade, business, industrial or professional secret or trade process.

Article XVI

(1) The nationals of one of the territories shall not be subjected in the other territory 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 the latter territory in the same circumstances are or may be subjected.

(2) In this Article the term “ nationals ” means :

- (a) all individuals possessing the nationality of one of the territories;
- (b) all other persons deriving their status as such from the law in force in one of the territories.

(3) The enterprises of one of the territories shall not be subjected in the other territory, in respect of profits attributable to their permanent establishments in that other territory, to any taxation which is other, higher or more burdensome than the taxation to which the enterprises of that other territory are or may be subjected in respect of the like profits.

Nothing in this paragraph shall be construed as

- (a) obliging either of the territories to grant, to persons not resident in its territory, those personal allowances, reliefs and reductions for tax purposes which are, by law, available only to persons who are so resident;
- (b) affecting the additional Ceylon tax with which Article VI, paragraph (1), is concerned;

(c) affecting the provisions of the Danish law under which the national income tax on income of companies which are not resident in Denmark but subject to tax in Denmark is computed in accordance with the rates applicable to individuals.

(4) Enterprises of one of the territories, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other territory shall not be subjected in the first-mentioned territory to any taxation or any requirement connected therewith which is other, higher or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned territory are or may be subjected.

(5) In this Article the term “taxation” means taxes of every kind and description levied on behalf of any authority whatsoever.

Article XVII

(1) Any taxpayer who shows that the action of the revenue authorities of the Contracting Governments has resulted or will result in double taxation with respect to the taxes which are the subject of this Convention may lodge a claim with the competent authority in the territory of which he is a resident. Should the claim be upheld, that competent authority may come to an agreement with the competent authority of the other territory with a view to avoidance of the double taxation.

(2) The competent authorities of the Contracting Governments may likewise come to an agreement for the purpose of overcoming double taxation in cases not otherwise provided for by this Convention as well as in the case where the interpretation or the application of this Convention gives rise to difficulties or doubts.

Article XVIII

This Convention may be made applicable either in its entirety or with modifications in respect of the territories of the Faroe Islands and Greenland, if such territories impose taxes of a substantially similar character to the taxes specified in Article I of this Convention, if such territories so desire and Ceylon agrees to it. For this purpose the Contracting Governments will communicate by an exchange of notes. In these notes the Contracting Governments will lay down the modifications and the conditions (including those relating to the date from which the applicability becomes effective and to the termination thereof) under which this Convention will be applicable.

Article XIX

(1) This Convention shall be ratified by the Contracting Governments.

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

(3) Upon exchange of instruments of ratification this Convention shall have effect

(a) In Denmark :

As respects Danish tax for any year of assessment beginning on or after 1st April, 1959;

(b) In Ceylon :

As respects income tax, for any year of assessment beginning on or after 1st April, 1959; as respects profits tax for any profits tax year beginning on or after 1st January, 1958; as respects expenditure tax and wealth tax, for any year of assessment beginning on or after 1st April, 1959.

Article XX

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

(a) In respect of Danish tax :

for any year of assessment beginning on or after 1st April in the calendar year next following that in which the notice is given ;

(b) In respect of Ceylon tax :

as regards income tax, wealth tax and expenditure tax for any year of assessment beginning on or after 1st April in the calendar year next following that in which the notice is given; as respects profits tax, for any profits tax year in which the notice is given.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Convention.

DONE in triplicate at Colombo on 16th of February, One Thousand Nine Hundred and Sixty-Three, in the Sinhala, Danish and English languages, all three texts being equally authoritative.

On behalf of the Government of the Kingdom of Denmark :

Bøgh ANDERSEN

On behalf of the Government of Ceylon :

P. B. G. KALUGALLA