No. 10735

FRANCE
and
INDIA

Convention for the avoidance of double taxation with respect to taxes on income (with exchange of letters). Signed at Paris on 26 March 1969

Authentic texts: French and Hindi.

Registered by France on 3 September 1970.

FRANCE
et
INDE

Convention tendant à éviter la double imposition en matière d'impôts sur les revenus (avec échange de lettres). Signée à Paris le 26 mars 1969

Textes authentiques: français et hindi.

Enregistrée par la France le 3 septembre 1970.

[TRANSLATION — TRADUCTION]

CONVENTION[1] BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF INDIA FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME

The Government of the French Republic and the Government of India, desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income have agreed for that purpose on the following provisions:

Article 1

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

(*a*) In India:

The income tax and the surcharge on income tax imposed under the Income-tax Act, 1961 (43 of 1961),

The surtax imposed under the Company Profits Surtax Act. 1964 (7 of 1964),

Hereinafter referred to as "Indian tax";

(*b*) In France:

The income tax on the income of physical persons;

The complementary tax;

The tax on the profits of companies and other bodies corporate,

Hereinafter referred to as "French tax".

2. This Convention shall also apply to any identical or substantially similar taxes which may be imposed after it has been signed in addition to, or in place of, the existing taxes. At the beginning of each year, the competent authorities of India and France shall notify each other of any changes which have been made in their respective taxation laws during the preceding year.

[1] Came into force on 20 March 1970, i.e., 30 days after the exchange of the notifications (effected on 18 February 1970) to the effect that each State had completed the appropriate procedure, in accordance with article 25 (1).

Article 2

1. For the purposes of this Convention:

(*a*) The term "India", used in a geographical sense, means all the territory in which the laws relating to Indian tax are applicable;

(*b*) The term "France", used in a geographical sense, means the European and Overseas Departments of the French Republic (Guadeloupe, Guiana, Martinique and Réunion);

(*c*) The terms "one of the Contracting States" and "the other Contracting State" mean, as the context requires, India or France;

(*d*) The term "person" comprises individuals, companies and all other entities treated as taxable units under the tax laws in force in the respective Contracting States;

(*e*) The term "company" means any body corporate and comprises any entity which is treated as a body corporate or company for the purposes of the tax laws in force in the respective Contracting States;

(*f*) The term "tax" means Indian tax or French tax, as the context requires;

(*g*) The terms "resident of India" and "resident of France" mean, respectively, a person who is resident in India for the purposes of Indian tax and not resident in France for the purposes of French tax, and a person who is resident in France for the purposes of French tax and not resident in India for the purposes of Indian tax.

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

(*h*) The terms "Indian enterprise" and "French enterprise" mean, respectively, an industrial or commercial enterprise or undertaking carried on by a resident of India and an industrial or commercial enterprise or undertaking carried on by a resident of France; and the terms "enterprise of one of the Contracting States" and "enterprise of the other Contracting State" mean an Indian enterprise or a French enterprise, as the context requires;

(i) 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" means a place of management, a branch, an office, a factory, a workshop, a warehouse and a mine, quarry or other place of exploitation of the resources of the ground or sub-soil.

(*bb*) An enterprise of one of the Contracting States shall be deemed to have a fixed place of business in the other Contracting State if it carries on in that other Contracting State a construction 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 any such goods or merchandise in the country of purchase, shall not constitute a permanent establishment;

(*dd*) A person working in one of the Contracting States for an enterprise of the other Contracting State shall be deemed to be a permanent establishment of that enterprise in the first-mentioned Contracting State if :

1. He has and habitually exercises in the first mentioned Contracting State a general authority to negotiate and enter into contracts for the enterprise, unless the activities of the person are limited to the purchase of goods or merchandise for the enterprise, or

2. He habitually maintains in the first-mentioned Contracting State a stock of goods or merchandise belonging to the enterprise from which the person regularly delivers goods or merchandise for the enterprise, or

3. He habitually secures orders in the first-mentioned Contracting State 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. A person of one of the Contracting States who is present in the other territory for a period not exceeding three months during one year of assessment for the purpose of securing orders there shall not be deemed to be habitually securing orders in the sense of this subparagraph.

(*ee*) A broker, a commission agent or genuinely independent representative who merely acts as an intermediary between an enterprise of one of the

Contracting States and a prospective customer in the other Contracting State shall not be deemed to be a permanent establishment of the enterprise in the last-mentioned Contracting State when his activities do not involve securing orders in the sense of subparagraph *dd*, 3.

(*ff*) The fact that a company which is a resident of one of the Contracting States has a subsidiary company which either is a resident of the other Contracting State or carries on a trade or business in that other Contracting State shall not of itself constitute that subsidiary company a permanent establishment of its parent company.

(*j*) The term "competent authorities" means:

In the case of India, the Central Government in the Ministry of Finance, Department of Revenue, or its authorized representative;

In the case of France, for the purposes of the interpretation of this Convention, The Minister for Foreign Affairs and, in other cases, the Minister of Finance or his authorized representative.

2. In the application of the provisions of this Convention in either of the Contracting States, any term not otherwise defined in this Convention shall, unless the context otherwise requires, have the meaning which it has under the laws in force in that Contracting State relating to the taxes which are the subject of this Convention.

Article 3

1. The industrial or commercial profits (with the exception of profits derived from the operation of ships or aircraft) of an enterprise of one of the Contracting States shall not be taxable in the other Contracting State unless the enterprise has a permanent establishment located in that other Contracting State. In such a case, the profits of that establishment shall be taxable only in that other Contracting State.

2. Where an enterprise of one of the Contracting States has a permanent establishment in the other Contracting State, there shall be attributed to that permanent establishment the industrial or commercial profits which it might be expected to make 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 at arm's length with the enterprise of which it is a permanent establishment.

3. In the determination of the industrial or commercial profits of a permanent establishment, there shall be allowed as deductions all expenses wherever

incurred which can reasonably be attributed to the permanent establishment including its share of executive and general administrative expenses.

4. Where there is difficulty in determining the exact amount of the industrial or commercial profits derived from a permanent establishment, the said profits shall be assessed fairly, taking into account the extent to which the activities of the said establishment have contributed to the profits of the enterprise.

5. The term "industrial or commercial profits", used in this article, does not include income derived from dividends, interest, rent, royalties or the like dealt with in article 7, paragraph 2, capital gains, remuneration for personal services or payment for technical services.

Article 4

Where

(*a*) An enterprise of one of the Contracting States participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or

(*b*) The same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the Contracting States and an enterprise of the other Contracting State;

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

Article 5

1. Income derived from the operation of aircraft by an enterprise of one of the Contracting States shall not be taxable in the other Contracting State, unless the aircraft is operated wholly or mainly between places within that other Contracting State.

2. Paragraph 1 shall likewise apply in respect of participation in a pool, a joint air transport enterprise or an international transport organization.

Article 6

1. When an enterprise of one of the Contracting States derives profits from the operation of ships in the other Contracting State, the tax charged on the profits in that other Contracting State shall be reduced by an amount equal to 50 per cent thereof, and the reduced amount of tax payable in that other State shall be allowed as credit not exceeding the tax against tax charged in respect of such profits in the first Contracting State.

2. Paragraph 1 shall not apply to profits derived from coastal traffic. The term "coastal traffic" refers to shipping which has its point of departure and point of arrival within the territorial waters of the same Contracting State.

3. The provisions of this article shall not in the case of India affect the application of subsections (1) to (6) of section 172 of the Indian Income-tax Act, 1961 for the assessment of profits from tramp steamers. The provisions of paragraph 1 shall be applied, in the case of tramp steamers, when an adjustment is to be made under subsection (7) of section 172 of the aforesaid Indian Act.

Article 7

1. Royalties derived by a resident of one of the Contracting States from sources in the other Contracting State may be taxed in both Contracting States.

2. For the application of this article, the term "royalties" means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific works, cinematographic films, patents, models, designs, plans, secret processes or formulae, and trademarks, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience, but does not include any royalty or other like amount in respect of the operation of mines, quarries or other places of extraction of natural resource.

Article 8

Interest on bonds, securities, notes, debentures or any other form of indebtedness, derived by a resident of one of the Contracting States from sources in the other Contracting State may be taxed in both Contracting States.

Article 9

Dividends paid by a company which is a resident of one of the Contracting States to a resident of the other Contracting State may be taxed in both Contracting States.

Article 10

1. Income from immovable property shall be taxable only in the Contracting State in which such property is situated.

2. For the purposes of the application of paragraph 1, any royalty or other income derived from the operation of a mine, quarry or other place of extraction of natural resources shall be regarded as income from immovable property.

Article 11

Capital gains derived from the sale, exchange or transfer of movable or immovable property shall be taxable only in the territory in which such property is situated at the time of the sale, exchange or transfer. For the purpose of this article, the shares of a company shall be deemed to be situated in the territory in which the company has its head office.

Article 12

1. Remuneration paid by a Contracting State or by a political sub-division or local authority thereof or out of the public funds of a Contracting State or of a political sub-division or local authority thereof to an individual for services rendered to the said State, political sub-division or local authority shall be taxable only in that Contracting State.

2. The provisions of paragraph 1 shall not apply:

(*a*) When remuneration is paid by a Contracting State or a political sub-division or local authority thereof to an individual who is a national of the other Contracting State and not a national of the first-mentioned State, in which case the remuneration shall be taxable only in the Contracting State of which the said individual is a resident;

(*b*) To remuneration paid for services rendered in connexion with any trade or business carried on for purposes of profit by a Contracting State or a political sub-division or local authority thereof referred to in paragraph 1.

3. The provisions of paragraphs 1 and 2(*a*) of this article shall also apply to remuneration paid by the Reserve Bank of India, the Public Railways Authorities and the Postal Administration of India and the corresponding bodies in France.

Article 13

1. Any pension or annuity derived from sources in one of the Contracting States by an individual who is a resident of the other Contracting State shall be taxable only in the first-mentioned Contracting State.

2. The term "pension" in this article means a periodic payment made in consideration of services rendered or by way of compensation for injuries received.

3. The term "annuity" in this article 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 14

1. Subject to the provisions of article 12, wages, salaries or other similar remuneration paid for services rendered as an employee in one of the Contracting States by an individual who is a resident of the other Contracting State shall be taxable only in the Contracting State in which such services were rendered.

2. Notwithstanding the provisions of paragraph 1 of this article, the wages, salaries or other similar remuneration paid to an individual who is a resident of one of the Contracting States for services rendered in the other Contracting State shall not be subject to taxation in that other Contracting State and shall be taxable in the first-mentioned Contracting State if:

(*a*) The said individual is present in the above-mentioned other Contracting State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned, and

(*b*) The remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting State, and

(*c*) The remuneration is not allowed as a deduction for the determination of the profits of a permanent establishment which is taxable in the other Contracting State.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this article, remuneration in respect of personal services rendered aboard a ship or aircraft operated in international traffic by an enterprise of one of the Contracting States shall be taxable only in that Contracting State.

Article 15

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in the Contracting State in which such services are rendered or such activities are exercised.

2. Income derived by public entertainers, such as theatre, motion picture, radio or television artists and musicians, and by athletes, from their personal activities as such shall be taxable only in the Contracting State in which such activities are exercised.

Article 16

The remuneration paid by an enterprise in one of the Contracting States to an enterprise in the other Contracting State for technical services rendered shall not be taxable in the first Contracting State except to the extent that such remuneration is paid in respect of activities actually exercised in the first-mentioned State. In the determination of the income thus subject to taxation, there shall be allowed as deductions the expenses incurred in the first Contracting State when the activities were exercised there.

Article 17

1. A resident of one of the Contracting States who travels to the other Contracting State, at the invitation of a university, college, school or any other recognized educational establishment of that other Contracting State, solely for the purpose of teaching or carrying out research in that educational establishment for a period not exceeding two years, shall be exempt from tax in that other territory in respect of payment for his teaching or research.

2. The provisions of this article shall apply to an individual carrying out research only if the results of such research are freely made available to the public.

Article 18

1. An individual who is a resident of one of the Contracting States and who is temporarily present in the other Contracting State solely:

(*a*) As a student at a university, college or recognized school of that other Contracting State, or

(*b*) As an apprentice, or

(*c*) As the recipient of a grant, allowance or award for the primary purpose of study or research from the public authorities or a religious, charitable, scientific, literary or educational organization of the first Contracting State shall not be taxed in the other Contracting State in respect of:

(i) Remittances from sources abroad for the purposes of his maintenance, education, vocational training, studies or research, and

(ii) Any amount he receives as remuneration for employment in the other Contracting State, provided that employment is connected with his studies or training or is necessary for the purpose of his maintenance, and

(iii) The grant, allowance or award,
as the case may be.

2. An individual who is a resident of one of the Contracting States and who is temporarily present in the other Contracting State for a period not exceeding one year, as an employee of an enterprise of the first Contracting State or of one of the organizations referred to in paragraph 1(*c*), or under a contract signed with that enterprise or organization, solely for the purpose of acquiring technical, professional or commercial experience from a person other than that enterprise or organization, shall not be taxed in that other Contracting State on the remuneration he receives during the above-mentioned period, provided that it does not exceed 12,000 French francs (or the equivalent of that sum in Indian currency at the official rate of exchange), including the remuneration paid to him by such a person in the other Contracting State.

3. An individual who is a resident of one of the Contracting States and who is temporarily present in the other Contracting State under arrangements concluded with the public authorities or an official body of that other Contracting State, solely for the purpose of training, studies or orientation, shall not be taxed in that other Contracting State for remuneration which he receives from abroad or which is paid to him in the other Contracting State for services directly connected with such training, studies or orientation, provided that it does not exceed 15,000 French francs (or the equivalent of that sum in Indian currency at the official rate of exchange) for one year of assessment.

Article 19

1. The laws in force in the Contracting State concerned shall continue to govern the taxation of income, except as otherwise stipulated in this Convention. Nevertheless, a company which is a resident of India and which has a permanent establishment in France and is subject there to taxation on income from movable capital under article 109-2 of the *Code général des impôts* shall not be subject to such taxation on income over and above the profits attributable to that permanent establishment in accordance with article 3 of this Convention.

2. Subject to the provisions of article 6 and paragraph 1 above, when any income from a source in France is derived by a resident of India and is subject to taxation both in India and in France, India shall allow as credit against Indian tax payable on such income an amount not exceeding that tax and corresponding to French tax paid on the income; if, however, the resident is a company subject to surtax in India, the above-mentioned credit shall first be allowed against the income tax payable by that company in India and any balance shall be allowed against the surtax payable by it in India.

3. Subject to the provisions of article 6 and paragraph 1 above, in the case of income taxable in both Contracting States, the tax shall, in the case of a resident of France, be computed as follows:

(*a*) With respect to royalties referred to in article 7 which were derived from Indian sources and have been subjected to taxation in India, France shall allow as credit against French tax payable on such royalties an amount not exceeding that and corresponding to Indian tax paid on the royalties.

(*b*) With respect to interest referred to in article 8 which was derived from Indian sources:

(i) In cases where such interest has been subjected to taxation in India, France shall allow as credit against French tax payable on such interest an amount not exceeding that tax and corresponding to Indian tax paid on the interest;

(ii) In cases where, in accordance with section 10 (15) (iv) of the Indian Income-tax Act, 1961, no Indian tax is payable on such interest, France shall reduce French tax on the interest by an amount equal to 50 per cent of that tax.

(*c*) With respect to dividends referred to in article 9 which were derived from Indian sources, France shall allow as credit against French tax payable on such dividends an amount not exceeding that tax and equal to 30 per cent of the gross amount of the dividends. In computing French tax, where the dividends have been subjected in India to taxation at a reduced rate or have been exempt from taxation under the combined provisions of sections 80 J, 80 K and 80 M of the Income-tax Act, 1961, the dividends shall be deemed to have been charged with Indian tax at the statutory rate.

4. In the case of income taxable in only one of the Contracting States in accordance with the provisions of this Convention, the other Contracting State may take into account the amount of such income for the sole purpose of computing the tax payable by the recipient on his other income.

Article 20

The competent authorities of the Contracting States shall exchange, on request, such information obtained in accordance with their respective taxation laws as is necessary for carrying out the provisions 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 or collection of the taxes which are the subject of this Convention. No information shall, however, be exchanged which would disclose a commercial, industrial or professional secret or a manufacturing process.

Article 21

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 or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. In particular, nationals of a Contracting State who are taxable within the territory of the other Contracting State shall be entitled, under the same conditions as nationals of that other State, to any exemptions, relief, deductions and reductions of tax granted on account of family responsibilities.

Article 22

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in

accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with this Convention.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties arising as to the interpretation or application of this Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 23

1. This Convention may be extended, either in its entirety or with any necessary modifications, to the overseas territories of the French Republic which impose taxes substantially similar in character to those to which this Convention applies. Any such extension shall take effect from such date and subject to such modifications and conditions (including conditions as to termination) as may be specified and agreed between the Contracting States in diplomatic notes to be exchanged for this purpose.

2. Unless otherwise agreed by both Contracting States, when this Convention ceases to apply to one of them under article 25 paragraph 3, it shall also cease to apply to any territory to which it has been extended under this article.

Article 24

The competent authorities of the two Contracting States shall consult together where necessary, to establish the procedures required for the application of this Convention within their respective territories. They shall communicate with each other directly for the purpose of making the provisions of this Convention effective.

Article 25

1. This Convention shall be approved in accordance with the legislative provisions in force in each of the two States. It shall enter into force 30 days after

the exchange of notifications announcing in each State, the completion of the appropriate procedure. The exchange of notifications shall take place at New Delhi.

2. This Convention shall thereupon apply:

(*a*) In India, to income derived during the "previous years" beginning on or after 1 January of the calendar year in which the exchange of notifications takes place;

(*b*) In France, to income derived during the years of assessment beginning on or after 1 January of the calendar year in which the exchange of notifications takes place.

3. This Convention shall remain in force indefinitely, but either of the Contracting States may, on or before 30 June in any calendar year after the year 1971, give notice of termination to the other Contracting State and, in such event, this Convention shall cease to be effective:

(*a*) In India, in respect of income derived during the "previous years" beginning on or after 1 January of the calendar year next following such notice;

(*b*) In France, in respect of income derived during the years of assessment beginning on or after 1 January of the calendar year next following such notice.

IN WITNESS WHEREOF the undersigned, duly authorized for this purpose, have signed this Convention.

DONE at Paris on 26 March 1969 in duplicate in French and Hindi, both texts being equally authentic.

For the Government of the French Republic:
Hervé ALPHAND

For the Government of India:
Dwarka Nath CHATTERJEE

EXCHANGE OF LETTERS

I

Paris, 26 March 1969

Sir,

The Convention between the Government of India and the Government of the French Republic for the avoidance of double taxation with respect to taxes on income has been signed today and I have the honour, on behalf of my Government, to propose the following:

1. If a resident of one of the Contracting States sells machinery to a resident of the other Contracting State and if, in connexion with such a sale, one or more persons employed by the resident of the first Contracting State have to travel to the other Contracting State to assist in the installation there of the machinery, that activity shall not be considered as constituting a permanent establishment unless it is exercised for a period exceeding three months or unless the expenses relating to such activity exceed 10 per cent of the total sales price.

2. (*a*) When a person who is a resident of India travels to France to exercise an activity there under the Agreement on Cultural, Scientific and Technical Co-operation between the Government of India and the Government of the French Republic of 7 June 1966[1], he shall not be subjected to French tax on the remuneration he receives for that activity.

(*b*) When a person who was domiciled in France travels to India to exercise an activity there under the Agreement on Cultural, Scientific and Technical Co-operation between the Government of India and the Government of the French Republic of 7 June 1966, he shall not be subjected to Indian tax on the remuneration he receives for that activity. In such a case, the part of such remuneration derived from French sources shall be liable to French tax on income.

I should be grateful if you would inform me if the above proposals are acceptable to your Government. If they are acceptable, I suggest that this letter and your reply be deemed to be an integral part of the Convention.

[1] United Nations, *Treaty Series*, vol. 690, p. 125.

Accept, Sir, etc.,

Dwarka Nath CHATTERJEE

His Excellency Mr. Hervé Alphand
Ambassador of France
Secretary-General of the Ministry of Foreign Affairs
Paris

II

Paris, 26 March 1969

Sir,

In your letter of today's date you informed me, on behalf of the Government of India, of the following:

[*See letter I*]

I have the honour to inform you that these proposals are acceptable to the Government of the French Republic. Your letter of today's date and my reply shall thus be an integral part of the Convention.

Accept, Sir, etc.,

Hervé ALPHAND

His Excellency Mr. Dwarka Nath Chatterjee
Ambassador Extraordinary and Plenipotentiary of India
to France
Paris