রেজিস্টার্ড নং ডি এ-১

বাংলাদেশ গেজেট

অতিরিক্ত সংখ্যা
কর্তৃপক্ষ কর্তৃক প্রকাশিত

রবিবার, ফেব্রুয়ারী ২৮, ১৯৯৩

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার

অর্থ মন্ত্রণালয়

অভ্যন্তরীণ সম্পদ বিভাগ

(আয়কর)

প্রজ্ঞাপন

ঢাকা, ১৫ই ফাল্গুন, ১৩৯৯/২৭শে ফেব্রুয়ারী, ১৯৯৩

এস, আর, ও, নং ৪৫-আইন/৯৩—যেহেতু গণপ্রজাতন্ত্রী বাংলাদেশ সরকার এবং প্রজাতন্ত্রী ভারত সরকার দ্বৈত করারোপন পরিহার এবং সরকারী রাজস্ব এড়ানো প্রতিরোধকল্পে চুক্তি সম্পাদন করিয়াছেন;

সেহেতু, এক্ষণে Income Tax Ordinance, 1984 (XXXVI of 1984) এর Section 144 এ প্রদত্ত ক্ষমতাবলে সরকার নির্দেশ দিলেন যে, এতদসংগে সংযোজিত উক্ত চুক্তির বিধানাবলী বাংলাদেশে কার্যকর হইবে।

রাষ্ট্রপতির আদেশক্রমে

ডঃ এ, কে, এম, মসিউর রহমান

সচিব।

মূল্য : টাকা ৬.০০

S.R.O. No. 45/1993 · unofficial copy for study · Md Sajid Hossain Shimanto · smartaccountantbd.com 1 / 26

CONVENTION BETWEEN

THE

GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH AND THE GOVERNMENT OF THE REPUBLIC OF INDIA 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 INDIA

Desiring to conclude a Convention for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with respect to Taxes on Income HAVE AGREED as follows :

ARTICLE 1

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

Md Sajid Hossain Shimanto · smartaccountantbd.com

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 other wise 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 India 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" means 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 indiviluals possessing the nationality of the respective Contracting State 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

Md Sajid Hossain Shimanto · smartaccountantbd.com

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 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) It 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 if neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

S.R.O. No. 45/1993 · unofficial copy for study · Md Sajid Hossain Shimanto · smartaccountantbd.com 4 / 26

(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 a resident of the Contraiting State in which its place of effective management is situated.

ARTICLE 5

Permanent Establishment

(1) For tthe 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;

Md Sajid Hossain Shimanto smartaccountantbd.com

(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 & 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 otherfise) 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 artists 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 to by both the Contracting States.

S.R.O. No. 45/1993 · unofficial copy for study · Md Sajid Hossain Shimanto · smartaccountantbd.com 6 / 26

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 degarded 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 of 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.

S.R.O. No. 45/1993 · unofficial copy for study · Md Sajid Hossain Shimanto · smartaccountantbd.com 8 / 26

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 apoly to profits derived from the participation in a pool, a joint business or an international operating agency.

ARTICLE 10

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 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

Md Sajid Hossain Shimanto · smartaccountantbd.com

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 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.

(5) Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other Contracting 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 Contracting 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 Contracting 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 Contracting State.

ARTICLE 12

Interest

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

S.R.O. No. 45/1993 · unofficial copy for study · Md Sajid Hossain Shimanto · smartaccountantbd.com

beneficial owner of the interest the tax so charged shall not exceed10 per cent of the gross amount of the interest.

(3) Notwithstanding the provisions of paragraph (2) :

(a) interest arising in India and paid to the Government of Bangladesh or to the Bangladesh Bank shall be exempt from Indian tax;

(b) interest arising in Bangladesh and paid to the Government of India or to the Reserve Bank of India shall be exempt from Bangladesh tax.

The competent authorities of the Contracting States may determine by mutual agreement any other institution to which this paragraph shall apply.

(4) The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

(5) The provisions of paragraphs (1) to (3) shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is 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.

(6) Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political sub division, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a nesident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

(7) Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the lastmentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

S.R.O. No. 45/1993 · unofficial copy for study · Md Sajid Hossain Shimanto · smartaccountantbd.com 11 / 26

ARTICLE 13

Royalties

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

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

(3) The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work inclhding cinematograph films, or films, or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience, but does not include any payments in respect of the operation of mineral deposits, sources and other natural resources.

(4) The provisions of paragraphs (1) and (2) shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties 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.

(5) Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political sub division, a local authority or a resident of that Contracting State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

(6) Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to other provisions of this Convention.

ARTICLE 14

Capital Gains

(1) Subject to the provisions of paragraph (3), capital gains arising from the sale, exchange or transfer of a capital asset as defined under the respective tax laws of the Contracting States shall be taxable only in the Contracting State in which the capital asset is situated at the time of such sate, exchange or transfer.

(2) For the purpose of this Article, the situs of the shares of a company shall be deemed to be in the Contracting State in which the company is incorporated.

(3) Capital gains derived from the sale, exchange or transfer of a capital asset being a ship or aircraft operated in international traffic by an enterprise of a Contracting State shall be taxable only in that Contracting State.

ARTICLE 15

Independent Personal Services

(1) Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that Contracting State. However, such income may be taxed in the other Contracting State if :

(a) he has a fixed base regularly available to him in the other Contracting State for the purposes of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or

(b) he is present in the other Contracting State for a period or periods exceeding in the aggregate 120 days in the previous year or income year concerned of that Contracting State.

(2) The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities, as well as the independent activities of physicians, surgeons, lawyers, engineers, architects, dentists and accountants.

ARTICLE 16

Dependent Personal Services

(1) Subject to the provisions of Articles 17, 19 and 20 salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that Contracting State unless

S.R.O. No. 45/1993 · unofficial copy for study · Md Sajid Hossain Shimanto · smartaccountantbd.com 13 / 26

the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom shall be taxable only in that other Contracting State.

(2) Notwithstanding the provisions of paragraph (1), remuneration derived by a resident of a Contracting State in respect of an employment exereised in the other Contracting State shall be taxable only in the first-mentioneed Contracting State, if

(a) he is present in that other Contracting State for a period or periods not exceeding in the aggregate 183 days during the 'previous year' or 'income year' concerned or he is present in that other Contracting State for any period which forms part of a continuous period exceeding 183 days throughout which he is present in that other Contracting State, and

(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of that other Contracting State, and

(c) the remuneration is not deducted from the profits of a permanent establishment, chargeable to tax in that other Contracting State.

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

ARTICLE 17

Director's Fees

Director's fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the Board of Directors of a company which is a resident of the other Contracting State shall be taxable only in that other Contracting State.

ARTICLE 18

Enterainers And Athletes

(1) Notwithstanding the provisions of Articles 15 and 16, income derived by a resident of a Contracting State as an entertainer, such as theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other Contracting State.

Md Sajid Hossain Shimanto · smartaccountantbd.com

(2) Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 15 and 16, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

(3) The provisions of paragraphs (1) and (2) shall not apply to remuneration or profits, salaries, wages and similar income derived from activities performed in a Contracting State by entertainers or athletes if their visit to that State is substantially supported from the public funds of the other Contracting State, including those of any political subdivision, a local authority or statutory body thereof, nor to income derived by a non-profit making organization in respect of such activities provided no part of its income is payable to, or is otherwise available for the personal benefit of its proprietors, members or shareholders.

ARTICLE 19

Non-Governmental Pensions

(1) Any pension other than pension to which paragraph (1) of Article 20 applies and any annuity derived from sources within a Contracting State by an individual, who is a resident of the other Contracting State, shall be taxable only in the first-mentioned Contracting State.

(2) The term "pension" as used in Article 20 and this Article means periodic payments made in consideration for services rendered or by way of compensation for injuries received.

(3) The term "annuity" as used in paragraph (1), 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 payment in return for adequate and full consideration, in money or money's worth.

ARTICLE 20

Governmental Remuneration And Pension

(1) Remuneration including pensions paid by or out of funds created by a Contracting State or a political subdivision or a local authority thereof, to any individual who is a citizen of that Contracting State in respect of services rendered to that Contracting State or political subdivision or local authority thereof in the discharge of functions of a governmental nature shall be taxable only in that State.

S.R.O. No. 45/1993 · unofficial copy for study · Md Sajid Hossain Shimanto · smartaccountantbd.com

(2) The provisions of paragraph (1) shall not apply to remuneration and pensions in respect of services rendered in connection with any business carried on by the Government of either of the Contracting States or a political subdivision or a local authority thereof for the purpose of profit.

(3) The provisions of paragraph (1) of this Article shall also apply to remuneration including pensions paid by the Reserve Bank of India and the Bangladesh Bank.

Md Sajid Hossain Shimanto · smartaccountantbd.com

ARTICLE 21

Students, Trainees And Apprentices

(1) An individual who is a resident of a Contracting State and who is temporarily present in the other Contracting State, solely—

(a) as a student at a recognised univeristy, college, school or other educational institution in the other Contracting State, or

(b) as a business or technical apprentice in an organisation other than a permanent establishment of an enterprise of the first-mentioned Contracting State, 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 be exempt from tax in that other Contracting State in respect of—

(i) the remittances from abroad for the purpose of his maintenance, education, study, research or training; the maximum period of exemption being five years;

(ii) the grant, allowance or award: and

(iii) any amount not exceeding the sum of Rs. 15,000/-per annum or its equivalent sum in Bangladesh currency during the 'previous year' or 'income year', as the case may be, representing remuneration for an employment in that other Contracting State if the employment is related with his studies or his training or if it is necessary for his maintenance.

(2) An individual who is a resident of a Contracting State and who is temporarily present in the other Contracting State for a period not exeeding one year, as an employee of, or under contrect with, an enterprise of the first-mentioned Contracting State or an organisation referred to in sub-paragraph (c) of paragraph (1), solely to acquire technical, professional or business experience

from a person other than such enterprise or organisation, shall be exempt from tax in that other Contracting State in respect of remuneration for such period for his services directly related to the acquisition of such experience, to the extent such remuneration does not exceed the sum of Rs. 12,000/-per annum or its equivalent sum in Bangladesh currency, during the 'previous year' or the 'income year', as the case may be.

(3) An individual who is a resident of a Contracting State and who is temporarily present in the other Contracting State under arrangements with the Government of that other Contracting State or any agency thereof solely for the purpose of training, study or orientation shall be exempt from tax in that other Contracting State in respect of remuneration received by him on account of such training, study or orientation.

ARTICLE 22

Professors, Teachers And Researchers

(1) A professor or a teacher who visits a Contracting State for the purposes of teaching or engaging in research, or both, at a university, college, school or other approved institution in that Contracting State and who is, or was immediately before such visit a resident of the other Contracting State, shall be exempt from tax in the first-mentioned Contracting State on any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival in that Contracting State.

(2) This Article shall not apply to income from research if such research is undertaken primarily for the private benefit of a specific person or persons.

(3) For the purposes of this Article and Article 21, an individual shall be deemed to be a resident of a Contracting State if he is resident in that Contracting State in the 'previous year' or 'income year' in which he visits the other Contracting State, or in the immediately preceding 'previous year' or 'income year', as the case may be.

(4) For purposes of paragraph (1), 'approved institution' means an institution which has been approved in this regard by the competent authority of the concerned Contracting State.

S.R.O. No. 45/1993 · unofficial copy for study · Md Sajid Hossain Shimanto · smartaccountantbd.com

ARTICLE 23

Income of Government And Institutions

(1) The Government of one of the Contracting States shall be exempt from tax in the other Contracting State in respect of any income derived by such Government from that other Contracting State.

(2) For the purposes of paragraph (1) of this Article, the term 'Government'—

(a) in the case of India means the Government of India and shall include—

(i) the Governments of the States and the Union territories of India;

(ii) the Reserve Bank of India;

(iii) any such institution or body as may be agreed from time to time between the two Contracting States.

(b) in the case of Bangladesh means the Government of the People's Republic of Bangladesh and shall include—

(i) the Bangladesh Bank;

(ii) any such institution or body as may be agreed from time to time between the two Contracting States.

ARTICLE 24

Income Not Expressly Mentioned

The laws in force in each Contracting State shall continue to govern the taxation of incomes in the respective Contracting States, except where express provision to the contrary has been made in this Convention.

CHAPTER IV

METHODS FOR THE ELIMINATION OF DOUBLE TAXATION

ARTICLE 25

Elimination of Double Taxation

(1) In the case of a resident of India, double taxation shall be avoided as follows:

Subject to the provisions of Indian tax law regarding the allowance as a credit against Indian tax of tax payable in any country other than India (which shall not affect the general principle hereof) the Bangladesh

S.R.O. No. 45/1993 · unofficial copy for study · Md Sajid Hossain Shimanto · smartaccountantbd.com

tax payable (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) under the laws of Bangladesh and in accordance with this Convention, whether directly or by deduction, in respect of income from sources within Bangladesh which has been subjected to tax both in Bangladesh and India shall be allowed as a credit against Indian tax payable in respect of that income. The credit shall not, however, exceed that proportion of Indian tax which the income from sources within Bangladesh bears to the entire income subject to Indian tax:

Provided that such credit shall not exceed Indian tax (as computed before allowing any such credit), which is appropriate to the income derived from sources within Bangladesh, 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 income tax payable by the company in India, and as to the balance if any against surtax payable by it in India.

(2) For the purposes of paragraph (1), the term "Bangladesh tax payable" shall be deemed to include the amount of Bangladesh tax which would have been payable if the Bangladesh tax had not been exempted or reduced in accordance with the follwing provisions of Bangladesh law:

(a) clause (x) of Section 29 (1), Section 45 and Section 46 of the Income Tax Ordinance, 1984;

(b) paragraph 7 of the Third Schedule to the Income Tax Ordinance, 1984;

(c) paragraphs 10, 11, 12, 13, 15 and 22 of Part B of the Sixth Schedule to the Income Tax Ordinance, 1984;

(d) paragraphs (c), (e), (f), (g) and (h) of Notification number S. R. O. 417A-L/76, dated 29 November, 1976; and paragraphs (a), (b) and (d), of the said Notification so far as the exemption or relief relates to loans made with a view to promoting economic development in Bangladesh:

So far as they were in force on, and have not been modified since, the date of signature of this Convention, or have been modified only in minor respects so as not to affect their general character; or

(e) under any other provision which may subsequently be made granting an exemption or reduction of tax which is agreed by the competent authorities of the Contracting States to be of a substantially similar

S.R.O. No. 45/1993 · unofficial copy for study · Md Sajid Hossain Shimanto · smartaccountantbd.com 19 / 26

character, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character:

Provided that the amount of the tax referred to in this paragraph shall not, however, exceed :

(a) in the case of dividends an amount equal to 10 per cent of the gross amount of such dividends in the case of dividends referred to in paragraph 2 (a) of Article 11 and 15 per cent of the gross amount of dividends in the case of dividends referred to in paragraph 2 (b) of Article 11;

(b) in the case of interest an amount equal to 10 per cent of the gross amount of such interest; and

(c) in the case of royalties an amount equal to 10 per cent of the gross amount of such royalties.

(3) In the case of a resident of Bangladesh, double taxation shall be avoided as follows:

Subject to the provisions of the law of Bangladesh regarding the allowance as a credit against Bangladesh tax of tax payable in any country other than Bangladesh (which shall not affect the general principle hereof), the Indian tax payable (excluding in the case of dividends, tax payable in respect of the profits out of which the dividend is paid) under the law of India and in accordance with this Convention, whether directly or by deduction, by a resident of Bangladesh in respect of income from sources within India which has been subjected to tax both in India and Bangladesh shall be allowed as a credit against Bangladesh tax payable in respect of such income, but in an amount not exceeding that proportion of Bangladesh tax which such income bears to the entire income chargeable to Bangladesh tax.

(4) For the purpose of paragraph (3) of this Article the term "Indian tax payable" shall be deemed to include any amount which would have been payable as Indian tax for any year but for an exemption or reduction of tax granted for that year or any part thereof under:

(a) any of the following provisions, that is to say, Section 10 (4), 10 (4A), 10 (6) (viia), 10 (15) (iv), 10A, 32A, 33A, 35C, 35CC, 54E, 80CC, 80HH, 80HHA, 80I, 80J, 80K, 80L of the Income Tax Act, 1961; or

(b) any other provisions which may subsequently be made granting an exemption or reduction of tax which is agreed by the competent

S.R.O. No. 45/1993 · unofficial copy for study · Md Sajid Hossain Shimanto · smartaccountantbd.com

authorities of the Contracting States to be of a substantially similar character if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character:

Provided that the amount of the tax referred to in this paragraph shall not, however, exceed:

(a) in the case of dividends an amount equal to 10 per cent of the gross amount of such dividends in the case of dividends referred to in paragraph 2 (a) of Article 11 and 15 per cent of the gross amount of dividends in the case of dividends referred to in paragraph 2 (b) of Article 11;

(b) in the case of interest an amount equal to 10 per cent of the gross amount of such interest; and

(c) in the case of royalties an amount equal to 10 per cent of the gross amount of such royalties.

CHAPTER V

SPECIAL PROVISIONS

ARTICLE 26

Non-Discrimination

(1) The nationals of a Contracting State 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 State in the same circumstances and under the same conditions are or may be subjected.

(2) The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other Contracting State than the taxation levied on enterprises of that other Contracting State carrying on the same activities in the same circumstances and under the same conditions.

(3) Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned Contracting State are or may be subjected in the same circumstances and under the same conditions.

Md Sajid Hossain Shimanto · smartaccountantbd.com

(4) Nothing contained in paragraphs (1), (2) and (3) of this Article shall be construed as—

(a) obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions which it grants to its own residents;

(b) affecting any provisions of the tax laws of the respective Contracting States regarding the imposition of tax on non-resident persons as such;

(c) affecting any provisions of the tax laws of the respective Contracting States regarding any tax concessions granted to persons fulfilling specified conditions.

(5) In this Article the term "taxation" means taxes which are the subject of this Convention.

ARTICLE 27

Mutual Agreement Procedure

(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 this Convention, he may notwithstanding the remedies provided by the national laws of those Contracting States, present the case to the competent authority of the Contracting State of which he is a resident. The case must be presented within three years from the date of the assessment or of the withholding of tax at the source whichever is later.

(2) The competnent 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 this Convention. Any agreement reached shall be implemented notwithstanding any time limits in the national laws of the Contracting States.

(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 this Convention. They may also consult together for the elimination of double taxation in cases not provided for in this Convention.

Md Sajid Hossain Shimanto · smartaccountantbd.com

(4) The competent authorities of the Contracting States may communicate with each other directly for the purposes of applying the provisions of this Convention. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

Md Sajid Hossain Shimanto · smartaccountantbd.com

ARTICLE 28

Exchange of Information

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or for the prevention or detection of evasion or avoidance of the taxes which are the subject of this Convention. Any information so exchanged shall be treated as secret but may be disclosed only to persons (including a court or administrative body) concerned with the assessment, collection, enforcement or prosecution in respect of the taxes which are the subject of this Convention, or to persons with respect to whom the information relates.

(2) The exchange of information shall be either on a routine basis or on request with reference to particular cases, or both. The competent authorities of the Contracting States shall agree from time to time on the list of information which shall be furnished on a routine basis.

(3) In no case shall the provisions of paragraph (1) be construed so as to impose on a Contracting State the obligation:

(a) to carry out administrative measures at variance with the laws or administrative practice of that or of the other Contracting State;

(b) to supply information which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process or information the disclosure of which would be contrary to public policy.

ARTICLE 29

Assistance in Collection

(1) The two Contracting States undertake to lend assistance and support to each other, in the collection of the taxes to which this Convention relates, in the cases where the taxes are definitely due according to the laws of the Contracting State making the request.

(2) In the case of a request for enforcement of collection, tax claims of either of the Contracting States which have been finally determined will be accepted for enforcement by the other Contracting State to which the request is made and collected in that Contracting State in accordance with the laws applicable to the enforcement and collection of its own taxes.

(3) In the case of Indian tax, the request will be sent by the Central Board of Direct Taxes, Ministry of Finance (Department of Revenue) to the National Board of Revenue of the Government of the People's Republic of Bangladesh and will be accompanied by such certificate as is required by the laws of India to establish that the taxes have been finally determined and are due from the taxpayer.

(4) In the case of Bangladesh tax, the request will be sent by the National Board of Revenue of the Government of the People's Republic of Bangladesh to the Central Board of Direct Taxes, Ministry of Finance (Department of Revenue) in India and will be accompanied by such certificate as is required by the laws of Bangladesh to establish that the taxes have been finally determined and are due from the taxpayer.

(5) Where the tax claim has not become final by reason of its being subject to appeal or any other proceeding, a Contracting State may, in order to protect its revenues, request the other Contracting State to take such interim measures in this behalf as are lawful under the laws of that other Contracting State.

(6) A request for assistance in collection of taxes due from a taxpayer shall be made only if adequate assets of that taxpayer are not available for recovering the taxes from him in the Contracting State making the request.

(7) The Contracting State in which tax is recovered in pursuance of paragraphs (1), (2) and (5) of this Article shall immediately thereafter remit the amount so recovered to the Contracting State which made the request but it shall be entitled to reimbursement of costs, if any, incurred in the course of rendering assistance in the recovery of such tax.

S.R.O. No. 45/1993 · unofficial copy for study · Md Sajid Hossain Shimanto · smartaccountantbd.com

ARTICLE 30

Diplomatic And Consular Officials

Nothing in this Convention shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special Convention.

CHAPTER VI

FINAL PROVISIONS

ARTICLE 31

Entry Into Force

(1) This Convention shall be ratified and the instruments of ratification shall be exchanged at Dhaka as soon as possible.

(2) This Convention shall enter into force upon the exchange of the instruments of ratification and its provisions shall have effect:

(a) in Bangladesh, for any year of assessment beginning on or after the first day of July in the calendar year next following that in which the exchange of instruments of ratification takes place; and

(b) in India, for any year of assessment beginning on or after the first day of April in the calendar year next following that in which the exchange of instruments of ratification takes place.

ARTICLE 32

Termination

This Convention shall remain in force indefinitely but either Contracting State may, on or before June 30 in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give to the other Contracting State, through diplomatic channels, written notice of termination. In such event, the Convention shall cease to have effect:

(a) in Bangladesh:

In respect of income assessable for any year of assessment commencing on first day of July in the calendar year next following that in which such notice is given, and subsequent years;

Md Sajid Hossain Shimanto · smartaccountantbd.com

(b) in India:

In respect of income assessable for any year of assessment commensing on 1st day of April in the calendar year next following that in which such notice is given, and subsequent years.

IN WITNESS WHEREOF the undersigned, duly authorised thereto. by their respective Governments, have signed this Convention.

DONE in duplicate at New Delhi on 27th August, 1991 in Hindi, Bengali and English languages, all text being equally authentic. In the case of divergence of interpretation the English text shall prevail.

GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH.	GOVERNMENT OF THE REPUBLIC OF INDIA.
A. S. M. Mostafizur Rahman	**Madhavsinh Solanki**
Minister for Foreign Affairs.	*Minister of External Affairs.*

বদিউর রহমান, উপ-নিয়ন্ত্রক, বাংলাদেশ সরকারী মুদ্রণালয়, ঢাকা কর্তৃক মুদ্রিত।
মোঃ আব্দুর রশীদ সরকার, উপ-নিয়ন্ত্রক, বাংলাদেশ ফরমস ও প্রকাশনী অফিস, তেজগাঁও, ঢাকা কর্তৃক প্রকাশিত।

S.R.O. No. 45/1993 · unofficial copy for study · Md Sajid Hossain Shimanto · smartaccountantbd.com