

Pakistan - United States

Income Tax Treaties

1957 Income Tax Convention

Signatories: Pakistan; United States

Signed: July 1, 1957

In Force: May 21, 1959

Effective: January 1, 1959. See Article XIX

Status: In Force

U.S. Legislative History Documents

Treasury Department Technical Explanation: July 26, 1957

Senate Foreign Relations Committee Report: S. Exec. Rpt. No. 1, 85-2, July 7, 1958

Senate Foreign Relations Committee Hearings: Aug. 9, 1957; July 30, 1957

Letters of Transmittal and Submittal: S. Exec. N, 85-1, July 12, 1957

Senate Floor Action and Debate: 104 Cong. Rec. 13238-44, July 9, 1958; 103 Cong. Rec. 11444, July 12, 1957

State Department News Releases:

Signing of Income-Tax Convention With Pakistan (No. 400, July 1, 1957)

Administrative Documents and Case Law

U.S. IRS Revenue Procedures: Rev. Proc. 87-9; Rev. Proc. 87-8

U.S. IRS Revenue Rulings: Rev. Rul. 89-5; Rev. Rul. 87-40; Rev. Rul. 72-301

Case Law: Budhwani, Amirali v. Comm., U.S.T.C.

Siddiqi, Musheer H. v. Comm., U.S.T.C.

PAKISTAN

Double Taxation: Taxes on Income

Convention signed at Washington July 1, 1957;

Ratification advised by the Senate of the United States of America, with a reservation, July 9, 1958;

Ratified by the President of the United States of America, subject to said reservation, November 6, 1958;

Ratified by Pakistan May 2, 1959;

Ratifications exchanged at Karachi May 21, 1959;

Proclaimed by the President of the United States of America May 28, 1959;

Entered into force May 21, 1959.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS a convention between the United States of America and Pakistan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income was signed at Washington on July 1, 1957 by their respective Plenipotentiaries, the original of which convention is word for word as follows:

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF PAKISTAN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the United States of America and the Government of Pakistan, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have appointed for that purpose as their respective Plenipotentiaries:

The Government of the United States of America:

John Foster Dulles, Secretary of State of the United States of America, and

The Government of Pakistan

Mohammed Ali, Ambassador Extraordinary and Plenipotentiary of Pakistan to the United States of America, and

Syed Amjad Ali, Minister of Finance of Pakistan,

who, having communicated to one another their full powers, found in good and due form, have agreed as follows:

Article I

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

In the United State of America:

The Federal income taxes, including surtaxes (hereinafter referred to as United States tax).

In Pakistan:

The income tax, super-tax and the business profits tax (hereinafter referred to as Pakistan tax).

(2) The present Convention shall also apply to any other taxes of a substantially similar character (including excess profits tax) imposed by either contracting State after the date of signature of the present Convention, or by the Government of any territory to which the present Convention is extended under Article XVIII.

Article II

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

(a) The term "United States" means the United States of America and when used in a geographical sense means the States thereof, the Territories of Alaska and Hawaii and the District of Columbia;

(b) The term "Pakistan" means the Provinces of Pakistan and the Capital of the Federation;

(c) The terms "one of the contracting States" and "the other contracting State" means the United States or Pakistan, as the context requires;

(d) The term "tax" means United States tax, or Pakistan tax, as the context requires;

(e) The term "person" includes any body of persons, corporate or not corporate;

- (f) The term "company" means any body corporate or not corporate, assessed as a company under Pakistan law relating to Pakistan tax;
- (g) The term "United States corporation" means a corporation, association or other like entity created or organized in the United States or under the law of the United States or of any State or Territory of the United States;
- (h) The term "resident of the United States" means any individual or fiduciary who is resident in the United States for the purposes of the United States tax, and not resident in Pakistan for the purposes of the Pakistan tax, and any United States corporation or any partnership created or organized in the United States or under the laws of the United States, being a corporation or partnership which is not resident in Pakistan for the purposes of Pakistan tax;
- (i) The term "resident of Pakistan" means any person (other than a citizen of the United States or a United States corporation) who is resident in Pakistan for the purposes of Pakistan tax and not resident in the United States for the purposes of the United States tax. A company is to be regarded as a resident of Pakistan if its business is managed and controlled in Pakistan;
- (j) The terms "resident of one of the contracting States" and "resident of the other contracting State" mean a person who is a resident of the United States or a person who is a resident of Pakistan, as the context requires;
- (k) The terms "United States enterprise" and "Pakistan enterprise" mean, respectively, an industrial or commercial enterprise or undertaking carried on in the United States by a resident of the United States and an industrial or commercial enterprise or undertaking carried on in Pakistan by a resident of Pakistan; and the terms "enterprise of one of the contracting States" and "enterprise of the other contracting State" means a United States enterprise or a Pakistan enterprise, as the context requires;
- (l) The term "industrial or commercial profits" does not include rents or royalties in respect of motion picture films or of oil wells, mines and quarries, or income in the form of dividends, interest, rents, or royalties, or fees or other remuneration derived by an enterprise from the management, control or supervision of the trade, business, or other activity of another enterprise or concern, or remuneration for labor or personal services, or income from the operation of ships;
- (m) The term "permanent establishment", when used with respect to an enterprise of one of the contracting States, means a branch, management, factory or other fixed place of business, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprise or has a stock of merchandise from which he regularly fills orders on its behalf. In this connection—
- (i) An enterprise of one of the contracting States shall not be deemed to have a permanent establishment in the other contracting State merely because it carries on business dealings in that other contracting State through a bona fide broker or general commission agent acting in the ordinary course of his business as such; and

(ii) The fact that a corporation or company which is a resident of one of the contracting States has a subsidiary corporation or company which is a resident of the other contracting State or which is engaged in trade or business in such other contracting State whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary corporation or company a permanent establishment of its parent corporation or company;

(n) The term "taxation authorities" means, in the case of the United States, the Commissioner of Internal Revenue as authorized by the Secretary of the Treasury and, in the case of Pakistan, the Central Board of Revenue or their authorized representatives; and, in the case of any territory to which the present Convention is extended under Article XVIII, the competent authority for the administration in such territory of the taxes to which the present Convention applies.

(2) In the application of the provisions of the present Convention by one of the contracting States, 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 the present Convention.

Article III

(1) A United States enterprise shall not be subject to Pakistan tax in respect of its industrial or commercial profits unless it is engaged in trade or business in Pakistan through a permanent establishment situated therein. If it is so engaged, Pakistan tax may be imposed upon the entire income of such enterprise from sources within Pakistan.

(2) A Pakistan enterprise shall not be subject to United States tax in respect of its industrial or commercial profits unless it is engaged in trade or business in the United States through a permanent establishment situated therein. If it is so engaged, United States tax may be imposed upon the entire income of such enterprise from sources within the United States.

(3) Where an enterprise of one of the contracting States is engaged in trade or business in the other contracting State through a permanent establishment situated therein, there shall be attributed to such permanent establishment the industrial or commercial profits which it might be expected to derive in such other contracting State if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment, and the profits so attributed shall be deemed to be income of that permanent establishment and shall be taxed accordingly.

Article IV

Where

(a) an enterprise of one of the contracting States 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 one of the contracting States and an enterprise of the other contracting State, and

(c) 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,

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 V

Profits derived by an enterprise of one of the contracting States from the operation of aircraft registered in such State shall be exempted from tax by the other contracting State, unless the aircraft is operated wholly or mainly between places within such other contracting State.

Article VI

(1) The rate of United States tax on dividends paid by a United States corporation to a Pakistan company

- (a) not having a permanent establishment in the United States and
- (b) owning shares carrying more than 50 percent of the voting power in the corporation paying such dividends

shall not exceed fifteen percent.

(2) Where a United States corporation

- (a) has no permanent establishment in Pakistan, and
- (b) is a public company as defined in paragraph (4) of this Article, and
- (c) owns shares carrying more than 50 percent of the voting power of a company which is a resident of Pakistan and is engaged in an industrial undertaking of the classes specified in section 15B of the Income Tax Act, 1922 (XI of 1922),

the rate of Pakistan super-tax otherwise payable with respect to dividends paid by such company to such corporation shall be reduced by 1 anna in the rupee.

(3) The provisions of section 23A of the Income Tax Act, 1922 (XI of 1922) (relating to the distribution of company profits) shall not apply to the income of a company in which shares carrying more than 50 percent of the voting power are owned by a United States corporation constituting a public company, as defined in paragraph (4) of this Article, if the company is engaged in an industrial undertaking of the classes specified in section 15B of the Income Tax Act, 1922 (XI of 1922) and its profits are retained for the purpose of its industrial development and expansion in Pakistan.

(4) In paragraphs (2) and (3) of this Article, the term "public company" means, in relation to any year of assessment--

(a) A corporation which does not restrict the right to transfer its shares, which does not prohibit the issue of its shares or debentures to the public or the sale of its shares on a stock exchange and of which shares carrying more than 50 percent of the voting power were not at any time during the previous year held by less than six persons; or

(b) A corporation all of whose shares were held at the end of the previous year by one or more public companies as defined in clause (a) of this paragraph.

Article VII

(1) Dividends paid by a company which is a resident of Pakistan shall be exempt from United States tax except where the recipient thereof is a citizen or resident or corporation of the United States.

(2) Dividends paid by a United States corporation shall be exempt from Pakistan tax except where the recipient thereof is resident in Pakistan.

Article VIII

(1) Any royalty (other than royalties or rentals from motion picture films) paid as consideration for the use of, or for the privilege of using, any copyright, patent, design, secret process or formula, trademark, or other like property, and derived from sources in one of the contracting States by a resident of the other contracting State not having a permanent establishment in the former State shall be exempt from tax by such former State.

(2) Where any royalty exceeds a fair and reasonable consideration in respect of the rights for which it is paid, the exemption provided by the present Article shall apply only to so much of the royalty as represents such fair and reasonable consideration.

Article IX

(1) Remuneration, including pensions and annuities, paid by or on behalf of the Government of the United States or its political subdivisions to an individual who is a citizen of the United States, not ordinarily resident in Pakistan, for services rendered to that Government in the discharge of governmental functions shall be exempt from Pakistan tax.

(2) Remuneration, including pensions and annuities, paid by or on behalf of the Government of Pakistan or the Government of a Province in Pakistan or any local authority thereof to any individual who is a citizen of Pakistan not having immigrant status in the United States, for services rendered in the discharge of functions of that Government or of local authority, as the case may be, shall be exempt from United States tax.

(3) The provisions of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on for purposes of profit.

Article X

(1) A pension or annuity (other than a pension or annuity of the kind referred to in paragraphs (1) and (2) of Article IX) derived from sources within one of the contracting States by a resident of the other contracting State shall be exempted from tax by the former State.

(2) The term "annuity," for the purpose of this Article, 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.

(3) This Article shall not apply to a pension or annuity payable from a superannuation fund approved or recognized under the tax law of Pakistan nor to a pension or annuity from a fund, under an employees' pension or annuity plan, contributions to which under the tax law of the United States are deductible in determining the taxable income of the employer.

Article XI

(1) An individual, who is a resident of the United States, shall be exempt from Pakistan tax on profits or remuneration in respect of personal (including professional) services performed within Pakistan in any financial year if--

- (a) he is present within Pakistan on a temporary visit for a period or periods not exceeding in the aggregate 183 days during that year, and
- (b) the services are performed for or on behalf of a resident of the United States, and
- (c) the profits or remuneration are subject to United States tax.

(2) An individual, who is a resident of Pakistan, shall be exempt from United States tax on profits or remuneration in respect of personal (including professional) services performed within the United States in any taxable year if--

- (a) he is present within the United States on a temporary visit for a period or periods not exceeding in the aggregate 183 days during that year, and
- (b) the services are performed for or on behalf of a resident of Pakistan, and
- (c) the profits or remuneration are subject to Pakistan tax.

Article XII

A professor or teacher, resident in one of the contracting States, who temporarily visits the other contracting State for the purposes of teaching for a period not exceeding two years at a university, college, school or other educational institution in the other contracting State, shall be exempted from tax by such other contracting State in respect of remuneration for such teaching.

Article XIII

(1) A resident of one of the contracting States who is temporarily present in the other contracting State solely

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

(b) 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 of the former State

shall be exempted from tax by such other State (i) on all remittances from abroad for the purposes of his maintenance, education or training, and (ii) with respect to an amount not in excess of 5,000 United States dollars for any taxable year, representing compensation for personal services.

(2) A resident of one of the contracting States who is temporarily present in the other contracting State for a period not exceeding one year, as an employee of, or under contract with, an enterprise of the former State or an organization referred to in paragraph (1), solely to acquire technical, professional or business experience from a person other than such enterprise or organization, shall be exempted from tax by such other State on compensation for such period in an amount not in excess of 6,000 United States dollars (including remuneration from such person in the other contracting State).

(3) A resident of one of the contracting States temporarily present in the other contracting State under arrangements with each other State or any agency or instrumentality thereof solely for the purpose of training, study or orientation shall be exempted from tax by such other State with respect to compensation not exceeding 10,000 United States dollars for the rendition of services directly related to such training, study or orientation (including emoluments and remuneration, if any, from the employer abroad of such resident).

Article XIV

(1) Effective January 1, 1956 the State Bank of Pakistan shall be exempted from United States tax with respect to interest from sources within the United States.

(2) Effective January 1, 1956 the Federal Reserve Banks of the United States shall be exempted from Pakistan tax with respect to interest from sources within Pakistan.

Article XV

(1) Subject to the provisions of the Internal Revenue Code (as in effect on the date of signature of the present Convention) regarding the allowance of a credit against United States tax for tax payable in a territory outside the United States, Pakistan tax payable, whether directly or by deduction, in respect of income from sources within Pakistan shall be allowed as a credit against United States tax payable in respect of that income. For the purposes of this credit there shall be deemed to have been paid by a United States domestic corporation the amount by which such Pakistan taxes (other than the business profits tax) have been reduced under the provisions of section 15B of the Income Tax Act, 1922 (XI of 1922) as in effect on the date of the signature of the present Convention: Provided, That any extension made by law of the period within which an

industrial undertaking may be set up or commenced in order to obtain the reduction provided in section 15B shall be deemed to be in effect on the date of the signature of the present Convention.

(2) Subject to the provisions of Pakistan income tax law (as in effect on the date of signature of the present Convention), United States tax payable, whether directly or by deduction, by a person resident in Pakistan, in respect of income from sources within the United States (including income accruing or arising in the United States but deemed, under the provisions of the law of Pakistan, to accrue or arise in Pakistan) shall be allowed as a credit against any Pakistan tax payable in respect of that income.

(3) For the purposes of this Article, profits or remuneration for personal (including professional) services performed in one of the contracting States shall be treated as income from sources within that State.

Article XVI

(1) The taxation authorities of the contracting States shall exchange such information (being information which is available under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or for the administration of statutory provisions in relation to the taxes which are the subject of the present Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of the present Convention. No information shall be exchanged which would disclose any trade, business, industrial or professional secret or trade process.

(2) The taxation authorities of the contracting States may consult together, as may be necessary, for the purpose of carrying out the provisions of the present Convention and in particular the provisions of Articles III and IV. Where a taxpayer claims that he has been or may be subjected to double taxation contrary to the provisions of the present Convention, he may present the facts to the taxation authorities of either contracting State. Should the taxpayer's claim be deemed worthy of consideration, the taxation authorities shall endeavor to come to an agreement with a view to avoidance of the double taxation in question.

(3) The taxation authorities of both contracting States may prescribe regulations necessary to interpret and carry out the provisions of the present Convention and may communicate with each other directly for the purpose of giving effect to the provisions of the present Convention.

(4) The provisions of the present Convention shall not be construed to restrict in any manner any exemption, deduction, credit or other allowance now or hereafter accorded by the laws of either contracting State in determining the tax of such State.

Article XVII

(1) The citizens or nationals of one of the contracting States shall not, while resident in the other contracting State, be subjected in such other State to taxes or any requirement connected therewith which is other, higher or more burdensome than the taxes and connected requirements to which the citizens or nationals of such other State resident therein are or may be subjected.

(2) The term "citizens" or "nationals", as used in this Article, includes all legal persons, partnerships and associations deriving their status from, or created or organized under, the laws in force in the respective contracting States.

(3) Nothing contained in this Article shall be construed--

- (a) as obliging either of the contracting States to grant to persons not resident in its territory those personal allowances, reliefs and reductions for tax purposes which are by law available only to persons who are so resident; or
- (b) as affecting any provisions of the law of Pakistan regarding the imposition of tax on a non-resident or the grant of rebate of tax to companies fulfilling specified requirements regarding the declaration and payment of dividends, unless those requirements are fulfilled.

Article XVIII

(1) The present Convention may be extended, either in its entirety or with modifications, to any territory for whose international relations either of the contracting States is responsible and which imposes taxes substantially similar in character to those which are the subject of the present Convention and any such extension shall take effect from such date and subject to such modifications and conditions (including conditions as to termination) as may be specified and agreed between the contracting States in notes to be exchanged for this purpose.

(2) The termination in respect of Pakistan or the United States of the present Convention under Article XX shall, unless otherwise expressly agreed by both contracting States, terminate the application of the present Convention to any territory to which the Convention has been extended under this Article.

Article XIX

The present Convention shall come into force on the date when the last of all such things shall have been done in the United States and Pakistan as are necessary to give the Convention the force of law in the United States and Pakistan, respectively, and shall thereupon have effect--

- (a) In the United States, for the taxable years beginning on or after the first day of January of the year in which the instruments of ratification are exchanged;
- (b) In Pakistan, in respect of the "previous years" or the "chargeable accounting periods" (as defined by the tax laws of Pakistan) beginning on or after the first day of January of the year in which the instruments of ratification are exchanged.

Article XX

The present Convention shall continue in effect indefinitely but either of the contracting States may, on or before the 30th day of June in any calendar year not earlier than three years from the

date of signature of the present Convention, give to the other contracting State written notice of termination and, in such event the present Convention shall cease to be effective--

- (a) in the United States, for the taxable years beginning on or after the first day of January next following such written notice of termination; and
- (b) in Pakistan, in respect of the "previous years" or the "chargeable accounting periods" (as defined by the tax laws of Pakistan) beginning on or after the first day of January next following such written notice of termination.

In witness whereof, the respective Plenipotentiaries have signed this Convention and have affixed thereto their seals.

Done in duplicate at Washington this first day of July, 1957.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

John Foster Dulles

FOR THE GOVERNMENT OF PAKISTAN:

Mohammed Ali

S. Amjad Ali

AND WHEREAS the Senate of the United States of America by their resolution of July 9, 1958, two-thirds of the Senators present concurring therein, did advise and consent to the ratification of the aforesaid convention "subject to the reservation, which shall be agreed to by the other high contracting party before ratifications are exchanged, that the second sentence of paragraph 1 of Article XV shall not be ratified";

AND WHEREAS the text of the aforesaid reservation was communicated by the Government of the United States of America to the Government of Pakistan and was agreed to by the Government of Pakistan;

AND WHEREAS the aforesaid convention was duly ratified by the President of the United States of America on November 6, 1958, in pursuance of the aforesaid advice and consent of the Senate and subject to the aforesaid reservation, and was duly ratified on the part of the Government of Pakistan;

AND WHEREAS the respective instruments of ratification of the aforesaid convention were duly exchanged at Karachi on May 21, 1959, and a protocol of exchange was signed at that place and on that date by the respective Plenipotentiaries of the United States of America and Pakistan;

AND WHEREAS it is provided in Article XIX of the aforesaid convention that the convention shall have effect (a) in the United States of America, for the taxable years beginning on or after the first day of January of the year in which the instruments of ratification are exchanged, and (b) in Pakistan, in respect of the "previous years" or the "chargeable accounting periods" (as defined by the tax laws of Pakistan) beginning on or after the first day of January of the year in which the instruments of ratification are exchanged;

NOW, THEREFORE, be it known that I, Dwight D. Eisenhower, President of the United States of America, do hereby proclaim and make public the aforesaid convention to the end that the said convention and each and every article and clause thereof, subject to the aforesaid reservation, may be observed and fulfilled with good faith, with respect to taxable years beginning on or after

January 1, 1959, by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the city of Washington this twenty-eighth day of May in the year of our Lord one thousand nine hundred fifty-nine and of the Independence of the United States of America the one hundred eighty-third.

DWIGHT D. EISENHOWER

FBR, Government of Pakistan