

1980 Income and Capital Tax Convention

Signed date: April 25, 1980

In force date: October 21, 1983

Effective date: January 1, 1983. See Article 24.

Status: In Force

CONVENTION BETWEEN THE GOVERNMENT OF THE POLISH PEOPLE'S REPUBLIC AND THE GOVERNMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL

The Government of the Polish People's Republic and the Government of the Democratic Socialist Republic of Sri Lanka,

Desiring to promote and develop economic relations between their countries based on principles of equality and mutual benefit;

Having decided to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital,

Have agreed as follows:

Article 1 Personal Scope

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

Article 2 Taxes Covered

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

(a) in Poland:

- o the income tax (podatek dochodowy),
- o the tax on wages or salaries (podatek od wynagrodzen),
- o the equalisation tax (podatek wyrównancy),
- o the real estate tax (podatek od nieruchomości) (hereinafter referred to as "Polish tax")

(b) in Sri Lanka:

- o the income tax,
 - o the wealth tax
- (hereinafter referred to as "Sri Lanka tax").

2. This Convention shall also apply to any other taxes of a substantially similar character imposed in Poland or in Sri Lanka after the date of signature of this Convention.

Article 3 General Definitions

1. In this Convention, unless the context otherwise requires:

- (a) the term "Poland" means the Polish People's Republic and the term "Sri Lanka" means the Democratic Socialist Republic of Sri Lanka;
- (b) the terms "a Contracting State" and "the other Contracting State" mean Poland and Sri Lanka, as the context requires;
- (c) the terms "resident of a Contracting States" and "resident of the other Contracting State" mean a resident of Poland or a resident of Sri Lanka, as the context requires;
- (d) the term "tax" means Polish tax or Sri Lanka tax, as the context requires;
- (e) the term "person" includes any individual, any company and any other body of persons;
- (f) the term "company" means any body corporate and includes any entity which is treated as a body corporate for tax purposes;
- (g) the terms "Polish enterprise" and "Sri Lanka enterprise" mean respectively an industrial or commercial enterprise carried on by a resident of Poland and an industrial or commercial enterprise carried on by a resident of Sri Lanka, and the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean a Polish enterprise or a Sri Lanka enterprise, as the context requires;
- (h) the term "industrial or commercial profits" includes profits from the business of agriculture, fishing, mining, banking, insurance, life insurance or dealing in investments, and profits from rents or royalties in respect of cinematograph films, but does not include income in the form of dividends, interest, rents, royalties (other than rents or royalties in respect of cinematograph films), management charges, or remuneration for personal services;

(i) the term "competent authority" means, in the case of Poland the Minister of Finance of the Polish People's Republic or his duly authorized representative, and in the case of Sri Lanka the Commissioner-General of Inland Revenue.

2. In the application of the provisions of this Convention in a Contracting State, any term not otherwise defined in the present Convention shall, unless the context otherwise requires, have the meaning which it has under the laws in force in that Contracting State relating to the taxes which are the subject of this Convention.

Article 4 Fiscal Domicile

1. For the purposes of this Convention, the terms "resident of Poland" and "resident of Sri Lanka" mean respectively any person who is resident in Poland for the purposes of Polish tax and not resident in Sri Lanka for the purposes of Sri Lanka tax, and any person who is resident in Sri Lanka for the purpose of Sri Lanka tax and not resident in Poland for the purposes of Polish tax.

A company shall be regarded as resident in Poland if it has its head or main office in Poland and is not managed and controlled in Sri Lanka and is not incorporated under the laws of Sri Lanka; a company shall be regarded as resident in Sri Lanka if either it is incorporated under the laws of Sri Lanka or its business is managed and controlled in Sri Lanka, and in either case it does not have its head or main office in Poland.

2. Where by reason of the provisions of the preceding paragraph an individual is a resident of both Contracting States, then his status 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 closer;

(b) if the Contracting State with which his personal and economic relations are closer cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;

(c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a citizen.

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

Article 5 Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" in relation to an enterprise 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 in any case include:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a warehouse;

(g) a mine, oil well, quarry or other place of extraction of natural resources;

(h) an agricultural or farming estate or plantation;

(i) an installation or structure used for the exploration of natural resources.

3. The term "permanent establishment" shall not be deemed to include:

(a) the use of facilities solely for the purpose of storage or the maintenance of a stock of goods or merchandise, whether in a warehouse or not, solely for the convenience of delivery of the 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;

(c) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or for collecting information, for the enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of advertising including display, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

4. Where a person acts in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned

Contracting State if he has, and habitually exercises in that first- mentioned Contracting State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

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 Contracting State through a bona fide broker, general commission agent or any other agent of an independent status where such persons are acting in the ordinary course of their business.

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 Contracting State (whether through a permanent establishment or otherwise) shall not of itself constitute either company a permanent establishment of the other.

Article 6 Business Profits

1. The industrial or commercial profits of a Polish enterprise shall not be subject to Sri Lanka tax unless the enterprise carries on a trade or business in Sri Lanka through a permanent establishment situated therein. If it carries on a trade or business in that other Contracting State through a permanent establishment situated therein, tax may be imposed on those profits by Sri Lanka but only on so much of them as is attributable to that permanent establishment.

2. The industrial or commercial profits of a Sri Lanka enterprise shall not be subject to Polish tax unless the enterprise carries on a trade or business in Poland through a permanent establishment situated therein. If it carries on a trade or business in that other Contracting State through a permanent establishment situated therein, tax may be imposed on those profits by Poland, but only on so much of them as is attributable to that permanent establishment.

3. Where an enterprise of a Contracting State carries on a trade or 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 industrial or commercial 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 or [sic] similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.

Provided that nothing in this paragraph shall affect the computation of the profits derived by a Polish enterprise from the production of tea or other agricultural product in Sri Lanka in accordance with the provisions of the law of Sri Lanka at the date of signature of this Convention.

4. No portion of any profits arising to an enterprise of a Contracting State shall be attributed to a permanent establishment situated in the other Contracting State by reason of the mere purchase of goods or merchandise within that other Contracting State by the enterprise.

Article 7 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 of 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 8 Shipping and Air Transport

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

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

Article 9 Dividends

1. Dividends paid by a company resident in Sri Lanka to a company resident in Poland shall be exempt from all Sri Lanka tax other than the Sri Lanka income tax not exceeding 33-1/3 percent on the company which pays the dividends and other than the additional tax not exceeding 6 percent on companies whose shares are not movable property situated in Sri Lanka for the purposes of the law of Sri Lanka relating to Estate Duty.

Provided that where any new contribution is made to the capital of a company resident in Sri Lanka by a company resident in Poland after the entering into force of this Convention, the rate of tax deducted

at source in respect of the dividends paid by the company in Sri Lanka relating to such contribution shall not exceed 15 percent.

2. The rate of Polish tax on dividends which are paid by a company resident in Poland to a company residing in Sri Lanka shall not exceed 15 percent.

Article 10 Royalties

1. Any royalties or other amounts which are payable as consideration for the use of, or for the right to use, any copyright or cinematograph films and which are derived from sources within a Contracting State by a resident of the other Contracting State shall be exempt from tax in that first-mentioned Contracting State.

2. Any royalties or other amounts which are payable as consideration for the use of, or for the right to use, any patents, designs or models, plans, secret processes or formulae, trade marks and other like property and rights and which are derived from sources within a Contracting State by a resident of the other Contracting State may be taxed in that other Contracting State.

However, such royalties may be taxed in the first-mentioned Contracting State and according to the law of that Contracting State, but the tax so charged shall in respect of the royalties becoming payable for the first time after the entering into force of this Convention, not exceed 10 percent of the amount of the royalties.

There shall be treated as royalties all rents and similar payments received as consideration for the use of, or for the right to use, industrial, commercial or scientific equipment.

3. The provisions of this Article shall not apply where a resident of a Contracting State has a permanent establishment in the other Contracting State and such items of income as are dealt with in this Article are attributable to that permanent establishment; in such event the provisions of Article 6 of the present Convention shall be applicable.

Article 11 Interest

1. Interest received by any banking institution which is a resident of a Contracting State shall be exempt from tax in the other Contracting State.

2. Interest derived from a Contracting State by the Government of the other Contracting State either directly or through any agency of that Government shall be exempt from tax in the first-mentioned State.

3. Interest accruing to any company, partnership, or other body of persons resident in a Contracting State from any loans in money, goods, or services or in any other form, granted by that company, partnership or body of persons to the Government of the other Contracting State or to a State Corporation, or to any State institution, or to any other institution to the capital of which the other Contracting State has made any contribution, or to a credit agency or an undertaking in that other Contracting State with the approval of the Government of the same State, shall be exempt from tax in this last-mentioned State.

4. The provisions of this Article shall not apply where a resident of a Contracting State has a permanent establishment in the other Contracting State, and such items of income as are dealt with in this Article are attributable to that permanent establishment; in such event the provisions of Article 6 of the present Convention shall be applicable.

5. Any other interest received by a resident of a Contracting State from a resident of the other Contracting State shall be taxable in both Contracting States; but the tax payable in the Contracting State where the interest arises shall, in respect of any transaction that has taken place after the entering into force of this Convention, not exceed 10 percent.

Article 12 Income From Immovable Property

1. Income from immovable property (including gains derived from the sale or exchange of such property) shall be taxable only in the Contracting State in which the property is situated.

2. Interest on debts secured by mortgage on real estate, excluding bonds or debentures, and royalties or other amounts paid in respect of the operations of a mine, quarry or any other place of extraction of natural resources shall be regarded as income from immovable property.

Article 13 Governmental Functions

Remuneration, including pensions, paid by, or out of funds created by a Contracting State or a political sub-division or a local authority thereof to any individual in respect of services rendered to that State or sub-division or local authority thereof in the discharge of functions of a governmental nature may be taxed in that State.

Article 14 Personal Services

1. Profits or remuneration from professional services or from services as an employee derived by an individual who is a resident of a Contracting State may be taxed in the other Contracting State only if such services are rendered in that other Contracting State.

2. An individual who is a resident of Poland shall be exempt from Sri Lanka tax on profits or remuneration referred to in paragraph 1 if:

(a) he is present within Sri Lanka for a period or periods not exceeding in the aggregate 183 days during the year of assessment concerned, and

(b) the services are performed for or on behalf of a resident of Poland.

3. An individual who is a resident of Sri Lanka shall be exempt from Polish tax on profits or remuneration referred to in paragraph 1 if:

(a) he is present within Poland for a period or periods not exceeding in the aggregate 183 days during the year of assessment concerned, and

(b) the services are performed for or on behalf of a resident of Sri Lanka.

4. The provisions of paragraphs 2 and 3 shall not apply to the profits or remuneration of public entertainers such as theatre, motion picture, radio or television artistes, musicians and professional athletes.

Article 15 Pensions

1. Any pension (other than a pension to which Article 13 applies) or 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 that other Contracting State.

2. 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 16 Teachers

A professor or teacher from a Contracting State who receives remuneration for teaching, during a period of residence not exceeding two years, at a university, college, school or other educational institution in the other Contracting State, shall be exempt from tax in the other Contracting State in respect of that remuneration.

Article 17 Students

An individual who is or was formerly a resident in a Contracting State and is temporarily present in the other Contracting State solely:

(a) as a student at a university, college or school in the other Contracting State,

(b) as a business or technical 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 organization

shall not be taxed in the other Contracting State in respect of remittances from abroad for the purposes of his maintenance, education or training or in respect of a scholarship grant. The same shall apply to any amount representing remuneration for services rendered in that other State, provided that such services are in connection with his studies or practical training or are necessary for the purpose of his maintenance[.]

Article 18 Taxation of Capital

1. Immovable property may be taxed in the Contracting State in which such property is situated.

2. Movable property forming part of the business property of a permanent establishment of an enterprise may be taxed in the Contracting State in which the permanent establishment is situated.

3. Notwithstanding the provisions of paragraph 2, ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft may be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. All other elements of capital or a resident of a Contracting State may be taxable only in that Contracting State.

Article 19 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 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 State than the taxation levied on enterprises of that other State carrying on the same activities.

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 State are or may be subjected.

4. Nothing contained in this Article shall be construed as obliging either Contracting State to grant to individuals not resident in that State any of the personal allowances, reliefs and reductions for tax purposes which are granted to individuals so resident.

5. In this Article the term "taxation" means taxes of every kind and description other than the Polish residence-registration fee (Oplata Skarbowa za Zameldowanie) and the Polish fee for a permit to open an enterprise (Oplata Skarbowa za Zezwolenie).

6. The taxes on income and capital and payments from profits to the budget (Wplaty z Zysku) which under Polish law are chargeable on Polish socialised enterprises (Jednostki Gospodarki Uspokecznionej) shall be chargeable only on such enterprises and shall not be treated as "taxation" for the purposes of this Article.

Article 20 Elimination of Double Taxation

1. In Poland, double taxation will be avoided in the following manner:

(a) Unless the provisions of sub-paragraph (b) apply, there shall be excluded from the basis upon which Polish tax is imposed, any item of income derived from Sri Lanka, and any item of capital situated within Sri Lanka, which, according to this Convention, may be taxed in Sri Lanka. Poland, however, retains the right to take into account in the determination of its rates of tax the items of income and capital so excluded.

(b) Subject to the provisions of Polish tax law regarding credit for foreign tax, there shall be allowed as a credit against Polish income tax payable, the Sri Lanka tax payable on dividends to which Article 9 applies, on royalties to which Article 10 applies, and on interest to which Article 11 applies. The credit shall not, however, exceed that part of the Polish tax, as computed before the credit is given, which is appropriate to such items of income.

(c) For the purposes of sub-paragraph (b) of this paragraph the term "Sri Lanka tax payable" shall mean the tax payable under the laws of Sri Lanka before the reduction of any tax under paragraph 1 of Article 9, paragraph 2 of Article 10 and paragraph 5 of Article 11.

2. In Sri Lanka, double taxation will be avoided in the following manner:

(a) Unless the provisions of sub-paragraph (b) apply, there shall be excluded from the basis upon which Sri Lanka tax is imposed, any item of income derived from Poland, and any item of capital situated within Poland which, according to this Convention, may be taxed in Poland. Sri Lanka, however, retains the right to take into account in the determination of its rates of tax the items of income and capital so excluded.

(b) Subject to the provisions of Sri Lanka tax law regarding credit for foreign tax, there shall be allowed as a credit against Sri Lanka income tax payable, the Polish tax payable on dividends to which Article 9 applies, on royalties to which Article 10 applies and on interest to which Article 11 applies. The credit shall not, however, exceed that part of the Sri Lanka tax, as computed before the credit is given, which is appropriate to such items of income.

(c) For the purposes of sub-paragraph (b) of this paragraph the term "Polish tax payable" shall mean the tax payable under the laws of Poland before the reduction of any tax under paragraph 2 of Article 9, paragraph 2 of Article 10 and paragraph 5 of Article 11.

Article 21 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 States, present his case to the competent authority of the Contracting State of which he is a resident.

2. The competent 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 the Convention.

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

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 22 Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Convention or for the prevention of fiscal evasion or for the administration of the domestic laws of the Contracting States concerning taxes covered by this Convention in so far as the taxation thereunder is in accordance with this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment, collection, or enforcement in respect of the taxes which are the subject of this Convention.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on one of the Contracting States the obligation:

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

(b) to supply particulars 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 (*ordre public*).

Article 23 Diplomatic and Consular Privileges

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 agreements.

Article 24 Entry Into Force

1. This Convention is subject to ratification and the instruments of ratification shall be exchanged at * * * .

2. This Convention shall enter into force upon the exchange of the instruments of ratification and shall have effect for the income of the calendar years or accounting periods beginning on or after the first day of January of the calendar year in which the instruments of ratification are exchanged.

Article 25 Termination

This Convention shall remain in force indefinitely but either of the Contracting States may terminate the Convention, through diplomatic channels, by giving to the other Contracting State notice of termination not later than the 30th June of any calendar year from the fifth year from the year in which the Convention entered into force. In such event, the Convention shall cease to have effect for the income of the calendar years or accounting periods beginning on/or after the first day of January of the calendar year following that in which the notice is given.

In witness whereof the undersigned duly authorized thereto have signed this Convention.

Done in duplicate at Colombo this twenty-fifth of April of the year 1980 in two originals, each in the Polish, Sinhala and English languages, all texts being equally authoritative. In case of divergence of interpretation the English text shall prevail.

ON BEHALF OF THE GOVERNMENT OF THE POLISH PEOPLE'S REPUBLIC

[Signature]

ON BEHALF OF THE GOVERNMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

[Signature]