

Double Taxation Agreement between India and Bangladesh

Signed on May 27, 1992

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Bangladesh

Double Taxation Avoidance Agreement

Bangladesh

Income-tax Act, 1961: Notification under section 90: Double taxation agreement between India and Bangladesh

Notification No. G. S. R. 758(E), dtd. 8.09.1992.

Whereas the annexed Convention between the Government of the Republic of India and the Government of the People's Republic of Bangladesh for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income has come into force on the 27th May, 1992, after the exchange of Instruments of Ratification as required by paragraph 1 of article 31 of the said Convention;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in the Union of India.

ANNEXURE

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

The Government of the Republic of India and the Government of the People's Republic of Bangladesh,

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:

CHAPTER I

SCOPE OF THE CONVENTION

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 existing taxes to which this Convention shall apply are--
 - a. In the case of Bangladesh:

the income-tax,

(hereinafter referred to as "Bangladesh tax");

- b. In the case of India:
 - i. the income-tax including any surcharge thereon;
 - ii. the surtax;

(hereinafter referred to as "Indian tax").

2. This Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of the present Convention in addition to, or in place of, the taxes referred to in paragraph (1). The competent authorities of the Contracting States shall notify each other of any substantial changes which are made in their respective taxation laws.

CHAPTER II

DEFINITIONS

Article 3

GENERAL DEFINITIONS

1. In this Convention, unless the context otherwise requires:
 - a. the term " Bangladesh " means the People's Republic of Bangladesh;
 - b. the term "India" means the Republic of India;
 - c. the terms " a Contracting State " and " the other Contracting State " mean Bangladesh or India as the context requires;
 - d. the term " tax " means Bangladesh tax or Indian tax, as the context requires;
 - e. the term " person " includes an individual, a company and any other entity which is treated as a taxable unit under the tax laws in force in the respective Contracting States;
 - f. the term " company " means any company, body corporate or any other entity which is treated as a company under the tax laws of the respective Contracting States;
 - g. the terms " resident of a Contracting State " and " resident of the other Contracting State " mean a person who is a resident of Bangladesh or a person who is a resident of India, as the context requires;
 - h. 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;
 - i. the term "nationals" means all individuals possessing the nationality of the respective Contracting States and also all legal persons, partnerships and associations deriving their status as such from the law in force in the respective Contracting States;
 - j. the term " competent authority " means in the case of Bangladesh, the National Board of Revenue or their authorised representative and in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative;
 - k. 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;
2. As regards the application of this Convention by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of this Convention.

Article 4

RESIDENT

1. For the purposes of this Convention, the term " resident of a Contracting State " means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.
2. Where by reason of the provisions of paragraph (1) an individual is a resident of both Contracting States, then his case shall be determined in accordance with the following rules:
 - a. He shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both

- Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are the closest (centre of vital interests);
- b. If the Contracting 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 Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
 - c. If he has an habitual abode in both Contracting States or in neither of them he shall be deemed to be a resident of the Contracting State of which he is a national;
 - d. If he is a national of both Contracting 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 Contracting State in which its place of effective management is situated.

Article 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.
2. The term "permanent establishment" shall include especially:
 - a. a place of management;
 - b. a branch;
 - c. an office;
 - d. a factory;
 - e. a workshop;
 - f. a warehouse;
 - g. a mine, quarry or other place of extraction of natural resources;
 - h. a building site or construction or assembly project or the like which exists for more than 183 days.
3. The term "permanent establishment" shall not be deemed to include:
 - a. the use of facilities solely for the purposes 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 for 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.
4. Notwithstanding the provisions of paragraphs (1) and (2), where a person--other than an agent of an independent status to whom paragraph (5) 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 State, if--
 - a. he has, and habitually exercises, in the first-mentioned State a general authority to conclude contracts for or on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise, or
 - b. he habitually maintains in the first-mentioned State a stock of goods or merchandise belonging to the enterprise from which that person regularly delivers goods or merchandise for or on behalf of the enterprise, or
 - c. he habitually secures orders in the first-mentioned State, wholly or almost wholly, for the enterprise itself, or for the enterprise or other enterprises which are controlled by it or have controlling interest in it.
5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State

- through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business and their activities do not fall within the scope of paragraph (4)(c) above.
6. 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 make either company a permanent establishment of the other.
 7. An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it carries on a business which consists of providing the services of public entertainers (such as stage, motion picture, radio or television artistes and musicians) or athletes in that other Contracting State unless such services are provided within the scope of a cultural or sports exchange programme agreed or by both the Contracting States.

CHAPTER III

TAXATION OF INCOME

Article 6

INCOME FROM IMMOVABLE PROPERTY

1. Income from immovable property shall be taxable only in the Contracting State in which such property is situated.
2. The term " immovable property " shall be defined in accordance with the law and usage (having the force of 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, forestry and fishery rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments in cash or kind as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships 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, then so much of the profits of the enterprise as is attributable to that permanent establishment shall be taxable only in that other Contracting State.
2. 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. In any case, where the correct amount of profits attributable to a permanent establishment is incapable of determination or the ascertainment thereof presents exceptional difficulties, the profits attributable to the permanent establishment may be computed on a reasonable basis.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purpose 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, but this does not include any expenses which, under the law of that State, would not be allowed to be deducted by an enterprise of that State.
4. In so far as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph (2) shall preclude that Contracting State from determining the Profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles laid down in this Article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
6. For the purpose 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.
7. 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

AIR TRANSPORT

1. Profits derived by an enterprise of a Contracting State from the operation of aircraft in international traffic shall be taxable only in that Contracting State.
2. The provisions of paragraph (1) shall likewise apply in respect of income derived from participation in pools of any kind by enterprises engaged in air transport.

Article 9

SHIPPING

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

Article 10

ASSOCIATED ENTERPRISES

Where --

1. 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
2. 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 11

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 Contracting 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 Contracting 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 which holds directly at least 10 per cent. of the capital of the company paying the dividends;
 - b. 15 per cent. of the 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, founder's 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 15, as the case may be, shall apply.