

No. 9721

**JAPAN
and
CEYLON**

Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (with protocol). Signed at Colombo on 12 December 1967

Authentic texts: Japanese, Sinhala and English.

Registered by Japan on 16 July 1969.

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et
CEYLAN**

Convention tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu (avec protocole). Signée à Colombo le 12 décembre 1967

Textes authentiques: japonais, cinghalais et anglais.

Enregistrée par le Japon le 16 juillet 1969.

CONVENTION ¹ BETWEEN THE GOVERNMENT OF JAPAN
AND THE GOVERNMENT OF CEYLON FOR THE AVOID-
ANCE OF DOUBLE TAXATION AND THE PRE-
VENTION OF FISCAL EVASION WITH RESPECT TO
TAXES ON INCOME

The Government of Japan 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,
Have agreed as follows:

Article I

- (1) The taxes which are the subject of the present Convention are:
- (a) In Japan:
the income tax and the corporation tax (hereinafter referred to as
“ Japanese tax ”);
- (b) In Ceylon:
the income tax (hereinafter referred to as “ Ceylon tax ”).

(2) The present Convention shall also apply to any other taxes of a
substantially similar character to those referred to in the preceding para-
graph imposed in Japan or Ceylon subsequently to the date of signature
of the present Convention.

Article II

- (1) In the present Convention, unless the context otherwise requires:
- (a) the term “ Japan ” when used in a geographical sense means all the
territory in which the laws relating to Japanese tax are enforced;
- (b) the terms “ one of the territories ” and “ the other territory ” mean
Japan or Ceylon, as the context requires;
- (c) the term “ Contracting State ” means Japan or Ceylon, as the context
requires;

¹ Came into force on 22 September 1968, the thirtieth day after the date of the exchange of the instruments of ratification, which took place at Tokyo on 23 August 1968, in accordance with article XX (2).

- (d) the term "tax" means Japanese tax or Ceylon tax, as the context requires;
- (e) the term "person" includes any body of persons, corporate or not corporate;
- (f) the term "company" means any body corporate and any entity which is treated as a body corporate for tax purposes;
- (g) the terms "resident of Japan" and "resident of Ceylon" mean respectively any person who is resident in Japan for the purposes of Japanese 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 Japan for the purposes of Japanese tax. A company shall be regarded as resident in Japan if it has its head or main office in Japan and is not managed and controlled in Ceylon and is not incorporated under the laws of Ceylon; a company shall be regarded as resident in Ceylon if either it is incorporated under the laws of Ceylon or its business is managed and controlled in Ceylon, and in either case it does not have its head or main office in Japan;
- (h) the terms "Japanese enterprise" and "Ceylon enterprise" mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of Japan 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 Japanese enterprise or a Ceylon enterprise, as the context requires;
- (i) the term "industrial or commercial profits" includes profits from the business of agriculture, fishing, mining, banking, insurance, 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;
- (j) 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, and a construction or assembly project or the like the duration of which exceeds 183 days; 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

- (aa) 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, general commission agent or any other agent of a genuinely independent status, where such persons are acting in the ordinary course of their business as such;
 - (bb) the fact that an enterprise of one of the territories maintains in the other territory a fixed place of business or any agent exclusively for the purchase of goods or merchandise shall not of itself constitute that fixed place of business or that agent a permanent establishment of the enterprise;
 - (cc) 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.
- (k) the term "competent authorities" means in the case of Japan the case of Japan the Minister of Finance or his authorized representatives; and in the case of Ceylon the Commissioner of Inland Revenue.

(2) In the application of the provisions of the present Convention in one of the territories any term not otherwise defined in the present Convention 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 the present 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 in that other territory through a permanent establishment situated therein, 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 ascertainment of profits

from the business of insurance in accordance with the provisions of the law of Ceylon at the date of signature of the present 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 Japanese 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 the present 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 Japan, operating ships or aircraft, derives profits from Ceylon through such operations carried on in Ceylon, such profits may be subject to tax in Japan as well as in Ceylon; but the tax so chargeable in Ceylon shall be reduced by an amount equal to 50 per cent thereof.

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

Article VI

(1) Dividends paid by a company resident in Ceylon to a company resident in Japan shall be exempt from all Ceylon tax other than the Ceylon income tax on the company which pays the dividends and other than the additional tax referred to in sub-section (4) of section 26 of the Ceylon Inland Revenue Act on companies whose shares are not movable property situated in Ceylon for the purposes of the law of Ceylon relating to Estate Duty; but the rate of this last-mentioned additional tax shall not, in the case of companies resident in Japan, exceed 6 per cent.

(2) The rate of Japanese tax on dividends which are paid by a company resident in Japan to a company resident in Ceylon shall not exceed 20 per cent.

(3) The amount of tax which a company resident in Ceylon is authorized to deduct by virtue of sub-section (1) of section 27 of the Ceylon Inland Revenue Act from any dividends paid shall be refunded to a company resident in Japan in the case where such dividends are paid by a company referred to in sub-section (1) of section 6 of the said Act and such dividends are paid out of the taxable income of that company of any of the five years immediately subsequent to the period for which profits are exempted under sub-section (2) of section 6 of the said Act, provided that not less than 10 per cent of the shares of the company which pays the dividends are held by one or more residents of Japan.

(4) The provisions of paragraphs (1), (2) and (3) of this Article 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 the provision of Article III of the present Convention shall be applicable.

(5) 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 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) Interest received by any banking institution which is a resident of one of the territories shall be exempt from tax in the other territory.

(2) Interest receivable on bonds, debentures, deposits or loans may be subject to tax in the territory in which the debtor resides, provided that profits and income derived by the Government of Japan, either directly or through any agency of that Government, or by any such body of persons or company resident in Japan as may be approved by the Government of Ceylon from aid granted in money, goods or services or any other form by the Government of Japan or that body or company to the Government of Ceylon shall be exempt from Ceylon tax.

(3) The provisions of 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 the provisions of Article III of the present Convention shall be applicable.

Article VIII

(1) Any royalty or other amount which is payable as consideration for the use of, or for the right to use, 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 right to use, 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 subject to tax in the first-mentioned territory, but the tax so chargeable shall be reduced by an amount equal to 50 per cent thereof. There shall be treated as royalties all rents and similar payments received as consideration for the use of, or for the right to use, industrial, commercial or scientific equipment.

(3) The provisions of 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 the provisions of Article III of the present Convention shall be applicable.

Article IX

(1) Except on gains derived from the sale, transfer or exchange of immovable property, a resident of one of the territories shall be exempt in the other territory from any tax on gains from the sale, transfer or exchange of capital assets (including the sale, transfer or exchange of patent rights).

(2) The provisions of paragraph (1) of this Article shall not apply to the gains derived from the sale, transfer or exchange of stocks, shares, bonds and debentures.

(3) The provisions of paragraph (1) of this Article shall not apply where a resident of one of the territories has a permanent establishment in the other territory and such gains are attributable to that permanent establishment; in such event the provisions of Article III of the present Convention shall be applicable.

Article X

(1) Remuneration, including pensions, paid by the Government (including any local government) of Japan, or paid out of funds created by such Government or to which such Government contributes, to any individual for services rendered shall be exempt from tax in Ceylon, if the individual is not resident in Ceylon or (where the remuneration is not a pension) is resident in Ceylon solely for the purposes of rendering those services.

(2) Remuneration, including pensions, paid by the Government (including any local government) of Ceylon, or paid out of funds created by such Government or to which such Government contributes, to any individual for services rendered shall be exempt from tax in Japan, unless the individual is a national of Japan or is admitted to Japan for permanent residence therein.

(3) The provisions of this Article shall not apply to payments in respect of services in connection with any trade or business carried on for purpose of profit.

Article XI

(1) Profits or remuneration from professional services (including services as a director) or an employment, earned by an individual who is a resident of one of the territories, may also be taxed in the other territory, but only if the activities are performed in that other territory.

(2) An individual who is a resident of Japan 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 Japan, and
- (c) the profits or remuneration are subject to Japanese tax.

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

- (a) he is present within Japan 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) 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.

(5) 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.

Article XII

Any pension and other similar remuneration (other than those to which Article X of the present Convention applies), derived from sources within one of the territories by an individual who is a resident of the other territory in respect of past employment shall be exempt from tax in the first-mentioned territory.

Article XIII

A professor or teacher from one of the territories, who visits the other territory at the invitation for a period not exceeding two years of a recognised university, college, school or other educational institution in

the other territory for the purposes of teaching or engaging in research at such educational institution, shall not be subject to tax for a period not exceeding two years in that other territory in respect of remuneration for such teaching or research.

Article XIV

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

- (a) as a student at a recognised 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 be exempt from tax in that other territory in respect of

- (i) remittances from abroad for the purposes of his maintenance, education, study, research or training;
- (ii) the grant, allowance or award; and
- (iii) remuneration for personal services in that other territory not exceeding the sum of 360,000 Yen or its equivalent sum in Ceylon currency, during any year of assessment or taxable year, as the case may be.

(2) An individual from one of the territories who is temporarily present in the other territory for a period not exceeding one year, as an employee of, or under contract with, an enterprise of the former territory or an organisation referred to in sub-paragraph (c) of paragraph (1) of this Article, solely to acquire technical, professional or business experience from a person other than such enterprise or organisation, shall not be subject to tax in that other territory in respect of remuneration for such period for his services directly related to the acquisition of such experience unless the amount thereof exceeds 1,000,000 Yen or its equivalent in Ceylon currency.

(3) An individual from one of the territories temporarily present in the other territory under arrangements with the Government of that other territory or any agency or instrumentality thereof solely for the purpose of training, research or study shall not be subject to tax in that other territory

in respect of remuneration received on account of such training, research or study.

Article XV

(1) The laws in force in either of the territories shall continue to govern the taxation of income in the respective territories except where express provisions to the contrary are made in the present Convention.

(2) (a) Subject to the provisions of the law of Japan regarding the allowance as a credit against Japanese tax of tax payable in any country other than Japan, Ceylon tax payable under the law of Ceylon and in accordance with the provisions of the present Convention, whether directly or by deduction, in respect of income derived from Ceylon shall be allowed as a credit against Japanese tax. Where a resident of Japan receives dividends paid by a company resident in Ceylon, Ceylon tax deductible under the provisions of sub-section (4) of section 26 and sub-section (1) of section 27 of the Ceylon Inland Revenue Act shall be treated as tax payable by such a resident of Japan in respect of such dividends.

(b) For the purposes of credit referred to in sub-paragraph (a) of this paragraph.

(i) there shall be deemed to have been paid by a company resident in Japan, in respect of dividends received by that company from a company resident in Ceylon, as is referred to in sub-section (1) of section 6 of the Ceylon Inland Revenue Act and not less than 10 per cent of the shares of which are held by one or more residents of Japan, the amount of Ceylon tax that would be payable if the provisions of sub-section (3) of section 6 of the said Act did not apply;

(ii) there shall be deemed not to have been refunded, in respect of dividends to which the provisions of paragraph (3) of Article VI of the present Convention apply, the amount of Ceylon tax refunded under the said provisions of the present Convention;

provided that the amount of Ceylon tax deemed to have been paid or deemed not to have been refunded shall not exceed the amount of Japanese tax payable in respect of such dividends by the company resident in Japan less the amount of Ceylon tax.

(c) For the purposes of credit referred to in sub-paragraph (a) of this paragraph, in addition to the reduced amount of Ceylon tax payable on royalties under the provisions of paragraph (2) of Article VIII of the present Convention, there shall be deemed to have been paid by a resident

of Japan in respect of such royalties 25 per cent of the amount of Ceylon tax that would be payable if the said provisions did not apply; provided that the amount of Ceylon tax deemed to have been paid shall not exceed the amount of Japanese tax payable by such a resident of Japan on such royalties less the reduced amount of Ceylon tax payable under the provisions paragraph (2) of Article VIII of the present Convention.

(d) In the application of the provisions of sub-paragraph (b) of this paragraph, the amount of Ceylon tax deemed to have been paid shall not exceed the amount which would be determined as if any amendment to the Ceylon Inland Revenue Act subsequent to the date of signature of the present Convention did not apply.

(3) Subject to the provisions of the Ceylon Inland Revenue Act, Japanese tax payable, whether directly or by deduction, by a person resident in Ceylon in respect of income from sources within Japan shall be allowed as a credit against any Ceylon tax payable in respect of that income.

Article XVI

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 Convention or for the prevention of fraud or for the administration of statutory provisions against tax avoidance in relation to the taxes which are the subject of the present Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any person other than those concerned with the assessment and collection of the taxes which are the subject of the present Convention. No information as aforesaid shall be exchanged which would disclose any trade, business, industrial or professional secret or trade process.

Article XVII

(1) The provisions of the present Convention shall not be construed to deny or affect in any manner the right of diplomatic and consular officers to other or additional exemptions now enjoyed or which may hereafter be granted to such officers.

(2) 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 the nationals of that other territory are or may be subjected.

(3) 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.

(4) 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.

(5) In this Article the term “ taxation ” means taxes of every kind and description.

(6) 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.

(7) Nothing in this Article shall be construed as

- (a) obliging either of the Contracting States 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 tax referred to in paragraph (1) of Article VI of the present Convention.

Article XVIII

(1) Where a resident of one of the territories shows proof that the action of the tax authorities has resulted or will result in double taxation contrary to the provisions of the present Convention, he shall be entitled to present his case to the competent authorities of the Contracting State in which he is resident. Should his claim be deemed worthy of consideration, the competent authorities of the Contracting State to which the claim is made shall endeavour to come to an agreement with the competent authorities of the other Contracting State with a view to avoiding double taxation.

(2) For the settlement of difficulties or doubts in the interpretation or application of the present Convention or in respect of its relation to

conventions of the Contracting States with third states the competent authorities shall reach a mutual agreement as quickly as possible.

Article XIX

The competent authorities may communicate with each other directly for the purpose of giving effect to the provisions of the present Convention.

Article XX

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

(2) The present Convention shall come into force on the thirtieth day after the date of exchange of instruments of ratification and shall have effect

(a) In Ceylon :

as regards tax for the years of assessment commencing on or after the first day of April of the calendar year in which the present Convention comes into force ; and

(b) In Japan :

as regards tax for the taxable years commencing on or after the first day of January of the calendar year in which the present Convention comes into force.

Article XXI

The present Convention shall continue in effect indefinitely but either of the Contracting States may terminate the present Convention at any time after a period of three years from the date on which the present Convention comes into force, by giving on or before the 30th day of June in any year to the other Contracting State notice of termination, and, in such event the present Convention shall cease to be effective

(a) In Ceylon :

as regards tax for the years of assessment commencing on or after the first day of April of the calendar year next following that in which the notice is given ; and

(b) In Japan :

as regards tax for the taxable years commencing on or after the first day of January of the calendar year next following that in which the notice is given.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed the present Convention.

DONE in duplicate in Colombo on December 12, 1967, in the Japanese, Sinhala and English languages, each text being equally authentic. In case of divergence of interpretation, the English text shall prevail.

For the Government
of Japan:

Seizo HINATA

For the Government
of Ceylon:

U. B. WANNINAYAKE

PROTOCOL

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

The provisions of paragraph (2) of Article VIII of the Convention shall be modified if the Government of Ceylon gives any further concession than is provided in the said provisions of the Convention to any other country, so that the same concession as is given to that other country shall be given to Japan and shall have effect from the first day of April of the calendar year in which the concession becomes applicable to that other country.

DONE in duplicate in Colombo on December 12, 1967, in the Japanese, Sinhala and English languages, each text being equally authentic. In case of divergence of interpretation, the English text shall prevail.

For the Government
of Japan:

Seizo HINATA

For the Government
of Ceylon:

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