The Gazette of India

EXTRAORDINARY

PART II—Section 3—Sub-section (i)

PUBLISHED BY AUTHORITY

No. 33] NEW DELHI, WEDNESDAY, MARCH 9, 1960/PHALGUNA 19, 1881

MINISTRY OF FINANCE

(Department of Revenue)

NOTIFICATION

INCOME-TAX

New Delhi, the 9th March 1960

G.S.R. 316.—Whereas the annexed agreement for the avoidance of double taxation of income between the Governments of India and Denmark has been ratified and the instruments of ratification exchanged, as required by Article XX of the said Agreement:

Now, therefore, in exercise of the powers conferred by Section 49A of the Indian Income-tax Act, 1922 (11 of 1922), the Central Government hereby directs that all provisions of the said Agreement shall be given effect to in the Union of India.

ANNEXURE

AGREEMENT BETWEEN THE GOVERNMENTS OF INDIA AND DENMARK FOR THE AVOIDANCE OF DOUBLE TAXATION OF INCOME

Whereas the Governments of India and Denmark desire to conclude an Agreement for the avoidance of double taxation of income:

Now, therefore, it is hereby agreed as follows:

ARTICLE I

(1) The taxes which are the subject of the present Agreement are:

(a) in India: the income tax, the super tax, the surcharge, imposed under the Indian Income-tax Act, 1922 (11 of 1922) hereinafter referred to as "Indian tax";

(b) in Denmark: National income taxes and communal income taxes hereinafter referred to as "Danish tax".

(2) The present Agreement shall also apply to any other taxes of a substantially similar character imposed in India or Denmark subsequent to the date of signature of the present Agreement.

ARTICLE II

(1) In the present Agreement, unless the context otherwise requires:

(a) The term "Denmark" means the kingdom of Denmark excluding the Faree Islands and Greenland;

(b) the terms "one of the territories" and "the other territory" mean Denmark or India as the context requires;

(c) the term "person" includes natural persons, companies and all other entities which are treated as taxable units under the tax laws in force in the respective territories;

(d) the term "company" means any entity which is treated as a body corporate or as a company for tax purposes;

(e) the term "tax" means the Danish tax or Indian tax, as the context requires;

(f) the terms "resident of Denmark" and "resident of India" mean, respectively, a person who is resident in Denmark for the purposes of Danish tax and not resident in India for the purposes of Indian tax, and a person who is resident in India for the purposes of Indian tax and not resident in Denmark for the purposes of Danish tax.

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

(g) the terms "Danish enterprise" and "Indian enterprise" mean, respectively, an industrial or commercial enterprise or undertaking carried on by a resident of Denmark and an industrial or commercial enterprise or undertaking carried on by a resident of India; and the terms "enterprise of one of the territories" and "enterprise of the other territory" mean a Danish enterprise or an Indian enterprise, as the context requires;

(h) 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' shall include a place of management, a branch, an office, a factory, a workshop, a warehouse and a mine, quarry or other place of extraction of natural resources.

(bb) An enterprise of one of the territories shall be deemed to have a fixed place of business in the other territory if it carries on in that other territory a construction, installation or assembly project or the like.

(cc) The use of more storage facilities or the maintenance of a place of business exclusively for the purchase of goods or merchandise and not for any processing of such goods or merchandise in the territory of purchase, shall not constitute a permanent establishment.

(dd) A person acting in one of the territories for or on behalf of an enterprise of the other territory shall be deemed to be a permanent establishment in the first-mentioned territory, if

1. he has and habitually exercises in the first-mentioned territory a general authority to negotiate and enter into contracts for or on behalf of the enterprise, unless the activities of the person are limited exclusively to the purchase of goods or merchandise for the enterprise, or

2. he habitually maintains in the first-mentioned territory 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 territory, 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.

(ee) A broker of a genuinely independent status who merely acts as an intermediary between an enterprise of one of the territories and a prospective customer in the other territory shall not be deemed to be a permanent establishment in that other territory where such activities do not involve securing of orders within the meaning of sub-paragraph (dd) 3. above.

(ff) The fact that a company, which is a resident of one of the territories, has a subsidiary company which either is a resident of the other territory or carries on a trade of business in that other territory

whether through a permanent establishment or otherwise shall not, of itself, constitute that subsidiary company a permanent establishment of its parent company.

(i) The term "competent authority" means in the case of India, the Central Government in the Ministry of Finance, Department of Revenue, or its authorized representative, and in the case of Denmark, the Minister of Finance or his authorized representative.

(2) In the application of the provisions of this Agreement in one of the territories any term not otherwise defined in the Agreement shall, unless the context otherwise requires, have the meaning which it has under the laws in force in that territory relating to the taxes which are the subject of this Agreement.

ARTICLE III

(1) Subject to the provisions of paragraph (3) below, tax shall not be levied in one of the territories on the industrial or commercial profits of an enterprise of the other territory unless profits are derived in the first-mentioned territory through a permanent establishment of the said enterprise situated in the first-mentioned territory. If profits are so derived, tax may be levied in the first-mentioned territory on the profits attributable to the said permanent establishment.

(2) There shall be attributed to the permanent establishment of an enterprise of one of the territories situated in the other territory the industrial or commercial profits which it might be expected to derive in that other territory if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment. 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 establishment may be estimated on a reasonable basis.

(3) For the purposes of this Agreement the term "industrial or commercial profits" shall not include income in the form of rents, royalties, interest, dividends, management charges, remuneration for labour or personal services or income from the operation of ships or aircraft but shall include rents or royalties in respect of cinematographic films.

ARTICLE IV

Where—

(a) an enterprise of one of the territories participates directly or indirectly in the management, control or capital of an enterprise of the other territory, or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the territories and an enterprise of the other territory, and

in either case conditions are made or imposed between the two enterprises, in their commercial or financial relations, which differ from those which would be made between independent enterprises, then any profits which 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) Income derived from the operation of aircraft by an enterprise of one of the territories shall not be taxed in the other territory, unless the aircraft is operated wholly or mainly between places within that other territory.

(2) Paragraph (1) shall likewise apply in respect of participations in pools of any kind by enterprises engaged in air transport.

ARTICLE VI

(1) When a resident of Denmark, operating ships, derives profits from India through such operations carried on in India, such profits shall be subject to tax in Denmark as well as in India; but the tax so charged in India shall be reduced

by an amount equal to fifty per cent therof, and the reduced amount of Indian tax payable on the profits shall be allowed as a credit against Danish tax charged in respect of such income.

(2) When a resident of India, operating ships, derives profits from Denmark through such operations carried on in Denmark, such profits shall be subject to tax in India as well as in Denmark; but the tax so charged in Denmark shall be reduced by an amount equal to fifty per cent thereof, and the reduced amount of Danish tax payable on the profits shall be allowed as a credit against Indian tax charged in respect of such income.

(3) Paragraphs (1) and (2) shall not apply to profits arising as a result of coastal traffic.

ARTICLE VII

Royalties derived by a resident of one of the territories from sources in the other territory may be taxed only in that other territory.

In this Article, the term "royalty" means any royalty or other like amount received as consideration for the right to use copyrights, artistic or scientific works, patents, models, designs, plans, secret processes or formulae, trade-marks and other like property or rights, but does not include any royalty or other like amount in respect of the operation of mines, quarries or other natural resources or in respect of cinematographic films.

ARTICLE VIII

Dividends paid by a company which is a resident of one of the territories to a resident of the other territory may be taxed only in the first-mentioned territory.

ARTICLE IX

Interest on bonds, securities, notes, debentures or any other form of indebtedness, derived by a resident of one of the territories from sources in the other territory may be taxed only in that other territory.

ARTICLE X

Income from immovable property may be taxed only in the territory in which the property is situated. For this purpose any rent or royalty or other income derived from the operation of a mine, quarry or any other 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 immovale may be taxed only in the territory in which the capital asset is situated at the time of such sale, exchange or transfer.

ARTICLE XII

(1) Remuneration other than pensions and annuities, paid in Denmark for services rendered therein out of public funds of India shall not be taxed in Denmark unless the payment is made to a citizen of Denmark.

(2) Remuneration other than pensions and annuities, paid in India for services rendered therein, out of public funds of Denmark shall not be taxed in India unless the payment is made to a citizen of India.

(3) The provisions of paragraphs (1) and (2) of this Article shall not apply to payments in respect of services in connection with any trade or business carried on by either of the Contracting Parties or political sub-divisions thereof for purposes of profit.

(4) The provisions of paragraphs (1) and (2) of this Article shall also apply to remuneration other than pensions and annuities, paid by the Reserve Bank of India, the Public Railways Authorities and the Postal Administration of India and the National Bank of Denmark, the State Railways and the Postal Administration of Denmark.

ARTICLE XIII

Any pension or annuity derived by a resident of one of the territories from sources in the other territory may be taxed only in that other territory.

In this Article, the term "pension" means a periodic payment made in consideration of services rendered or by way of compensation for injuries received; and the term "annuity" 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) Profits or remuneration from professional services (including services as a director) or from services as an employee derived by an individual who is a resident of one of the territories may be taxed in the other territory only if such services are rendered in that other territory.

(2) An individual who is a resident of India shall not be taxed in Denmark on profits or remuneration referred to in paragraph (1) if

(a) he is temporarily present in Denmark for a period or periods not exceeding in the aggregate 183 days during a taxable year,

(b) the services are rendered for or on behalf of a resident of India,

(c) the profits or remunerations are subject to Indian tax, and

(d) the profits or remuneration are not deducted in computing the profits of an enterprise chargeable to Danish tax.

(3) An individual who is a resident of Denmark shall not be taxed in India on the profits or remuneration referred to in paragraph (1) if

(a) he is temporarily present in India for a period or periods not exceeding in the aggregate 183 days during a relevant "previous year",

(b) the services are rendered for or on behalf of a resident of Denmark,

(c) the profits or remuneration are subject to Danish tax, and

(d) the profits or remuneration are not deducted in computing the profits of an enterprise chargeable to Indian tax.

(4) Where an individual permanently or predominantly renders services on ships or aircraft operated by an enterprise of one of the territories such services shall be deemed to be rendered in that territory.

ARTICLE XV

A professor or teacher from one of the territories, who receives remuneration for teaching, during a period of temporary residence not exceeding two years, at a university, college, school or other educational institution in the other territory, shall not be taxed in that other territory, in respect of that remuneration.

ARTICLE XVI

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

(a) as a student at a university, college or school in such other territory,

(b) as a business apprentice, or

(c) as the recipient of a grant, allowance or award for the primary purpose of study or research from a religious, charitable, scientific or educational organisation shall not be taxed in the other territory in respect of remittances from abroad for the purposes of his maintenance, education or training, in respect of a scholarship, and in respect of any amount representing remuneration for services rendered in that other territory, provided that such services are in connection with his studies or training or are necessary for the purpose of his maintenance.

ARTICLE XVII

(1) The laws in force in either of the territories will continue to govern the assessment and taxation of income in the respective territories except where express provision to the contrary is made in this Agreement.

(2) Subject to the provisions of Article VI, income from sources within Denmark which under the laws of Denmark and in accordance with this Agreement is subject to tax in Denmark either directly or by deduction shall not be subject to Indian tax.

(3) Subject to the provisions of Article VI, income from sources within India which under the laws of India and in accordance with this Agreement is subject to tax in India either directly or by deduction shall not be subject to Danish tax.

(4) Notwithstanding the provisions of paragraphs (2) and (3) of this Article, the items of income which under the laws of the two territories should be taken into account for calculating the rate of tax to be imposed shall continue to be so taken into account.

ARTICLE XVIII

The competent authorities shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of the present 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 the taxes which are the subject of the present Agreement. No information as aforesaid shall be exchanged by the competent authority of one of the territories which would disclose any trade, business, industrial or professional secret or any trade process to the authority of the other territory.

ARTICLE XIX

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

(2) The competent authorities of the Contracting Parties may likewise come to an agreement for the purpose of avoiding double taxation in cases not otherwise provided for by this Agreement as well as in cases where the interpretation or the application of this Agreement gives rise to difficulties or doubts.

ARTICLE XX

(1) The present Agreement shall be ratified by both the Governments and the instruments of ratification shall be exchanged at New Delhi.

(2) Thereupon, the Agreement shall have effect:

(a) in India, for any year of assessment, beginning on or after the 1st April, 1959,

(b) in Denmark, for any year of assessment, beginning on or after the 1st April, 1959.

ARTICLE XXI

This Agreement shall continue in effect indefinitely but either of the Contracting Parties may on or before the 30th day of June in any calendar year after 1961 give to the other Contracting Party notice of termination, and in such event this Agreement shall cease to be effective—

(a) in India, for any year of assessment beginning on or after the 1st April next following such written notice of termination,

(b) in Denmark, for any taxable year beginning on or after the 1st April next following such written notice of termination.

ARTICLE XXII

This Agreement may be made applicable either in its entirety, or with modifications, in respect of the territories of the Faroe Islands and Greenland, if such territories impose taxes of a character substantially similar to the taxes specified in Article I of this Agreement, and if such territories so desire and the Government of India agrees to such application. For this purpose, the Contracting Parties will communicate by an exchange of notes, incorporating the modifications and the conditions under which the Agreement will be applicable.

In witness whereof the undersigned duly authorised thereto have signed this Agreement and have affixed thereto their seals.

Done in duplicate at Copenhagen in the English language, on the 16th September, 1959.

(s.) KEWAL SINGH. | (s.) J. O. Krag.

EMBASSY OF INDIA

STOCKHOLM
September 16, 1959

Monsieur le Ministre,

The Agreement between the Government of India and Royal Government of Denmark for the Avoidance of Double Taxation of Income being signed to-day, I have the honour on behalf of the Government of India, to inform you that the provisions of Article VI of the said Agreement will not affect the application of the provisions of Sections 44A, and 44B of the Indian Income-tax Act 1922, relating to the assessment of profits from occasional shipping and tramp steamers, provided that when an adjustment is to be made under Section 44C of the Indian Income-tax Act, 1922 in the case of occasional shipping or tramp steamers, the provisions of Article VI of the Agreement will apply.

I should be grateful if you confirm your agreement to the above understanding of the provisions of Article VI of the said Agreement, and that in such case, this note and your reply thereto shall be deemed to be part of the Agreement.

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

(Sd.) KEWAL SINGH,
Ambassador of India.

His Excellency M. J. O. Krag,
The Minister for Foreign Affairs,
The Royal Government of Denmark,
Copenhagen.

COPENHAGEN, 16*th September*, 1959.

Monsieur l' Ambassadeur,

I have the honour to acknowledge receipt of your note of to-day's date reading as follows:

"Monsieur le Ministre,

The Agreement between the Government of India and the Royal Government of Denmark for the Avoidance of Double Taxation of Income being signed to-day, I have the honour on behalf of the Government of India, to inform you that the provisions of Article VI of the said Agreement will not affect the application of the provisions of Sections 44A, and 44B of the Indian Income-tax Act 1922, relating to the assessment of profits from occasional shipping and tramp steamers, provided that when an adjustment is to be made under Section 44C of the Indian Income-tax Act, 1922 in the case of occasional shipping or tramp steamers, the provisions of Article VI of the Agreement will apply.

I should be grateful if you confirm your agreement to the above understanding of the provisions of Article VI of the said Agreement, and that in such case, this note and your reply thereto shall be deemed to be part of the Agreement.

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

In reply, I have the honour to state that the Danish Government agree to the above understanding and agree that Your Excellency's Note and the present reply shall be deemed to be part of the Agreement.

I avail myself of this opportunity to renew to you, Sir, the assurance of my highest consideration.

(Sd.) J. O. KRAG.

His Excellency
Mr. Kewal Singh,
Ambassador of India.

(No. 23)

[No. 25/26/58-IT.]

V. V. CHARI, Jt. Secy.

PRINTED IN INDIA BY THE GENERAL MANAGER, GOVT. OF INDIA PRESS, NEW DELHI AND PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI, 1960.