

Convention for Avoidance of Double Taxation

March 26, 1969

AGREEMENT BETWEEN THE GOVERNMENT OF INDIA AND THE GOVERNMENT OF THE FRENCH REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION IN RESPECT OF TAXES ON INCOME

Paris

The Government of India and the Government of the French Republic,
DESIRING to conclude an Agreement for the Avoidance of Double Taxation in respect to Taxes on Income,
HAVE agreed as follows:

Article I

This taxes which are the subject of the present Agreement are:

1. in India:

I.the income tax and any surcharge levied under the Income-Tax Act, 1961 (43 of 1961); and

II.the surtax levied under the Companies (Profits) Surtax Act,1964 (7 of 1964); (hereinafter referred to as "Indian Tax")

2. in France:

I.the IncomeTax on individuals (import sur le revenu des personnes physiques),

II.the complementary tax (tax complementaire),

III.the tax on the profits of companies and other legal entities (impot sur les benefices des societes et autres personnes morales), (hereinafter referred to as "French tax").

Article II

1. In the present Agreement :

I.The term "India" when used in a geographical sense, means, all territory in which the laws relating to the Indian tax are in force.

II.The term "France" when used in a geographical sense, means all the European departments and the overseas departments (Guadeloupe, Guiana, Martinique and Reunion);

III.the terms "one of the Contracting States" and "the other Contracting State" mean India or France, as the context requires;

IV.the term "person" includes natural person, companies and all other entities which are treated as taxable units under the tax laws in force in the respective Contracting State;

V.the term "company" means any body corporate and include any entity which is treated as a body corporate or a company for tax purposes under the laws of the respective Contracting States;

VI.the term "tax" means Indian tax or French tax, as the context requires;

VII.The terms "resident of India" and "resident of France" mean respectively any person who is resident in India for the purposes of Indian tax and not resident in France for the purposes of French tax, and any person who is resident in France for the purposes of French tax, and any 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 French if it is incorporated in France or its business is wholly managed and controlled in France;

VIII. The terms "Indian enterprise" and "French enterprise" means 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 required;

1. The term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

I. The term "fixed place establishment" shall include a place of management, a branch, an office, a factory, a workshop, a warehouse, a mine, a quarry or other place of extraction of natural resources ;

II. 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, installation or assembly project or the like.

III. The use of mere storage facilities or the maintenance of a place of business exclusively for the purpose of goods or merchandise and not for any processing of such goods or merchandise in the country of purchase, shall not constitute a permanent establishment.

IV. A person acting in one of the Contracting States for or on behalf of 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 that Contracting State a general authority to negotiate and enter into contracts for or on behalf of 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 or on behalf of the enterprise, or

(3) he habitually secures orders in the first mentioned Contracting State exclusively or almost exclusively, 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 from one of the Contracting States who is present in the other Contracting State for not more than three months in the taxable year for the purpose of securing orders shall not be deemed to be habitually securing orders within the meaning of this sub-paragraph.

V. a broker, a commission agent or other agent of a genuinely independent status who merely acts as an intermediary between an enterprise of one of the Contracting States and a person prospective customers in the other Contracting State shall not be deemed to be a permanent establishment in that other Contracting State in cases where such activities do not involve securing of orders within the meaning of sub-paragraph (dd)(3) above.

VI. 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.

VII. The term "competent authority" means

1. in the case of India the Central Government in the Ministry of Finance, Department of Revenue or its authorised representative,
2. in the case of the France, for the purpose of interpretation of the present Agreement, the Minister of Foreign Affairs and for any other purposes, the Minister of Finance or his authorised representative.
3. In the application of the provisions of the present Agreement in either Contracting State, any term not otherwise defined in the present Agreement 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 the present Agreement.

Article III

1. The Industrial or commercial profits (excluding the profits derived from the operation of ships or aircrafts) of an enterprise of one of the Contracting States shall not be subjected to tax in the other Contracting State unless the enterprise has a permanent establishment situated in that other Contracting State. If it has such a permanent establishment, the profits attributable thereto shall be subjected to tax only in that other Contracting State.
2. Where an enterprise of one of the Contracting States has a permanent establishment situated in the other Contracting State, there shall be attributed to such permanent establishment has 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.
3. In determining the industrial or commercial profits of a permanent establishment, there shall be allowed an deductions all expenses, wherever incurred reasonably allocable to such permanent establishment, including executive and general administrative expenses so allocable.
4. In a case where the ascertainment of the correct amount of the industrial or commercial profits of a permanent establishment presents, difficulties, such profits may be reasonably estimated with reference to the extent to which the activities of such permanent establishment have contributed to earning o profits.
5. (5) The term "industrial or commercial profits", as used in this Article, shall not include income in the form of dividends, interest, rents, royalties and similar payments as referred to in paragraph (2) of Article VII, capital gains, remuneration for personal services, or fees for technical services.

Article IV

Where :

1. 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

2. the same person participate directly or indirectly in the management, control or capital of an enterprise or 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 but for those conditions would 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. Profits derived by an enterprise of one of the Contracting States from the operation of aircraft shall not be subjected to tax in the other Contracting State unless the aircraft is operated wholly or mainly between places within that other Contracting State.

2. The provisions of paragraph (1) shall likewise apply in respect of participations in a pooled service, in a joint air transport operating organisations or an international operating agency.

Article VI

1. Where an enterprise of one of the Contracting States derives profits through shipping operations carried on in the other Contracting State, the tax leviable on such profits in the other Contracting State shall be reduced by an amount equal to fifty per cent thereof and the reduced amount of tax payable in that other Contracting State on such profits shall be allowed as a credit against, but in an amount not exceeding, the tax charged in respect of such profits in the first mentioned Contracting State.

2. Paragraph (1) shall not apply to profits arising as a result of coastal traffic. The term "coastal traffic" means traffic which originates and terminates in the territorial waters of the same Contracting State.

3. This Article shall not in the case of India, affect the provisions of sub-section (1) to (6) of section 172 of the Income-tax Act, 1961, relating to the assessment of profits from occasional shipping or tramp steamers. When an adjustment is to be made under sub-section (7) of section 172 of the said Act in the case of occasional shipping or tramp steamers, the provisions of paragraph (1) shall apply.

Article VII

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

2. The this Article, the term "Royalties" means payments of any kind received as 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 trade marks or for the use of, or for 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 similar payments in respect of the operation of mines, quarries, or other places of extraction of natural resources.

Article VIII

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 the Contracting States.

Article IX

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 the Contracting States.

Article X

1. Income from immovable property may be subjected to tax only in the Contracting State in which the property is situated.
2. For the purpose of paragraph (1), and 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 XI

Capital gains arising from the sale, exchange or transfer of a capital asset, whether movable or immovable may be taxed only in the Contracting State in which the capital asset is situated at the time of which sale exchange or transfer. For this purpose, the situs of the share of a company shall be deemed to be in the Contracting State where the company is incorporated.

Article XII

1. Remuneration paid by or out of the funds created by a Contracting State or any political sub-division thereof or a local authority therein to any individual in respect of services rendered to that State or sub-division or local authority shall be taxed only in that Contracting State.
2. The provisions of paragraph (1) shall not apply :
 - I. where remuneration is paid by a Contracting State or a political subdivision thereof or a local authority therein to any individual who is a national of the other Contracting State without being a national of the first mentioned Contracting State, the remuneration in such a case being taxable only in the Contracting State in which the individual is resident;
 - II. to remuneration paid in respect of services rendered in connection with any trade or business carried on for the purpose or profits by a Contracting State or a political sub-division thereof or a local authority therein referred to in paragraph (1).
3. The provisions of paragraph (1) and sub-paragraph (a) of paragraph (2) of this Article shall also apply to remuneration paid by the Reserve Bank of India, the Public Railway Authorities and the Postal Administration of India and the corresponding organisations in France.

Article XIII

1. Any pension or annuity derived from sources within one of the Contracting States by individual who is a resident of the other Contracting State shall be taxable only in the first mentioned Contracting State.
2. The term "pension", be used in this Article, means periodic payments made in consideration of services rendered or by way of compensation for injuries received.

3. The term "annuity", as used 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 XIV

1. Subject to the provisions of Article XII, salaries, wages or other remuneration for services as an employee performed in one of the Contracting States by an individual who is a resident of the other Contracting State may be taxed only in the Contracting State, in which such services are rendered.

2. Notwithstanding the provisions of paragraph (1) of this Articles, salaries, wages, or other similar remuneration paid to an individual who is a resident of one of the Contracting States for services performed in the other Contracting State shall not be subjected to tax in that other Contracting State and may be subjected to tax in the former Contracting State, if

I. he is present in that other Contracting State for a period or periods not exceeding in the aggregate 183 days in the taxable year concerned, and

II. the remuneration is paid by or on behalf of an employer who is not resident of that other Contracting State, and

III. the remuneration is not deducted in computing the profits of a permanent establishment chargeable at tax in that other Contracting State.

3. Notwithstanding the provision of paragraphs (1) and (2) of the Article, remuneration for personal services performed aboard a ship or aircraft operated by an enterprise of one the Contracting States in international traffic shall be taxed only in that Contracting State.

Article XV

1. Income derived by a resident of a Contracting State in respect of professional services rendered or other independent activities of a similar character shall be subjected to tax in the Contracting State where such services or activities are performed.

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

Article XVII

Amounts paid by an enterprise of one of the Contracting States for technical services furnished by an enterprise of the other Contracting State shall not be subjected to tax in the first mentioned Contracting State except in so far as such amounts are attributable to activities actually performed in the first mentioned Contracting State. In computing the income so subjected to tax, there shall be allowed as deductions the expenses incurred in the first mentioned Contracting State in connection with the activities performed in that Contracting State.

Article VIII

1. A resident of one of the Contracting State, who, at the invitation of a university, college, school or other recognised educational institution in the other Contracting State, visits that other Contracting State solely for the purpose of teaching or engaging in research at such educational

institution for a period not exceeding two years shall not be taxed in that other Contracting State on his remuneration for such teaching or research.

2. This Article shall apply to an individual engaged in research only if the results of such research are freely available to the general public.

Article XVIII

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

I.as a student at recognised university, college or school in the other Contracting State; or

II.as a business apprentice, or

III.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 of the former Contracting State, shall not be subject to tax in that other Contracting State :

1. on the remittances from abroad for the purposes of his maintenance, education, training, study or research, and

2. with respect to any amount representing remuneration for an employment in that other Contracting State if that employment is related with his studies or his training or if it is necessary for his maintenance; and

3. the grant, allowance or aware,
as the case may be.

2. An individual, who is a resident of one of the Contracting States and is temporarily present in the other Contracting State for a period not exceeding one year as an employee of, or under contract with, an enterprise of the former Contracting State or an organisation referred to in paragraph (1)(c) above solely to acquire technical, professional or business experience from a person other than such enterprise or organisation, shall not be subjected to tax in that other Contracting State on the remuneration for such period in an amount not exceeding 12,000 new French Francs (or its equivalent sum in Indian currency at the official rate of exchange) including remuneration from such person in the other Contracting State.

3. An individual who is resident in one of the Contracting States and is temporarily present in the other Contracting State under arrangements with a Government in that other Contracting State or any agency thereof solely for the purpose of training study or orientation shall not be subjected to tax in that other Contracting State on remuneration, received from abroad or paid in that other Contracting State for his services directly related to such training, study or orientation, in an amount not exceeding the sum of 15,000 new French Francs (or its equivalent sum in Indian Currency at the official rate of exchange) during any taxable year.

Article XIX

1. The laws in force in either of the Contracting States will continue to govern the taxation of income in the respective Contracting States except where express provision of the contrary is made in the present Agreement. However, a company which is a resident of India and has a permanent establishment in France and which is liable to the tax on income from movable capital under Article 109.2 of the General Code of Taxes of France shall not be charged to that tax on income exceeding the profits attributable to such permanent establishment in accordance with Article III of the present Agreement.

2. Subject to the provisions of Article VI and paragraph (1) above, where, in the case of a resident of India, any income from sources within France is subjected to tax both in India and in France, India shall allow against the Indian tax, a credit of French tax payable in respect of such income; so, however, that where such resident is a company by which surtax is payable in India, the credit aforesaid shall be allowed in the first instance, against the IncomeTax payable by the Company, in India and, as to the balance if any, against the surtax payable by it in India.

3. Subject to the provisions of Article VI and paragraph(1) above in respect of income subject to tax in both the Contracting States, tax shall be determined in the case of a resident of France as follows :

I. On royalties mentioned in Article VII derived from sources within India and which have been subjected to tax in India, France shall allow, against the French tax payable in respect of such royalties and within the limit of such French tax, a credit of Indian tax payable in respect of such royalties.

II. On interest mentioned in Article VIII derived from sources within India :

1. in cases where such interest has been subjected to tax in India. France shall allow, against the French tax payable in respect of such interest and within the limit of such French tax, a credit of Indian tax payable in respect of such interest.

2. in cases where, owing to the operation of section 10(15) (iv) of the Income-tax Act, 1961, no Indian tax is payable on such interest, France shall reduce the French tax payable in respect of such interest by an amount equal to fifty per cent thereof.

III. On dividends, mentioned in Article IX, derived from sources within India, France shall allow, against the French tax payable in respect of such dividends any within the limit of such French tax, a credit of an amount equal to thirty per cent, of the gross amount of such dividends. In computing the French tax on such dividends in cases where the Indian tax thereon has been reduced or exempted by the operation of section 80J, 80K and 80M of the Income-tax Act, 1961, it shall be deemed that the amount by which the Indian tax has been reduced or exempted has been actually paid in India.

IV. Income which, in accordance with the provisions of the present Agreement, is not to be subjected to tax in any Contracting State, may be included in the amount of income to be taken into account for calculating the rate of tax to be imposed in that Contracting State.

Article XX

The competent authorities of the Contracting States shall upon request, exchange such information (being information available under the respective taxation laws of the Contracting States) as is necessary for carrying out the provisions of the present Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of taxes which are the subject of the present Agreement. No information, shall, however, be exchanged which would disclose any trade, business, industrial or professional secret or any trade process.

Article XXI

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 Contracting State in the same circumstances are or may be subjected. In particular, the citizens of one Contracting State who

are subjected to tax in the other Contracting State shall be entitled to the same extent as the citizens of that other Contracting State, to any exemption, deduction, credit or other allowance accorded in consideration of the family circumstances.

Article XXII

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 the present Agreement, 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 the present Agreement.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the present Agreement.
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 XXIII

1. The present Agreement may be extended, either in its entirety or with necessary modifications, to Overseas Territories of the French Republic, which impose taxes substantially similar to character to those to which the present Agreement 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 to between the Contracting States in notes to be exchanged through diplomatic channels.
2. Unless otherwise agreed to by both Contracting States, the termination of the present agreement by one of the Contracting States under paragraph (3) of Article XXV shall also terminate the application of the present Agreement to any territory to which it has been extended under this Article.

Article XXIV

The competent authorities of the two Contracting States may consult together as may be necessary to prescribe regulations necessary to carry into effect the present Agreement within the respective Contracting States. They may communicate with each other directly for the purpose of giving effect to the present Agreement.

Article XXV

1. The present Agreement shall be approved in accordance with the laws in force in each of the two States. It shall enter into force thirty days after the exchange of letters certifying that the proper procedure was fulfilled in each State. The exchange of letters shall take place in New Delhi.
2. The present Agreement shall thereupon be applicable :
I. in India, in respect of income derived during the "previous years" beginning on or after the first day of January of the calendar year in which the exchange of letters takes place;

II. in France, in respect of income derived during the years of assessment beginning on or after the first day of January of the calendar year in which the exchange of letters takes place.

3. This Agreement shall continue in effect indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year after 1971, give to the other Contracting State notice of termination, and in such event, the present Agreement shall cease to be effective :

. in India, in respect of income derived during the "previous years" beginning on or after the first day of January of the calendar year next following the calendar year in which such notice is given;

I. in France, in respect of income derived during the years of assessment beginning on or after the first day of January of the calendar year next following the calendar year in which such notice is given.

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

DONE at Paris, on the 26th day of March, 1969 in duplicate in the French and Hindi languages, both texts being equally authentic.

Sd/-

For the Government of the
India

Sd/-

For the Government of
French Republic

Sd/-

D N CHATTERJEE

Sd/-

HERVE ALPHAND

LETTERS

Paris

26th March 1969

Monsieur le Ministre,

The Agreement between the Government of India and the Republic of France for the avoidance of double taxation in respect of taxes on income, being signed today, I have the honour, on behalf of my Government, to propose as follows :

1. Where a resident of one of the Contracting States fulfils an order for sale of machinery to a resident of the other Contracting State and it is incidental to the sale of the machinery that a person or persons employed by the resident of the first mentioned Contracting State should proceed to the other Contracting State for assisting in the installation of the machinery therein, such activity shall not be deemed to constitute permanent establishment unless it is carried on for a period exceeding three months or the expenses incurred on such activity are more than 10 per cent of the total sale price for the order.

2.

I. Where a person, who is a resident of India, visits France in connection with any activity under the terms of the Agreement, dated 7th June 1966, concerning Cultural, Scientific and Technical Co-operation between the Government of India and the Government of the French Republic, he shall not be taxable in France in respect of the remuneration received by him in connection with such activity.

II. Where a person, who has domiciled in France, visits India in connection with any activity under the terms of the Agreement, dated 7th June 1966, concerning Cultural, Scientific and Technical Co-operation between the Government of India and the Government of the French Republic, he shall not be taxable in India in respect of the remuneration received by him in connection with such activity. In that case, the part of such remuneration received from French sources shall be subject to French income tax.

I shall be grateful if you confirm your agreement to the above proposals and that in such case, this letter and your reply thereto, shall be deemed to be part of the Agreement.

Please accept, Monsieur le Ministre, the assurance of my highest consideration.

Sd/-

D N CHATTERJEE

Monsieur HERVE ALPHAND
Secretary General
Ministry of External Affairs,
Paris.

Paris

26th March 1969

Monsieur l' Ambassadeur,

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

"The Agreement between the Government of India and the Republic of France for the avoidance of double taxation in respect of taxes on income, being signed today, I have the honour, on behalf of my Government, to propose as follows :

1. Where a resident of one of the Contracting States fulfils an order for sale of machinery to a resident of the other Contracting State and it is incidental to the sale of the machinery that a person or persons employed by the resident of the first mentioned Contracting State should proceed to the other Contracting State for assisting in the installation of the machinery therein, such activity shall not be deemed to constitute permanent establishment unless it is carried on for a period exceeding three months or the expenses incurred on such activity are more than 10 per cent of the total sale price for the order.

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activity. In that case, the part of such remuneration received from French sources shall be subject to French income tax.”

I have the honour to inform you that this proposal meets with the approval of the Government of the French Republic. It is, therefore, confirmed that your letter of today's date and my reply thereto shall form part of the Agreement.

Please accept, Monsieur l' Ambassador, the assurance of my highest consideration.

Sd/-

HERVE ALPHAND

His Excellency Shri D N CHATTERJEE
Ambassador of India
Paris