

Bangladesh



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GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH

MINISTRY OF FINANCE

Internal Resources Division

(Income Tax)

NOTIFICATION

Dhaka, the 2nd October 1984

No. S.R.O. 433-L/84.—Whereas the Government of the People's Republic of Bangladesh and the Government of the Republic of Korea have concluded a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;

Now, therefore, in exercise of the powers conferred by section 144(1) of the Income Tax Ordinance, 1984 (XXXVI of 1984), the Government is pleased to direct that all the provisions of the said Convention annexed hereto shall be given effect to in Bangladesh.

CONVENTION BETWEEN THE PEOPLE'S REPUBLIC OF BANGLADESH AND THE REPUBLIC OF KOREA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME.

The Government of the People's Republic of Bangladesh and the Government of the Republic of Korea.

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 1

PERSONAL SCOPE

This Convention shall apply to persons who are residents of one or both of the Contracting States.

Article 2

TAXES COVERED

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

(a) in the case of Korea :

- (i) the income tax;
- (ii) the corporation tax; and
- (iii) the inhabitant tax,
(hereinafter referred to as "Korean tax");

(b) in the case of Bangladesh :

the income tax
(hereinafter referred to as "Bangladesh tax").

2. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting State shall notify each other of any significant changes which have been made in their respective taxation laws.

Article 3

GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires :

- (a) the term "Korea" means the Republic of Korea;
- (b) the term "Bangladesh" means the People's Republic of Bangladesh;
- (c) the terms "a Contracting State" and "the other Contracting State" mean Korea or Bangladesh, as the context requires;
- (d) the term "tax" means Korean tax or Bangladesh tax, as the context requires;
- (e) the term "person" includes an individual, a company and any other body of persons;
- (f) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(h) The term "nationals" means :

- (a) all individuals possessing the nationality of a Contracting State;
- (b) all legal persons, partnerships and associations deriving their status as such from the laws in force in a Contracting State;
- (i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (j) the term "competent authority" means, in the case of Korea, the Minister of Finance or his authorised representative; and, in the case of Bangladesh, the National Board of Revenue or its authorised representative.

2. As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

Article 4

RESIDENT

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of head or main office, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows :

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated. In case of doubts the competent authorities of the Contracting States shall settle the question by mutual agreement.

Article 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially :

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a warehouse, in relation to a person providing storage facilities for others; and
- (g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site or construction, installation or assembly project constitutes a permanent establishment only if it lasts more than 183 days.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include :

- (a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (c), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include the use of facilities or maintenance of a stock of goods or merchandise belonging to the enterprise for the purpose of occasional delivery of such goods or merchandise.

6. Notwithstanding the provisions of paragraphs 1 and 2, where a person, other than an agent of an independent status to whom paragraph 7 applies is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person :

- (a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
- (b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6

INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7

BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

4. No profits shall be attributed to a permanent establishment by reason of the mere purchases by that permanent establishment of goods or merchandise for the enterprise.

5. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

6. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

SHIPPING AND AIR TRANSPORT

1. Profits of an enterprise of a Contracting State from the operation of aircraft in international traffic shall be taxable only in that State.

2. Profits of an enterprise of a Contracting State derived from the other Contracting State from the operation of ships in international traffic may be taxed in that other Contracting State, but the tax chargeable in that other Contracting State on such income shall be reduced by an amount equal to fifty per cent of such tax.

3. The provisions of paragraphs 1 and 2 shall also apply to profits derived from the participation in a pool, a joint business or an international operating agency.

4. In respect of the operation of ships or aircraft in international traffic carried on by an enterprise of a Contracting State, that enterprise, if an enterprise of Bangladesh, shall also be exempt from the value added tax in Korea and, if an enterprise of Korea, shall also be exempt from any tax similar to the value added tax in Korea which may hereafter be imposed in Bangladesh.

Article 9

ASSOCIATED ENTERPRISES

Where

- (a) an enterprise of a Contracting State 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 a Contracting State 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 10

DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

- (a) 10 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 10 per cent of the capital of the company paying the dividends;
- (b) 15 per cent of gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11

INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2,

(a) interest arising in a Contracting State and received by the Government of the other Contracting State including a political subdivision or a local authority thereof or the central bank of that other Contracting State shall be taxable only in that other Contracting State;

(b) interest arising in a Contracting State in respect of loans or credits made or guaranteed,

- in the case of Korea, by the Export-Import Bank of Korea;

- in the case of Bangladesh, by the Bangladesh Bank;

and paid to a resident of the other Contracting State shall be taxable only in that other State;

(c) interest paid in connection with the sale on credit of any industrial, commercial or scientific equipment, or paid in connection with the sale on credit of any merchandise by one enterprise to another enterprise shall be taxable only in the Contracting State of which the beneficiary is a resident.

4. The term "interest" as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and debt-claims of every kind as well as all other income assimilated to income from money lent according to the taxation law of the State in which the income arises.