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MINISTRY OF FINANCE
(Department of Revenue)

NOTIFICATION
INCOME-TAX

New Delhi, the 13th June 1960

G.S.R. 692.—Whereas the annexed agreement for the avoidance of double taxation of income between the Government of India and the Government of Japan has been ratified and the Instruments of Ratification exchanged, as required by Article XVI 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 India and Japan for the avoidance of double taxation in respect of taxes on income.

AGREEMENT BETWEEN INDIA AND JAPAN FOR THE AVOIDANCE OF
DOUBLE TAXATION IN RESPECT OF TAXES ON INCOME

The Government of India and the Government of Japan,

Desiring to conclude an Agreement for the Avoidance of Double Taxation in respect of Taxes on Income,

Have appointed for that purpose as their respective Plenipotentiaries,

The Government of India:

Dr. B. Gopala Reddi, Minister for Revenue and Civil Expenditure of the Government of India.

The Government of Japan:

Dr. Shiroshi Nasu, Ambassador Extraordinary and Plenipotentiary of Japan to India.

Who, having communicated to one another their respective full powers, found in good and due form,

Have 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 and the surcharge, imposed under the Indian Income-tax Act, 1922 (11 of 1922) (hereinafter referred to as "Indian tax")

(b) In Japan:

The income tax and the corporation tax (hereinafter referred to as "Japanese tax").

(2) The present Agreement shall also apply to any other taxes on income or profits which has a substantially similar character to those referred to in paragraph (1) of this Article and which may be imposed by either Contracting State after the date of signature of the present Agreement.

Article II

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

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

(ii) The term "Japan", when used in a geographical sense, means all the territory in which the laws relating to Japanese tax are in force.

(b) The terms "one of the Contracting States" and "the other Contracting State" mean India or Japan, as the context requires.

(c) The term "tax" means Indian tax or Japanese tax, as the context requires.

(d) The term "Indian corporation" means any entity treated as a company for the purposes of Indian tax which is incorporated in India or the business of which is wholly managed and controlled in India and which does not have its head or principal office in Japan; and the term "Japanese corporation" means any corporation or other association having juridical personality or any association without juridical personality which has its head or principal office in Japan and the business of which is not wholly managed and controlled in India.

(e) The term "resident of India" means any natural person or any entity other than an Indian corporation which is treated as a taxable unit for the purposes of Indian tax, being resident in India for the purposes of Indian tax and not being resident in Japan for the purposes of Japanese tax, and any Indian corporation; and the term "resident of Japan" means any individual being resident in Japan for the purposes of Japanese tax and not being resident in India for the purposes of Indian tax, and any Japanese corporation.

(f) The terms "corporation of one of the Contracting States" and "corporation of the other Contracting State" mean an Indian corporation or a Japanese corporation, as the context requires.

(g) The term "Indian enterprise" means an industrial or commercial enterprise or undertaking carried on by a resident of India; and the term "Japanese enterprise" means an industrial or commercial enterprise or undertaking carried on by a resident of Japan.

(h) The terms "enterprise of one of the Contracting States" and "enterprise of the other Contracting State" mean an Indian enterprise or a Japanese enterprise, as the context requires.

(i) The term "permanent establishment" means a fixed place of business in which the business of an enterprise is carried on;

(1) The term "fixed place of business" shall include a branch, an office, a factory, a workshop, a warehouse and 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, erection or assembly project or the like;

- (iii) The use of mere storage facilities or the maintenance of a place of business exclusively for the purchase of goods or merchandise and not for any processing of such goods or merchandise in the country where such purchase takes place 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 in the former Contracting State, if
- A. the person has and habitually exercises in the former Contracting State a general authority to negotiate and conclude contracts for or on behalf of such enterprise, unless the activities of such person are limited exclusively to the purchase of goods or merchandise for or on behalf of such enterprise, or
 - B. the person habitually maintains in the former Contracting State a stock of goods or merchandise belonging to such enterprise from which such person regularly delivers goods or merchandise for or on behalf of such enterprise, or
 - C. the person habitually secures orders in the former Contracting State, exclusively or almost exclusively, for the enterprise itself or for such enterprise and other enterprises which are controlled by it or have a controlling interest in it;
- (v) A broker, a commission agent or other agent of genuinely independent status who merely acts as an intermediary between an enterprise of one of the Contracting States and a prospective customer in the other Contracting State shall not be deemed to be a permanent establishment in that other Contracting State in case where such activities do not involve securing of orders within the meaning of paragraph (iv) C above;
- (vi) The fact that a corporation of one of the Contracting States has a subsidiary corporation which is a corporation of the other Contracting State or which carries on a trade or business in that other Contracting State shall not of itself constitute that subsidiary corporation a permanent establishment of its parent corporation. In this paragraph, the term "corporation" refers to a corporation with juridical personality.
- (j) The term "competent authorities" means, in the case of India, the Central Government in the Ministry of Finance, Department of Revenue, or its authorised representatives, and,
- in the case of Japan, the Minister of Finance, or his authorised representatives.

(2) In the application of the provisions of the present Agreement by 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 of that Contracting State relating to tax.

Article III

(1) The industrial or commercial profits (excluding the profits derived from the operation of ships or aircraft) 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 permanent establishment, the profits attributable thereto may be subjected to tax 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 the 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 as 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 of profits.

(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 (c) of Article X, capital gains, remuneration for personal services, or fees for technical services as referred to in paragraph (k) of Article X.

(6) The competent authorities of both Contracting States may, consistent with the provisions of the present Agreement, arrange details for the apportionment of industrial or commercial profits.

Article IV

Where:

(a) an enterprise of one of the Contracting States participates directly or indirectly in the managerial or financial control of an enterprise of the other Contracting State, or

(b) the same persons participate directly or indirectly in the managerial or financial control of an enterprise of one of the Contracting States and an enterprise of the other Contracting State,

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

Article V

(1) The profits which an enterprise of one of the Contracting States derives from the operation of aircraft shall not be subjected to tax in the other Contracting State unless the aircraft are operated wholly or mainly between places within that other Contracting State.

(2) The amount of tax imposed by one of the Contracting States on profits which an enterprise of the other Contracting State derives from the operation of ships shall be reduced by an amount equal to fifty per cent thereof unless the ships are operated wholly or mainly between places within the former Contracting State.

(3) The provisions of paragraph (2) of this Article shall not, in the case of India, affect the provisions of Section 44A and 44B of the Indian Income-tax Act, 1922 (11 of 1922), effective on the date of signature of the present Agreement, relating to the assessment of profits from occasional shipping or tramp steamers. When an adjustment is to be made under the provisions of Section 44C of the said Act, effective on the date of signature of the present Agreement, in the case of occasional shipping or tramp steamers, the provisions of paragraph (2) shall apply.

Article VI

(1) (a) Salaries, wages, pensions or similar remuneration paid by, or paid out of funds created by, the Government of India or any political sub-division thereof or any local authority of India, to an individual who is a national of India (other than an individual who has been admitted to Japan for permanent residence therein) in respect of services rendered to such governments or local authority shall not be subjected to tax in Japan.

(b) Salaries, wages, pensions or similar remuneration paid by the Government of Japan or any local authority of Japan, or paid out of funds to which the Government of Japan or any local authority of Japan contributes, to an individual who is a national of Japan (other than an individual who has been

admitted to India for permanent residence therein) in respect of services rendered to such Government or local authority shall not be subjected to tax in India.

(2) The provisions of paragraph (1) of this Article shall not apply to salaries, wages, pensions or similar remuneration paid in respect of services rendered in connection with any trade or business carried on by such governments or local authorities for the purposes of profit.

Article VII

Remuneration paid to an individual who is resident in one of the Contracting States for personal services performed within the other Contracting State shall not be subjected to tax in that other Contracting State, if

- (a) he is present within that other Contracting State for a period or periods not exceeding in the aggregate 183 days during any taxable year or "previous year", as the case may be,
- (b) the services are performed for or on behalf of a resident of the former Contracting State, and
- (c) the remuneration is not deducted in computing the profits of an enterprise chargeable to tax in that other Contracting State.

Article VIII

An individual who is resident in one of the Contracting States at the beginning of a visit to the other Contracting State and who at the invitation of the Government of the other Contracting State, or of a university, a college, a school or other educational institution in that other Contracting State, visits that other Contracting State for a period not exceeding two years for the purpose of teaching or engaging in research at such educational institution in that other Contracting State, shall not be subjected to tax in that other Contracting State on the remuneration for such teaching or research.

Article IX

(1) An individual who is resident in one of the Contracting States at the beginning of a visit to the other Contracting State and is temporarily present in that other Contracting State solely,—

- (a) as a student at a recognised university, college or school in that other Contracting State.
- (b) as a recipient of grant, allowance or award for the primary purpose of study or research from a governmental, religious, charitable, scientific, literary or educational organisation, or
- (c) as a business apprentice,

shall not be subjected to tax in that other Contracting State on,—

- (i) remittances from abroad for the purposes of his maintenance, education, study or research;
- (ii) the grant, allowance or award; and
- (iii) remuneration for personal services in that other Contracting State not exceeding the sum of 360,000 Yen or its equivalent sum in Indian currency, during any taxable year or "previous year", as the case may be.

In this paragraph, the term "business apprentice" means an individual having a little or no technical, professional or business experience.

(2) An individual who is resident in one of the Contracting States at the beginning of a visit to the other Contracting State and is temporarily present in that other Contracting State for a period not exceeding twelve months as an employee of, or under contract with, an enterprise of the former Contracting State, or an organisation referred to in paragraph (1)(b) 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, received from abroad, or paid in that other Contracting State for his services directly related to the acquisition of such

experience, if the amount thereof does not exceed the sum of 1,000,000 Yen or its equivalent sum in Indian currency, during any taxable year or "previous year", as the case may be.

(3) An individual who is resident in one of the Contracting States at the beginning of a visit to the other Contracting State and is temporarily present in that 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, if the amount thereof does not exceed the sum of 1,000,000 Yen or its equivalent sum in Indian currency, during any taxable year or "previous year", as the case may be.

(4) The benefits of paragraph (1), (2), or (3) of this Article shall not be cumulative.

Article X

For the purposes of the present Agreement:

- (a) The industrial or commercial profits other than those mentioned in paragraph (b) below derived from the sale of goods or merchandise shall be treated as derived in part from the country in which such goods or merchandise are purchased and in part from the country in which such goods or merchandise are sold.
- (b) The industrial or commercial profits derived by an enterprise from the sale in one of the Contracting States of goods manufactured or produced in the other Contracting State in whole or in part by such enterprise shall be treated as derived in part from the country in which such goods are manufactured or produced and in part from the country in which such goods are sold.
- (c) (i) Interest on bonds or debentures issued by a government or a local authority or a corporation of one of the Contracting States, or on deposits made in one of the Contracting States shall be treated as income from sources within that Contracting State.
(ii) Interest on loans made to a government or a local authority or a resident of one of the Contracting States shall be treated as income from sources within that Contracting State.
- (iii) Interest on loans made to a branch or other establishment in one of the Contracting States of an enterprise of the other Contracting State shall be treated as income from sources within the former Contracting State.
- (d) As regards dividends:
 - (i) On the part of India, dividends declared in India shall be treated as income from sources within India.
 - (ii) On the part of Japan, dividends paid by a Japanese Corporation shall be treated as income from sources within Japan.
- (e) Royalties and similar payments paid as consideration for the use of, or for the right to use, in one of the Contracting States, any copyrights, artistic or scientific works or equipments, patents, designs, secret processes and formulae, trade-marks, cinematographic films (including films for use in connection with television) and other like properties and fees for technical services rendered in that connection, shall be treated as income from sources within that Contracting State.
- (f) Profits or gains derived from the sale, transfer or exchange of the property mentioned in paragraph (e) above shall be treated as income from sources within the Contracting State in which such property is to be used.
- (g) Income derived from immovable property (including profits or gains derived from the sale, transfer or exchange of such property), and royalties in respect of the operation of mines, quarries, or other places

of extraction of natural resources shall be treated as income from sources within the Contracting State in which such immovable property, mines, quarries, or other places of extraction of natural resources are situated.

- (h) Profits or gains derived from the sale, transfer or exchange of ships or aircraft shall be treated as income from sources within the Contracting State in which such ships or aircraft are registered.
- (i) Profits or gains (excluding industrial or commercial profits) derived from the sale, transfer or exchange of moveable property (excluding shares, bonds, debentures and similar assets) of a branch or other establishment in one of the Contracting States of an enterprise of the other Contracting State shall be treated as income from sources within the former Contracting State.
- (j) Salaries, wages, or similar remuneration for personal services as well as remuneration for professional services shall be treated as income from sources within the Contracting State in which are rendered the services for which such remuneration is paid, and the services performed in ships or aircraft operated by an enterprise of one of the Contracting States shall be deemed to be rendered in that Contracting State.
- (k) Fees for technical services payable to an enterprise shall be treated as income from sources within the Contracting State in which are rendered the services for which such fees are paid.

Article XI

(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 provisions to the contrary are made in the present Agreement.

(2) The amount of Japanese tax payable, under the laws of Japan and in accordance with the provisions of the present Agreement, whether directly or by deduction, by a resident of India, in respect of income from sources within Japan which has been subjected to tax both in India and Japan, shall be allowed as a credit against Indian tax payable in respect of such income, but in an amount not exceeding that proportion of Indian tax which such income bears to the entire income chargeable to Indian tax.

(3) (a) The amount of Indian tax payable, under the laws of India and in accordance with the provisions of the present Agreement, whether directly or by deduction, by a taxpayer in Japan, in respect of income from sources within India which has been subjected to tax both in India and Japan, shall be allowed as a credit against Japanese tax payable in respect of such income, but in an amount not exceeding that proportion of Japanese tax which such income bears to the entire income chargeable to Japanese tax.

(b) For the purposes of the credit referred to in paragraph (a) above, there shall be deemed to have been paid by the taxpayer the amount by which Indian tax has been reduced by the special incentive measures designed to promote economic development in India, set forth in the following sections of the Indian Income-tax Act, 1922 (11 of 1922), provided that the scope of the benefit accorded to the taxpayer by the said measures effective on the date of signature of the present Agreement is not increased.

- (i) Section 4(3)(XVII b)—relating to exemption from tax of interest payable on money borrowed abroad.
- (ii) Section 10(2)(VI b)—relating to development rebate.
- (iii) Section 15C—relating to exemption from tax of newly established industrial undertakings.
- (iv) Section 56A—relating to exemption from super tax of dividends received by corporations from Indian companies engaged in certain basic industrial undertakings.

Article XII

The competent authorities of the Contracting States shall exchange such information available to them under their respective tax 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, including a court, concerned with the assessment and collection of tax or the disposal of appeals relating thereto. No information shall be exchanged which would disclose any trade, business, industrial or professional secret or any trade process.

Article XIII

(1) Any taxpayer may make a representation to the competent authorities of the Contracting State of which the taxpayer is a resident, if the action of the taxation authorities of either Contracting State has resulted or will result in double taxation contrary to the provisions of the present Agreement. Should the representation be deemed worthy of consideration by the competent authorities of that Contracting State, who find it necessary in this connection to come to an agreement with the competent authorities of the other Contracting State with a view to avoidance of the double taxation in question, the competent authorities of the former Contracting State shall endeavour to come to such an agreement with the competent authorities of that other Contracting State.

(2) Should any difficulty or doubt arise as to the interpretation or application of the present Agreement, the Governments or the competent authorities of the Contracting States may settle the question by mutual agreement.

(3) Details including procedures for the implementation of the present Agreement may be agreed upon through consultation between the Governments or between the competent authorities of the Contracting States.

Article XIV

The provisions of the present Agreement shall not be construed to restrict in any manner any exemption, deduction, credit or other allowance now or hereafter accorded by the laws of one of the Contracting States in determining the tax of that Contracting State.

Article XV

The nationals of one of the Contracting States shall not be subjected in the other Contracting State to tax which is more burdensome than tax to which the nationals of that other Contracting State in the same circumstances are subjected.

Article XVI

(1) The present Agreement shall be ratified and the instruments of ratification shall be exchanged at Tokyo as soon as possible.

(2) The present Agreement shall enter into force on the date of exchange of instruments of ratification and shall be applicable;

(a) On the part of 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 instruments of ratification takes place.

(b) On the part of Japan, in respect of income derived during the taxable years beginning on or after the first day of January of the calendar year in which the exchange of instruments of ratification takes place.

(3) Either of the Contracting States may terminate the present Agreement at any time after a period of three years shall have expired from the date on which the present Agreement enters into force, by giving to the other Contracting State notice of termination, provided that such notice is given on or before the 30th day of June and, in such event, the present Agreement shall cease to be effective;

(a) On the part of India, in respect of income derived during the "previous years" beginning on or after the first day of January next following such notice of termination.

(b) On the part of Japan, in respect of income derived during the taxable years beginning on or after the first day of January next following such notice of termination.

In witness whereof the undersigned Plenipotentiaries have signed the present Agreement.

Done at New Delhi in duplicate in the English language on the 5th day of January, 1960.

Sd./- B. Gopala Reddi,
for India.

Sd./- Shiroshi Nasu,
for Japan.

PROTOCOL

The Government of India and the Government of Japan,

Considering that the Government of India has taken and may take special incentive measures designed to promote economic development in India,

Recognizing that the achievement of the objectives of such measures in relation to capital and technology supplied to India from Japan requires, in addition to the arrangement provided for in paragraph (3)(b) of Article XI of the Agreement between India and Japan for the Avoidance of Double Taxation in respect of Taxes on Income, a supplementary arrangement,

Have accordingly agreed, at the time of signing the said Agreement, on the following provisions which shall constitute an integral part thereof:

"For the purposes of the credit referred to in paragraph (3)(a) of Article XI, there shall be deemed to be paid by the taxpayer the amount by which Indian tax will be reduced by any special incentive measure which may be taken in future under the Indian tax laws (including any future modification involving increase in the scope of the benefit accorded to the taxpayer by the special incentive measures set forth in the sections of the Indian Income-tax Act, 1922 (11 of 1922), as mentioned in paragraph (3)(b) of Article XI), provided that an agreement to that effect is made between the Governments of the Contracting States in respect of that special measure".

IN WITNESS WHEREOF the undersigned Plenipotentiaries have signed the present Protocol.

DONE at New Delhi in duplicate in the English language on the 5th day of January, 1960.

Sd./- B. Gopala Reddi,
for India.

Sd./- Shiroshi Nasu,
for Japan.

[No. 65.]

[No. 23/32/58-IT.]

V. V. CHARI, Jt. Secy.

