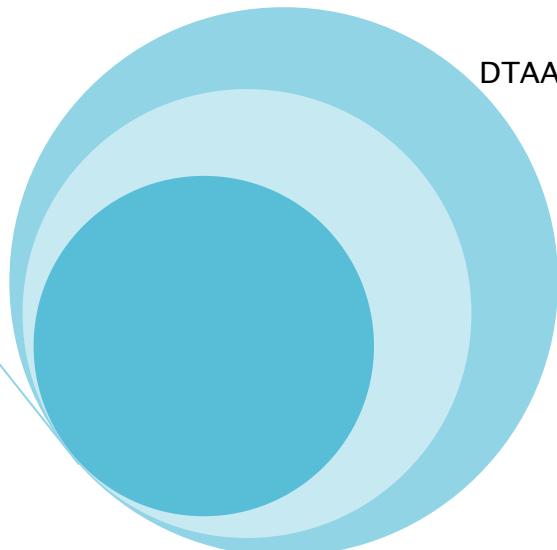




DTAA



International Taxation Double Taxation Avoidance Agreement

- ✚ Comprehensive Agreements

- ✚ Limited Agreements

- ✚ Other Agreements



COMPREHENSIVE AGREEMENTS

WITH RESPECT TO TAXES ON INCOME

INDEX

Sr. No	Name of the Country	Sr. No	Name of the Country
1	Armenia	35	Malaysia
2	Australia	36	Malta
3	Austria	37	Mauritius
4	Bangladesh	38	Mangolia
5	Belarus	39	Montenegro
6	Belgium	40	Morocco
7	Botswana	41	Myanmar
8	Brazil	42	Namibia
9	Bulgaria	43	Nepal
10	Canada	44	Netherlands
11	China	45	New Zealand
12	Cyprus	46	Norway
13	Czech Republic	47	Oman
14	Denmark	48	Romania
15	Egypt	49	Russia
16	Finland	50	Saudi Arabia
17	France	51	Serbia
18	Germany	52	Singapore
19	Greece	53	Slovenia
20	Hashemite Kingdom of Jordan	54	South Africa
21	Hungary	55	Spain
22	Iceland	56	Sri Lanka
23	Indonesia	57	Sudan
24	Ireland	58	Sweden
25	Israel	59	Swiss Confederation
26	Italy	60	Syrian Arab Republic
27	Japan	61	Tajikistan
28	Kazakstan	62	Tanzania
29	Kenya	63	Thailand
30	Korea	64	Trinidad and Tobago
31	Kuwait	65	Turkey
32	Kyrgyz Republic	66	Turkmenistan

33	Libya	67	UAE
34	Luxembourg	68	UAR (Egypt)
69	UGANDA	73	Uzbekistan
70	UK	74	Vietnam
71	Ukraine	75	Zambia
72	USA		

LIMITED AGREEMENTS

WITH RESPECT TO INCOME OF AIRLINES/ MERCHANT SHIPPING

INDEX

Sr. No	Country	Sr. No	Country
1	Afghanistan	9	Lebanon
2	Bulgaria	10	Oman
3	Czechoslovakia	11	Pakistan
4	Ethiopia	12	People's Democratic Republic of Yemen
5	Iran	13	Russia Federation
6	Kuwait	14	Saudi Arabia
7	Switzerland	15	UAE
8	Yemen Arab Republic		

OTHER AGREEMENTS / RELIEF RULES

1. [African National Congress Mission](#)
2. [Income Tax \(Double Taxation Relief\) \(Aden\) Rules, 1953](#)
3. [Income Tax \(Double Taxation Relief\) \(Dominions\) Rules, 1956](#)

Armenia

Agreement for Avoidance of Double Taxation and prevention of fiscal evasion with Armenia

Whereas the annexed Convention between the Government of the Republic of India and the Government of the Republic of the Armenia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, has come into force on the 9th day of September, 2004, on date of the later of the notifications by both the Contracting States to each other, under Article 30 of the said Convention, of the completion of the procedures required by their respective laws for the entry into force of the said Convention:

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in the Union of India.

Notification : No. GSR 800E, dated 8-12-2004.

ANNEXURE

CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE REPUBLIC OF ARMENIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of India and Government of the Republic of Armenia, desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income

and with a view to promoting economic cooperation between the two countries, have agreed as follows :

ARTICLE 1 : PERSONS COVERED – This Convention shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2 : TAXES COVERED – 1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State or of its political sub-divisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property and taxes on the total amounts of wages or salaries paid by enterprises.

3. The existing taxes to which the Convention shall apply are in particular:

(a) in India, the income-tax, including any surcharge thereon;

(hereinafter referred to as Indian tax);

(b) in Armenia:

(i) the profit tax;

(ii) the income-tax;

(iii) the land tax;

(hereinafter referred to as the Armenian tax).

4. The Convention shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their taxation laws.

ARTICLE 3 : GENERAL DEFINITIONS – 1. For the purposes of this Convention, unless the context otherwise requires :

(a) the term India means territory of India and includes the territorial sea and air space above it, as well as any other maritime zone in which India has

sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law, including the U.N. Agreement on the Law of the Sea;

- (b) the term Armenia means the Republic of Armenia;
- (c) the terms a Contracting State and the other Contracting State mean the Republic of India or the Republic of Armenia as the context requires;
- (d) the term person includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States;
- (e) the term company means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (f) the term enterprise applies to the carrying on of any business;
- (g) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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;
- (h) 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;
- (i) the term competent authority means:
 - (i) in India the Central Government in the Ministry of Finance (Department of Revenue) or its authorised representatives;
 - (ii) in Armenia the Ministry of Finance and Economy or his authorised representatives or State Tax Service at the Government or its authorised representatives;
- (j) the term national, in relation to a Contracting State means:
 - (i) any individual possessing the nationality or citizenship of that Contracting State; and
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State;
- (k) the term tax means Indian tax or Armenia tax, as the context requires, but shall not include any amount which is payable in respect of any default or

omission in relation to the taxes to which this Convention applies or which represents a penalty or fine imposed relating to those taxes;

(/) the term fiscal year means:

(i) in the case of India: the financial year beginning on the 1st day of April;

(ii) in the case of Armenia: calendar year.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

ARTICLE 4 : RESIDENT – 1. For the purposes of this Convention, the term resident of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political sub-division or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 and individual is a resident of both Contracting States, then his status shall be determined as follows:

- (a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;

(d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 only of the State in which its place of effective management is situated. If the State in which its place of effective management is situated cannot be determined, the competent authorities of the Contracting States shall settle the question by mutual agreement.

ARTICLE 5 : PERMANENT ESTABLISHMENT – 1. For the purposes of this Convention, the term permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a sales outlet;
- (g) a warehouse in relation to a person providing storage facilities for others;
- (h) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on; and
- (i) a mine, an oil or gas well, a quarry or any other place of exploration or extraction of natural resources.

3. A building site or construction, installation or assembly project or supervisory activities in connection therewith constitutes a permanent establishment only if such site, project or activities last more than 270 days.

4. Notwithstanding the preceding provisions of this Article the term permanent establishment shall be deemed not to include:

- (a) the use of facilities solely for the purpose 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 of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purposes of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 7 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 Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:

- (a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph, or
- (b) has no authority to conclude contracts in the name of the enterprise, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise; or
- (c) habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise itself.

6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

8. 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 otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6 : INCOME FROM IMMOVABLE PROPERTY – 1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircrafts shall not be regarded 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, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, 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.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business 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, in accordance with the provisions of and subject to the limitations of the tax laws of that State.

However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the enterprise, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for services performed or for management, or, except in the case

of a banking enterprise, by way of interest on moneys lent to the permanent establishment.

Likewise, no account shall be taken, in determining the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the enterprise, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for services performed or for management, or, except in the case of a banking enterprise by way of interest on moneys lent to the enterprise.

4. Insofar 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 contained 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 purposes 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 Article of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8 : SHIPPING AND AIR TRANSPORT – 1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircrafts in international traffic shall be taxable only in that State.

2. Profits derived by a transportation enterprise which is a resident of a Contracting State from the use, maintenance, or rental of containers (including trailers and other equipment for the transport of containers) used for the transport of goods or merchandise in international traffic shall be taxable only in that Contracting State unless the containers are used solely within the other Contracting State.

3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9 : ASSOCIATED ENTERPRISES – 1. 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.

2. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10 : **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 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 laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 10 per cent of the gross amount of the dividends. 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 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 14, 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 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 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 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 State.

ARTICLE 11 : **INTEREST** – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 beneficial owner of the interest, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State, provided that it is derived and beneficially owned by :

- (a) the Government, a political sub-division or a local authority of the other Contracting State; or
- (b) (i) in the case of India the Reserve Bank of India;
(ii) in the case of Armenia the Central Bank of Armenia;
- (c) any other institution as may be agreed upon from time to time between the competent authorities of the Contracting States through exchange of letters.

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 debtors 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 and 2 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 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 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, 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 indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the 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 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 the other provisions of this Convention.

ARTICLE 12 : ROYALTIES AND FEES FOR TECHNICAL SERVICES – 1. Royalties or fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties or fees for technical services may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties or fees for technical services is a resident of the other Contracting State the tax so charged shall not exceed 10 per cent of the gross amount of the royalties or fees for technical services.

3. (a) 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 including cinematograph films or films or tapes used for television or radio 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.

(b) The term fees for technical services as used in this Article means payments of any kind, other than those mentioned in articles 14 and 15 of this Convention as consideration for managerial or technical or consultancy services, including the provision of services of technical or other personnel.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services 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 or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of article 7 or article 14, as the case may be, shall apply.

5. Royalties or fees for technical services shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties or fees for technical services, 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 or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the 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 or fees for technical services, 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 the other provisions of this Convention.

ARTICLE 13 : CAPITAL GAINS – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains derived by a resident of a Contracting State from the alienation of ships or aircrafts operated in international traffic, or movable property pertaining to the operation of such ships or aircrafts, shall be taxable only in that State.

4. Gains from the alienation of shares of the capital stock of, or other corporate rights in, a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from the alienation of shares other than those mentioned in paragraph 4 in a company which is a resident of a Contracting State may be taxed in that State.

6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14 : INDEPENDENT PERSONAL SERVICES – 1. Income derived by an individual who is a resident of a Contracting State from the performance of professional services or other independent activities of a similar character shall be taxable only in that State (except in the following circumstances when such income may also be taxed in the other Contracting State) :

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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 State; or
- (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any period of 12 month; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

ARTICLE 15 : DEPENDENT PERSONAL SERVICES – 1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if :

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft

operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

ARTICLE 16 : DIRECTORS FEES – Directors fees and other 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 may be taxed in that other State.

ARTICLE 17 : ARTISTES AND SPORTSPERSONS – 1. Notwithstanding the provisions of articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived by a resident of a Contracting State from his personal activities as an entertainer or as a sportsperson shall be taxable only in that State if the activities are exercised in the other Contracting State within the framework of a cultural or sports exchange programs approved by both Contracting States.

ARTICLE 18 : PENSIONS – Subject to the provisions of paragraph 2 of article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

ARTICLE 19 : GOVERNMENT SERVICE – 1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who :

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of articles 15, 16, 17 and 18 shall apply to salaries, wages and other similar remuneration and to pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

ARTICLE 20 : PROFESSORS, TEACHERS AND RESEARCH SCHOLARS – 1. A professor, teacher or research scholar who is or was a resident of the Contracting State immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college or other similar institution in that other Contracting State recognised by the Government of that other Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding 2 years from the date of his arrival in that other State.

2. The provisions of paragraph 1 of this Article shall not apply to remuneration from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

3. For the purposes of this Article, an individual shall be deemed to be a resident of a Contracting State if he is resident in that State in the fiscal year in

which he visits the other Contracting State or in the immediately preceding fiscal year.

ARTICLE 21 : STUDENTS – 1. A student who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State and who is present in that other Contracting State solely for the purpose of his education or training, shall besides grants, loans and scholarships be exempt from tax in that other State on payments made to him for the purpose of his maintenance, education or training, provided that such payments arise from sources outside that State.

2. In respect of grants, scholarships and remuneration from employment not covered by paragraph 1, a student or business apprentice referred to in paragraph 1 shall, in addition, be entitled during such education or training to the same exemptions, reliefs or reductions in respect of taxes available to residents of the Contracting State which he is visiting.

3. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken.

ARTICLE 22 : OTHER INCOME – 1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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 income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of article 7 or article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraph 1, if a resident of a Contracting State derives income from sources within the other Contracting State in the form of lotteries, crossword puzzles, races including horse races, card games and other games of any sort or gambling or betting of any nature whatsoever, such income may be taxed in the other Contracting State.

4. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention and arising in the other Contracting State may also be taxed in that other State.

ARTICLE 23 : METHODS FOR ELIMINATION OF DOUBLE TAXATION – Double taxation shall be eliminated as follows :

1. In India :

- (a) Where a resident of India derives income which, in accordance with the provisions of this Convention, may be taxed in Armenia, India shall allow as a deduction from the tax on the income of that resident, an amount equal to the income-tax paid in Armenia.

Such deduction shall not, however, exceed that part of the income-tax as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in Armenia.

- (b) Where in accordance with any provision of the Convention income derived by a resident of India is exempt from tax in India, India may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

2. In Armenia :

- (a) Where a resident of Armenia derives income which, in accordance with the provisions of this Convention, may be taxed in India, Armenia shall allow as a deduction from the tax on the income of that resident, an amount equal to the income-tax paid in India.

Such deduction shall not, however, exceed that part of the income-tax, as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in India.

- (b) Where in accordance with any provision of the Convention income derived by a resident of Armenia is exempt from tax in Armenia, Armenia may nevertheless, in calculating the amount of tax on the remaining income of such resident taken into account the exempted income.

ARTICLE 24 : NON-DISCRIMINATION – 1. 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, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of article 1, also apply to persons who are not residents of one or both of the Contracting States.

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. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents. This provision shall not be construed as preventing a Contracting State from taxation of the profits of a permanent establishment of the company of the other Contracting State within the framework of provisions of domestic law of the first-mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of article 7.

3. Except where the provisions of paragraph 1 of article 9, paragraph 7 of article 11, or paragraph 6 of article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, and debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be

deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

4. 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 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 the first-mentioned State are or may be subjected.

5. The provisions of this Article shall, notwithstanding the provisions of article 2, apply to taxes of every kind and description.

ARTICLE 25 : MUTUAL AGREEMENT PROCEDURE – 1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

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 a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any Agreement reached shall be implemented notwithstanding any time limits in the domestic law 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 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. 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.

ARTICLE 26 : EXCHANGE OF INFORMATION – 1. The competent authorities of the Contracting States shall exchange such information (including documents or certified copies of the documents) as is necessary for carrying out the provisions of this Convention or of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political sub-division or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by articles 1 and 2. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred in the first sentence. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. 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 and administrative practice of that or of the other Contracting State;
- (b) to supply information (including documents or certified copies of the documents) which is 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 27 : ASSISTANCE IN THE COLLECTION OF TAXES – 1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. The term revenue claim as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting State, or of their political sub-divisions or local authorities, insofar as the taxation thereunder is not contrary to this Convention or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authorities of the other contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in

that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall only be brought before the courts or administrative bodies of that State. Nothing in this Article shall be construed as creating or providing any right to such proceedings before any court or administrative body of the other Contracting State.

7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be

- (a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or
- (b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection.

The competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

8. In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to carry out measures which would be contrary to public policy (ordre public);

- (c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
- (d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

ARTICLE 28 : LIMITATION OF BENEFITS – 1. Except as otherwise provided in this, Article, a resident of a Contracting State who derives income from the other Contracting State shall be entitled to all the benefits of this Convention otherwise accorded to residents of a Contracting State only if such resident is a qualified person as defined in paragraph 2 and meets the other conditions of this Convention for the obtaining of such benefits.

2. A resident of a Contracting State is a qualified person for a fiscal year only if such resident is either:

- (a) an individual;
- (b) a qualified governmental entity;
- (c) a company, if
 - _(i) the principle class of its shares is listed on a recognized stock exchange specified in sub-paragraph (a) or (b) of paragraph 6 and is regularly traded on one or more recognized stock exchanges; or
 - (ii) at least 50 per cent of the aggregate vote and value of the shares in the company is owned directly or indirectly by five or fewer companies entitled to benefits under sub-division (i) of this sub-paragraph, provided that, in the case of indirect ownership, each intermediate owner is a resident of either Contracting State;
- (d) A charity or other tax-exempt entity, provided that, in the case of a pension trust or any other organization that is established exclusively to provide pension or other similar benefits, more than 50 per cent of the persons beneficiaries, members or participants are individuals resident in either Contracting State; or
- (e) a person other than an individual, if :

- (i) on at least half the days of the fiscal year persons that are qualified persons by reason of sub-paragraph (a), (b) or (d) or sub-division (c)(i) of this paragraph own, directly or indirectly, at least 50 per cent of the aggregate vote and value of the shares or other beneficial interests in the person; and
- (ii) less than 50 per cent of the persons gross income for the taxable year is paid or accrued, directly or indirectly, to persons who are not residents of either Contracting State in the form of payments that are deductible for purposes of the taxes covered by this Convention in the persons State of residence (but not including arms length payments in the ordinary course of business for serviced or tangible property and payments in respect of financial obligations to a bank, provided that where such a bank is not a resident of a Contracting State such payment is attributable to a permanent establishment of that bank located in one of the Contracting States).

3. (a) A resident of a Contracting State will be entitled to benefits of the Convention with respect of an item of income, derived from the other State, regardless of whether the resident is a qualified person, if the resident is actively carrying on business in the first-mentioned State (other than the business of making or managing investments for the residents own account, unless these activities are banking, insurance or securities activities carried on by a bank, insurance company or registered securities dealer), the income derived from the other Contracting State is derived in connection with, or is incidental to, that business and that resident satisfies the other conditions of this Convention for the obtaining of such benefits.

(b) If the resident or any of its associated enterprises carries on a business activity in the other Contracting State which gives rise to an item of income, sub-paragraph (a) shall apply to such item only if the business activity in the first-mentioned State is substantial in relation to business carried on in the other State. Whether a business activity is substantial for purposes of this paragraph will be determined based on all the facts and circumstances.

(c) In determining whether a person is actively carrying on business in a Contracting State under sub-paragraph (a), activities conducted by a partnership in which that person is a partner and activities conducted by persons connected to such person shall be deemed to be conducted by such person. A person shall be connected to another if one possesses at least 50 per cent of the beneficial interest in the other (or, in the case of a company, at least 50 per cent of the aggregate vote and value of the company's shares) or another person possesses, directly or indirectly, at least 50 per cent of the beneficial interest (or, in the case of a company, at least 50 per cent of the aggregate vote and value of the company's shares) in each person. In any case, a person shall be considered to be connected to another if, based on all the facts and circumstances, one has control of the other or both are under the control of the same person or persons.

4. Notwithstanding the preceding provisions of this Article, if a company that is a resident of a Contracting State, or a company that controls such a company, has outstanding a class of shares.

- (a) which is subject to terms or other arrangements which entitle its holders to a portion of the income of the company derived from the other Contracting State that is larger than the portion such holders would receive absent such terms of arrangements (the disproportionate part of the income); and
- (b) 50 per cent or more of the voting power and value of which is owned by persons who are not qualified persons.

The benefits of this Convention shall not apply to the disproportionate part of the income.

5. A resident of a Contracting State that is neither a qualified person pursuant to the provisions of paragraph 2 or entitled to benefits under paragraph 3 or 4 shall, nevertheless, be granted benefits of the Convention if the competent authority of that other Contracting State determines that the establishment, acquisition or maintenance of such person and the conduct of its operations did not have as one of its principal purposes the obtaining of benefits under the Convention.

6. For the purposes of this Article the term recognized stock exchange means:
- (a) in India, a stock exchange which is for the time being recognized by the Central Government under section 4 of the Securities Contracts (Regulation) Act, 1956;
 - (b) in Armenia, ARMDEX; and
 - (c) any other stock exchange which the competent authorities agree to recognise for the purposes of this article.

ARTICLE 29 : MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POST – Nothing in this Convention shall effect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

ARTICLE 30 : ENTRY INTO FORCE – 1. The Contracting States shall notify each other in writing, through diplomatic channels, of the completion of the procedures required by the respective laws for the entry into force of this Convention.

2. This Convention shall enter into force on the date of the later of the notifications referred to in paragraph 1 of this Article.

3. The provisions of this Convention shall have effect :

- (a) In India :
 - in respect of income derived in any fiscal year beginning on or after the first day of April next following the calendar year in which the Convention enters into force; and
- (b) in Armenia:
 - (i) in respect of taxes withheld at source – on income derived on or after the first day of January in the calendar year next following the year in which the Convention enters into force;
 - (ii) in respect of other taxes on income – for taxes chargeable for any tax year beginning on the first day of January in the calendar year next following the year in which the Convention enters into force.

ARTICLE 31 : TERMINATION – This Convention shall remain in force indefinitely until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year beginning after the expiration of five years from the date of entry into force of the Convention. In such event, the Convention shall cease to have effect :

(a) In India :

in respect of income derived in any fiscal year on or after the first day of April next following the calendar year in which the notice is given;

(b) in Armenia :

(i) in respect of taxes withheld at source – on income derived on or after the first day of January in the calendar year next following the year in which the notice of termination has been given;

(ii) in respect of other taxes on income – for taxes chargeable for any tax year beginning on the first day of January in the calendar year next following the year in which the notice of termination has been given.

Australia

Agreement for avoidance of double taxation

And

prevention of fiscal evasion with Australia

Whereas the annexed Agreement between the Government of the Republic of India and the Government of Australia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income has entered into force on the 30th day of December, 1991, on the exchange of notes notifying each other that the last of such things has been done as is necessary to give the said Agreement the force of law in India and in Australia, in accordance with paragraph (1) of Article 28 of the said Agreement ;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), and section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964), the Central Government hereby directs that all the provisions of the said Agreement shall be given effect to in the Union of India.

Notification : No. GSR 60(E), dated 22-1-1992.

ANNEXURE

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF AUSTRALIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of India and the Government of Australia, desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows :

ARTICLE I – *Personal scope* – This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE II – *Taxes covered* 1. The existing taxes to which this Agreement shall apply are :

(a) in Australia :

the income-tax, and the resource rent tax in respect of offshore projects relating to exploration for or exploitation of petroleum resources, imposed under the federal law of the Commonwealth of Australia;

(b) in India :

(i) the income-tax including any surcharge thereon; and

(ii) the surtax imposed on chargeable profits of companies.

2. This Agreement shall also apply to any identical or substantially similar taxes which are imposed under the federal law of the Commonwealth of Australia or the law of the Republic of India after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in the laws of their respective States relating to the taxes to which this Agreement applies.

ARTICLE III – *General definitions* – 1. For the purposes of this Agreement, unless the context otherwise requires :

(a) the term Australia, when used in a geographical sense, excludes all external territories other than :

(i) the Territory of Norfolk Island ;

(ii) the Territory of Christmas Island ;

(iii) the Territory of Cocos (Keeling) Islands ;

(iv) the Territory of Ashmore and Cartier Islands ;

(v) the Territory of Heard Island and McDonald Islands ; and

(vi) the Coral Sea Islands Territory,

and includes any area adjacent to the territorial limits of Australia [including the territories specified in sub-paragraphs (i) to (vi) inclusive] in respect of

which there is for the time being in force, consistently with international law, a law of Australia dealing with the exploitation of any of the natural resources of the seabed and subsoil of the continental shelf;

- (b) the term India means the territory of India and includes the territorial sea and the air space above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdictions, according to the Indian law and in accordance with international law;
- (c) the terms Contracting State, one of the Contracting States and other Contracting State mean, as the context requires, Australia or India, the Governments of which have concluded this Agreement;
- (d) the term person includes an individual, a company, any other body of persons and any other entity which is treated as a taxable unit for tax purposes;
- (e) the term company means any body corporate or any entity which is treated as a company or body corporate for tax purposes;
- (f) the terms enterprise of one of the Contracting States and enterprise of the other Contracting State mean an enterprise carried on by a resident of Australia or an enterprise carried on by a resident of India, as the context requires;
- (g) the term tax means Australian tax or Indian tax, as the context requires ;
- (h) the term :
 - (i) Australian tax means tax imposed by Australia; and
 - (ii) Indian tax means tax imposed by India,
 being tax to which this Agreement applies by virtue of Article 2, but neither term includes any amount which represents a penalty or fine or interest imposed under the law of either Contracting State relating to its tax;
- (i) the term competent authority means, in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner and, in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative; and
- (ii) the term year of income, in relation to Indian tax, means previous year as defined in the Income-tax Act, 1961.

2. In the application of this Agreement by a Contracting State, any term not defined in this Agreement shall, unless the context otherwise requires, have the meaning which it has under the laws of that State from time to time in force relating to the taxes to which this Agreement applies.

ARTICLE IV – *Residence* – 1. For the purposes of this Agreement, a person is a resident of one of the Contracting States if the person is a resident of that Contracting State for the purposes of its tax. However, a person is not a resident of a Contracting State for the purposes of this Agreement if the person is liable to tax in that State in respect only of income from sources in that State.

2. Where, by reason of the provisions of paragraph (1), an individual is a resident of both Contracting States, then the status of that person shall be determined in accordance with the following rules :

- (a) the person shall be deemed to be a resident solely of the Contracting State in which a permanent home is available to the person;
- (b) if a permanent home is available to the person in both Contracting States, or in neither of them, the person shall be deemed to be a resident solely of the Contracting State with which the persons personal and economic relations are closer (centre of vital interests).

For the purposes of this paragraph, an individuals citizenship of a Contracting State as well as that persons habitual abode shall be factors in determining the degree of the persons personal and economic relations with that Contracting State.

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 solely of the Contracting State in which its place of effective management is situated.

ARTICLE V – *Permanent establishment* – 1. For the purposes of this Agreement, the term permanent establishment means a fixed place of business through which the business of an 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 mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) a warehouse in relation to a person providing storage facilities for others;
- (h) a farm, plantation or other place where agricultural, pastoral, forestry or plantation activities are carried on;
- (i) premises used as a sales outlet or for receiving or soliciting orders;
- (j) an installation or structure, or plant or equipment, used for the exploration for or exploitation of natural resources;
- (k) a building site or construction, installation or assembly project, or supervisory activities in connection with such a site or project, where that site or project exists or those activities are carried on (whether separately or together with other sites, projects or activities) for more than 6 months.

3. An enterprise shall be deemed to have a permanent establishment in one of the Contracting States and to carry on business through that permanent establishment if :

- (a) substantial equipment is being used in that State by, for or under contract with the enterprise;
- (b) it carries on activities in that State in connection with the exploration for or exploitation of natural resources in that State; or
- (c) it furnishes services, including managerial services and those mentioned in sub-paragraphs (3)(h) to (k) of Article 12 but not those services in respect of which payments or credits that are royalties as defined in Article 12 are made, within one of the Contracting States through employees or other personnel, but only if those services are furnished within that State :
 - (i) for a period or periods aggregating to more than 90 days within any 12-month period; or

(ii) for another enterprise, if both enterprises are within either of the relationships described in sub-paragraphs (1)(a) and (b) of Article 9.

4. An enterprise shall not be deemed to have a permanent establishment merely by reason of :

- (a) the use of facilities solely for the purpose 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 of collecting information, for the enterprise; or
- (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.

However, the preceding provisions of this paragraph shall not apply where an enterprise of one of the Contracting States maintains in the other Contracting State a fixed place of business for any purpose other than those specified in this paragraph.

5. A person acting in one of the Contracting States on behalf of an enterprise of the other Contracting State – other than an agent of an independent status to whom paragraph (6) applies – shall be deemed to be a permanent establishment of that enterprise in the first-mentioned State if :

- (a) the person has, and habitually exercises in that State, an authority to conclude contracts on behalf of the enterprise, unless the persons activities are limited to the purchase of goods or merchandise for the enterprise;
- (b) the person has no such authority, but habitually maintains in that State a stock of goods or merchandise from which the person regularly delivers goods or merchandise on behalf of the enterprise;

- (c) the person habitually secures orders in that State, wholly or principally for the enterprise itself or for the enterprise and other enterprises controlling, or controlled by or subject to the same common control as, that enterprise; or
- (d) in so acting, the person manufactures or processes in that State for the enterprise goods or merchandise belonging to the enterprise.

6. 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 in that other State through a broker, a general commission agent or any other agent of an independent status, where that person is acting in the ordinary course of the persons business as such a broker or agent. However, when the activities of such a broker or agent are carried on wholly or principally on behalf of that enterprise itself or on behalf of that enterprise and other enterprises controlling, or controlled by or subject to the same common control as, that enterprise, the person will not be considered a broker or agent of an independent status within the meaning of this paragraph.

7. The fact that a company which is a resident of one of the Contracting States 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 otherwise), shall not of itself make either company a permanent establishment of the other.

8. The principles set forth in the preceding paragraphs of this Article shall be applied in determining for the purposes of paragraph (5) of Article 11 and paragraph (5) of Article 12 of this Agreement whether there is a permanent establishment outside both Contracting States, and whether an enterprise, not being an enterprise of one of the Contracting States, has a permanent establishment in one of the Contracting States.

ARTICLE VI – *Income from real property (immovable property)* – 1. Income from real property may be taxed in the Contracting State in which that property is situated.

2. For the purposes of this Article, the term real property:

(a) in the case of Australia, has the meaning which it has under the laws of Australia and shall include :

- (i) a lease of land and any other interest in or over land, whether improved or not; and
- (ii) a right to receive variable or fixed payments either as consideration for the working of or the right to work or explore for, or in respect of the exploitation of, mineral or other deposits, oil or gas wells, quarries or other places of extraction or exploitation of natural resources; and

(b) in the case of India, means such property which, according to the laws of India, is immovable property and shall include :

- (i) property accessory to immovable property;
- (ii) rights to which the provisions of the general law respecting landed property apply; and
- (iii) usufruct of immovable property and rights to receive variable or fixed payments either as consideration for the working of or the right to work or explore, for, or in respect of exploitation of, mineral or other deposits, oil or gas wells, quarries or other places of extraction or exploitation of natural resources.

3. A lease of land, any other interest in or over land and any rights or property referred to in any of the sub-paragraphs of paragraph (2) shall be regarded as situated where the land, mineral or other deposits, oil or gas wells, quarries, natural resources or property, as the case may be, are situated or where the exploration may take place.

4. The provisions of paragraph (1) shall apply to income-derived from the direct use, letting or use in any other form of real property.

5. The provisions of paragraphs (1), (3) and (4) shall also apply to the income from real property of an enterprise and to income from real property used for the performance of independent personal services.

ARTICLE VII – *Business profits* – 1. The profits of an enterprise of one of the Contracting States 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, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to :

- (a) that permanent establishment; or
- (b) sales within that other Contracting State of goods or merchandise of the same or a similar kind as those sold, or other business activities of the same or a similar kind as those carried on, through that permanent establishment.

2. Subject to the provisions of paragraph (3), where an enterprise of one of the Contracting States 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 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 or with other enterprises with which it deals.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions, in accordance with and subject to the limitations of the law relating to tax in the Contracting State in which the permanent establishment is situated, expenses of the enterprise, being expenses which are incurred for the purposes of the business of the permanent establishment (including executive and general administrative expenses so incurred), whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.

4. 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.

5. Where the correct amount of profits attributable to a permanent establishment is incapable of determination by the taxation authority of one of the Contracting States or the ascertaining thereof by that authority presents exceptional difficulties, nothing in this Article shall affect the application of any

law of that State relating to the determination of the tax liability of a person, provided that the law shall be applied, so far as the information available to that authority permits, in accordance with the principles of this Article.

6. For the purposes of the preceding paragraphs of this Article, 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 Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

8. Nothing in this Article shall affect the operation of any law of a Contracting State relating to tax imposed on profits from insurance with non-residents provided that if the relevant law in force in either Contracting State at the date of signature of this Agreement is varied (otherwise than in minor respects so as not to affect its general character) the Contracting States shall consult with each other with a view to agreeing to any amendment of this paragraph that may be appropriate.

9. Where :

- (a) a resident of one of the Contracting States is beneficially entitled, whether directly or through one or more interposed trust estates, to a share of the business profits of an enterprise carried on in the other Contracting State by the trustee of a trust estate other than a trust estate which is treated in that other State as a company for tax purposes; and
- (b) in relation to that enterprise, that trustee would, in accordance with the principles of Article 5, have a permanent establishment in that other Contracting State,

the enterprise carried on by the trustee shall be deemed to be a business carried on in that other Contracting State by that resident through a permanent establishment situated therein and that share of business profits shall be attributed to that permanent establishment.

ARTICLE VIII – *Ships and aircraft* – 1. Profits from the operation of ships or aircraft, including interest on funds connected with that operation, derived by a resident of one of the Contracting States shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph (1), such profits may be taxed in the other Contracting State where they are profits from the operations of ships or aircraft confined solely to places in that other State.

3. The provisions of paragraphs (1) and (2) shall apply in relation to the share of the profits from the operation of ships or aircraft derived by a resident of one of the Contracting States through participation in a pool service, in a joint transport operating organisation or in an international operating agency.

4. For the purposes of this Article, profits derived from the carriage by ships or aircraft of passengers, livestock, mail, goods or merchandise shipped in a Contracting State for discharge at another place in that State shall be treated as profits from operations of ships or aircraft confined solely to places in that State.

ARTICLE IX – *Associated enterprises* – 1. 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 in either case conditions operate between the two enterprises in their commercial or financial relations which differ from those which might be expected to operate between independent enterprises dealing wholly independently with one another, then any profits which, but for those conditions, might have been expected to accrue 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.

2. Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person, including determinations in cases where the information available to the taxation authority of that State is inadequate to determine the income to be attributed to an enterprise, provided that that law shall be applied, so far as it is practicable to do so, consistently with the principles of this Article.

3. Where profits on which an enterprise of one of the Contracting States has been charged to tax in that State are also included, by virtue of paragraph (1) or (2), in the profits of an enterprise of the other Contracting State and charged to tax in that other State, and the profits so included are profits which might have been expected to have accrued to that enterprise of the other State if the conditions operative between the enterprises had been those which might have been expected to have operated between independent enterprises dealing wholly independently with one another, then the first-mentioned State shall make an appropriate adjustment to the amount of tax charged on those profits in the first-mentioned State. In determining such an adjustment, due regard shall be had to the other provisions of this Agreement and for this purpose the competent authorities of the Contracting States shall, if necessary, consult each other.

ARTICLE X – *Dividends* – 1. Dividends paid by a company which is a resident of one of the Contracting States for the purposes of its tax, being dividends to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

2. Such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident for the purposes of its tax, and according to the law of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

3. The term dividends in this Article means income from shares and other income which is subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the company making the distribution is a resident for the purposes of its tax.

4. The provisions of paragraphs (1) and (2) shall not apply if the person beneficially entitled to the dividends, being a resident of one of the Contracting States, 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 any such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Dividends paid by a company which is a resident of one of the Contracting States, being dividends to which a person who is not a resident of the other Contracting State is beneficially entitled, shall be exempt from tax in that other State except insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or fixed base situated in that other State:

Provided that this paragraph shall not apply in relation to dividends paid by any company which is a resident of Australia for the purposes of Australian tax and which is also a resident of India for the purposes of Indian tax.

ARTICLE XI – *Interest* – 1. Interest arising in one of the Contracting States, being interest to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

2. Such interest may also be taxed in the Contracting State in which it arises, and according to the law of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

3. The term interest in this Article includes interest from Government securities or from bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and interest from any other form of indebtedness as well as all other income assimilated to income from money lent by the law, relating to tax, of the Contracting State in which the income arises, but does not include interest referred to in paragraph (1) of Article 8.

4. The provisions of paragraphs (1) and (2) shall not apply if the person beneficiary entitled to the interest, being a resident of one of the Contracting States, carries on business in the other Contracting State, in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the indebtedness in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Interest shall be deemed to arise in a Contracting State when the payer is that State itself or a political sub-division or local authority of that State or a person who is a resident of that State for the purposes of its tax. Where, however, the person paying the interest, whether the person is a resident of one of the Contracting States or not, has in one of the Contracting States or outside both Contracting States a permanent establishment or 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 such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, owing to a special relationship between the payer and the person beneficially entitled to the interest, or between both of them and some other person, the amount of the interest paid, having regard to the indebtedness for which it is paid, exceeds the amount which might have been expected to have been agreed upon by the payer and the person so entitled in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the amount of the interest paid shall remain taxable according to the law, relating to tax, of each Contracting State, but subject to the other provisions of this Agreement.

ARTICLE XII – *Royalties* – 1. Royalties arising in one of the Contracting States, being royalties to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

2. Such royalties may also be taxed in the Contracting State in which they arise, and according to the law of that State, but the tax so charged shall not exceed:

(a) in the case of :

- (i) royalties referred to in sub-paragraph (3)(b) ;
- (ii) payments or credits for services referred to in sub-paragraph (3)(d), subject to sub-paragraphs (3)(h) to (j), that are ancillary and subsidiary to the application or enjoyment of equipment for which payments or credits are made under sub-paragraph (3)(b); or
- (iii) royalties referred to in sub-paragraph (3)(f) that relate to equipment mentioned in sub-paragraph (3)(b) ;

10 per cent of the gross amount of the royalties; and

(b) in the case of other royalties :

- (i) during the first 5 years of income for which this Agreement has effect :
 - (a) where the payer is the Government or a political sub-division of that State or a public sector company: 15 per cent of the gross amount of the royalties; and
 - (b) in all other cases: 20 per cent of the gross amount of the royalties; and
- (ii) during all subsequent years of income: 15 per cent of the gross amount of the royalties.

3. The term royalties in this Article means payments or credits, whether periodical or not, and however described or computed, to the extent to which they are made as consideration for :

- (a) the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trade mark or other like property or right;
- (b) the use of, or the right to use, any industrial, commercial or scientific equipment;
- (c) the supply of scientific, technical, industrial or commercial knowledge or information;
- (d) the rendering of any technical or consultancy services (including those of technical or other personnel) which are ancillary and subsidiary to the application or enjoyment of any such property or right as is mentioned in sub-paragraph (a), or any such equipment as is mentioned in sub-

paragraph (b) or any such knowledge or information as is mentioned in sub-paragraph (c);

(e) the use of, or the right to use :

(i) motion picture films;

(ii) films or video tapes for use in connection with television; or

(iii) tapes for use in connection with radio broadcasting;

(f) total or partial forbearance in respect of the use or supply of any property or right referred to in sub-paragraphs (a) to (e);

(g) the rendering of any services (including those of technical or other personnel), which make available technical knowledge, experience, skill, know-how or processes or consist of the development and transfer of a technical plan or design;

but that term does not include payments or credits relating to services mentioned in sub-paragraphs (d) and (g) that are made;

(h) for services that are ancillary and subsidiary, and inextricably and essentially linked, to a sale of property;

(i) for services that are ancillary and subsidiary to the rental of ships, aircraft, containers or other equipment used in connection with the operation of ships or aircraft in international traffic;

(j) for teaching in or by an educational institution;

(k) for services for the personal use of the individual or individuals making the payments or credits; or

(l) to an employee of the person making the payments or credits or to any individual or firm of individuals (other than a company) for professional services as defined in Article 14.

4. The provisions of paragraphs (1) and (2) shall not apply if the person beneficially entitled to the royalties, being a resident of one of the Contracting States, 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 property, right or services in respect of which the royalties are paid or credited are effectively connected with such permanent establishment or fixed

base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself or a political sub-division or local authority of that State or a person who is a resident of that State for the purposes of its tax. Where, however, the person paying the royalties, whether the person is a resident of one of the Contracting States or not, has in one of the Contracting States or outside both Contracting States a permanent establishment or fixed base in connection with which the liability to pay the royalties was incurred, and the royalties are borne by the permanent establishment or fixed base, then the royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, owing to a special relationship between the payer and the person beneficially entitled to the royalties, or between both of them, and some other person, the amount of the royalties paid or credited, having regard to what they are paid or credited for, exceeds the amount which might have been expected to have been agreed upon by the payer and the person so entitled in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the amount of the royalties paid or credited shall remain taxable according to the law, relating to tax, of each Contracting State, but subject to the other provisions of this Agreement.

ARTICLE XIII – *Alienation of property* 1. Income or gains derived by a resident of one of the Contracting States from the alienation of real property referred to in Article 6 and, as provided in that Article, situated in the other Contracting State may be taxed in that other State.

2. Income or gains derived from the alienation of property, other than real property referred to in Article 6, that forms part of the business property of a permanent establishment which an enterprise of one of the Contracting States has in the other Contracting State or pertains to a fixed base available to a resident of the first-mentioned State in that other State for the purpose of performing independent personal services, including income or gains from the

alienation of such a permanent establishment (alone or with the whole enterprise) or of such a fixed base, may be taxed in that other State.

3. Income or gains derived from the alienation of ships or aircraft operated in international traffic, or of property other than real property referred to in Article 6 pertaining to the operation of those ships or aircraft, shall be taxable only in the Contracting State of which the enterprise which operated those ships or aircraft is a resident.

4. Income or gains derived from the alienation of shares or comparable interests in a company, the assets of which consist wholly or principally of real property referred to in Article 6 and, as provided in that Article, situated in one of the Contracting States, may be taxed in that State.

5. Income or gains derived from the alienation of shares or comparable interests in a company, other than those referred to in paragraph (4), may be taxed in the Contracting State of which the company is a resident.

6. Nothing in this Agreement affects the application of a law of a Contracting State relating to the taxation of gains of a capital nature derived from the alienation of property other than that to which any of paragraphs (1), (2), (3), (4) and (5) apply.

ARTICLE XIV – *Independent personal services* – 1. Income derived by an individual or a firm of individuals (other than a company) who is a resident of one of the Contracting States in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless :

- (a) the individual or firm has a fixed base regularly available to the individual or firm in the other Contracting State for the purpose of performing the individuals or the firms activities, in which case the income may be taxed in that other State but only so much of it as is attributable to activities exercised from that fixed base; or
- (b) the stay by the individual or, in the case of a firm, by one or more members of the firm (alone or together) in the other Contracting State is for a period or periods amounting to or exceeding 183 days in a year of income, in

which case only so much of the income as is derived from the activities of the individual, that member or those members, as the case may be, in that other State may be taxed in that other State.

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

ARTICLE XV – *Dependent personal services* – 1. Subject to the provisions of Articles 16, 17, 18, 19 and 20, salaries, wages and other similar remuneration derived by an individual who is a resident of one of the Contracting States in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived from that exercise may be taxed in that other State.

2. Notwithstanding the provisions of paragraph (1), remuneration derived by an individual who is a resident of one of the Contracting States in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if :

- (a) the recipient is present in that other State for a period or periods not exceeding in the aggregate 183 days in a year of income of that other State;
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of that other State; and
- (c) the remuneration is not deductible in determining taxable profits of a permanent establishment or a fixed base which the employer has in that other State.

3. Notwithstanding, the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by a resident of one of the Contracting States may be taxed in that State.

ARTICLE XVI – *Directors fees* – Directors fees and similar payments derived by a resident of one of the Contracting States as a member of the Board of Directors of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE XVII – *Entertainers* – 1. Notwithstanding the provisions of Articles 14 and 15, income derived by residents of one of the Contracting States as entertainers, such as theatre, motion picture, radio or television artists, musicians and athletes, from their personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of the personal activities of an entertainer as such accrues not to that entertainer but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer are exercised.

3. Notwithstanding the provisions of paragraph (1), income derived by an entertainer who is a resident of one of the Contracting States, from the entertainers personal activities as such exercised in the other Contracting State, shall be taxable only in the first-mentioned Contracting State if the activities in the other Contracting State are supported wholly or substantially from the public funds of the first-mentioned Contracting State, including any of its political sub-divisions or local authorities.

4. Notwithstanding the provisions of paragraph (2) and Articles 7, 14 and 15, where income in respect of personal activities exercised by an entertainer in the entertainers capacity as such in one of the Contracting States accrues not to the entertainer but to another person, that income shall be taxable only in the other Contracting State if that other person is supported wholly or substantially from the public funds of that other State, including any of its political sub-divisions or local authorities.

ARTICLE XVIII – *Pensions and annuities* – 1. Pensions (not including pensions referred to in Article 19) and annuities paid to a resident of one of the Contracting States shall be taxable only in that 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 moneys worth.

ARTICLE XIX – *Government service* – 1. Remuneration, other than a pension or annuity, paid by one of the Contracting States or political sub-division or local authority of that State to any individual in respect of services rendered in the discharge of governmental functions shall be taxable only in that State. However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the recipient is a resident of that other State who :

- (a) is a citizen of that State; or
- (b) did not become a resident of that State solely for the purpose of performing the services.

2. Any pension paid by, or out of funds created by, one of the Contracting States or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State. However, such pension shall be taxable only in other Contracting State if the recipient is resident and a citizen of that other State.

3. The provisions of Articles 15, 16 and 18 shall apply, as appropriate in the circumstances, to remuneration and pensions in respect of services rendered in connection with a business carried on by one of the Contracting States or a political sub-division or local authority thereof.

ARTICLE XX – *Professors and teachers* – 1. Where a professor or teacher who is a resident of one of the Contracting States visits the other Contracting State for a period not exceeding two years for the purpose of teaching or carrying out advanced study or research at a University, college, school or other educational institution, any remuneration that person receives for such teaching, advanced study or research shall be exempt from tax in that other State to the extent to which such remuneration is, or upon the application of this Article will be, subject to tax in the first-mentioned State.

2. This Article shall not apply to remuneration which a professor or teacher receives for conducting research if the research is undertaken primarily for the private benefit of a specific person or persons.

ARTICLE XXI – *Students and trainees* – Where a student or trainee, who is a resident of one of the Contracting States or who was a resident of that State immediately before visiting the other Contracting State and who is temporarily present in that other State solely for the purpose of the students or trainees education or training, receives payments from sources outside that other State for the purpose of the students or trainees maintenance, education or training, those payments shall be exempt from tax in that other State.

ARTICLE XXII – *Income not expressly mentioned* – 1. Items of income of a resident of one of the Contracting States which are not expressly mentioned in the foregoing Articles of this Agreement shall be taxable only in that State.

2. However, any such income derived by a resident of one of the Contracting States from sources in the other Contracting State may also be taxed in that other State.

3. The provisions of paragraph (1) shall not apply to income derived by a resident of one of the Contracting States where that income is effectively connected with a permanent establishment or fixed base situated in the other Contracting State. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

ARTICLE XXIII – *Source of income* – 1. Income, profits or gains derived by a resident of one of the Contracting States which, under any one or more of Articles 6 to 8, Articles 10 to 20 and Article 22 may be taxed in the other Contracting State, shall for the purpose of the law of that other State relating to its tax, be deemed to be income from sources in that other State.

2. Income, profits or gains derived by a resident of one of the Contracting States which, under any one or more of Articles 6 to 8, Articles 10 to 20 and Article 22 may be taxed in the other Contracting State, shall for the purposes of

Article 24 and of the law of the first-mentioned State relating to its tax, be deemed to be income from sources in that other State.

ARTICLE XXIV – *Methods of elimination of double taxation* – 1. (a) Subject to the provisions of the law of Australia from time to time in force which relate to the allowance of a credit against Australian tax or tax paid in a country outside Australia (which shall not affect the general principle hereof), Indian tax paid under the law of India and in accordance with this Agreement, whether directly or by deduction, in respect of income derived by a person who is a resident of Australia from sources in India shall be allowed as a credit against Australian tax payable in respect of that income.

(b) Where a company which is a resident of India and is not a resident of Australia for the purposes of Australian tax pays a dividend to a company which is a resident of Australia and which controls directly or indirectly not less than 10 per cent of the voting power of the first-mentioned company, the credit referred to in sub-paragraph (a) shall include the Indian tax paid by that first-mentioned company in respect of that portion of its profits out of which the dividend is paid.

2. In paragraph (1), Indian tax paid shall include :

- (a) subject to sub-paragraph (b) an amount equivalent to the amount of any Indian tax foregone which, under the law of India relating to Indian tax and in accordance with this Agreement, would have been payable as Indian tax on income but for an exemption from, or reduction of, Indian tax on that income in accordance with :
 - (i) section 10(4), 10(15)(iv), 10A, 10B, 80HHC, 80HHD or 80-I of the Income-tax Act, 1961, insofar as those provisions were in force on, and have not been modified since, the date of signature of this Agreement, or have been modified only in minor respects so as not to affect their general character; or
 - (ii) any other provision which may subsequently be made granting an exemption from or reduction of Indian tax which the Treasurer of Australia and the Ministry of Finance of India agree from time to time in letters exchanged for this purpose to be of a substantially similar

character, if that provision has not been modified thereafter or has been modified only in minor respects so as not to affect its general character; and

(b) in the case of interest derived by a resident of Australia which is exempted from Indian tax under the provisions referred to in sub-paragraph (a), the amount which would have been payable as Indian tax if the interest had not been so exempt and if the tax referred to in paragraph (2) of Article 11 did not exceed 10 per cent of the gross amount of the interest.

3. Paragraph (2) shall apply only in relation to income derived in any of the first 10 years of income in relation to which this Agreement has effect under sub-paragraph (1)(a)(ii) of Article 28 or in any later year of income that may be agreed by the Contracting States in letters exchanged for this purpose.

4. In the case of India, double taxation shall be avoided as follows :

- (a) the amount of Australian tax paid under the laws of Australia and in accordance with the provisions of this Agreement, whether directly or by deduction, by a resident of India in respect of income from sources within Australia which has been subjected to tax both in India and Australia shall be allowed as a credit against the Indian tax payable in respect of such income but in an amount not exceeding that proportion of Indian tax which such income bears to the entire income chargeable to Indian tax; and
- (b) for the purposes of the credit referred to in sub-paragraph (a) above, where the resident of India is a company by which surtax is payable, the credit to be allowed against Indian tax shall be allowed in the first instance against the income-tax payable by the company in India and, as to the balance, if any, against the surtax payable by it in India.

5. Where a resident of one of the Contracting States derives income which, in accordance with the provisions of this Agreement shall be taxable only in the other Contracting States, the first-mentioned State may take that income into account in calculating the amount of its tax payable on the remaining income of that resident.

ARTICLE XXV – *Mutual agreement procedure* – 1. Where a person who is a resident of one of the Contracting States considers that the actions of the taxation authority of one or both of the Contracting States result or will result for the person in taxation not in accordance with this Agreement, the person may, notwithstanding the remedies provided by the national laws of those States, present a case to the competent authority of the Contracting State of which the person is a resident. The case must be presented within three years from the first notification of the action giving rise to taxation not in accordance with this Agreement.

2. The competent authority shall endeavour, if the claim appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with this Agreement. The solution so 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 jointly endeavour to resolve any difficulties or doubts arising as to the application of this Agreement.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of giving effect to the provisions of this Agreement.

ARTICLE XXVI – *Exchange of information* – 1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Agreement or of the domestic laws of the Contracting States concerning the taxes to which this Agreement applies insofar as the taxation thereunder is not contrary to this Agreement, or for the prevention of evasion or avoidance of, or fraud in relation to, such taxes. The exchange of information is not restricted by Article 1. Any information received by the competent authority of a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including Courts and administrative bodies) concerned with the assessment or collection of,

enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes to which this Agreement applies and shall be used only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. The competent authorities may, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchange of information shall be made. 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 may agree from time to time in the list of the 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 the competent authority of a Contracting State 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 information which is 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 to supply information the disclosure of which would be contrary to public policy.

ARTICLE XXVII – *Diplomatic and consular officials* – Nothing in this Agreement shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special international agreements.

ARTICLE XXVIII – *Entry into force* – 1. This Agreement shall enter into force on the date on which the Contracting States exchange notes through the diplomatic channel notifying each other that the last of such things has been done as is necessary to give this Agreement the force of law in Australia and in India, as the case may be, and thereupon this Agreement shall have effect :

- (a) in Australia:

- (i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after 1 July in the calendar year next following that in which the Agreement enters into force; and
 - (ii) in respect of other Australian tax, in relation to income, profits or gains of any year of income beginning on or after 1 July in the calendar year next following that in which the Agreement enters into force;
- (b) in India, in respect of income, profits or gains arising in any year of income beginning on or after 1 April in the calendar year next following that in which the Agreement enters into force.

2. The Agreement made between the Government of Australia and the Government of the Republic of India for the Avoidance of Double Taxation of Income derived from International Air Transport signed at Canberra on 31 May, 1983 (in this Article called the 1983 Agreement) shall cease to have effect with respect to taxes to which this Agreement applies when the provisions of this Agreement become effective in accordance with paragraph (1).

3. The 1983 Agreement shall terminate on the expiration of the last date on which it has effect in accordance with the foregoing provisions of this Article.

ARTICLE XXIX – *Termination* – This Agreement shall continue in effect indefinitely, but either of the Contracting States may, on or before 30 June in any calendar year beginning after the expiration of 5 years from the date of its entry into force, give to the other Contracting State through the diplomatic channel written notice of termination and, in that event, this Agreement shall cease to be effective :

(a) in Australia :

- (i) in respect of withholding tax on income, that is, derived by a non-resident, in relation to income derived on or after 1 July in the calendar year next following that in which the notice of termination is given; and
 - (ii) in respect of other Australian tax, in relation to income, profits or gains of any year of income beginning on or after 1 July in the calendar year next following that in which the notice of termination is given;

(b) in India, in respect of income, profits or gains arising in any year of income beginning on or after 1 April in the calendar year next following that in which the notice of termination is given.

Austria

Agreement for avoidance of double taxation and prevention of fiscal evasion with Austria

Whereas the annexed Convention between the Government of the Republic of India and the Government of the Republic of Austria for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, shall enter into force on 5th September, 2001, thirty days after the exchange of Instrument of Ratification as required by paragraph 2 of Article 28 of the said Convention;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in the Union of India.

Notification : No. GSR 682(E), dated 20-9-2001.

ANNEXURE

CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE REPUBLIC OF AUSTRIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of India and the Government of the Republic of Austria, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows :

ARTICLE 1 : *Persons Covered* – This Convention shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2 : *Taxes Covered* – 1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State or of its political sub-divisions or local authorities irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which the Convention shall apply are in particular :

(a) in Austria :

(i) the income-tax (die Einkommensteuer);

(ii) the corporation tax (die Körperschaftsteuer);

(hereinafter referred to as Austrian taxes)

(b) in India :

the income-tax, including any surcharge thereon imposed under the Income-tax Act, 1961 (43 of 1961);

(hereinafter referred to as Indian tax)

4. The Convention shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

ARTICLE 3 : *General Definitions* – 1. For the purposes of this Convention, unless the context otherwise requires :

(a) the term Austria means the Republic of Austria;

(b) the term India means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law, including the U.N. Convention on the law of the sea;

- (c) the terms a Contracting State and the other Contracting State mean Austria or India as the context requires;
- (d) the term fiscal year means :
 - (i) in relation of Austrian tax the calendar year;
 - (ii) in relation to Indian tax the financial year beginning on the first day of April;
- (e) the term tax means Austrian tax or Indian tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty imposed relating to those taxes;
- (f) the term person includes an individual, a company and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States;
- (g) the term company means any body corporate or any entity which is treated as a company or body corporate under the taxation laws in force in the respective Contracting States;
- (h) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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 competent authority means,
 - (i) in Austria: the Federal Minister of Finance or his authorised representative;
 - (ii) in India: the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representatives;
- (j) the term national means :
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
- (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 the Convention by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

ARTICLE 4 : *Resident* – 1. For the purposes of this Convention, the term resident of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political sub-division or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

2. Whereby reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his status shall be determined as follows :

- (a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall endeavour to settle the question by mutual agreement.

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 only of the State in which its place of effective management is situated. If the State in which its place of effective management is situated

cannot be determined, then the competent authorities of the Contracting States shall settle the question by mutual agreement.

ARTICLE 5 : *Permanent Establishment* – 1. For the purposes of this Convention, the term permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) a sales outlet;
- (h) a warehouse in relation to a person providing storage facilities for others;
- (i) a building site or construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or activities (for the same or connected project, site or activities) continue for a period of more than six months.

3. An enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it provides services or facilities in connection with, or supplies plant and machinery on hire used for or to be used in the prospecting for, or extraction or exploitation of mineral oils in that State.

4. Notwithstanding the preceding provisions of this Article, the term permanent establishment shall be deemed not to include :

- (a) the use of facilities solely for the purpose of storage, display or delivery 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, display or delivery;

- (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 of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 6 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 such a person :

- (a) has and habitually exercises, in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
- (b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise; or
- (c) habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise itself or for the enterprise and other enterprises controlling, controlled by, or subject to the same control, as that enterprise.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status,

provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise itself or on behalf of that enterprise and other enterprises controlling, controlled by, or subject to the same common control, as that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

7. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 6 applies.

8. 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 otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6 : *Income from Immovable Property* – 1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded 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, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, 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.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes 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, and according to the domestic law of the Contracting State in which the permanent establishment is situated. However, no such deduction shall be allowed in respect of amounts, if any paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent

establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges, for specific services performed or for management, or, except in the case of a banking enterprise by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. 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.

5. For the purposes 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.

6. 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 : *Shipping and Air Transport* – 1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. Profits derived by an enterprise referred to in paragraph 1 which is a resident of a Contracting State from the use, maintenance or rental of containers (including trailers and other equipment for the transport of containers) used for the transport of goods or merchandise in international traffic shall be taxable only in that Contracting State unless the containers are used solely within the other Contracting State.

3. For the purposes of this Article, interest on funds connected with the operation of ships or aircraft in international traffic shall be regarded as profits

derived from the operation of such ships or aircraft, and the provisions of Article 11 shall not apply in relation to such interest.

4. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9 : *Associated Enterprises* – 1. 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.

2. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall, if necessary, consult each other.

ARTICLE 10 : *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 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 laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

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 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 14, 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 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 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 State, nor subject the companys undistributed profits to a tax on the companys undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11 : *Interest* – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2,

(a) interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by :

(i) the State, a political sub-division or a local authority of the other Contracting State; or

(ii) the Central Bank of the other Contracting State; or

(iii) in the case of India also the Export-Import Bank of India; or

(iv) in the case of Austria also the Oesterreichische Kontrollbank AG;

(b) interest arising in a Contracting State shall be exempt from tax in that Contracting State to the extent approved by the State if it is derived and beneficially owned by any person [other than a person referred to in sub-paragraph (a)] who is a resident of the other Contracting State provided that the transaction giving rise to the debt-claim has been approved in this regard by the first-mentioned Contracting State.

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 debtors 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 and 2 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 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 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, 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 indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the 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 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 the other provisions of this Convention.

ARTICLE 12 : *Royalties and fees for technical services* – 1. Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties or fees for technical services may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties and fees for technical services is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties and fees for technical services.

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 including 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.

4. The term fees for technical services as used in this Article means payments of any amount to any person other than payments to an employee of a person making payments, in consideration for the services of a managerial, technical or consultancy nature, including the provision of services of technical or other personnel.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services 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 or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Royalties or fees for technical services shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties or fees for technical services, 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 or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or, fixed base, then such royalties or fees for technical services shall be deemed to arise in the 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 royalties or fees for technical services 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 the other provisions of this Convention.

ARTICLE 13 : *Capital Gains* – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in their Contracting State of which the alienator is a resident.

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from the alienation of shares other than those mentioned in paragraph 4 in a company which is a resident of a Contracting State may be taxed in that State.

6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5, shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14 : *Independent Personal Services* – 1. Income derived by an individual who is a resident of a Contracting State from the performance of professional services or other independent activities of a similar character shall

be taxable only in that State except in the following circumstances when such income may also be taxed in the other Contracting State :

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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 State; or
- (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any period of twelve months; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

ARTICLE 15 : *Dependent personal services* – 1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any period of twelve months, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft

operated in international traffic, by an enterprise of a Contracting State may be taxed in that State.

ARTICLE 16 : *Directors fees* – Directors fees and other 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 may be taxed in that other State.

ARTICLE 17 : *Entertainers and sportspersons* – 1. Notwithstanding the provisions of Articles 7, 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. Notwithstanding the provisions of paragraph 1, income derived by an entertainer or a sportsperson who is a resident of a Contracting State from personal activities as such exercised in the other Contracting State, shall be taxable only in the first-mentioned Contracting State, if the activities in the other Contracting State are supported wholly or substantially from the public funds of the first-mentioned Contracting State, including any of its political sub-divisions or local authorities.

4. Notwithstanding the provisions of paragraph 2 and Articles 7, 14 and 15, where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such in a Contracting State accrues not to the entertainer or sportsperson but to another person, that income shall be taxable only in the other Contracting State, if that other person is supported wholly or substantially from the public funds of that other State, including any of its political sub-divisions or local authorities.

ARTICLE 18 : *Pensions and annuities* – 1. Any pension, other than a pension referred to in Article 19, or any annuity derived by a resident of a Contracting State from sources within the other Contracting State shall be taxable only in the first-mentioned Contracting State.

2. The term pension means a periodic payment made in consideration of past services or by way of compensation for injuries received in the course of performance of services.

3. 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 moneys worth.

ARTICLE 19 : *Government service* – 1. (a) Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who :

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. The provisions of paragraph 1 of this Article shall also apply to remuneration derived by members of permanent delegations of foreign commerce of a Contracting State in the other Contracting State.

3. (a) Any pension paid by, or out of funds created by, a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

4. The provisions of Articles 15, 16, 17 and 18 shall apply to remuneration and pensions, in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

ARTICLE 20 : *Students* – 1. A student or business apprentice who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State and who is present in that other State solely for the purpose of his education or training shall be exempt from tax in that other State on :

- (a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training; and
- (b) remuneration which he derives from an employment which he exercises in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in any period of twelve months if the employment is directly related to his studies or apprenticeship.

2. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article, for more that five consecutive years from the date of his first arrival in that other State.

ARTICLE 21 : *Professors, Teachers and Research Scholars* – 1. A professor or a teacher who is or was a resident of one of the Contracting State immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college, school or other approved institution in that other Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival in that other 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 paragraph 1 approved institution means an institution which has been approved in this regard by the competent authority of the concerned Contracting State.

ARTICLE 22 : *Other Income* – 1. Subject to the provisions of paragraph 2, items of income of a resident of a Contracting State, wherever arising, which are not expressly dealt within the foregoing Articles of this Convention, shall be taxable only in that Contracting State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal service from fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt within the foregoing Articles of this Convention, and arising in the other Contracting State may be taxed in that other State.

ARTICLE 23 : *Elimination of Double Taxation* – 1. The laws in force in either of the Contracting States shall continue to govern the taxation of income in the respective Contracting State except where express provision to the contrary is made in this Convention.

2. In the case of Austria, double taxation shall be eliminated as follows :

- (a) Where a resident of Austria derives income which, in accordance with the provisions of this Convention, may be taxed in India, Austria shall, subject to the provisions of sub-paragraphs (b) and (c) exempt such income from tax.
- (b) Where a resident of Austria derives items of income which, in accordance with the provisions of paragraph 2 of Articles 10, 11, 12, paragraphs 4 and

5 of Article 13 and paragraph 3 of Article 22 may be taxed in India, Austria shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in India. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income derived from India.

- (c) Where in accordance with any provision of the Convention income derived by a resident of Austria is exempt from tax in Austria, Austria may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

3. In the case of India, double taxation shall be eliminated as follows :

- (a) Where a resident of India derives income which, in accordance with the provisions of this Convention, may be taxed in Austria, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in Austria whether directly or by deduction at source. Such amount shall not, however, exceed that part of income-tax, as computed before the deduction is given, which is attributable to the income which may be taxed in Austria.
- (b) Where, in accordance with any provision of this Convention, income derived by a resident of India is exempt from tax in India, India may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

ARTICLE 24 : *Non-Discrimination* – 1. 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, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

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. This provision shall not be construed as

obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 7 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

4. 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 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 the first-mentioned State are or may be subjected.

5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

ARTICLE 25 : *Mutual Agreement Procedure* – 1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

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 a satisfactory 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 which is not in

accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time-limits in the domestic law 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 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, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

ARTICLE 26 : *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. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. 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 and administrative practice of that or of the other Contracting State ;
- (b) to supply information which is 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 27 : *Members of Diplomatic Missions and Consular Activities* – 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 28 : *Entry into Force* – 1. The Convention shall be ratified and the instruments of ratification shall be exchanged at New Delhi as soon as possible.

2. The Convention shall enter into force thirty days after the exchange of instruments of ratification and its provisions shall have effect :

- (a) in Austria, in respect of the taxes levied for any fiscal year following the calendar year in which the exchange of instruments of ratification takes place;
- (b) in India, in respect of income arising in any fiscal year beginning on or after the first day of April next following the calendar year in which the exchange of instruments of ratification takes place.

3. The Convention between the Republic of Austria and the Republic of India for the avoidance of double taxation with respect to taxed on income, signed at New Delhi on 24th September, 1963, shall cease to have effect when the provisions of this Convention become effective in accordance with the provisions of paragraph 2.

ARTICLE 29 : *Termination* – This Convention shall remain in force indefinitely but either of the Contracting States may on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give the other Contracting State through diplomatic channels, written notice of termination and, in such event, this Convention shall cease to have effect :

- (a) in Austria, in respect of the taxes levied for any fiscal year following the calendar year in which the notice of termination is given;

- (b) in India, in respect of income arising in any fiscal year beginning on or after the first day of April next following the calendar year in which the notice of termination is given.

PROTOCOL

At the moment of signing the Convention between the Government of the Republic of Austria 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 undersigned have agreed that the following provisions shall form an integral part of the Convention :

Ad Articles 6 and 13 : With reference to paragraph 1 of Article 6 and Article 13 it is understood that in case of India income from immovable property and capital gains on alienation of immovable property respectively may taxed in both Contracting States subject to the provisions of Article 23 paragraph 3.

Ad Article 7 :

- (a) It is understood that the deductions in respect of the head office expenses as referred to in paragraph 3 of Article 7 shall in no case be less than those allowable under the Indian Income-tax Act as on the date of entry into force of this Convention.
- (b) In the case of Austria the term profits as used in this Article includes the profits derived by any partner from his participation in a partnership and in any other body of persons which is treated in the same way for tax purposes and from a participation in a sleeping partnership (Stille Gesellschaft) created under Austrian law.

Ad Article 24 : It is understood that the provisions of Article 24 paragraph 2 shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which a company of the other Contracting State has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first-mentioned Contracting State, nor being in conflict with the provisions of paragraph 3 of Article 7. However, the difference in tax rate shall not exceed 15 percentage points.

Ad Article 26 : It is understood that in the case of disclosure of information referred to in paragraph 1 of Article 26 the confidentiality of person related data may be waived only insofar as this is necessary to safeguard predominant and legitimate interests of another person or predominant public interests.

It is understood that the provisions of Article 26 paragraph 2 sub-paragraph (c) include the basic rights granted by a State, in particular in the area of data protection.

Bangladesh

Agreement for avoidance of double taxation

and

prevention of fiscal evasion with Bangladesh

Whereas the annexed Convention between the Government of the Republic of India and the Government of the Peoples Republic of Bangladesh for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income has come into force on the 27th May, 1992 after the exchange of Instruments of Ratification as required by paragraph 1 of Article 31 of the said Convention;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in the Union of India.

Notification : No. GSR 758(E), dated 8- 9-1992.

ANNEXURE

CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE PEOPLES REPUBLIC OF BANGLADESH FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of India and the Government of the Peoples Republic of Bangladesh desiring to conclude a Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income.

Have agreed as follows :

CHAPTER I – SCOPE OF THE CONVENTION

ARTICLE I – *Personal scope* – This Convention shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE II – *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 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 substantive changes which are made in their respective taxation laws.

CHAPTER II – DEFINITIONS

ARTICLE III – *General definitions* – 1. In this Convention, unless the context otherwise requires :

- (a) the term Bangladesh means the Peoples 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 Indian 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 mean 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 individuals possessing the nationality of the respective Contracting States 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 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 IV – 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 he 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) 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 national;
- (d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 V – *Permanent establishment* – 1. For the 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;
- (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 otherwise) 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.

CHAPTER III – TAXATION OF INCOME

ARTICLE VI – *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, lights 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 regarded 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 II – *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 or 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. Insofar 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 VIII – *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.

ARTICLE IX – *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 apply to profits derived from the participation in a pool, a joint business or an international operating agency.

ARTICLE X – *Associated enterprises* – 1. 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 XI – *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 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 the 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, founders 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 II – *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 beneficial owner of the interest the tax so charged shall not exceed 10 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 debtors profits, and in particular, income from Government securities and income from bonds or debentures, including premium 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 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 resident 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 such 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 last-mentioned amount. In such case, the excess part of the

payment shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE XII – *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, including 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 the other provisions of this Convention.

ARTICLE XIV – *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 sale, 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 XV – *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 XVI – *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 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 exercised in the other Contracting State shall be taxable only in the first-mentioned 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 XVII – *Directors fees* – Directors 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 XVIII – *Entertainers 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 artist, 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.

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 sub-division, 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 XIX – *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 moneys worth.

ARTICLE XX – *Governmental remuneration and pension* – 1. Remuneration including pensions paid by or out of funds by a Contracting State or a political sub-division 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 sub-division or local authority thereof in the discharge of functions of a governmental nature shall be taxable only in that State.

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 sub-division 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.

ARTICLE XXI – *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 university, 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 exceeding one year, as an employee of, or under contract 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 XXII – *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.

ARTICLE XXIII – *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 Peoples 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 XXIV – *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.

ARTICLE XXV – *Methods for 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 laws 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 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 following 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 belief 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 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 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 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, sections 10(4), 10(4A), 10(6)(vii), 10(15)(iv), 10A, 32A, 33A, 35C, 35CC, 54E, 80CC, 80HH, 80HHA, 80-I, 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 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 XXVI – *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 in which other similar enterprises of that first-mentioned Contracting State are or may be subjected in the same circumstances and under the same conditions.

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 XXVII – *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 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 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.

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.

ARTICLE XXVIII – *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 XXIX – *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 Peoples 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 Peoples 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.

ARTICLE XXX – *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 XXXI – *Entry into force* – 1. This Convention shall be ratified and the instruments of ratification shall be exchanged 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 XXXII – *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 1st day of July in the calendar year next following that in which such notice is given, and subsequent years;

(b) in India :

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

Belarus

Agreement for avoidance of double taxation and prevention of fiscal evasion with Belarus

Whereas the annexed Agreement between the Government of the Republic of India and the Government of the Republic of Belarus for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on property (capital) shall enter into force on the seventeenth day of July, 1998, in accordance with Article 30 of the said Agreement, thirty days after the receipt of later of notifications by both the Contracting States to each other of completion of the procedure required by their respective laws for bringing into force of the said Agreement.

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961) and section 44A of the Wealth-tax Act, 1957 (27 of 1957), the Central Government hereby directs that all the provisions of the said Agreement shall be given effect to in the Union of India.

Notification : No. GSR 392(E), dated 17-7-1998.

ANNEXURE

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE REPUBLIC OF BELARUS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON PROPERTY (CAPITAL)

The Government of the Republic of India and the Government of the Republic of Belarus desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on property (capital) have agreed as follows :

ARTICLE 1 : *Personal scope* – This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2 : *Taxes covered* – 1. This Agreement shall apply to taxes on income and on property (capital) imposed on behalf of a Contracting State or of its political sub-divisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on property (capital) all taxes imposed on total income, on total property (capital) or on elements of income or of property (capital) including taxes on gains from the alienation of immovable property or property other than immovable property and taxes on the total amounts of wages or salaries paid by enterprises.

3. The taxes to which this Agreement shall apply are in particular :

(a) in India :

(i) the income-tax including any surcharge thereon; and

(ii) wealth-tax

(hereinafter referred to as Indian Tax); and

(b) in Belarus :

(i) the tax on income and profits of enterprises associations and organisations;

(ii) the income-tax on individuals; and

(iii) the tax on immovable property

(hereinafter referred to as Belarusian tax).

4. The Agreement shall apply also to any similar or substantially identical taxes which are imposed by either Contracting State after the date of signature of the Agreement in addition to, or in place of, the taxes referred to in paragraph 3 above. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

ARTICLE 3 : *General definitions* – 1. In this Agreement, unless the context otherwise requires :

- (a) the term India means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdictions, according to the Indian law and in accordance with international law and the U.N. Convention on the law of the Sea;
- (b) the term Belarus means the Republic of Belarus and when used in a geographical sense, means the territory over which the Republic of Belarus exercises under the laws of the Republic of Belarus and in accordance with international law sovereign rights and jurisdiction;
- (c) the terms a Contracting State and the other Contracting State mean, as the context requires, India or the Republic of Belarus;
- (d) the term tax means Indian tax or Belarusian tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Agreement applies or which represents a penalty imposed relating to those taxes;
- (e) the term person includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States;
- (f) the term company means :
 - (i) in India, any body corporate or other entity which is treated as a company or body corporate under the taxation laws in force;
 - (ii) in Belarus, any legal person or any entity which is treated as a legal person for tax purposes;
- (g) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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;
- (h) the term competent authority means :
 - (i) in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative;

- (ii) in the case of Belarus, the State Tax Committee or its authorised representative;
- (j) the term national means:
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
- (j) 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;
- (k) the term fiscal year means :
 - (i) in the case of India, the previous year as defined under section 3 of the Income-tax Act, 1961;
 - (ii) in the case of Belarus, the calendar year from 1st day of January to 31st day of December of the year.

2. As regards the application of the Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that State concerning the taxes to which the Agreement applies.

ARTICLE 4 : *Resident* – 1. For the purposes of this Agreement, the term resident of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, place of incorporation, residence, place of management or any other criterion of a similar nature. However, this term does not include any person who is liable to tax in that State only in respect of income from sources in that State or property situated therein.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows :

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);

- (b) if the State in which he has his centre of vital interests cannot be determined or if he does not have 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 States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if each State considers him as its own national or if he is not a national of either of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 if a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated. If the State in which its place of effective management is situated cannot be determined, then the competent authorities of the Contracting States shall settle the question by mutual agreement.

ARTICLE 5 : *Permanent establishment* – 1. For the purposes of this Agreement, the term permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) a warehouse in relation to a person providing storage facilities for others;
- (h) a farm, plantation or other place where agriculture, forestry, plantation, or related activities are carried on;
- (i) a sales outlet;

- (j) an installation or structure used for the exploration or exploitation of natural resources;
- (k) a building site or construction or assembly project or supervisory activities in connection therewith only if such site, project or activity lasts for more than six months.

3. Notwithstanding the preceding provisions of this Article, the term permanent establishment shall be deemed not to include :

- (a) the use of facilities solely for the purposes of storage, display or delivery 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 of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

However, the provisions of sub-paragraphs (a) to (f) shall not be applicable where the enterprise maintains any other fixed place of business in the other Contracting State for any purposes other than the purposes specified in the said sub-paragraphs.

4. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 5 applies – is acting 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 in respect of any activities which that person undertakes for the enterprise, if such a person :

- (a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 3 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
- (b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of 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 State through a broker, a commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise itself or on behalf of that enterprise and other enterprises controlling, controlled by, or subject to the same common control, as that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

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.

7. An enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it provides services or facilities in connection with, or supplies plant and machinery on hire used for or to be used in the prospecting for, or extraction or exploitation of mineral oils in that State.

8. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 5 applies.

ARTICLE 6 : *Income from immovable property* – 1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. Ships, boats, motor vehicles and aircraft shall not be regarded 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 apply to income from immovable property of an enterprise and also 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, the profits of the enterprise may also be taxed in the other State but only so much of them as is attributable to :

- (a) that permanent establishment;
- (b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or
- (c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.

2. Subject to the provisions of paragraph 3, 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 make if it were a separate independent enterprise engaged in the same or similar activities under the same or similar conditions and acting wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deduction expenses which are incurred for the purposes 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, in accordance with the provisions of and subject to the limitations of the taxation laws of that State.

4. No profits shall be attributed to a permanent establishment by reason of the mere purchase of goods or merchandise by that permanent establishment for the enterprise.

5. 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 are good and sufficient reasons to the contrary.

6. Where the profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8 : *International traffic* – 1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic, as the case may be, shall be taxable only in that State.

2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

3. For the purposes of this article, interest on funds connected with the operation of ships or aircraft in international traffic shall be regarded as profits

derived from the operation of such ships or aircraft, and the provisions of Article 11 shall not apply in relation to such interest.

4. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall mean profits derived by an enterprise from the transportation by sea or air, respectively, of passengers, mail, livestock, goods or merchandise carried on by the owners or lessees or charterers of ships or aircraft. This will also include :

- (a) the sale of tickets for such transportation on behalf of other enterprises;
- (b) the use, maintenance, or rental of containers (including trailers, barges, and related equipment for the transportation of containers) used in connection with the operation of ships or aircraft in international traffic;
- (c) the rental of ships or aircraft incidental to the operation of ships or aircraft in international traffic; and
- (d) other activity directly connected with operation of ships or aircraft in international traffic.

ARTICLE 9 : *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 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 10 : *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 laws of that 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 25 per cent of the shares of the company paying the dividends;
- (b) 15 per cent of the 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 or other rights, not being debt-claims, participating in profits, as well as income from other rights which is subjected to the same taxation treatment as income from shares under the laws of the Contracting 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 14, 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 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 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 State, nor subject the companys undistributed profits to a tax on the companys undistributed profits,

even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other State.

ARTICLE 11 : *Interest* – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2,

(a) interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by :

(i) the Government, a political sub-division or a local authority of the other Contracting State; or

(ii) the Central Bank of the other Contracting State or any other bank or Governmental financial institutions that may be mutually agreed upon between the two Contracting States;

(b) interest arising in a Contracting State shall be exempt from tax in that Contracting State to the extent approved by the Government of that State if it is derived and beneficially owned by any person, other than a person referred to in sub-paragraph (a), who is a resident of the other Contracting State, provided that the transaction giving rise to the debt-claim has been approved in this regard by the Government of the first-mentioned Contracting State.

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 debtors 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 and 2 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 interest arises, through a permanent establishment situated therein, or performs in that other 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 a case, the provisions of Article 7 or 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, its political sub-division or a local authority or a resident of that State. Where, however, the person paying the interest 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 indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such 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 last-mentioned amount. In such a 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 Agreement.

ARTICLE 12 : *Royalties and fees for technical services* – 1. Royalties or fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties or fees for technical services may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties or fees for

technical services, the tax so charged shall not exceed 15 per cent of the gross amount of the royalties or fees for technical services.

3. The term royalties as used in this Article means payment of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematographic films or films or tapes 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.

4. The term fees for technical services as used in this Article means payment of any kind in consideration for the rendering of any managerial, technical or consultancy services including the provision of services by technical or other personnel but does not include payments for services mentioned in Articles 14 and 15 of this Agreement.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services 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, property or contract in respect of which the royalties or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Royalties or fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties or fees for technical services, 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 or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such

royalties or fees for technical services shall be deemed to arise in the 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 royalties or fees for technical services, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a 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 Agreement.

ARTICLE 13 : *Capital gains (gains from alienation of property)* – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may also be taxed in that other Contracting State.

2. Gains from the alienation of property other than immovable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of property other than immovable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or property other than immovable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State of which the alienator is a resident.

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from the alienation of shares other than those mentioned in paragraph 4 in a company which is a resident of a Contracting State may be taxed in that State.

6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14 : *Independent personal services* – 1. Income derived by a resident of a Contracting State from the performance of professional services or other independent activities of a similar character shall be taxable only in that State except in the following circumstances when such income may also be taxed in the other Contracting State :

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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 State; or
- (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in a period of twelve months; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

ARTICLE 15 : *Dependent personal services* – 1. Subject to the provisions of Articles 17, 18, 19, 20 and 21 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if :

- (a) the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in any period of twelve months; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other Contracting State.

3. Notwithstanding the preceding provisions of this Article, the remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by the enterprise of a Contracting State may be taxed in that State.

ARTICLE 16 : *Directors fees* – Directors fees and other 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 may be taxed in that other State.

ARTICLE 17 : *Artists and sportspersons* – 1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson from his personal activities as such exercised in the other Contracting State may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, such income may, notwithstanding the provisions of Articles 7, 14 and 15 be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. The provisions of paragraphs 1 and 2, shall not apply to income from activities performed in a Contracting State by entertainers or sportspersons if

the visit to that State is supported wholly by public funds of one or both of the Contracting States of political sub-divisions or local authorities thereof or the activity is exercised within the framework of cultural or sports co-operation agreement between the Contracting States. In such a case, the income is taxable only in the Contracting State of which the entertainer or sportsman is a resident.

ARTICLE 18 : *Government service* – 1. (a) Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who :

- (i) is a national of that State; or
- (ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political sub-division or a local authority thereof, to an individual in respect of services rendered to that State or sub-division or local authority thereof shall be taxed only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15, 16 and 19 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

ARTICLE 19 : *Non-Government pensions and annuities* – 1. Any pension, other than a pension referred to in Article 18, or any annuity derived by a resident of a Contracting State from sources within the other Contracting State shall be taxable only in the first-mentioned Contracting State.

2. The term pension means a periodic payment made in consideration of past services or by way of compensation for injuries received in the course of performance of services.

3. 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 payments in return for adequate and full consideration in money or moneys worth.

ARTICLE 20 : *Students and apprentices* – 1. A student or business apprentice who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State and who is present in that other State solely for the purpose of his education or training, shall be exempt from tax in that other State on :

- (a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training; and
- (b) remuneration from employment in that other State for an amount not exceeding the amount which is exempt from tax under the laws of that other Contracting State for any fiscal year; provided that such employment is directly related to his studies or is undertaken for the purpose of his maintenance.

2. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article, for more than five consecutive years from the date of his first arrival in that other Contracting State.

ARTICLE 21 : *Professors, teachers and research scholars* – 1. A professor or teacher who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college, or other similar institution in that Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival in that other 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 20, an individual shall be deemed to be a resident of the Contracting State if he is resident in that Contracting State in the fiscal year in which he visits the other Contracting State or in the immediately fiscal year.

ARTICLE 22 : *Other income* – 1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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 income is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Agreement, and arising in the other Contracting State may be taxed in that other State.

ARTICLE 23 : *Property (Capital)* – 1. Property (Capital) represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Property (Capital) represented by property other than immovable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by property other than immovable property pertaining to a fixed base available to

a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.

3. Property (Capital) represented by ships and aircraft operated in international traffic or by boats engaged in inland waterways transport and by property other than immovable property pertaining to the operation of such ships, boats and aircraft shall be taxable only in the Contracting State of which the owner of such ships, boats, aircraft or property is a resident.

4. All other elements of property (capital) of a resident of a Contracting State shall be taxed only in that State.

ARTICLE 24 : *Elimination of double taxation – 1.* The laws in force in either of the Contracting States shall continue to govern the taxation of income and property (capital) on the respective Contracting States except where express provision to the contrary is made in this Agreement.

2. In the case of India, double taxation shall be eliminated as follows :

Where a resident of India derives income or owns capital which, in accordance with the provisions of this Agreement, may be taxed in the Republic of Belarus, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in the Republic of Belarus whether directly or by deduction; and as a deduction from the tax on the capital of that resident an amount equal to the property (capital) tax paid in the Republic of Belarus. Such deduction in either case shall not, however, exceed that part of the income-tax or capital tax (as computed before the deduction is given) which is attributable, as the case may be, to the income or the capital which may be taxed in the Republic of Belarus.

3. In the case of the Republic of Belarus, double taxation shall be eliminated as follows :

Where a resident of the Republic of Belarus derives income which, in accordance with the provisions of this Agreement, may be taxed in India, the Republic of Belarus shall allow as a deduction from the tax on the income of that resident,

an amount equal to the income-tax paid in India; and as a deduction from the tax on the property (capital) of that resident, an amount equal to the capital tax paid in India. Such deduction shall not, however, exceed that part of the income-tax or property (capital) tax, as computed before the deduction is given, which is attributable, as the case may be, to the income or the property (capital) which may be taxed in India.

4. The tax payable in the Contracting State mentioned in paragraphs 2 and 3 of this Article shall be deemed to include the tax which would have been payable but for the tax incentives granted under the laws of the Contracting State and which are designed to promote economic development.

5. Income which in accordance with the provisions of this Agreement, is not to one subjected to tax in a Contracting State, may be taken into account for calculating the rate of tax to be imposed in that Contracting State.

ARTICLE 25 : *Non-discrimination* – 1. Nationals of a Contracting State shall not be subjected in the other Contracting State to other or more burdensome taxation or any requirement connected therewith, 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. This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which an enterprise of the other Contracting State, has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar enterprise of the first-mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7 of this Agreement.

3. Nothing contained in this Article shall be construed as obliging a Contracting State to grant to persons not resident in that State any personal allowances,

reliefs, reductions and deductions for taxation purposes which are by law available only to persons who are so resident.

4. 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 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 the first-mentioned State may be subjected in the same circumstances and under the same conditions.

5. In this Article, the term taxation means taxes which are the subject of this Agreement.

6. Except where the provisions of Article 9, paragraph 7 of Article 11 or paragraph 7 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprises, be deductible under the same conditions as if they had been paid to a resident of the first mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first mentioned State.

ARTICLE 26 : *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 Agreement, he may, irrespective of the remedies provided by the domestic laws of those Contracting States, present his case to the competent authority of the Contracting State of which he is a resident, or if his case comes under paragraph 1 of Article 25, to that of the Contracting State of which he is a national. The case must be presented within three years from the date of the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.

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 a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State for the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law 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 the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

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. When it seems advisable in order to reach an 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.

ARTICLE 27 : *Exchange of information* – 1. The competent authorities of the Contracting States shall exchange such information (including documents) as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including Courts and administrative bodies) involved in the assessment, or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The competent authorities shall, through consultation, develop appropriate conditions, methods and

techniques, the list of information and documents concerning the matters in respect of which such exchange of information shall be made, including, where appropriate, exchange of information regarding tax avoidance. The exchange of information or documents shall be on request of the competent authorities of the Contracting States.

2. In no case shall the provisions of paragraph 1 be construed 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 the other Contracting State;
- (b) to supply information or documents 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 or documents 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 28 : *Assistance in collection* – 1. The Contracting States undertake to lend assistance and support to each other, in the collection of the taxes to which this Agreement relates, in the cases where the taxes are definitely due according to the laws of the 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 State in accordance with the laws applicable to the enforcement and collection of its taxes.

3. In the case of Indian tax, the request will be sent by the Central Board of Direct Taxes, Department of Revenue to the State Tax Committee of the Republic of Belarus 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 Belarusian tax, the request will be sent by the State Tax Committee of the Republic of Belarus to the Central Board of Direct Taxes, Department of Revenue, in India and will be accompanied by such certificate as is required by the laws of the Republic of Belarus to establish that the taxes have been finally determined and are due from the taxpayer.

5. Where that 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 actual costs, if any, incurred in the course of rendering assistance to the extent mutually agreed between the competent authorities of the Contracting States.

ARTICLE 29 : *Diplomatic and consular officials* – Nothing in this Agreement 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 30 : *Entry into force* – 1. The Contracting States shall notify each other in writing, through diplomatic channels, the completion of the procedure required by the respective laws for the entry into force of this Agreement.

2. This Agreement shall enter into force thirty days after the receipt of the later of the notifications referred to in paragraph 1 of this Article.

3. The provisions of this Agreement shall have effect :

(a) in India :

- (i) in respect of income arising in any fiscal year beginning on or after the first day of April next following the calendar year in which the Agreement enters into force;
 - (ii) in respect of capital which is held on the last day of any fiscal year beginning on or after the first day of April next following the calendar year in which the Agreement enters into force ;
- (b) in Belarus :
- (i) in respect of taxes withheld at source on amounts of income, derived on or after the 1st day of January in the calendar year next following the year in which the Agreement enters into force; and
 - (ii) in respect of other taxes on income and taxes on property (capital) to such taxes chargeable in any taxable year beginning on or after the 1st day of January in the calendar year next following the year in which the Agreement enters into force.

ARTICLE 31 : *Termination* – This Agreement shall remain in force indefinitely until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year beginning after the expiration of five years from the date of entry into force of the Agreement. In such event, the Agreement shall cease to have effect :

- (a) in India,
- (i) in respect of income arising in any fiscal year beginning on or after the first day of April next following the calendar year in which the notice of termination is given;
 - (ii) in respect of capital which is held at the expiry of any previous year beginning on or after the first day of April next following the calendar year in which the notice of termination is given;
- (b) in Belarus,
- (i) in respect of taxes withheld at source, to amounts of income derived on or after the 1st day of January in the calendar year next following the year in which the notice is given;

- (ii) in respect of other taxes on income or taxes on property (capital) to such taxes chargeable in any taxable year beginning on or after the 1st day of January in the calendar year next following the year in which the notice is given.

PROTOCOL

The Government of Republic of India and the Government of the Republic of Belarus have agreed at the signing at New Delhi on 27th September, 1997, of the Agreement between the two States for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on property (capital) upon the following provisions which shall form an integral part of the said Agreement.

1. For purposes of this Agreement, the term political sub-division as used in the Agreement shall be applicable to India only.
2. With reference to Article 4, it is understood that when establishing the place of effective management as used in paragraph 3 of Article 4, circumstances which may, *inter alia*, be taken into account are the place where a company is actually managed and controlled, the place where the decision making at the highest level on important policies essential for the management of a company takes place, the place that plays a leading part in the management of a company from an economic and functional point of view and the place where the relevant accounting books are kept.
3. For purposes of this Agreement, it is understood that the term fixed base includes a fixed place such as an office or a room or any other place regularly available to him through which the activity of a person performing independent personal services is wholly or partly carried on.

Belgium

Agreement for avoidance of double taxation and prevention of fiscal evasion with Belgium

Whereas the annexed Agreement between the Government of the Republic of India and the Government of the Kingdom of Belgium for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income has come into force on the first day of October, 1997, the thirtieth day after the receipt of later of notifications by both the Contracting States to each other of the completion of the procedures required for bringing into force of the said Agreement in accordance with paragraph 1 of Article 29 of the said Agreement;

Now, therefore, in exercise of the powers conferred under section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Agreement shall be given effect to in the Union of India.

Notification : *No. GSR 632(E), dated 31-10-1997¹, as amended by Notification No. SO 54(E), dated 19-1-2001.*

ANNEXURE

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE KINGDOM OF BELGIUM FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of India and the Government of the Kingdom of Belgium, Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows :

CHAPTER I – SCOPE OF THE AGREEMENT

ARTICLE 1 : *Personal scope* – This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2 : *Taxes covered* – 1. This Agreement shall apply to all taxes imposed on total income or on elements of income including taxes on gains from the sale, exchange or transfer of movable or immovable property and taxes on the total amounts of wages or salaries paid by enterprises.

The term taxes shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which the Agreement applies or which represents a penalty imposed relating to those taxes.

2. The existing taxes to which the Agreement shall apply are :

(a) in the case of India :

(i) the income-tax including any surcharge thereon; and

(ii) the surtax,

(hereinafter referred to as Indian tax);

(b) in the case of Belgium :

(i) the individual income-tax (limpot des personnes physiques; de personenbelasting);

(ii) the corporate income-tax (limpot des societes; de vennoot-schapsbelasting);

(iii) the income-tax on legal entities (limpot des personnes morales; de rechtspersonenbelasting);

(iv) the income-tax on non-residents (limpot des non-residents; de belasting der niet-verblijfhouders);

(v) the special levy assimilated to the individual income-tax (la cotisation speciale assimilee a limpot des personnes physiques; de met de personenbelasting gelijkgestelde bijzondere heffing),

including the prepayments, the surcharges on these taxes and prepayments, and the supplements to the individual income-tax,

(hereinafter referred to as Belgian tax).

3. The Agreement shall also apply to any identical or substantially similar tax which is imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall, from time to time, notify to each other any significant changes which have been made in their respective taxation laws.

CHAPTER II – DEFINITIONS

ARTICLE 3 : *General definitions* – 1. In this Agreement, unless the context otherwise requires :

- (a) the term India means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdictions, according to the Indian law and in accordance with international law;
- (b) the term Belgium means the Kingdom of Belgium; when used in a geographical sense, it means the national territory, the territorial sea and any other area in the sea within which Belgium, in accordance with international law, exercises sovereign rights or its jurisdiction;
- (c) the terms a Contracting State and the other Contracting State mean India or Belgium as the context requires;
- (d) the term competent authority means :
 - in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative, and
 - in the case of Belgium, the Minister of Finance or his authorised representative;
- (e) the term tax means Indian tax or Belgian tax as the context requires;
- (f) 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 Contracting State of which it is a resident;
- (g) the term company means in the case of India any entity which is a company or which is treated as a company under the Indian tax law, and in the case of Belgium

any entity which is a company or which is treated as a body corporate under the Belgian tax law;

- (h) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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 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;
- (j) the term national means :
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership and association deriving its status as such from the laws in force in a Contracting State.

As regards the application of the Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Agreement applies.

ARTICLE 4 : *Resident* – 1. For the purposes of this Agreement, the term resident of a Contracting State means any person who, under the laws of that State, is resident of that State for the purposes of the taxes of that State to which the Agreement applies.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his residential status for the purposes of the Agreement 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 (hereinafter referred to as his centre of vital interests);
- (b) if the Contracting State in which he 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) 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 national;
- (d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall determine the question by mutual agreement.

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 Agreement, the term permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop or a warehouse;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) an installation or structure, used for the exploration or exploitation of natural resources;
- (h) the provision of services or facilities in connection with or supply of plant and machinery on hire used or to be used in, the prospecting for, or extraction or production of mineral oils;
- (i) a premises used as a sales outlet or for receiving or soliciting orders;
- (j) a building site or construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or activities (together with other such sites, projects or activities, if any) continue for a period of more than six months, or where such project or supervisory activity, being incidental to

the sale of machinery or equipment, continues for a period not exceeding six months and the charges payable for the project or supervisory activity exceed 10 per cent of the sale price of the machinery and equipment.

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

- (a) the use of facilities solely for the purpose 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 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 scientific research, for the enterprise.

4. Subject to the provisions of paragraph 5, a person acting in a Contracting State on behalf of an enterprise of the other Contracting State shall be deemed to have a permanent establishment of that enterprise in the first-mentioned State, if :–

- (a) he has and habitually exercises, in that State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for that enterprise; or
- (b) he habitually maintains in the first-mentioned Contracting State a stock of goods or merchandise belonging to the enterprise from which the person regularly delivers goods or merchandise on behalf of the enterprise; or
- (c) he habitually secures orders in the first-mentioned Contracting State, exclusively or almost exclusively, for the enterprise itself, or for the enterprise and other enterprises which are controlled by it or have a 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 provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise itself or on behalf of that enterprise and

other enterprises controlling, controlled by, or subject to the same common control, as that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

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

CHAPTER III – TAXATION OF INCOME

ARTICLE 6 : *Income from immovable property* – 1. Income from immovable property may be taxed in the Contracting State in which such property is situated.

2. The term immovable property shall be defined in accordance with the 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits sources and other natural resources. Ships and aircraft shall not be regarded 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 professional 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, the profits of the enterprise may be taxed in the other

State but only so much of them as is attributable to (a) that permanent establishment; (b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or (c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.

2. Where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall be attributed to such permanent establishment the profits which it might be expected to derive if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arms length with the enterprise of which it is a permanent establishment.

3. (a) In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business 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, subject to the limitations of the taxation laws of that State :

Provided that where the law of the State in which the permanent establishment is situated imposes a restriction on the amount of the executive and general administrative expenses which may be allowed, and that restriction is relaxed or overridden by any Convention or Agreement between that State and a third State which is a member of the OECD which enters into force after the date of entry into force of this Agreement, the competent authority of that State shall notify the competent authority of the other Contracting State of the terms of the corresponding paragraph in the Convention or Agreement with that third State immediately after the entry into force of that Convention or Agreement and, if the competent authority of the other Contracting State so requests, the provisions of this sub-paragraph shall be amended by protocol to reflect such terms.

(b) However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of

royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission or other charges for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission or other charges for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. Insofar 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 or paragraph 3 shall preclude such 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 purpose of export to the enterprise of which it is the permanent establishment.

6. For the purposes 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 Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8 : *Shipping and air transport* – 1. Income derived from the operation of ships or aircraft in international traffic by an enterprise of a Contracting State shall not be taxed in the other Contracting State.

2. For the purposes of this Article :

- (a) interest on funds directly connected with the operation of ships or aircraft in international traffic shall be regarded as income from the operation of such ships or aircraft and the provisions of Article 11 shall not apply in relation to such interest; accordingly there will be no withholding tax on such income;
- (b) income derived from the operation of ships or aircraft in international traffic shall mean income derived by an enterprise described in paragraph 1 from the transportation by sea or air respectively of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of ships or aircraft including :
 - (i) the sale of tickets for such transportation on behalf of other enterprises;
 - (ii) any other activity directly connected with such transportation;
 - (iii) the leasing of ships or aircraft on charter fully equipped, manned and supplied, or on a bare boat charter basis where the leasing is incidental to any activity directly connected with such transportation;
- (c) income derived from the operation of ships in international traffic, includes income derived from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) in connection with the transportation of goods or merchandise in international traffic, where the income is derived from an activity which is incidental to any activity directly connected with such transportation.

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

ARTICLE 9 : *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 10 : *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 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 laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

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, jouissance shares or jouissance rights, mining shares, founders 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. This term means also income – even paid in the form of interest – derived from capital invested by the members of a company other than a company with share capital, which is a resident of Belgium.

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 14, 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 State may not impose any tax on the dividend paid by the company, except insofar as such dividends are paid to a resident of that other 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 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 State.

ARTICLE 11 : *Interest* – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 beneficial owner of the interest is a resident of the other Contracting State the tax so charged shall not exceed :

- (a) 10 per cent of the gross amount of the interest, if such interest is paid on any loan of whatever kind granted by a bank; and
- (b) 15 per cent of the gross amount of the interest in all other cases.

3. 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 debtors 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, however, the term interest shall not include for the purpose of this Article interest regarded as dividends under the second sentence of paragraph 3 of Article 10.

4. The provisions of paragraphs 1 and 2 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 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 14, as the case may be, shall apply.

5. Interest shall be deemed to arise in a Contracting State when the payer is that 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 resident 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 such interest shall be deemed to arise in the 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 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 last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State.

ARTICLE 12 : *Royalties and fees for technical services* – 1. Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

¹[2. However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and, according to the laws of that State, but if the beneficial owner of the royalties or fees for technical services is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties or fees for technical services.]

3. ¹[(a) 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 including cinematograph films, any patent, trade mark, design or model, plant, secret formula or process, or for information concerning industrial, commercial or scientific experience.]

(b) The term fees for technical services as used in this Article means payments of any kind to any person, other than payments to an employee of the person making the payments and to any individual for independent personal services mentioned in Article 14, in consideration for services of a managerial, technical or consultancy nature, including the provision of services of technical or other personnel.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services 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, or the contract under which, the royalties or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties and fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties or fees for technical services, 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 make the payments was incurred and the payments are borne by such permanent establishment or fixed base, then the royalties or fees for technical services shall be deemed to arise in the 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 or

fees for technical services, having regard to the use, right, information or technical services 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 royalties or fees for technical services shall remain taxable according to the laws of each Contracting State.

ARTICLE 13 : *Capital gains* – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.

4. Gains from the alienation of shares of the capital stock of a company, the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from the alienation of shares other than those mentioned in paragraph 4, forming part of a participation of at least 10 per cent of the capital stock of a company which is a resident of a Contracting State may be taxed in that State.

6. Gains from the alienation of any property other than that mentioned in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14 : *Independent personal services* – 1. Income derived by an individual who is a resident of a Contracting State from the performance of professional services or other independent activities of a similar character shall be taxable only in that State except in the following circumstances when such income may also be taxed in the other Contracting State :

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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 State; or
- (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in the relevant previous year or taxable period, as the case may be; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

ARTICLE 15 : *Dependent personal services* – 1. Subject to the provisions of Articles 16, 17, 18, 19, 20 and 21, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State, if :

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the relevant previous year or taxable period, as the case may be;
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and

(c) the remuneration is not deductible in computing the profits or income of a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

ARTICLE 16 : *Directors fees* – 1. Directors fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or a similar organ of a company which is a resident of the other Contracting State may be taxed in that other State. This provision shall also apply to payments derived in respect of the discharge of functions which under the laws of the Contracting State of which the company is a resident are treated as functions analogous to those stated hereinbefore.

2. Remuneration derived by a director referred to in paragraph 1 from the company in regard to the discharge of day-to-day functions of a managerial or technical nature and remuneration received by a resident of a Contracting State consequent to some personal activity as partner of a company, other than a company having a share capital which is a resident of the other Contracting State, may be taxed in accordance with the provisions of paragraph 1 of Article 15, as if such remuneration were derived in respect of an employment.

ARTICLE 17 : *Income earned by entertainers and athletes* – 1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer such as a 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 State.

2. Where income in respect of personal activities exercised by an entertainer or 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, 14 and 15, be

taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. Notwithstanding the provisions of paragraph 1, income derived by an entertainer or an athlete who is a resident of a Contracting State from his personal activities as such exercised in the other Contracting State, shall be taxable only in the first-mentioned Contracting State, if the activities in the other Contracting State are supported wholly or substantially from the public funds of the first-mentioned Contracting State, including any of its political sub-divisions or local authorities.

4. Notwithstanding the provisions of paragraph 2 and of Articles 7, 14 and 15, where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such in a Contracting State accrues not to the entertainer or athlete himself but to another person, that income shall be taxable only in the other Contracting State, if that other person is a resident of that other Contracting State and is supported wholly or substantially from the public funds of that other State, including any of its political sub-divisions or local authorities.

ARTICLE 18 : *Non-Government pensions and annuities* – 1. Any pension, other than a pension referred to in Article 19, or any annuity derived by a resident of a Contracting State from sources within the other Contracting State shall be taxable only in the first-mentioned Contracting State.

2. Notwithstanding the provisions of paragraph 1, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State or a political sub-division or a local authority thereof shall be taxable only in that State.

3. The term pension means a periodic payment made in consideration of past services, or by way of compensation for injuries received in the course of performance of services.

4. 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 moneys worth.

ARTICLE 19 : *Remuneration and pensions in respect of Government service* – 1. (a) Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who :–

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that other State.

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

ARTICLE 20 : *Teachers and researchers* – 1. An individual who is a resident of a Contracting State and who, at the invitation of the Government of the other Contracting State or of a university or other recognised educational institution situated in that other Contracting State, visits such other Contracting State for the primary purpose of teaching or engaging in research, or both, at a university or other recognised educational institution shall not be subject to tax by that other Contracting State on his income from personal services for such teaching or research for a period not exceeding twenty-four months from the date of his arrival in that other Contracting State.

2. This article shall not apply to income from personal services for 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 a resident of that Contracting State in the year in which he visits the other Contracting State or in the year immediately preceding that year.

ARTICLE 21 : *Payments received by students and apprentices* – 1. An individual who is a resident of a Contracting State and visits the other Contracting State solely :

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

shall be exempt from tax in that other Contracting State :

- (i) on all remittances from abroad for the purposes of maintenance, education or training;
- (ii) on the grant, allowance or award; and
- (iii) in respect of the amount, representing remuneration for an employment in that other Contracting State, if such remuneration does not exceed 100,000 Belgian Francs or its equivalent in Indian Rupees, as the case may be, in any year.

2. An individual who is a resident of a Contracting State and who visits the other Contracting State for a period not exceeding one year as an employee of, or under contract with, an enterprise of the first-mentioned Contracting State or an organisation referred to in paragraph 1 for the primary purpose of acquiring 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 the remuneration received from that enterprise or organisation for such period, if such remuneration does not exceed 1,20,000 Belgian Francs or its equivalent in Indian Rupees, as the case may be, in any year.

ARTICLE 22 : *Other income* – 1. Items of income of a resident of a Contracting State, wherever arising, not dealt within the foregoing Articles of this Agreement shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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 income is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of the Agreement and arising in the other Contracting State may also be taxed in that other State.

CHAPTER IV – METHODS FOR ELIMINATION OF DOUBLE TAXATION

ARTICLE 23 : *Elimination of double taxation* – 1. The laws in force in either of the Contracting States will continue to govern the assessment and taxation of income in the respective Contracting States except where express provision to the contrary is made in this Agreement.

2. In the case of India, double taxation shall be avoided as follows :

- (a) Where a resident of India derives income which, in accordance with the provisions of the Agreement, may be taxed in Belgium, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in Belgium whether directly or by deduction. Such deduction shall not, however, exceed that part of the income-tax (as computed before the deduction is given) which is attributable to the income which may be taxed in Belgium. Further, where such resident is a company by which surtax is payable in India, the deduction in respect of income-tax paid in Belgium shall be allowed in the first instance from income-tax payable by the company in India and as to the balance, if any, from surtax payable by it in India.

- (b) Where a resident of India derives income which, in accordance with the provisions of the Agreement, shall be taxable only in Belgium, India may include this income in the tax base but shall allow as a deduction from the income-tax that part of the income-tax which is attributable to the income derived from Belgium.

3. In the case of Belgium, double taxation shall be avoided as follows :

- (a) Where a resident of Belgium derives income which may be taxed in India in accordance with the provisions of the Agreement, other than those of paragraph 2 of Article 10, of paragraphs 2 and 6 of Article 11 and of paragraphs 2 and 6 of Article 12, Belgium shall exempt such income from tax but may, in calculating the amount of tax on the remaining income of that resident, apply the rate of tax which would have been applicable if such income had not been exempted.
- (b) (i) Where a resident of Belgium derives items of his aggregate income for Belgian tax purposes which are dividends taxable in accordance with paragraph 2 of Article 10, and not exempt from Belgian tax according to sub-paragraph (c), interest taxable in accordance with paragraph 2 or 6 of Article 11, or royalties taxable in accordance with paragraph 2 or 6 of Article 12, the Indian tax levied on that income shall be allowed as a credit against Belgian tax relating to such income in accordance with the existing provisions of Belgian law regarding the deduction from Belgian tax of taxes paid abroad.
- (ii) Where a resident of Belgium derives fees for technical services which have been taxed in India in accordance with paragraph 2 or 6 of Article 12, the provisions of Belgian tax law with respect to earned income derived from sources outside Belgium and subject to foreign tax shall apply.
- (c) Where a company which is a resident of Belgium owns shares in a company which is a resident of India, the dividends which are paid to it by the latter company and which may be taxed in India in accordance with paragraph 2 of Article 10, shall be exempt from the corporate income-tax in Belgium under the conditions and limits provided for in Belgian law.
- (d) Where in accordance with Belgian law, losses incurred by an enterprise carried on by a resident of Belgium in a permanent establishment situated in India have been effectively deducted from the profits of that enterprise for its taxation in Belgium,

the exemption provided for in sub-paragraph (a) shall not apply in Belgium to the profits of other taxable periods attributable to that establishment to the extent that those profits have been exempted from tax in India by reason of compensation for the said losses.

(e) For the purposes of sub-paragraph (b)(i), the term Indian tax levied shall be deemed to include any amount which would have been payable as Indian tax under the laws of India and in accordance with the provisions of the Agreement for any year but for a deduction allowed in computing the taxable income or an exemption from or a reduction of tax granted for that year under :

- (i) sections 10(4), 10(4B), 10(15)(iv) and 80L of the Income-tax Act, 1961 (43 of 1961), so far as they were in force on, and have not been modified since, the date of the signature of the Agreement, or have been modified only in minor respects so as not to affect their general character; or
- (ii) any other provision which may be enacted after the Agreement enters into force granting a deduction in computing the taxable income or an exemption from or a reduction of tax and which the competent authorities of the Contracting States agree to be for the purposes of economic development of India, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character; the competent authorities may in such a case decide as to the period for which the benefit of this clause shall apply.

CHAPTER V – SPECIAL PROVISIONS

ARTICLE 24 : *Non-discrimination* – 1. 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 taxed. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. Subject to the provisions of paragraph 3 of Article 7, 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 in the same circumstances or under the same conditions.

3. The provisions of paragraph 2 shall not be construed as preventing :

- (a) a Contracting State from charging the profits of a permanent establishment which an enterprise of the other Contracting State has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar enterprise of the first-mentioned Contracting State;
- (b) Belgium from imposing the movable property prepayment on dividends paid to a permanent establishment in Belgium of a company which is a resident of India.

4. Nothing contained in this Article shall be construed as obliging a Contracting State to grant to persons not resident in that State any personal allowances, reliefs or reductions for tax purposes which are by law available only to persons who are so resident.

5. 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 requirement to which other similar enterprises of that first-mentioned State are or may be subjected in the same circumstances and under the same conditions.

6. In this Article, the term taxation means taxes of every kind as specified in this Agreement.

ARTICLE 25 : *Mutual agreement procedure* – 1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a

national. The case must be presented within two years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

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 a satisfactory 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 which is not in accordance with the Agreement :

Provided that the case has been presented within the time period specified in paragraph 1, any agreement reached shall be implemented notwithstanding any time-limits in the domestic 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 the Agreement.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of giving effect to the provisions of the Agreement. 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.

ARTICLE 26 : *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 Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement, insofar as the taxation thereunder is not contrary to the Agreement, in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State. However, if the information is originally regarded as secret in the transmitting State, it shall be disclosed only to persons or authorities (including Courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the

Agreement. Such persons or authorities shall use the information only for such purposes but may disclose the information in public court proceedings or in judicial decisions. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchanges of information shall be made, including, where appropriate, exchanges of information regarding tax avoidance.

2. Information may be exchanged either spontaneously, 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 the 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 is 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 27 : *Aid and assistance in recovery* – 1. The Contracting States shall lend aid and assistance to each other in order to notify and recover the taxes mentioned in Article 2.

2. The interest due for delay or default in the payment of taxes shall be treated as tax for the purposes of this Article.

3. On the request of the competent authority of a Contracting State, the competent authority of the other Contracting State shall secure, in accordance with the legal provisions and regulations applicable to the notification and recovery of its taxes, the notification and the recovery of taxes referred to in paragraph 1 which are due in the first-mentioned State. Such taxes shall not be considered as preferential claims in the

requested State and that State shall not be obliged to apply any means of enforcement which are not authorised by the legal provisions and regulations of the requesting State.

4. Questions concerning any period of limitation of a tax claim shall, notwithstanding the provisions of paragraph 3, be governed solely by the laws of the applicant State.

5. Requests referred to in paragraph 3 shall be supported by an official copy of the instrument permitting the execution, accompanied where appropriate, by an official copy of any final administrative or judicial decision.

6. With regard to taxes which are open to appeal, the competent authority of a Contracting State may, in order to safeguard its rights, request the competent authority of the other Contracting State to take the protective measures provided for in the legislation of that other State; the provisions of paragraphs 1 to 4 shall apply *mutatis mutandis* to such measures.

7. The Contracting State in which tax is recovered in pursuance of the preceding paragraphs shall immediately thereafter remit the amount so recovered to the other Contracting State.

8. The provisions of paragraph 1 of Article 26 shall also apply to any information which, by virtue of this Article, is supplied to the competent authority of a Contracting State.

ARTICLE 28 : *Diplomatic and consular officials* – Nothing in this Agreement shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreements.

CHAPTER VI – FINAL PROVISIONS

ARTICLE 29 : *Entry into force* – 1. The Contracting States shall notify each other in writing through diplomatic channels that the procedures required by their respective laws for the bringing into force of this Agreement have been completed. The Agreement shall enter into force on the thirtieth day after the receipt of the later of these notifications and shall thereupon have effect :

- (a) in India, in respect of income arising in any previous year beginning on or after the first day of April next following the calendar year in which the Agreement enters into force;
- (b) in Belgium :
 - (i) in respect of all tax due at source on income credited or payable on or after the first day of January of the calendar year next following the calendar year in which the Agreement enters into force;
 - (ii) in respect of all tax other than tax due at source on income derived during any taxable period ending on or after the thirty-first day of December of the calendar year next following the calendar year in which the Agreement enters into force.

2. The Agreement between the Government of India and the Government of Belgium for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, and the Protocol thereto, signed on 7th February, 1974 and the Supplementary Protocol modifying the said Agreement and Protocol signed on 20th October, 1984, shall terminate and cease to have effect in respect of the taxes on income to which the present Agreement applies in accordance with the provisions of paragraph 1 of this Article.

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

- (a) in India, in respect of income arising in any previous year beginning on or after the first day of April next following the calendar year in which the notice of termination is given;
- (b) in Belgium :
 - (i) in respect of all tax due at source on income credited or payable on or after the first day of January of the calendar year next following the calendar year in which the notice of termination is given;

- (ii) in respect of all tax other than tax due at source on income derived during any taxable period ending on or after the thirty-first day of December of the calendar year next following the calendar year in which the notice of termination is given.

PROTOCOL

The Government of the Republic of India and the Government of the Kingdom of Belgium,

Having entered into an Agreement for the avoidance of double taxation and the prevention of fiscal with respect to taxes on income,

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

1. Ad Articles 5, 7 and 12

If under any Convention or Agreement between India and a third State being a member of the OECD which enters into force after 1st January, 1990, India limits its taxation on royalties or fees for technical services to a rate lower or a scope more restricted than the rate or scope provided for in the present Agreement on the said items of income, the same rate or scope as provided for in that Convention or Agreement on the said items of income shall also apply under the present Agreement with effect from the date from which the present Agreement or the said Convention or Agreement is effective, whichever date is later.

2. Ad Article 7

- (a) In the determination of the profits of a permanent establishment in Belgium of an enterprise which is a resident of India, Belgium shall allow as deductions, notwithstanding the provisions of the first sentence of sub-paragraph (a) of paragraph 3 of Article 7, executive and general administrative expenses incurred whether in Belgium or elsewhere insofar as they are reasonably allowable to that permanent establishment.

(b) Where the law of the Contracting State in which a permanent establishment is situated imposes in accordance with the provisions of the first sentence of sub-paragraph (a) of paragraph 3 of Article 7, a restriction on the amount of the executive and general administrative expenses which may be allowed as deductions in determining the profits of such permanent establishment, it is understood that in determining the profits of such permanent establishment the deduction in respect of such executive and general administrative expenses in no case shall be less than what is allowable as on the date of signature of the present Agreement under the law of that Contracting State.

3. Ad Article 23

For the purposes of sub-paragraph (a) of paragraph 2 and sub-paragraph (b) of paragraph 3 of Article 23, it is understood that if, after the date of signature of the Agreement, the law of a Contracting State is amended with regard to the allowance of tax credit or the reduction of tax, the competent authority of that State shall inform the competent authority of the other Contracting State of the amendments so made and, if the competent authority of that other Contracting State so requests, the competent authorities of both States shall consult each other with a view to amend the Agreement, if necessary.

Botswana

Section 90 of the Income-tax Act, 1961 – Double Taxation Agreement – Agreement for avoidance of double taxation and prevention of fiscal evasion with foreign countries with Government of the Republic of Botswana

Whereas an Agreement between the Government of the Republic of India and the Government of the Republic of Botswana for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income was signed in India on the 8th day of December, 2006;

And whereas the date of entry into force of the said agreement is the 30th day of January, 2008, being the date of receipt of the later of the notifications after completion of the procedures as required by the respective laws for the entry into force of this Agreement, in accordance with paragraph 2 of Article 30 of the said Agreement;

And whereas sub-paragraph (b) of paragraph 3 of Article 30 of the said Agreement provides that provisions of the said agreement shall have effect in India in respect of the income derived in any fiscal year beginning on or after the first day of April next following the calendar year in which the Agreement enters into force;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Agreement annexed hereto shall be given effect to in the Union of India with effect from the 1st day of April, 2009.

Notification : No. 70/2008-FTD, dated 18-6-2008.

ANNEXURE

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE REPUBLIC OF BOTSWANA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of India and the Government of the Republic of Botswana, desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, and with a view to promoting economic co-operation between the two countries, have agreed as follows:

Article 1

PERSONS COVERED

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

Article 2

TAXES COVERED

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its political sub-divisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from alienation of movable or immovable property.
3. The existing taxes to which the Agreement shall apply are in particular:
 - (a) In Botswana, the income-tax (hereinafter referred to as "Botswana tax");
 - (b) In India, the income-tax, including any surcharge thereon (hereinafter referred to as "Indian tax").

4. Nothing in this Agreement shall limit the right of either Contracting State to charge tax on the profits of a mineral enterprise, at an effective rate different from that charged on the profits of any other enterprise. The term a mineral enterprise means an enterprise carrying on the business of mining.

5. The Agreement shall also apply to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their respective taxation laws.

Article 3

GENERAL DEFINITIONS

1. For the purposes of this Agreement, unless the context otherwise requires:

(a) the term "India" means the territory of India and includes the territorial sea and air space above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law, including the UN Convention on the Law of the Sea;

(b) the term "Botswana" means the Republic of Botswana;

(c) the terms "Contracting State" and "the other Contracting State" mean the Republic of Botswana or the Republic of India, as the context requires;

(d) the term "person" includes an individual, a company, a trust, an estate of a deceased person, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States;

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

(f) the term "enterprise" applies to carrying on of any business;

(g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean 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;

(h) 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;

(i) the term "competent authority" means:

(i) in Botswana, the Minister of Finance and Development Planning, represented by the Commissioner General of the Botswana Unified Revenue Service; and

(ii) in India, the Central Government in the Ministry of Finance (Department of Revenue) or its authorised representative

(j) the term "national" means:

(i) any individual possessing the nationality of a Contracting State;

(ii) any legal person, partnership and association deriving its status as such from the laws in force in a Contracting State;

(k) the term "tax" means Botswana or Indian tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Agreement applies or which represents a penalty or fine relating to those taxes;

(l) The term "fiscal year" means:

(i) In the case of India, the financial year beginning on the 1st day of April;

(ii) In the case of Botswana, a period of twelve months relating to the tax year beginning on the 1st day of July.

2. As regards the application of the Agreement by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Agreement applies and any meaning under the applicable tax laws of that State shall prevail over a meaning given to the term under other laws of that State.

Article 4

RESIDENT

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.
2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his status shall be determined as follows:
 - (a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be resident of the State with which his personal and economic relations are closer (centre of vital interests);
 - (b) if the State in which he has his centre of vital interests cannot be determined, or if he has no permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
 - (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
 - (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall endeavour to settle the question by mutual agreement.
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 State in which its place of effective management is situated. If the place in which its place of effective management is situated cannot be determined, then the competent authorities of the Contracting States shall endeavour to settle the question by mutual agreement.

Article 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a warehouse in relation to a person providing storage facilities for others;

(g) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on;

(h) a mine, an oil or gas well, a quarry or any other place of extraction or exploitation of natural resources; and

(i) an installation or structure used for the exploration of natural resources, provided that the installation or structure continues for a period of not less than six months.

3. *(a)* A building site, a construction, assembly or installation project or supervisory activities in connection therewith constitutes a permanent establishment only if such site, project or activities last for more than six months.

(b) The furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or connected project) within the Contracting State for a period or periods

aggregating more than 183 days in any twelve month period commencing on or ending in the fiscal year concerned.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

(a) the use of facilities solely for the purpose 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 of collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person other than an agent of an independent status to whom paragraph 7 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 Contracting State in respect of any activities which that person undertakes for the enterprise, if such person:

(a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed

place of business, would make this fixed place of business a permanent establishment under the provisions of that paragraph; or

(b) has no such authority but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise; or

(c) habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise itself.

6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

8. 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 otherwise) shall not of itself constitute either company a permanent establishment of the other.

Article 6

INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
2. The term "immovable property" shall have the meaning which it has under the 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded 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, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, 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.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business 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. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. 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.

5. For the purposes 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 reason to the contrary.

6. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

SHIPPING AND AIR TRANSPORT

1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.
2. The profits derived by a transportation enterprise which is a resident of a Contracting State from the use, maintenance or rental of containers (including trailers and other equipment for the transport of containers) used for the transport of goods or merchandise in international traffic shall be taxable only in that Contracting State unless the containers are used solely within the other contracting State.
3. For the purposes of this Article interest on funds directly connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft if they are incidental to the carrying on of such business, and the provisions of Article 11 shall not apply in relation to such interest.
4. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9

ASSOCIATED ENTERPRISES

1. 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.

2. Where a Contracting State includes in the profits of an enterprise of the State –and taxes accordingly– profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10

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 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 laws of that State, but if the beneficial recipient of the dividends is the resident of the other Contracting State, the tax so charged shall not exceed:

(a) 7.5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 25 per cent of the share capital of the company paying dividends;

(b) 10 per cent of the gross amount of dividends in all other cases.

This paragraph shall not affect taxation of the company in respect of the profits out of which the dividends were distributed.

3. The term "dividends" as used in this Article means income from 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 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 State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed place situated in that other 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 State.

Article 11

INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 beneficial recipient of the interest is the resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by:

(i) the Government, a political sub-division or local authority of the other Contracting State;

(ii) the Central Bank of the other Contracting State; or any other bank or governmental financial institutions or agencies that may be mutually agreed upon between the two contracting-states.

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 debtors 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 and 2 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 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 a resident of that State. Where, however, the person paying the interest, 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 indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the 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 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 the other provisions of this Agreement.

Article 12

ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, 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 including cinematograph films and films or tapes for radio or television broadcasting, any patent, trade mark, know how, 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.
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 a resident of that 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 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 the other provisions of this Agreement.

Article 13

TECHNICAL FEES

1. Technical fees arising in a Contracting State and paid to a resident of the other contracting state may be taxed in that State.
2. However, such technical fees may also be taxed in the Contracting State in which they arise, and according to the laws of that State; but if the beneficial owner of the technical fees is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the technical fees.
3. The term "technical fees" as used in this Article means payments of any kind other than those referred to in other Articles of this Agreement to any person, in consideration for any services of a technical, managerial or consultancy nature.
4. The provisions of paragraphs 1 and 2 of this Article, shall not apply if the recipient of the technical fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the technical fees arise,

through a permanent establishment situated therein or performs in that other State independent personal services from a fixed base situated therein and the technical fees are effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. Technical fees shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the technical fees, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the technical fees was incurred, and such technical fees are borne by that permanent establishment, then such technical fees shall be deemed to arise in the State in which the permanent establishment is situated.

6. Where by reason of a special relationship between the payer and the recipient or between both of them and some other person, the amount of the technical fees 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 the other provisions of this Agreement.

Article 14

CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or

with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from alienation of shares other than those mentioned in paragraph 4 in a company which is a resident of a Contracting State may be taxed in that State in which the company issuing shares is resident.

6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5, shall be taxable only in the Contracting State of which the alienator is a resident.

Article 15

INDEPENDENT PERSONAL SERVICES

1. Income derived by an individual who is a resident of a Contracting State from the performance of professional services or other independent activities of a similar character shall be taxable only in that State except in the following circumstances when such income may also be taxed in the other Contracting State:

(a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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 State; or

(b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days within any period of 12 months; in that case, only so much the income as is derived from his activities performed in that other State may be taxed in that Other State.

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

Article 16

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 17, 19, 20, 21 and 22, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived there from may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

(a) the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned; and

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

(c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other Contracting State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

Article 17

DIRECTORS FEES

Directors fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors having supervisory functions in a company which is a resident of the other Contracting State may be taxed in that other State.

Article 18

ARTISTES AND SPORTSPERSONS

1. Notwithstanding the provisions of Articles 7, 15 and 16, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson 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 sportsperson are exercised.
3. The provisions of paragraphs 1 and 2, shall not apply to income derived from activities performed in a Contracting State by entertainers or sportspersons if the activities are substantially supported by public funds of one or both of the Contracting States or of political subdivisions or local authorities thereof. In such a case, the income shall be taxable only in the Contracting State of which the entertainer or sportsperson is a resident

Article 19

PENSIONS AND ANNUITIES

1. Subject to the provisions of paragraph 2 of Article 20, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that 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 moneys worth.

Article 20

GOVERNMENT SERVICE

1. (a) Salaries, Wages and other similar remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State, political sub-division or local authority shall be taxable only in that State.

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who:
 - (i) is a national of that State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.
2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State;

(b) However, such pension shall be taxable only in the other Contracting State if the individual is resident of, and a national of, that State.

3. The provisions of Articles 16, 17, 18 and 19 shall apply to salaries, wages and other similar remuneration and to pensions in respect of services rendered in connection with a business carried on by a Contracting State, a political sub-division or a local authority thereof.

Article 21

PROFESSORS, TEACHERS AND RESEARCH SCHOLARS

1. A Professor, a teacher or research scholar who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college, or other similar institution in that other Contracting State, shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years, from the date of his arrival in that other State.
2. This Article shall apply to income from research only if such research is undertaken in the public interest and not primarily for the benefit of some private person or persons.
3. For the purpose of this Article, an individual shall be deemed to be a resident of a Contracting State if he is resident in that State in the fiscal year in which he visits the other Contracting State or in the immediately preceding fiscal year.

Article 22

STUDENTS AND BUSINESS APPRENTICES

1. A student or business apprentice who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State and who is present in that other Contracting State solely for the purpose of his education or training, shall besides grants, loans and scholarships be exempt from tax in that other State on:
 - (a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training; and

(b) remuneration which he derives from an employment which he exercises in the other Contracting State if the employment is directly related to his studies.

2. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article, for more than six consecutive years from the date of his first arrival in that other State.

Article 23

OTHER INCOME

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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 income 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.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing articles of the Agreement and arising in the other Contracting State may also be taxed in that other State.

Article 24

METHODS FOR ELIMINATION OF DOUBLE TAXATION

Double Taxation shall be eliminated as follows:

1. In India:

(a) Where a resident of India derives income which, in accordance with the provisions of this Agreement, may be taxed in Botswana, India shall allow as a deduction from the tax on the income of that resident, an amount equal to the Botswana tax paid in respect of such income.

Such deduction shall not however exceed that portion of the tax as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in Botswana.

(b) Where in accordance with any provision of the Agreement income derived by a resident of India is exempt from tax in India, India may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

2. In Botswana:

(a) Where a resident of Botswana derives income which, in accordance with the provisions of this Agreement, may be taxed in India, Botswana shall allow as a deduction from the tax on the income of that resident, an amount equal to the Indian tax paid in respect of such income. Such deduction shall not however exceed that portion of the tax as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in India.

(b) Where in accordance with any provision of the Agreement income derived by a resident of Botswana is exempt from tax in Botswana, Botswana may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

Article 25

NON DISCRIMINATION

1. 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, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

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. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents. This provision shall also not be construed as preventing a Contracting State from charging the profits of a permanent establishment which an enterprise of the other Contracting State has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar enterprise of the first-mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, paragraph 6 of Article 12 or paragraph 6 of Article 13 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining

the capital gains of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

4. 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 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 the first-mentioned State are or may be subjected.

5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Article 26

MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic laws of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 25, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation, not in accordance with the provisions of the Agreement.

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 a satisfactory 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 which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic 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 the Agreement. They may also consult together

for the elimination of double taxation in cases not provided for in the Agreement.

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. 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.

Article 27

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information (including documents or certified copies of the documents) as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. 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 and administrative practice of that or of the other Contracting State;
- (b) to supply information (including documents or certified copies of the documents) which is 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 28

COLLECTION ASSISTANCE

1. The Contracting States undertake to lend assistance to each other in the collection of the taxes to which the Agreement relates, together with interest, costs, and civil penalties relating to such taxes, referred to in this Article as a "revenue claim".

2. Request for assistance by the Competent Authority of a Contracting State in the collection of a revenue claim shall include:

(i) a certification by such authority that, under the laws of that State, the revenue claim has been finally determined and concerns a tax covered by the Agreement;

(ii) an official copy of the notice issued by the authority collecting the tax.

3. For the purposes of this Article, a revenue claim is finally determined when a Contracting State has the right under its internal law to collect the revenue claim and the taxpayer has no further rights to restrain collection. The requesting State shall certify that it has exhausted all means of recovery of the revenue claim.

4. Amount collected by the Competent Authority of a Contracting State pursuant to this Article shall be forwarded to the Competent Authority of the other Contracting State. However, the first-mentioned Contracting State shall be entitled to reimbursement of costs, if any, incurred in the course of rendering such assistance to the extent mutually agreed between the Competent Authorities of the two States.

5. Nothing in this Article shall be construed as imposing on either Contracting State the obligation to carry out administrative measures of a different nature from those used in the collection of its own taxes or those which would be contrary to its public policy.

Article 29

MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

Nothing in this Agreement shall affect the fiscal privileges of diplomatic agents or consular officers under the rules of general international law or under the provisions of special agreements.

Article 30

ENTRY INTO FORCE

1. The Contracting States shall notify each other, in writing, through diplomatic channels, of the completion of the procedure required by the respective laws for the entry into force of this Agreement.
2. The Agreement shall enter into force on the date of the later of these notifications referred in paragraph 1 of this Article.
3. The provisions of this Agreement shall have effect:
 - (a) In Botswana, in respect of income tax, on taxable income derived on or after the first day of July of the year next following that of the entry into force of this Agreement; and
 - b) In India, in respect of income derived in any fiscal year beginning on or after the first day of April next following the calendar year in which the Agreement enters into force.

Article 31

TERMINATION

This Agreement shall remain in force indefinitely until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving written notice of termination at least six months before the end of any calendar year beginning after the expiration of a period of five years from the date of entry into force. In such event, the Agreement shall cease to have effect:

(a) In Botswana, in respect of income tax, on taxable income derived on or after the first day of July of the year next following that in which the notice of termination is given;

(b) In India, in respect of income derived in any fiscal year on or after the first day of April next following the calendar year in which the notice is given.

Brazil

Agreement for avoidance of double taxation and prevention of fiscal evasion with Brazil

Whereas the annexed Convention between the Government of the Republic of India and the Government of the Federative Republic of Brazil for avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income has been ratified and the instruments of ratification exchanged at Brasilia on 11th March, 1992 as required by Article 28 of the said Convention :

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961) and section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in the Union of India.

Notification : No. GSR 381(E), dated 31-3-1992.

ANNEXURE

CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of India and the Government of the Federative Republic of Brazil.

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

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 to which the Convention shall apply are :

(a) in the case of Brazil :

– the federal income-tax, excluding the supplementary income-tax and the tax on activities of minor importance;

(hereinafter referred to as Brazilian 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. The Convention shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of the above-mentioned taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

ARTICLE 3 : *General definitions* – 1. For the purposes of this Convention, unless the context otherwise requires :

(a) the term nationals means :

I. all individuals possessing the nationality of a Contracting State;

II. all legal persons, partnerships and associations deriving their status as such from the law in force in a Contracting State;

(b) the terms a Contracting State and the other Contracting State mean Brazil or India, as the context requires;

(c) the term person includes an individual, a company and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States;

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

(e) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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;

(f) the term international traffic means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

(g) the term tax means Brazilian tax or Indian tax, as the context requires;

(h) the term competent authority means :

I. in Brazil : the Minister of Finance, the Secretary of Federal Revenue or their authorized representative;

II. in India : the Central Government in the Ministry of Finance (Department of Revenue) or their authorized representative.

2. As regards the application of the Convention by a Contracting State; any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

ARTICLE 4 : *Fiscal domicile* – 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 tax 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 status shall be determined as follows :

(a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);

(b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;

- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 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 means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or other place of extraction of natural resources;
- (g) a building site or construction or assembly project which exists for more than six months;
- (h) an installation, drilling rig or ship used for the exploration or exploitation of natural resources, but only if so used for a period of more than six months.

3. Notwithstanding the preceding provisions of this Article, the term permanent establishment shall be deemed not to include :

- (a) the use of facilities solely for the purpose 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 of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character.

4. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 5 applies – is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 3 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

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, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise itself or on behalf of that enterprise and other enterprises controlling, controlled by, or subject to the same common control, as that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

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 otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6 : *Income from immovable property* – 1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The terms shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded 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, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, 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.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, in accordance with the provisions of and subject to the limitations of the taxation laws of the Contracting State concerned.

4. 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.

5. 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 : *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. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

4. The term operation of ships or aircraft shall mean business of transportation of persons, mail, livestock or goods carried on by the owners or lessees or charterers of the ships or aircraft, including the sale of tickets for such transportation on behalf of other enterprises.

ARTICLE 9 : *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 10 : *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 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 laws of that State, but if the recipient is a company which is the beneficial owner of the dividends the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

This paragraph shall not effect 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, jouissance shares or jouissance rights, mining shares, founders 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, and the holding by virtue of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Where a resident of India has a permanent establishment in Brazil, this permanent establishment may be subject to a tax withheld at source in accordance with Brazilian law. However, such a tax cannot exceed 15 per cent of the gross amount of the profits of that permanent establishment determined after the payment of the corporate tax related to such profits.

6. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other 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 State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other 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 State.

ARTICLE 11 : *Interest* – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 beneficial owner of the interest the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraphs 1 and 2 :

(a) interest arising in a Contracting State and paid to the Government of the other Contracting State, a political sub-division thereof or any agency (including a financial institution) wholly owned by that Government, or political sub-division shall be exempt from tax in the first-mentioned State, unless sub-paragraph (b) applies;

(b) interest from securities, bonds or debentures issued by the Government of a Contracting State, a political sub-division thereof or any agency (including a financial institution) wholly owned by that Government or political sub-division shall be taxable only in that State.

4. The term interest as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and debt-claims of every kind as well as other income assimilated to income from money lent by the taxation law of the Contracting State in which the income arises.

5. The provisions of paragraphs 1 and 2 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 and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

6. The tax rate limitation provided for in paragraph 2 shall not apply to interest arising in a Contracting State and paid to a permanent establishment of an enterprise of the other Contracting State which is situated in a third State.

7. Interest shall be deemed to arise in a Contracting State when the payer is that 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 resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

8. Where, by a 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 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 the other provisions of this Convention.

ARTICLE 12 : *Royalties* – 1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

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

(a) 25 per cent of the gross amount of the royalties arising from the use or the right to use trade marks;

(b) 15 per cent of the gross amount of the royalties in all other cases.

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 (including cinematography films, films or tapes for television or radio 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.

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, and the right of property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that 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 in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then

such royalties shall be deemed to arise in the State in which the permanent establishment 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 the other provisions of this Convention.

ARTICLE 13 : *Capital gains* – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6, which is situated in the other Contracting State, may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in the other State. However, gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

3. Gains from the alienation of any property other than that referred to in paragraphs 1 and 2, may be taxed in both Contracting States.

ARTICLE 14 : *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 State, unless the remuneration for such services or activities is paid by a resident of the other Contracting State or is borne by a permanent establishment situated therein. In such case, the income may be taxed in that other State.

2. The term professional services includes especially independent scientific, technical, literary, artistic, educational or teaching activities of physicians, lawyers, engineers, architects, dentists and accountants.

ARTICLE 15 : *Dependent personal services* – 1. Subject to the provisions of Articles 16, 18, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if :

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- (c) the remuneration is not borne by a permanent establishment which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

ARTICLE 16 : *Directors fees* – Directors fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or of any council of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 17 : *Artists and athletes* – 1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as theatre, motion picture, radio or television artists, 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 State.

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, 14 and 15, 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 of this Article shall not apply to income derived from activities performed in a Contracting State by an entertainer or an athlete if the visit to that Contracting State is substantially supported by public funds of, or sponsored by the other Contracting State, including those of any political sub-division or local authority.

ARTICLE 18 : *Pensions and social security payments* – 1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration, alimony and annuities paid to a resident of a Contracting State may be taxed in that State.

2. However, such pensions and other similar remuneration, alimony and annuities may also be taxed in the other Contracting State if the payment is made by a resident of that other State or a permanent establishment situated therein.

3. Notwithstanding the provisions of paragraphs 1 and 2, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State or a political sub-division or a local authority thereof shall be taxable only in that State.

4. As used in this Article :

- (a) the term pensions and other similar remuneration means periodic payments made in consideration of past employment or by way of compensation for injuries in connection with past employment;
- (b) the term annuities means stated sums 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 moneys worth.

ARTICLE 19 : *Government payments* – 1. Remuneration not including pensions, paid by a Contracting State, a political sub-division or a local authority thereof to an individual in respect of services rendered to that State, to a political sub-division or local authority shall be taxable only in that State.

However, such remuneration shall be taxable only in the Contracting State of which the recipient is a resident if the services are rendered in that State and the recipient of the remuneration is a resident of that State who:

- (a) is a national of that State, or
- (b) did not become a resident of that State solely for the purpose of performing the services.

2. Pensions paid by, or out of funds created by, a Contracting State, a political sub-division or a local authority thereof to an individual in respect of services rendered to that State, to a political sub-division or a local authority thereof may be taxed in that State.

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions paid in respect of services rendered in connection with any business carried on by a Contracting State, a political sub-division or a local authority thereof.

ARTICLE 20 : *Teachers and researchers* – 1. An individual who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who, at the invitation of the Government of the first-mentioned State or of a university, college, school, museum or other cultural institution of that first-mentioned State or under an official programme of cultural exchange, is present in that State for a period not exceeding two consecutive years solely for the purpose of teaching, giving lectures or carrying out research at such institution shall be exempt from tax in that State on his remuneration for such activity, provided that the payment of such remuneration is derived by him from outside that 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.

ARTICLE 21 : *Students and apprentices* – 1. Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

2. In respect of grants, scholarships and remuneration from employment not covered by paragraph 1, a student or business apprentice described in paragraph 1 shall, in addition, be entitled during such education or training to the same exemptions, reliefs or reductions in respect of taxes available to residents of the State which he is visiting.

3. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article, for more than five consecutive years from the date of his first arrival in that State.

ARTICLE 22 : *Other income* – Items of income of a resident of a Contracting State, arising in the other Contracting State and not dealt with in the foregoing Articles of this Convention, may be taxed in that other State.

ARTICLE 23 : *Methods for the elimination of double taxation* – 1. Subject to the provisions of paragraphs 3 and 4, where a resident of a Contracting State derives income which, in accordance with the provisions of this Convention may be taxed in the other Contracting State, the first-mentioned State shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in that other State.

Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to the income which may be taxed in that other State.

2. For the deduction mentioned in paragraph 1, the tax paid in that other State shall always be deemed to have been paid at the rate of 25 per cent of the gross amount of interest referred to in paragraph 2 of Article 11 and of royalties referred to in paragraph 2(b) of Article 12, provided however, that the tax so deemed to have been paid shall not exceed the tax leviable on that income in the first-mentioned State.

3. Where a company which is a resident of a Contracting State derives dividends which, in accordance with the provisions of paragraph 2 of Article 10 may be taxed in the other Contracting State, the first-mentioned State shall exempt such dividends from tax.

4. Where a resident of India derives profits which, in accordance with the provisions of paragraph 5 of Article 10 may be taxed in Brazil, India shall exempt such profits from tax.

ARTICLE 24 : *Non-discrimination* – 1. 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. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

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 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 the first-mentioned State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of a third State, are or may be subjected.

4. In this Article the term taxation means taxes to which this Convention applies.

ARTICLE 25 : *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. This case must be presented within five years of the date of receipt of notice of the action which gives rise to taxation not in accordance with the Convention.

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 avoidance of taxation not in accordance with the 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 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. 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.

ARTICLE 26 : *Exchange of information* – 1. The competent authorities of the Contracting States shall exchange such information (including documents) as is necessary for carrying out the provisions of the Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention, in so far as the taxation thereunder is not contrary to the Convention, in particular for the prevention of fraud or evasion of such taxes. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that state: However, if the information is originally regarded as secret in the transmitting State, it shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals relation to, the taxes which are the subject, of the Convention. Such persons or authorities shall use the information only for such purposes but may disclose the information in public court proceedings or in judicial decisions. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchange of information shall be made, including, where appropriate, exchange of information regarding tax avoidance.

2. 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 or documents 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 or documents 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 27 : *Diplomatic agents and consular officers* – Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

ARTICLE 28 : *Entry into force* – 1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Brasilia as soon as possible.

2. This Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect for the first time :

(a) in Brazil :

I. in respect of taxes withheld at source, to amounts paid or credited on or after the first day of January of the calendar year immediately following that in which the Convention enters into force;

II. in respect of other taxes covered by the Convention, for the taxable year beginning on or after the first day of January of the calendar year immediately following that in which the Convention enters into force;

(b) in India :

in respect of income arising in any previous year beginning on or after the first day of April immediately following the calendar year in which the Convention enters into force.

ARTICLE 29 : *Termination* – Either Contracting State may terminate this Convention after a period of five years from the date on which the Convention enters into force by giving to the other Contracting State, through diplomatic channels, a written notice of termination, provided that any such notice shall be given only on or before the thirtieth day of June in any calendar year.

In such case, the Convention shall cease to have effect :

(a) in Brazil :

I. in respect of taxes withheld at source, to amounts paid or credited on or after the first day of January of the calendar year immediately following that in which the notice of termination is given :

II. in respect of other taxes, for taxable years beginning on or after the first day of January of the calendar year immediately following that in which the notice of termination is given;

(b) in India :

in respect of income arising in any previous year beginning on or after the first day of April immediately following the calendar year in which the notice is given.

PROTOCOL

At the moment of the signature of the Convention between the Republic of India and the Federative Republic of Brazil for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income the undersigned, being duly authorised thereto, have agreed upon the following provisions which constitute an integral part of the Convention :

1. With reference to Article 3, paragraph 1, item (q) – It is understood that the term tax shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty imposed relating to those taxes.

2. With reference to Article 12, paragraph 3 – It is understood that the provisions of paragraph 3 of Article 12 shall apply to payments of any kind to any person, other than payments to an employee of a person making such payments, in consideration for the rendering of assistance or services of a managerial, administrative, scientific, technical or consultancy nature.

3. With reference to Article 20 – It is understood that the term museum or other cultural institution shall refer only to such organisations which have been approved in this regard by the competent authority of the Contracting State concerned.

4. With reference to Article 24, paragraph 2 – It is understood that the provisions of paragraph 5 of Article 10 are not in conflict with the provisions of paragraph 2 of Article 24.

5. It is understood that either Contracting State may, at any time not earlier than ten years from the date on which the Convention enters into force, seek to review any or all of its provisions, by notice in writing through competent authority thereof to the competent authority of the other Contracting State. The

competent authorities shall, within a period of six months thereafter, initiate appropriate proceedings for such review.

Bulgaria

Comprehensive Agreement

Agreement for avoidance of double taxation

And

prevention of fiscal evasion with Bulgaria

Whereas the annexed Convention between the Government of the Republic of India and the Government of the Republic of Bulgaria for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital has come into force on the 23rd June, 1995, after the notification by both the Contracting States to each other of the completion of the procedures required under their laws for the bringing into force of the said Convention in accordance with Article 30 of the said Convention;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in the Union of India.

Notification : No. GSR 205(E), dated 9-5-1996.

ANNEXURE

CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE REPUBLIC OF BULGARIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Government of the Republic of India and the Government of the Republic of Bulgaria,

desiring to further expand and facilitate mutual economic relations,

have resolved to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital and 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 to which the Convention shall apply are :

(a) In India:

- (i) the income-tax, including any surcharge thereon; and
 - (ii) the wealth-tax;
- (hereinafter referred to as Indian tax);

(b) In Bulgaria:

- (i) the tax on total income;
- (ii) the tax on profits; and
- (iii) the tax on buildings;

(hereinafter referred to as Bulgarian 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 signature of this Convention in addition to, or in place of, the taxes of that Contracting State referred to in paragraph 1 of this Article. The competent authorities of the Contracting States shall notify each other of any substantial changes which are made in their respective laws.

ARTICLE 3 : *General definitions* – 1. In this Convention, unless the context otherwise requires :

- (a) the term India means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian laws and in accordance with International law;
- (b) the term Bulgaria means the Republic of Bulgaria, and, when used in a geographical sense means the territory over which it exercises its State

sovereignty, as well as the continental shelf and exclusive economic zone over which it exercises sovereign rights and jurisdiction according to international law;

- (c) the terms Contracting State and the other Contracting State mean India or Bulgaria, as the context requires;
- (d) the term tax means Indian tax or Bulgarian tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty imposed relating to those taxes;
- (e) the term person shall have the meaning assigned to it in the taxation laws in force in the respective Contracting States;
- (f) the term company means any body corporate or any entity which is treated as a company or a body corporate under the taxation laws in force in the respective Contracting States;
- (g) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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;
- (h) the term competent authority means in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorized representative; and in the case of Bulgaria – the Minister of Finance or his authorized representative;
- (i) 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 defined herein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

ARTICLE 4 : *Resident* – 1. For the purposes of this Convention, the term resident of a Contracting State means :

- (a) in the case of India, any person who, under the laws of India, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature;
- (b) in the case of Bulgaria, any individual who is national of Bulgaria, as well as any legal person which has its head office in Bulgaria or is registered therein.

2. (a) Where by reason of the provisions of paragraph 1 of this Article, an individual is a resident of both Contracting States, then he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);

(b) if the Contracting State in which he has his centre of vital interests cannot be determined, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 of this Article, a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the 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 means a fixed place of business through which the business of the enterprise is wholly or partly carried on separately or together with other persons.

2. The term permanent establishment includes especially :

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) a warehouse in relation to a person providing storage facilities for others;

- (h) an installation on structure used for the exploration or exploitation of natural resources;
- (i) a building site or construction, installation or assembly project or supervisory activities in connection therewith, where such site, projects or activities (together with other such sites, projects or activities, if any) continue for a period of more than six months :

Provided that for the purpose of this paragraph an enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it provides services or facilities in connection with or supplies plant and machinery on hire, used or to be used in the prospecting for, or extraction or production of mineral oils in the State.

3. Notwithstanding the preceding provisions of this Article, the term permanent establishment shall not be deemed to include :

- (a) the use of facilities solely for the purpose 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 of collecting information, for the enterprise;
- (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;
- (f) the selling of goods or merchandise belonging to the enterprises displayed in an occasional temporary fair or exhibition in the process of closing down of such fair or exhibition; and
- (g) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (f), provided that overall

activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

However, the provisions of sub-paragraphs (a) to (g) shall not be applicable where the enterprise maintains any other fixed place of business in the other Contracting State for any purposes other than the purposes specified in the said sub-paragraphs.

4. Notwithstanding the provisions of paragraphs 1 and 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 Contracting State, if,

- (a) he has, and habitually exercises in that State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise;
- (b) he has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise;
- (c) he habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise itself or for the enterprise and other enterprises in which the first-mentioned enterprise has a majority participation, or for the enterprise and other enterprises which have a majority participation in the first-mentioned 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 carried on business in that other State through a broker, a general commission agent or any other agent of an independent status, provided that 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 the other State (whether through a permanent

establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6 : *Income from immovable property* – 1. Income, derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the laws of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall also 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, the profits of the enterprise may be taxed in the other State, as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, 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 attribute 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.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deduction expenses which are incurred for the purposes of the business 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, in accordance with the provisions of and subject to the limitation of the taxation laws of that State.

4. 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.

5. For the purposes 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.

6. Where the 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 State.

2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

3. The provisions of paragraphs 1 and 2 shall also apply where the enterprise has an office or agency in the other State for the transportation of goods or persons. However, this shall apply only to activities directly connected with the business of the operation of aircraft in inter-national traffic.

4. For the purposes of this Article, interest on funds connected with the operation of aircraft in international traffic shall be regarded as profits derived

from the operation of such aircraft, and the provisions of Article 12 shall not apply in relation to such interest.

5. The term operation of aircraft shall mean business of transportation by air of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of aircraft, including the sale of tickets for such transportation on behalf of other enterprises, the incidental lease of aircraft and any other activity directly connected with such transportation.

ARTICLE 9 : *Shipping* – 1. Income derived by an enterprise of a Contracting State from the operation of ships in international traffic shall be taxable only in that State.

2. Notwithstanding anything contained in paragraph 1 of this Article and paragraph 2 of Article 10 of the Agreement on merchant shipping dated 18–11–1976, between the Government of the Republic of India and the Government of the Peoples Republic of Bulgaria, income derived by an enterprise of a Contracting State from the operation of ships in international traffic from the ports of the other Contracting State to the ports of third countries and from the ports of third countries to the ports of the other Contracting State may be taxed in the other Contracting State, but the tax imposed in that other Contracting State shall not exceed :

- (a) 50 per cent of the tax otherwise imposed by the taxation law of that other Contracting State, or
- (b) 2.50 per cent of the gross amount payable in respect of such operation of ships, whichever is lower.

3. For the purposes of clause (b) of paragraph 2 of this Article, the gross amount payable in respect of the operation of ships shall mean the aggregate of the following amounts, namely :

- (a) the gross amount paid or payable on account of the carriage of passengers, livestock, mail or goods shipped at a port or ports in the other Contracting State;

- (b) the gross amount received in the other Contracting State on account of carriage of passengers, livestock, mail or goods shipped at a port of the third country;
- (c) interest arising in the other Contracting State on funds connected with the operation of ships in international traffic;
- (d) the gross amount payable on account of the use, maintenance or rent of containers (including trailers and related equipment for the transport of containers) in connection with the transport of goods or merchandise in international traffic.

4. The provisions of paragraphs 1 and 2 shall also apply to profits from the participation in a pool, a joint business or an international operating agency engaged in the operation of ships.

5. For the purposes of this Article,

- (a) interest on funds connected with the operation of ships in international traffic shall be regarded as income from the operation of such ships and the provisions of Article 12 shall not apply in relation to such interest; and
- (b) income from the operation of ships includes income derived from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) in connection with the transport of goods or merchandise in international traffic.

ARTICLE 10 : *Associated enterprises* – 1. Where

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of 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 resident of a Contracting State to a resident of the other Contracting State may be taxed in that other 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 laws of that State, but if the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

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 or other rights, not being debt-claims, participating in profits, as well as income from 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 a 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 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 State or in so far 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 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 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 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, if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2,

(a) interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by :

(i) the Government, a political sub-division or a local authority of the other Contracting State; or

(ii) the Central Bank of the other Contracting State;

(b) interest arising in a Contracting State shall be exempt from tax in that State if it is beneficially owned by a resident of the other Contracting State and it is derived in connection with a loan or credit extended or endorsed by :

(i) in the case of Bulgaria, the Foreign Trade Bank to the extent such interest is attributable to financing of exports and imports only;

(ii) in the case of India, the Export-Import Bank of India (Exim Bank), to the extent such interest is attributable to financing of exports and imports only;

(iii) any institution of a Contracting State incharge of public financing of external trade;

(iv) any other person provided that the loan or credit is approved by the Government of the first-mentioned Contracting State.

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 debtors 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 payments shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1 and 2 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 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 a 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 thereof or a resident of that State. Where, however, the person paying the interest, 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 indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such 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 to the last-mentioned amount. In such a 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.

ARTICLE 13 : *Royalties and fees for technical services* – 1. Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, or fees for technical services, the tax so charged shall not exceed :

- (a) 15 per cent of the gross amount of the royalties relating to copyrights of literary, artistic or scientific works, other than cinematograph films or films or tapes used for radio or television broadcasting; and
- (b) 20 per cent of the gross amount of the royalties in all other cases or fees for technical services.

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 including 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.

4. The term fees for technical services as used in this Article means payments of any amount to any person other than payments to an employee of the person making payments, in consideration for the services of a managerial, technical or consultancy nature, including the provision of services of technical or other personnel.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services 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, property or contract in respect of which the royalties or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such a case the provisions of Article 7 or Article 15, as the case may be, shall apply.

6. Royalties and fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority thereof, or a resident of that State. Where, however, the person paying the royalties or fees for technical services, 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 or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

ARTICLE 14 : *Capital gains* – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State of which the alienator is resident.

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from the alienation of shares, other than those mentioned in paragraph 4 of a company which is a resident of a Contracting State may be taxed in that State.

6. Gains from the alienation of any property other than that mentioned in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 15 : *Independent personal services* – 1. Income derived by an individual, who is a resident of a Contracting State from the performance of professional services or other independent activities of a similar character shall be taxable only in that State except in the following circumstances when such income may also be taxed in the other Contracting State :

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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 State; or
- (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in the relevant previous year or year of income, as the case may be; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

2. The term professional services includes 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, 18, 19, 20, 21 and 22, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if :

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the relevant previous year or year of income, as the case may be ;
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

ARTICLE 17 : *Directors fees* – Directors 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 may be taxed in that other State.

ARTICLE 18 : *Income earned by entertainers 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 a 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 State.

2. Where income in respect of personal activities exercised by an entertainer or 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. Notwithstanding the provisions of paragraph 1, income derived by an entertainer or an athlete who is a resident of a Contracting State, from his personal activities as such, exercised in the other Contracting State, shall be taxable only in the first-mentioned Contracting State, if the activities in the other Contracting State are performed within the framework of cultural exchange between the two Contracting States, or are supported wholly or

substantially, from the public funds of the first-mentioned Contracting State, including any of its political sub-divisions or local authorities.

4. Notwithstanding the provisions of paragraph 2 and Articles 7, 15 and 16, where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such in a Contracting State accrues not to the entertainer or athlete himself but to another person, that income shall be taxable only in the other Contracting State, if that other person is supported wholly or substantially from the public funds of that other State, including any of its political sub-divisions or local authorities.

ARTICLE 19 : *Remuneration and pensions in respect of Government service* – 1.

(a) Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State, who :

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds, created by a Contracting State or a political sub-division or a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of that other State.

3. The provisions of Articles 16, 17 and 20 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or local authority thereof.

ARTICLE 20 : *Non-Government pensions and annuities* – 1. Any pension, other than a pension referred to in Article 19, or any annuity derived by a resident of a Contracting State from sources within the other Contracting State may be taxed only in the first-mentioned Contracting State.

2. The term pension means a periodic payment made in consideration of past services or by way of compensation for injuries received in the course of performance of services.

3. The term annuity means a stated sum payable periodically at stated time 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 moneys worth.

ARTICLE 21 : *Payments received by students and apprentices* – 1. A student or business apprentice who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State and who is present in that State solely for the purpose of his education or training, shall be exempt from tax in that other State on :

- (a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training; and
- (b) remuneration from employment in that other State, in an amount not exceeding Lev. 1500 or its equivalent in Indian currency during any previous year or year of income, as the case may be, provided that such employment is directly related to his studies or is undertaken for the purposes of his maintenance.

2. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article, for more than five consecutive years from the date of his first arrival in that other Contracting State.

ARTICLE 22 : *Payments received by professors, teachers and research scholars* – 1. A professor or teacher who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State for the purpose

of teaching or engaging in research, or both, at a university, college, school or other approved institution in that other Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival in that other State.

2. This paragraph 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 purpose 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 the year of income, as the case may be, in which he visits the other Contracting State or in the immediately preceding previous year or year of income.

4. For the purposes of paragraph 1, approved institution means an institution which has been approved or established by the competent authority of the concerned Contracting State.

ARTICLE 23 : *Other income* – 1. Subject to the provisions of paragraphs 2 and 3, items of income of a resident of a Contracting State, wherever arising, which are not expressly dealt with in the foregoing Articles of this Convention, shall be taxable only in that Contracting State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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 income 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.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this

Convention and arising in the other Contracting State may be taxed in that other State.

ARTICLE 24 : *Capital* – 1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.

3. Capital represented by ships or aircraft operated in international traffic and by movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State of which the enterprise owning such property is a resident.

4. All other elements of capital of a resident of a Contracting State may be taxed in the Contracting State in which such elements of capital are situated.

ARTICLE 25 : *Elimination of double taxation* – 1. The laws in force in either of the Contracting States shall continue to govern the taxation of income or capital in the respective Contracting States except where provisions to the contrary are made in this Convention.

2. In both the Contracting States, double taxation shall be avoided in the following manner :

- (a) where a resident of a Contracting State derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in the other Contracting State, the first-mentioned State shall, subject to the provisions of sub-paragraph (b) of this paragraph, exempt such income or capital from tax but may, in calculating tax on the remaining income or capital of that person, apply the rate of tax which would have been applicable if the exempted income or capital had not been so exempted ;

(b) either of the Contracting States when imposing taxes on its residents may include in the tax base upon which such taxes are imposed the items of income which according to the provisions of Articles 9, 11, 12 and 13 of this Convention may also be taxed in the other State but shall allow as a deduction from the amount of tax computed on such a base an amount equal to the tax paid in the other Contracting State. Such deduction shall not, however, exceed that part of tax, leviable by the first-mentioned State, as computed before the deduction is given, which is appropriate to the income which, in accordance with the provisions of Articles 9, 11, 12 and 13 of this Convention may be taxed in the other State.

3. For the purposes of sub-paragraph (b) of paragraph 2, the term tax paid in the other Contracting State shall be deemed to include any amount which would have been payable as tax but for any relief by way of deduction allowed in computing the taxable income or an exemption or a reduction of tax or otherwise under the laws relating to taxation of income in force in that other Contracting State.

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 term nationals means :

- (a) All individuals possessing the nationality of a Contracting State;
- (b) All legal persons, partnerships and associations deriving their status as such from the laws in force in a Contracting State.

3. 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 in the same circumstances or under the same conditions. This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which

an enterprise of the other Contracting State has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar enterprise of the first-mentioned Contracting State, nor as being not in accordance with the provisions of paragraph 3 of Article 7 of this Convention.

4. Nothing in this Article shall be construed as obliging a Contracting State to grant to non-residents of that State any personal allowances, reliefs, reductions and deductions for taxation purposes which are by law available only to persons who are so resident.

5. 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 in the same circumstances and under the same conditions.

6. 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 the Convention, he may, notwithstanding the remedies provided by the national laws of these States, present his case to the competent authority of the Contracting State of which he is a resident. This case must be presented within three years of the date of receipt of notice of the action which gives rise to taxation, not in accordance with the Convention.

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

ARTICLE 28 : *Exchange of information* – 1. The competent authorities of the Contracting States shall exchange such information (including documents) as is necessary for carrying out the provisions of the Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention, in particular for the prevention of fraud or evasion of such taxes. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State. However, if the information is originally regarded as secret in the transmitting State, it shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are subject of the Convention. Such persons or authorities shall use the information only for such purposes but may disclose the information in public court proceedings or in judicial decisions. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchange of information shall be made, including, where appropriate, exchange of information regarding tax avoidance.

2. The exchange of information or documents shall be either on a routine basis or on request with reference to particular case or both. The competent

authorities of the Contracting States shall agree from time to time on the list of the information or documents 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 the administrative practice of that or of the other Contracting State ;
- (b) to supply information or documents 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 or documents 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 29 : *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 agreements.

ARTICLE 30 : *Entry into force* – Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Convention. This Convention shall enter into force on the date of the latter of these notifications and shall thereupon have effect :

- (a) in India :
 - (i) in respect of income arising in any previous year beginning on or after the first day of April next following the calendar year in which the Convention enters into force; and
 - (ii) in respect of capital which is held on the last day of any previous year beginning on or after the first day of April next following the calendar year in which the Convention enters into force; and
- (b) in Bulgaria :
 - (i) in respect of income arising in any year of income beginning on or after the first day of January, next following the calendar year in which the Convention enters into force; and

- (ii) in respect of capital which is held on the last day of any year of income beginning on or after the first day of January next following the calendar year in which the Convention enters into force.

ARTICLE 31 : *Termination* – This Convention shall remain in force indefinitely, but either of the Contracting States may, on or before the thirtieth day of June, 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 India :

- (i) in respect of income arising in any previous year beginning on or after the first day of April, next following the calendar year in which the notice of termination is given; and
- (ii) in respect of capital which is held on the last day of any previous year beginning on or after the first day of April next following the calendar year in which the notice of termination is given.

(b) In Bulgaria :

- (i) in respect of income arising in any year of income beginning on or after the first day of January, next following the calendar year in which the notice of termination is given; and
- (ii) in respect of capital which is held on the last day of any year of income beginning on or after the first day of January, next following the calendar year in which the notice of termination is given.

PROTOCOL

At the signing today of the Convention between the Government of the Republic of India and the Government of the Republic of Bulgaria for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, the undersigned have agreed upon the following provisions which shall form an integral part of the Convention :

1. *To Article 7 (Business Profits) :*

- (a) In respect of paragraph 1, the profits attributable to a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall include profits directly or indirectly attributable to the permanent establishment and in particular shall include profits of the enterprise from the sales in that other State of goods or merchandise of the same or similar kind as those sold through the permanent establishment.
- (b) In respect of paragraph 3, it is agreed that while determining the profits of a permanent establishment, no deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges, for specific services performed or for management or, except in the case of a banking enterprise, by way of interest on money lent to the permanent establishment. Likewise, no account shall be taken in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any other of its offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges, for specific services performed or for the management or, except in the case of a banking enterprise, by way of interest on money lent to the head office of the enterprise or any of its other offices.

2. To Article 12 (Interest) :

In respect of paragraph 3(a)(ii), it is understood that the Central Bank in the case of India means the Reserve Bank of India.

3. To Article 26 (Non-discrimination) :

In respect of paragraph 3, it is understood that a Contracting State may not exercise in respect of a resident of the other Contracting State a higher or more

burdensome taxation than the taxation which that State would exercise in respect of a resident of a third State.

Limited Agreements with respect to Income of Airlines/Merchant Shipping

Agreement for avoidance of double taxation of income from carriage of cargo with Bulgaria¹

Whereas the annexed Agreement on Merchant Shipping has been concluded between the Government of the Republic of India and the Government of the Peoples Republic of Bulgaria;

And whereas article 10 of the said Agreement provides for the avoidance of double taxation in respect of taxes on income derived from the carriage of cargo;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961) and section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964), the Central Government hereby directs that the provisions of the said article of the said Agreement shall be given effect to in the Union of India.

Notification : N.o GSR 184(E), dated 15-4-1977.

TEXT OF ANNEXED AGREEMENT, DATED 18-11-1978

The Government of the Republic of India and the Government of the Peoples Republic of Bulgaria, inspired by the desire to develop the maritime relations between the two countries, have agreed as follows :

ARTICLE 1 – 1. The co-operation between the two countries in the field of maritime navigation shall be based on the principles of sovereign equality, national interests and mutual advantage and assistance.

2. The provisions of this Agreement shall be applicable to bilateral shipping between the two Contracting Parties.

ARTICLE 2 – In accordance with article 1 of this Agreement, both Parties shall contribute to the establishment of a regular liner shipping service between the ports of the two countries and develop mutual contacts among their organisations responsible for shipping activities.

ARTICLE 3 – 1. (a) The term vessel of each party indicates the vessel of the mercantile marine sailing under the flag of that country in accordance with its laws.

This term would exclude the warships of both the Parties.

2. The term member of the crew of a merchant vessel indicates any person entered in its crew list.

ARTICLE 4 – 1. The Parties agree to promote the participation of their vessels in the carriage of all commercial cargoes between the ports of the two countries on the principle of equality in all matters, including the distribution of cargo, its transportation and freight earnings over specified periods.

2. In case the shipping companies of one of the Contracting Parties are not able to undertake the carriage in accordance with paragraph (1), such carriage will be offered to the vessels of the other Contracting Party. If the required tonnage is not available with the other Contracting Party, the first Party may use vessels of third countries for the carriage of the share of cargo of the Contracting Party.

3. The provisions of this article do not concern the right of the vessels, sailing under the flag of third countries to participate in the sea traffic between the ports of the Contracting Parties.

ARTICLE 5 – Each Party will avoid competition with the fleet of the other in its trade with third countries and desist from such activities as would prejudice the growth and utilisation of the merchant fleet of the other Party.

ARTICLE 6 – Each Party may establish a general agency for its shipping companies in the territory of the other Party in accordance with the laws of that country.

ARTICLE 7 – 1. The vessels of either Party, their crews, passengers and cargoes shall be admitted to the territorial waters and the ports of the other Party and shall be accorded the most-favoured nation treatment relating to their entry, stay and leaving of the ports and all the facilities for maritime commercial navigation.

2. The provisions of the preceding paragraph shall not apply to maritime activities legally protected for each country, such as coasted shipping, pilotage, sea fishing as well as to the regulations regarding the entry and stay of foreigners.

ARTICLE 8 – The Parties shall endeavour to adopt, within the limits of their laws and port regulations, all appropriate measures to facilitate and expedite maritime traffic, to prevent delays to vessels and to expedite the carrying out of customs and other formalities applicable at the ports.

ARTICLE 9 – All ship documents including those relating to nationality, registration, tonnage and survey issued or recognised by one Party shall be recognised by the other Party.

ARTICLE 10 – 1. All port dues and charges for services rendered to the vessels operating under the provisions of the present Agreement shall be regulated in accordance with the relevant laws applicable at the ports of India and Bulgaria from time to time.

2. The Parties agree not to collect income-tax on the freight earnings on cargoes carried by vessels from ports of one Contracting Party to the ports of the other Contracting Party.

ARTICLE 11 – 1. Each of the party shall recognise the seamans identity documents issued by the appropriate authorities of the other Party.

2. Holders of seamans identity documents specified above shall be permitted to land on temporary shore leave without visa during the stay of the vessel in the port of the other Party, provided that the crew list has been submitted to the concerned authorities in accordance with the laws and regulations in force in that port.

3. From the time of their landing to the time of their returning to the vessel, the said persons shall be subject to frontier and customs control and the laws and regulations for foreigners traffic in force in that port.

4. When a member of the crew possessing an identity document and the prescribed permission, disembarks in the port of the other Party due to illness, official reasons or other reasons, the latter shall allow his being put up at a hospital, his being repatriated or his being moved to another port in order to be accommodated in another ship.

5. Holders of the seaman's identity documents shall be permitted to enter, move through or leave by any means of transport the territory of the other country in order to be able to join a vessel of his country in a port of the other Party or on way to his home country with the approval of the appropriate authorities of the other Party. In all such cases, the seaman shall be required to have proper visa of the other Party which shall be granted by the concerned authorities within the shortest possible time.

6. For the purpose of navigation, the captain of the vessel staying in the port of the other Party or a persons authorised by him shall be permitted the contact or visit the diplomatic or consular official, or the representative of the shipping company by observing the laws and regulations of the other country regarding the port regime and foreigners entry into that country.

ARTICLE 12 – If a vessel of one of the Parties suffers shipwreck, runs aground, is cast ashore or suffers any other accident off the coast of the other party, the vessel, the cargo, the crew and the passengers shall receive in the territory of the other Party the same assistance which is accorded to a national vessel, its cargo, crew and passengers. This will be subject to the respective laws and international obligations of each of the Parties.

The loads, freights and repairing of a vessel which has been damaged shall not be subject to customs duties and taxes provided the same are taken out of the country within a reasonable period or are not handed over for local consumption.

ARTICLE 13 – All payments and expenses relating to sea transport between the two countries shall be effected in accordance with the provisions of the payments agreement in force between the two countries from time to time.

ARTICLE 14 – Any difficulty arising in the working of this Agreement shall be settled by negotiation.

ARTICLE 15 – 1. For the purpose of evaluating, supervising and reviewing the overall working of this Agreement and resolving any outstanding issues, the Contracting Parties agree to set up a Joint Committee on shipping which will meet periodically. The Parties will nominate their representatives to the Joint Committee.

2. State Shipping Corporation, Water Transport, Varna, from the Bulgarian side and the Shipping Corporation of India Limited, Bombay, from the Indian side are the organisations which are authorised to solve the questions such as distribution of cargoes, fixation of sailings and tariff and similar other questions for implementing the present Agreement.

Each Party may, if necessary, nominate any other organisation in place of the above by notifying to the other Party.

ARTICLE 16 – The present Agreement shall be applicable in the territory of the Republic of India on the one hand and in the territory of the Peoples Republic of Bulgaria on the other hand.

ARTICLE 17 – 1. This Agreement shall take effect from the date on which instruments of ratification are exchanged in New Delhi and shall remain in force for a period of five years.

2. After the expiration of this period the Agreement shall be automatically renewed for a one year period at a time unless either of the Contracting Parties expresses its desire to renegotiate the Agreement or any of its provisions by giving a written notice to the other Party to that effect six months prior to the expiry of any of the above-mentioned periods.

Done in New Delhi on this the 18th day of November, 1976, in two original copies in English, both the texts being equally authentic.

Canada

Agreement for avoidance of double taxation of income

and

the prevention of fiscal evasion with Canada

Whereas the agreement between the Government of the Republic of India and the Government of Canada stated in Annexure below for the avoidance of double taxation and for the prevention of fiscal evasion with respect to taxes on income and on capital has entered into force on the 6th May, 1997, after the notification by both the Contracting States of the completion of the procedures required under their laws for bringing into force of the said agreement in accordance with Article 29 of the said agreement ;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961) and section 44A of the Wealth-tax Act, 1957 (27 of 1957), the Central Government hereby directs that all the provisions of the said agreement shall be given effect to in the Union of India.

Notification : No. SO 28(E), dated 15-1-1998.*

ANNEXURE

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF CANADA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Government of the Republic of India and the Government of Canada desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, have agreed as follows :

I. SCOPE OF THE AGREEMENT

ARTICLE 1 : *Personal scope* – This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2 : *Taxes covered* – 1. This Agreement shall apply to taxes on income and on capital imposed on behalf of each Contracting State, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property.

3. The existing taxes to which the Agreement shall apply are in particular :

(a) in the case of Canada :

the taxes imposed under the Income-tax Act of Canada,
(hereinafter referred to as Canadian tax);

(b) in the case of India :

(i) the income-tax including any surcharge thereon imposed under the Income-tax Act;

(ii) the wealth-tax imposed under the Wealth-tax Act;
(hereinafter referred to as Indian tax).

4. The Agreement shall apply also to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Agreement in addition to, or in place of, the existing taxes.

5. At the end of each year, the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws which are the subject of this Agreement.

II. DEFINITIONS

ARTICLE 3 : *General definitions* – 1. In this Agreement, unless the context otherwise requires :

- (a) the term Canada used in a geographical sense, means the territory of Canada, including any area beyond the territorial seas of Canada which, in accordance with international law and the laws of Canada, is an area within which Canada may exercise rights with respect to the sea-bed and subsoil and their natural resources;
- (b) the term India used in a geographical sense, means the territory of India, including any area beyond the territorial seas of India which, in accordance with international law and the laws of India, is an area within which India may exercise rights with respect to the sea-bed and subsoil and their natural resources;
- (c) the terms a Contracting State and the other Contracting State mean, as the context requires, Canada or India;
- (d) the term person includes an individual, a partnership, a company and any other entity (including a trust) which is treated as a taxable unit under the taxation laws of a Contracting State;
- (e) the term company means any body corporate or any entity which is treated as a company or a body corporate under the taxation laws of a Contracting State;
- (f) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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;
- (g) the term competent authority means :
 - (i) in the case of Canada, the Minister of National Revenue or his authorised representative;
 - (ii) in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or its authorised representative;
- (h) the term national means :
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership and association deriving its status as such from the law in force in a Contracting State;
- (i) the term tax means Canadian tax or Indian tax, as the context requires, but shall not include any amount payable in respect of any default or omission in relation to the said taxes or which represent a penalty imposed relating to those taxes;

- (j) the term international traffic means any voyage of a ship or aircraft operated by an enterprise of a Contracting State, except where the principal purpose of the voyage is to transport passengers or goods between places in the other Contracting State.

As regards the application of the Agreement by a Contracting State, any term not defined in this Agreement 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 Agreement.

ARTICLE 4 : *Residence* – 1. For the purposes of this Agreement, the term resident of a Contracting State means any person who, under the laws of that State, is liable to tax 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 status shall be determined in accordance with the following rules :

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (hereinafter referred to as his centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Whereby reason of the provisions of paragraph 1, a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting

States shall by mutual agreement endeavour to settle the question. In the absence of such agreement, such person shall not be considered to be a resident of either Contracting State for the purposes of enjoying benefits under the Agreement.

ARTICLE 5 : *Permanent establishment* – 1. For the purposes of this Agreement, the term permanent establishment means a fixed place of business through which the business of an 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 mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) a warehouse, in relation to a person providing storage facilities for others;
- (h) a farm, plantation or other place where agriculture, forestry, plantation or related activities are carried on;
- (i) a store or premises used as a sales outlet;
- (j) an installation or structure used for the exploration or exploitation of natural resources, but only if so used for a period of more than 120 days in any twelve-month period;
- (k) a building site or construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or activities (together with other such sites, projects or activities, if any) continue for a period of more than 120 days in any twelve-month period;
- (l) the furnishing of services other than included services as defined in Article 12, within a Contracting State by an enterprise through employees or other personnel, and only if :
 - (i) activities of that nature continue within that State for a period or periods aggregating to more than 90 days within any twelve-month period; or

(*ii*) the services are performed within that State for a related enterprise (within the meaning of paragraph 1 of Article 9).

3. Notwithstanding the preceding provisions of this Article, the term permanent establishment shall be deemed not to include any one or more of the following :

- (*a*) the use of facilities solely for the purpose of storage, display, or occasional delivery 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, display, or occasional delivery;
- (*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 of collecting information, for the enterprise;
- (*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 other activities which have a preparatory or auxiliary character, for the enterprise.

4. Notwithstanding the provisions of paragraphs 1 and 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 an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to those mentioned in paragraph 3 which, if exercised through a fixed place of business, would not make that fixed place of business a permanent establishment under the provisions of that paragraph;
- (*b*) he has no such authority but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise, and some additional activities conducted in that State on behalf of the enterprise have contributed to the sale of the goods or merchandise; or

(c) he habitually secures orders in the first-mentioned State, wholly or almost wholly 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 State through a broker, general commission agent, or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise and the transactions between the agent and the enterprise are not made under arms length conditions, he shall not be considered an agent of independent status within the meaning of this paragraph.

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 otherwise), shall not of itself constitute either company a permanent establishment of the other.

III. TAXATION OF INCOME

ARTICLE 6 : *Income from immovable property* – 1. Income from immovable property (including income from agriculture or forestry) may be taxed in the Contracting State in which such property is situated.

2. For the purposes of this Agreement, the term immovable property shall be defined in accordance with the law and usage 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded 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 or has carried on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to :

- (a) that permanent establishment, and
- (b) sales of goods and merchandise of the same or similar kind as those sold, or from other business activities of the same or similar kind as those effected, through that permanent establishment.

2. Subject to the provisions of paragraph 3, 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 or the ascertainment thereof presents exceptional difficulties, the profits attributable to the permanent establishment may be estimated on a reasonable basis provided that the result shall be in accordance with the principles laid down in this Article.

3. In the determination of the profits of a permanent establishment, there shall be allowed those deductible expenses which are incurred for the purposes of the business of the permanent establishment, including executive and general administrative expenses, whether incurred in the State in which the permanent establishment is situated or elsewhere as are in accordance with the provisions of and subject to the limitations of the taxation laws of that State. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than as a reimbursement of

actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. Subject to the provisions of paragraph 3, insofar 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 contained 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 purposes 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 Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8 : *Shipping and air transport* – 1. Profits derived by an enterprise of a Contracting State from the operation by that enterprise of ships or aircraft in international traffic shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1 and of Article 7, profits derived by an enterprise of a Contracting State from a voyage of a ship or aircraft where the principal purpose of the voyage is to transport passengers or property between places in the other Contracting State may be taxed in that other State.

3. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall mean profits derived by an enterprise described in paragraph 1 from the transportation by sea or air respectively of passengers, mail, livestock or goods carried on by owners or lessees or charterers of ships or aircraft including :

- (a) the sale of tickets for such transportation on behalf of other enterprises;
- (b) other activity directly connected with such transportation; and
- (c) the rental of ships or aircraft incidental to any activity directly connected with such transportation.

4. Profits of an enterprise of a Contracting State described in paragraph 1 from the use, maintenance, or rental of containers (including trailers, barges, and related equipment for the transport of containers) used in connection with the operation of ships or aircraft in international traffic shall be taxable only in that State.

5. The provisions of paragraphs 1 and 4 shall also apply to profits from participation in a pool, a joint business, or an international operating agency.

6. For the purposes of this Article, interest on funds connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft, and the provisions of Article 11 shall not apply in relation to such interest.

7. The provisions of this Article shall not apply to a drilling rig or any vessel the principal function of which is the performance of activities other than the transportation of goods or passengers.

ARTICLE 9 : *Associated enterprises* – 1. 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 income 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 income of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the income of an enterprise of that State – and taxes accordingly – income on which an enterprise of the other Contracting State has been charged to tax in that other State and the income so included is income which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on that income. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

3. A Contracting State shall not change the income of an enterprise in the circumstances referred to in paragraph 1 after the expiry of the time-limits provided in its national laws and, in any case, after five years from the end of the year in which the income which would be subject to such charge would, but for the conditions referred to in paragraph 1, have accrued to that enterprise.

4. The provisions of paragraphs 2 and 3 shall not apply in the case of fraud, wilful default or neglect.

ARTICLE 10 : *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 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 laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed :

- (a) 15 per cent of the gross amount of the dividends if the beneficial owner is a company which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividends;
- (b) 25 per cent of the gross amount of the dividends in all other cases.

3. The provisions of paragraphs 1 and 2 shall not affect the taxation of the company on the profits out of which the dividends are paid.

4. The term dividends as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident.

5. 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 14, as the case may be, shall apply.

6. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on dividends paid by the company, except insofar as such dividends are paid to be a resident of that other 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 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 State.

ARTICLE 11 : *Interest* – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 beneficial owner of the interest, the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2,

(a) interest arising in a Contracting State and paid to a resident of the other Contracting State shall be exempt from tax in the first-mentioned State if :

(i) the payer of the interest is the Government of that Contracting State or of a political sub-division or local authority thereof;

(ii) the beneficial owner of the interest is the central bank of the other Contracting State; or

(iii) the interest is paid to an agency or instrumentality (including a financial institution) which may be agreed upon in letters exchanged between the competent authorities of the Contracting States.

(b) (i) interest arising in India and paid to a resident of Canada shall be taxable only in Canada if it is paid in respect of a loan made, guaranteed or insured, or a credit extended, guaranteed or insured by the Export Development Corporation; or

(ii) interest arising in Canada and paid to a resident of India shall be taxable only in India if it is paid in respect of a loan made, guaranteed or insured, or a credit extended, guaranteed or insured by the Export-Import Bank of India (Exim Bank).

4. The term interest as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and in particular, income from Government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as income assimilated to income from money lent by the taxation laws of the State in which the income arises. However, the term interest does not include income dealt with in Article 8 or in Article 10.

5. The provisions of paragraphs 1 and 2 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 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 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that 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 resident 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 such interest shall be deemed to arise in the 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 last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 12 : *Royalties and fees for included services* – 1. Royalties and fees for included services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties and fees for included services may also be taxed in the Contracting State in which they arise and according to the laws of that State; but if the beneficial owner of the royalties or fees for included services is a resident of the other Contracting State, the tax so charged shall not exceed :

(a) in the case of royalties referred to in sub-paragraph (a) of paragraph 3 and fees for included services as defined in this Article (other than services described in sub-paragraph (b) of this paragraph) :

(i) during the first five taxable years for which this Agreement has effect,

(A) 15 per cent of the gross amount of the royalties or fees for included services as defined in this Article, where the payer of the royalties or fees is the Government of that Contracting State, a political sub-division or a public sector company; and

(B) 20 per cent of the gross amount of the royalties or fees for included services in all other cases; and

(ii) during the subsequent years, 15 per cent of the gross amount of the royalties or fees for included services; and

(b) in the case of royalties referred to in sub-paragraph (b) of paragraph 3 and fees for included services as defined in this Article that are ancillary and subsidiary to the enjoyment of the property for which payment is received under paragraph 3(b) of this Article, 10 per cent of the gross amount of the royalties or fees for included services.

3. The term royalties as used in this Article means :

(a) payment of any kind received as a consideration for the use of, or the right to use, any copyright of a literary, artistic, or scientific work including cinematograph films or work on film tape or other means of reproduction for use in connection with radio or television broadcasting, any patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial,

commercial or scientific experience, including gains derived from the alienation of any such right or property which are contingent on the productivity, use, or disposition thereof; and

- (b) payments of any kind received as consideration for the use of, or the right to use, any industrial, commercial, or scientific equipment, other than payments derived by an enterprise described in paragraph 1 of Article 8 from activities described in paragraph 3(c) or 4 of Article 8.

4. For the purposes of this Article, fees for included services means payments of any kind to any person in consideration for the rendering of any technical or consultancy services (including through the provision of services of technical or other personnel) if such services :

- (a) are ancillary and subsidiary to the application or enjoyment of the right, property or information for which a payment described in paragraph 3 is received; or
- (b) make available technical knowledge, experience, skill, know-how, or processes or consist of the development and transfer of a technical plan or technical design.

5. Notwithstanding paragraph 4, fees for included services does not include amount paid :

- (a) for services that are ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of property other than a sale described in paragraph 5(a);
- (b) for services that are ancillary and subsidiary to the rental of ships, aircraft, containers or other equipment used in connection with the operation of ships or aircraft in international traffic;
- (c) for teaching in or by educational institutions;
- (d) for services for the personal use of the individual or individuals making the payment; or
- (e) to an employee of the person making the payments or to any individual or firm of individuals (other than a company) for professional services as defined in Article 14.

6. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for included services, being a resident of a Contracting State, carries

on business in the other Contracting State in which the royalties or the fees for included services 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, property or contract in respect of which the royalties or fees for included services are paid is effectively connected with such permanent establishment or fixed base. In such a case the provisions of Article 7 or Article 14, as the case may be, shall apply.

7. Royalties and fees for included services shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties or the fees for included services, 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 obligation to pay the royalties or the fees for included services was incurred, and such royalties or fees for included services are borne by that permanent establishment or fixed base, then such royalties or fees for included services shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

8. 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 or fees for included services, having regard to the use, right, information or services 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 that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 13 : *Capital gains* – 1. Gains from the alienation of ships or aircraft operated in international traffic by an enterprise of a Contracting State and movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.

2. Gains from the alienation of any property, other than those referred to in paragraph 1 may be taxed in both Contracting States.

ARTICLE 14 : *Independent personal services* – 1. Income derived by an individual or a firm of individuals (other than a company) who is a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State. However, in the following circumstances, such income may be taxed in the other Contracting State, that is to say :

- (a) if he has or had a fixed base regularly available to him in the other Contracting State for the purpose 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) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in the relevant fiscal year; or
- (c) if the remuneration for the services in the other Contracting State is either derived from residents of that other Contracting State or is borne by a permanent establishment which a person not resident in that other Contracting State has in that other Contracting State and such remuneration exceeds two thousand five hundred Canadian dollars (\$2,500) or its equivalent in Indian currency in the relevant fiscal year.

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

ARTICLE 15 : *Dependent personal services* – 1. Subject to the provisions of Articles 16, 18 and 19, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if :

- (a) the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in the relevant fiscal year;
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State, may be based in that State.

ARTICLE 16 : *Directors fees* – Directors fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or a similar capacity of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 17 : *Artistes and athletes* – 1. Notwithstanding the provisions of Articles 7, 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste or a musician, or an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised in a Contracting State by an entertainer or an athlete accrues not to the entertainer or athlete himself but to another person which provides the activities in that State, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in that Contracting State unless the entertainer, athlete, or other person establishes that neither the entertainer or athlete nor persons related thereto participate directly or indirectly in the profits of that other person in any manner, including the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions, or other distributions.

3. The provisions of paragraphs 1 and 2 shall not apply if the visit to a Contracting State of the entertainer or the athlete is directly or indirectly supported, wholly or

substantially, from the public funds of the other Contracting State, including any political sub-division, local authority or statutory body of that other State.

ARTICLE 18 : *Pensions* – 1. Pensions arising in a Contracting State shall be taxable only in that State.

2. Pensions shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that State.

ARTICLE 19 : *Government service* – 1. (a) Salaries, wages and similar remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority, in any other State (including the other Contracting State) shall be taxable only in the first-mentioned State.

(b) However, such salaries, wages or similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that other State who :

(i) is a national of that other State ; or

(ii) did not become a resident of that other State solely for the purpose of rendering the services.

2. The provisions of paragraph 1 shall not apply to salaries, wages and similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

ARTICLE 20 : *Students and apprentices* – Payments which a student, apprentice or business trainee who is, or was immediately before visiting a Contracting State, a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in the first-mentioned State, provided that such payments are made to him from sources outside that State.

ARTICLE 21 : *Other income* – 1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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 income is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles, and arising in the other Contracting State, may be taxed in that other State. However, in the case of income derived from an estate or a trust (other than a trust to which contributions were deductible for tax purposes), the tax so charged shall, provided that the income is taxable in the Contracting State in which the beneficiary is a resident, not exceed 15 per cent of the gross amount of the income.

IV. TAXATION OF CAPITAL

ARTICLE 22 : *Capital* – 1. Capital represented by ships and aircraft operated by a resident of a Contracting State in international traffic and by movable property pertaining to the operation of such ships and aircraft, shall be taxable only in that state.

2. All other elements of capital of a resident of a Contracting State may be taxed in both Contracting States.

V. METHODS FOR PREVENTION OF DOUBLE TAXATION

ARTICLE 23 : *Elimination of double taxation* – 1. The laws in force in either of the Contracting States will continue to govern the taxation of income in the respective

Contracting States except where provisions to the contrary are made in this Agreement.

2. In the case of Canada, double taxation shall be avoided as follows :

- (a) Subject to the existing provisions of the law of Canada regarding the deduction from tax payable in Canada of tax paid in a territory outside Canada and to any subsequent modification of those provisions – which shall not affect the general principle hereof – and unless a greater deduction or relief is provided under the laws of Canada, tax payable in India on profits, income or gains arising in India shall be deducted from any Canadian tax payable in respect of such profits, income or gains.
- (b) Subject to the existing provisions of the law of Canada regarding the determination of the exempt surplus of a foreign affiliate and to any subsequent modification of those provisions – which shall not affect the general principle hereof – for the purpose of computing Canadian tax, a company which is a resident of Canada shall be allowed to deduct in computing its taxable income any dividend received by it out of the exempt surplus of a foreign affiliate which is a resident of India.
- (c) Where a resident of Canada owns capital which, in accordance with the provisions of the Agreement may be taxed in India, Canada shall allow as a deduction from the tax on capital of that resident an amount equal to the capital tax paid in India. Such deduction shall not, however, exceed that part of the capital tax (as computed before the deduction is given) which is attributable to the capital which may be taxed in India.
- (d) Where in accordance with any provision of the Agreement, income derived or capital owned by a resident of Canada is exempt from tax in Canada, Canada may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

3. In the case of India, double taxation shall be avoided as follows :

- (a) The amount of Canadian tax paid, under the laws of Canada and in accordance with the provisions of the Agreement, whether directly or by deduction, by a resident of India, in respect of income from sources within Canada which has been

subjected to tax both in India and Canada shall be allowed as a credit against the Indian tax payable in respect of such income but in an amount not exceeding that proportion of Indian tax which such income bears to the entire income chargeable to Indian tax.

- (b) Where a resident of India owns capital, which, in accordance with the provisions of the Agreement, may be taxed in Canada, India shall allow as a deduction from the tax on the capital of that resident an amount equal to the capital tax paid in Canada. Such deduction shall not, however, exceed that part of the capital tax (as computed before the deduction is given) which is attributable to the capital which may be taxed in Canada :

Provided that income which in accordance with the provisions of the Agreement is not to be subjected to tax may be taken into account in calculating the rate of tax imposed.

4. For the purposes of paragraph 2(a), the term tax payable in India shall, with respect to a company which is a resident of Canada, be deemed to include any amount which would have been payable as Indian tax but for a deduction allowed in computing the taxable income or an exemption or reduction of tax granted for that year under :

- (a) sections 10(15)(iv), 10A, 32A (but not the part dealing with ships and aircraft), 80HH, 80HHD and 80-IA (but not the part dealing with ships) of the Income-tax Act, 1961, as amended, so far as they were in force on and have not been modified since the date of signature of the Agreement, or have been modified only in minor respects so as not to affect their general character.
- (b) any other provision which may subsequently be made granting an exemption or reduction from tax which is agreed by the competent 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 relief from Canadian tax shall not be given by virtue of this paragraph in respect of income from any source if the income relates to a period starting more than ten fiscal years after the exemption from, or reduction of, Indian tax is first granted to the resident of Canada, in respect of that source.

5. For the purposes of this Article, profits, income or gains of a resident of a Contracting State which are taxed in the other Contracting State in accordance with the Agreement shall be deemed to arise from sources in that other State.

VI. SPECIAL PROVISIONS

ARTICLE 24 : *Non-discrimination* – 1. 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. Nothing in this Article shall be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

4. (a) Nothing in this Agreement shall be construed as preventing Canada from imposing on the earnings of a company, which is a resident of India, attributable to a permanent establishment in Canada, a tax in addition to the tax which would be chargeable on the earnings of a company which is a national of Canada, provided that any additional tax so imposed shall not exceed the rate specified in sub-paragraph 2(a) of Article 10 of the amount of such earnings which have not been subjected to such additional tax in previous taxation years. For the purpose of this provision, the term earnings means the profits attributable to a permanent establishment in Canada in a year and previous years after deducting therefrom all taxes, other than the additional tax referred to herein, imposed on such profits by Canada.

The provisions of this sub-paragraph shall also apply with respect to earnings from the disposition of immovable property situated in Canada by a company carrying on a

trade in immovable property without a permanent establishment in Canada but only insofar as these earnings may be taxed in Canada under the provisions of Article 6 or paragraph 2 of Article 13.

(b) A company which is a resident of Canada may be subject to tax in India at a rate higher than that applicable to Indian domestic companies. The difference in tax rate shall not, however, exceed 15 percentage points.

5. 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 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 the first-mentioned State, the capital of which, wholly or partly owned or controlled, directly or indirectly, by one or more residents of a third State, are or may be subjected.

6. In this Article, the term taxation means taxes which are the subject of this Agreement.

ARTICLE 25 : *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 the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case in writing to the competent authority of the Contracting State of which he is a resident. The case must be presented within two years from the first notification of the action which gives rise to taxation not in accordance with the Agreement.

2. The competent authority referred to in paragraph 1 shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory 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 which is not in accordance with the Agreement.

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 Agreement.

4. The competent authorities of the Contracting States may consult together for the elimination of double taxation in cases not provided for in the Agreement.

ARTICLE 26 : *Exchange of information* – 1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Agreement or of the domestic laws of the Contracting States (including the provisions thereof dealing with the prevention of fiscal evasion or fraud) concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement in respect of, or the determination of appeals in relation to, the taxes covered by the Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. 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 and the administrative practice of that or of the other Contracting State ;
- (b) to supply information which is 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*).

3. If information is requested by a Contracting State in accordance with the provisions of this Article, the other Contracting State shall endeavour to obtain the information to which the request relates in the same way as if its own taxation was involved

notwithstanding the fact that the other State does not, at that time, need such information. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall endeavour to provide information under this Article in the form requested, such as depositions of witnesses and copies of unedited original documents (including books, papers, statements, records, accounts or writings), to the same extent such depositions and documents can be obtained under the laws and administrative practices of that other State with respect to its own taxes.

ARTICLE 27 : *Diplomatic agents and consular officers* – Nothing in this Agreement shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

ARTICLE 28 : *Miscellaneous rules* – 1. The provisions of this Agreement shall not be construed to restrict in any manner any exclusion, exemption, deduction, credit or other allowance now or hereafter accorded by the laws of a Contracting State in the determination of the tax imposed by that State.

2. The competent authorities of the Contracting States may communicate with each other directly for the purpose of applying the Agreement.

3. With respect to paragraph 3 of Article XXII of the General Agreement on Trade in Services, the Contracting States agree that, notwithstanding that paragraph, any dispute between them as to whether a measure relating to a tax to which any provision of this Agreement applies falls within the scope of this Agreement may be brought before the Council for Trade in Services, as provided by that paragraph, only with the consent of both Contracting States.

VII. FINAL PROVISIONS

ARTICLE 29 : *Entry into force* – 1. The Governments of the Contracting States shall notify each other that the constitutional requirements for the entry into force of this Agreement have been complied with.

2. The Agreement shall enter into force upon the date of the later of the notifications referred to in paragraph 1 and its provisions shall have effect :

(a) in Canada :

- (i) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after the first day of January in the calendar year next following that in which the Agreement enters into force; and
- (ii) in respect of other Canadian tax for taxation years beginning on or after the first day of January in the calendar year next following that in which the Agreement enters into force;

(b) in India :

- (i) in respect of income arising in any taxable year beginning on or after the first day of April in the calendar year next following that in which the Agreement enters into force; and
- (ii) in respect of capital which is held at the end of any fiscal year beginning on or after the first day of April in the calendar year next following that in which the Agreement enters into force.

3. The provisions of the Agreement between the Government of India and the Government of Canada for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed at New Delhi on the 30th day of October, 1985 (hereinafter referred to as the 1985 Agreement) shall cease to have effect with respect to taxes to which this Agreement applies in accordance with the provisions of paragraph 2.

4. The 1985 Agreement shall terminate on the last day on which it has effect in accordance with the foregoing provisions of this Article.

ARTICLE 30 : *Termination* – This Agreement shall continue in effect indefinitely but either Contracting State may, on or before June 30 in any calendar year after expiry of five years from the year in which it enters into force, give notice of termination to the other Contracting State and in such event, the Agreement shall cease to have effect :

(a) in Canada :

- (i) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after the first day of January in the next following calendar year; and
 - (ii) in respect of other Canadian tax for taxation years beginning on or after the first day of January in the next following calendar year;
- (b) in India :
- (i) in respect of income arising in any taxable year beginning on or after the first day of April in the next following calendar year; and
 - (ii) in respect of capital which is held at the end of any fiscal year beginning on or after the first day of April in the next following calendar year.

PROTOCOL

At the signing of the Agreement between the Government of the Republic of India and the Government of Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, the undersigned have agreed upon the following provisions which shall be an integral part of the Agreement :

1. It is understood that the term fiscal year in relation to Indian tax, means previous year as defined in the Income-tax Act, 1961.
2. It is understood that the provisions of paragraph 1 of Article 6, also apply to income, other than capital gains, derived from the alienation of immovable property.
3. It is understood that where an enterprise of a Contracting State has a permanent establishment in the other Contracting State in accordance with the provisions of paragraph 2(j), 2(k) or 2(l) of Article 5, and the time period referred to in that paragraph extends over two taxable years, a permanent establishment shall not be deemed to exist in a year, if any, in which the use, site, project or activity, as the case may be, continues for a period or periods aggregating less than 30 days in that taxable year. A permanent establishment will exist in the other taxable year, and the enterprise will be subject to tax in that other Contracting State in accordance with the provisions of Article 7, but only on income arising during that other taxable year.

4. With reference to Article 13, it is understood that the term alienation includes a transfer within the meaning of Indian taxation laws.

5. It is understood that nothing in the Agreement shall be construed as preventing a Contracting State from imposing a tax on amounts included in the income of a resident of that Contracting State with respect to a partnership, trust, or controlled foreign affiliate, in which he has an interest.

ANNEX TO 1986 AGREEMENT

Amendment of provisions relating to rate of tax on royalties and fees for technical services under Double Taxation Agreement with Canada

1. The existing tax treaty with Canada was signed on 30-10-1985 and notified on 25-9-1986, Para 2 of Article 13 of the Agreement provides the rate of taxation at 30 per cent in respect of royalties and fees for technical services in the country where the same arises. Para 4 of the Protocol to the said Agreement reads as below :

With reference to paragraph 2 of Article 13, in the event that pursuant to an Agreement or a Convention concluded with a State which is a member of the Organisation for Economic Co-operation and Development after the date of signature of this Agreement India would accept a rate lower than 30 per cent for the taxation of royalties or fees for technical services paid by a resident of India to a resident of that State, it is understood that such lower rate will automatically be applied for the taxation of royalties and fees for technical services paid by a resident of India to a resident of Canada where the royalties or fees for technical services are paid in respect of a right or property which is first granted, or under a contract which is signed, after the date of entry into force of the first-mentioned Agreement or Convention.

2. Subsequent to the signing of the Agreement with Canada, India has entered into Agreements with other OECD countries wherein the rate of taxation in respect of royalties and fees for technical services has been agreed at 20 per cent of the gross amount. The revised Agreement with Sweden, which came into force on 12-12-1988, is the first of such Agreements. Accordingly, after consultation with the Canadian

Government, a notification has been issued on 24-6-1992, notifying that the rate of tax of 20 per cent will be applicable to royalties and fees for technical services paid by a resident of India to a resident of Canada. This reduced rate will be applicable to payments made in respect of the right or property which is first granted or under a contract which is signed, after 12-12-1988. A copy of the notification bearing GSR No. 635(E), dated 24-6-1992 is enclosed.

3. The Canadian Government have also passed Remission Order dated 3-12-1991 making the revised rate as above applicable to Indian residents as well in respect of royalties or fees for technical services paid by a Canadian resident. A copy of this order is enclosed.

EXPLANATORY NOTE

(This note is not part of the Order)

This remission order effectively lowers the rate of non-resident withholding tax payable under Part XIII of the Income-tax Act from 25 per cent to 20 per cent with respect to royalties or fees paid or credited in respect of a right or property which is first granted, or under a contract which is signed, after 12-12-1988 to residents of India for technical services.

Canada and India are reviewing their tax treaty and will be re-examining rates of non-resident withholding tax. Pending conclusion of those negotiations, this remission order will provide residents of India with the same rate of non-resident withholding tax on fees or royalties for technical services as it provided by India for residents of Canada on such fees or royalties.

Statistics are not available on the annual levels of royalty payments distributed to Indian residents and the associated withholding taxes. Therefore, the annual revenue cost of a five percentage point reduction in the withholding tax levied on such royalties must be based on a breakdown of related but more aggregated data. Using the best information available, the annual cost of this remission order would almost certainly be less than \$ 1 million and would likely not exceed \$ 50,000.

*ORDER RESPECTING THE REMISSION OF INCOME-TAX, INTEREST AND PENALTIES ON
ROYALTIES OR FEES RECEIVED FROM CANADA BY RESIDENTS OF INDIA FOR TECHNICAL
SERVICES*

Short title

1. This Order may be cited as the residents of India Remission Order.

Interpretation

2. In this Order,

Act means the Income-tax Act; (*Loi*)

Agreement means the Agreement between the Government of Canada and the Government of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on income set out in Schedule III to Chapter 7 of the Statutes of Canada, 1986; (*Accord*)

Person has the meaning assigned by paragraph 1(c) of Article 3 of the Agreement (*personne*).

Remission

3. Remission is hereby granted to any person who is a resident of India, within the meaning of the Agreement, for any amount paid or credited to that person in respect of royalties in relation to a right or property that is granted after 12-12-1988 or in respect of fees for technical services under a contract that is signed after that date, of an amount equal to the amount by which

(a) the aggregate of the taxes, interest and penalties payable by that person under the Act with respect to the amount so paid or credited, exceeds

(b) the aggregate of the taxes, interest and penalties that would have been payable by that person under the Act with respect to the amount so paid or credited, if the

reference to a rate of 30 per cent in paragraph 2 of Article 13 of the Agreement were read as a reference to a rate of 20 per cent.

His Excellency the Governor General in Council, considering that it is in the public interest on the recommendation of the Minister of Finance pursuant to section 23(2) of the Financial Administration Act is pleased hereby to make the annexed Order respecting the remission of income-tax, interest and penalties on royalties or fees received from Canada by residents of India for technical services.

Notification : *No. GSR 635(E), dated 24-6-1992.*

Whereas paragraph 4 of the Protocol to the Agreement between the Government of India and the Government of Canada for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income which was notified by the Government of India in the Ministry of Finance (Department of Revenue) in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i) *vide* No. GSR 1108(E), dated 25-9-1986, provides that in the event that pursuant to an Agreement or a Convention concluded with a State which is a member of the Organisation for Economic Co-operation and Development after the date of signature of the Agreement, that is 30-10-1985. India would accept a rate lower than 30 per cent for the taxation of royalties or fees for technical services paid by a resident of India to a resident of that State, such lower rate would automatically be applied for the taxation of royalties and fees for technical services paid by a resident of India to a resident of Canada where such payment is made in respect of a right or property which is first granted, or under a contract which is signed after the date of entry into force of the first-mentioned agreement.

And whereas in the Convention with the Government of the Kingdom of Sweden, which is a member of the Organisation for Economic Co-operation and Development, and which entered into force on 12-12-1988, the Government of India has accepted the rate of 20 per cent for the taxation of royalties and fees for technical services;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961) and section 24A of the Companies (Profits) Surtax Act, 1964 (7

of 1964), the Central Government hereby directs that the rate of taxation of royalties and fees for technical services paid by a resident of India to a resident of Canada, where such payment is made in respect of a right or property which is first granted, or under a contract which is signed, after 12-12-1988 shall be twenty per cent.

Circular : No. 638, dated 28-10-1992.

China

Agreement for avoidance of double taxation of income

And

the prevention of fiscal evasion with China

Whereas the annexed Agreement between the Government of the Republic of India and the Government of the Peoples Republic of China for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income has come into force on the 21st day of November, 1994 after the notification by both the Contracting States to each other of the completion of the procedures required under their laws for bringing into force of the said Agreement in accordance with Article 28 of the said Agreement;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Agreement shall be given effect to in the Union of India.

Notification : No. GSR 331(E), dated 5-4-1995.

ANNEXURE

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE PEOPLES REPUBLIC OF CHINA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of India and the Government of the Peoples Republic of China, desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows :

ARTICLE 1 : *Personal scope* – This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2 : *Taxes covered* – 1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its political sub-divisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income, all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, as well as taxes on capital appreciation.

3. The existing taxes to which the Agreement shall apply are :

(a) in China :

(i) the individual income-tax;

(ii) the income-tax for enterprises with foreign investment and foreign enterprises;

(iii) the local income-tax;

(hereinafter referred to as Chinese Tax).

(b) in India;

the income-tax including any surcharge thereon;

(hereinafter referred to as Indian Tax).

4. This Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes referred to in paragraph 3. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws within a reasonable period of time after such changes.

ARTICLE 3 : *General definitions* – 1. For the purposes of this Agreement, unless the context otherwise requires,

(a) the term China means the Peoples Republic of China; when used in geographical sense means all the territory of the Peoples Republic of China, including its territorial sea, in which the Chinese laws relating to taxation apply, and any area beyond its territorial sea, within which the Peoples Republic of China has sovereign rights of exploration for any exploitation of resources of the sea-bed

and its sub-soil and superjacent water resources in accordance with international law;

- (b) the term India means the territory of the Republic of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdictions, according to the Indian law and in accordance with international law;
- (c) the terms a Contracting State and the other Contracting State mean China or India as the context requires;
- (d) the term tax means Chinese tax or Indian 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 taxation laws in force in the respective Contracting States;
- (f) the term company means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (g) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean, respectively, and enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (h) the term nationals means any individual possessing the nationality of a Contracting State and any legal person, partnership or association deriving its status from the laws in force in the Contracting State;
- (i) the term international traffic means any transport by a ship or aircraft operated by an enterprise which is a resident of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (j) the term competent authority means, in the case of China, the State Administration of Taxation or its authorized representative, and in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorized representative.

2. As regards the application of this Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it

has under the laws of that Contracting State concerning the taxes to which this Agreement applies.

ARTICLE 4 : *Resident* – 1. For the purposes of this Agreement, the term resident of a Contracting State means any person who, under the laws of that Contracting State, is liable to tax therein by reason of his domicile, residence, place of head office 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 status shall be determined as follows :

- (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 (centre of vital interests);
- (b) If the State in which he 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 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 national;
- (d) If he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 head office is situated.

ARTICLE 5 : *Permanent establishment* – 1. For the purposes of this Agreement, the term permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) a warehouse, in relation to a person providing storage facilities for others;
- (h) a farm, plantation or other place where agriculture, forestry, plantation or related activities are carried on;
- (i) an installation or structure used for the exploration or exploitation of natural resources, but only if so used for a period of more than 183 days;
- (j) a building site or construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or activities (together with other such sites, projects or activities, if any) continue for a period of more than 183 days;
- (k) the furnishing of services other than technical services as defined in Article 12 (Royalties and Fees for Technical Services), by an enterprise of a Contracting State through employees or other personnel in the other Contracting State, but only if activities of that nature continue within that other Contracting State for a period or periods aggregating more than 183 days.

3. Notwithstanding the preceding provisions of this Article, the term permanent establishment shall be deemed not to include :

- (a) the use of facilities solely for the purpose of storage, display or delivery 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, display or delivery;

- (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 of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character.

4. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom the provisions of paragraph 5 apply – is acting in a Contracting State on behalf of an enterprise of the other Contracting State, has and habitually exercises an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 3 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

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 broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

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 otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6 : *Income from immovable property* – 1. Income derived by a resident of a Contracting State from immovable property situated in the other Contracting State may be taxed in that other Contracting State.

2. The term immovable property shall have the meaning which it has under the 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships and aircraft shall not be regarded 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 Contracting State unless the enterprise carries business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other Contracting State but only so much of them as is directly or indirectly attributable to that permanent establishment.

The provisions of this paragraph shall, however, not apply if the enterprise proves that the above activities could not have been undertaken by the permanent establishment or have no relation with the permanent establishment.

2. Subject to the provisions of paragraph 3, 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.

3. Insofar as the tax law of a Contracting State provides with respect to a specific business activity that the profits to be attributed to a permanent establishment are to be determined on the basis of a deemed profit, nothing in paragraph 2 shall preclude that Contracting State from applying those provisions of its law, provided that the result is in accordance with the principles contained in this Article.

4. In determining the profits of a permanent establishment, there shall be allowed as deduction expenses which are incurred for the purposes of the business of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere in accordance with the provisions of tax law of that Contracting State.

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 purposes of paragraphs 1 to 5, 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 Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8 : *Shipping and air transport* – 1. Profits derived by an enterprise which is a resident of a Contracting State from the operation by that enterprise of ships or aircraft in international traffic shall be taxable only in that Contracting State.

2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall mean profits derived by an enterprise described in paragraph

1 from the transportation by sea or air respectively of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of ships or aircraft including :

- (a) the sale of tickets for such transportation ;
- (b) the rental of ships or aircraft connected with such transportation; and
- (c) income from use, maintenance, or rental of containers (including trailers, barges, and related equipment for the transport of containers) operated in international traffic.

3. For the purposes of this Article, interest on funds directly connected with the operation of ships or aircraft in international traffic shall be regarded as profits described in this Article, and the provisions of Article 11 (interest) shall not apply in relation to such interest.

4. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9 : *Associated enterprises* – 1. 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 the reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that Contracting State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other Contracting State, and the profits so included are profits which would have accrued to the enterprise of the first-mentioned

Contracting State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall, if necessary, consult each other.

ARTICLE 10 : *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 laws of that Contracting State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 10 per cent of the gross amount of the dividends. The provisions of 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, 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 either Contracting 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 14, 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 companys undistributed profits to a tax on the companys 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 11 : *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 Contracting State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and derived by the Government of the other Contracting State, a political sub-division, a local authority and the Central Bank thereof or any financial institution wholly owned by that Government, or by any other resident of that other Contracting State with respect to debt claims indirectly financed by the Government of that other Contracting State, a political sub-division, a local authority, and the Central Bank thereof or any financial institution wholly owned by that Government shall be exempt from tax in the first-mentioned Contracting State.

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 debtors 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 and 2 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 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is the Government of that Contracting State, a political sub-division, a local authority thereof or a resident of that Contracting State. Where, however, the person paying the interest, 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 indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base. Then such 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 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 the other provisions of this Agreement.

ARTICLE 12 : *Royalties and fees for technical services* – 1. Royalties or fees for technical services 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 or fees for technical services 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 or fees for technical

services, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties or fees for technical services.

3. The term royalties as used in this Article means payment of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films or tapes 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.

4. The term fees for technical services as used in this Article means any payment for the provision of services of managerial, technical or consultancy nature by a resident of a Contracting State in the other Contracting State, but does not include payment for activities mentioned in paragraph 2(k) of Article 5 and Article 15 of the Agreement.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services arise, through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the right, property or contract in respect of which the royalties or fees for the technical services are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Royalties or fees for technical services shall be deemed to arise in a Contracting State when the payer is the Government of that Contracting State, a political subdivision, a local authority thereof or a resident of that Contracting State. Where, however, the person paying the royalties or fees for technical services, 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 or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties

or fees for technical services 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 royalties or fees for technical services, 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 the other provisions of this Agreement.

ARTICLE 13 : *Capital gains* – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other Contracting State.

2. Gains from the alienation of movable property forming part of business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in that other Contracting State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that Contracting State.

5. Gains from the alienation of any property other than that referred to in the preceding paragraphs of this Article, arising in a Contracting State, may be taxed in that Contracting State.

ARTICLE 14 : *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 except in one of the following circumstances, when such income may also be taxed in the other Contracting State :

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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;
- (b) if his stay in the other Contracting State is for a period or periods exceeding in the aggregate 183 days in the taxable year concerned; in that case, only so much of the income as is derived from his activities performed in that other Contracting State may be taxed in that other 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, lawyers, engineers, architects, dentists and accountants.

ARTICLE 15 : *Dependent personal services* – 1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, 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 the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed 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 exercised in the other Contracting State shall be taxable only in the first-mentioned State if :

- (a) the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in the taxable year concerned; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other Contracting State.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated by an enterprise which is a resident of a Contracting State in international traffic shall be taxable only in that Contracting State.

ARTICLE 16 : *Directors fees* – Directors fees and other similar payments derived by a resident of a Contracting State in his capacity as member of the Board of Directors of a company which is resident of the other Contracting State may be taxed in that other Contracting State.

ARTICLE 17 : *Artistes and sportspersons* – 1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in other Contracting State, may be taxed in that other Contracting State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived by entertainers or sportsperson who are residents of a Contracting State from the activities exercised in the other Contracting State either as a part of culture exchange between the Contracting States or supported wholly or substantially from the public funds in either of the Contracting States or political sub-divisions or local authorities thereof, shall be exempt from tax in that other Contracting State.

ARTICLE 18 : *Pensions* – 1. Subject to the provisions of paragraph 2 of Article 19, pensions, annuity and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that Contracting State.

2. Notwithstanding the provisions of paragraph 1, pensions, annuity paid and other similar payments made by the Government of a Contracting State or a political sub-division or a local authority thereof under a public welfare scheme of the special security system of that Contracting State shall be taxable only in that Contracting State.

ARTICLE 19 : *Remuneration and pensions in respect of Government services – 1. (a)* Remuneration, other than pension, paid by the Government of a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to the Government of that Contracting State or a political sub-division or local authority thereof, in the discharge of functions of a governmental nature, shall be taxable only in that Contracting State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other Contracting State and the individual is a resident of that other Contracting State who :

(i) is a national of that other Contracting State; or

(ii) did not become a resident of that other Contracting State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds to which contributions are made by the Government of a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to the Government of that Contracting State or a political sub-division or a local authority thereof shall be taxable only in the Contracting State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that other Contracting State.

3. The provisions of Articles 15, 16, 17 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by the Government of a Contracting State or a political sub-division or a local authority thereof.

ARTICLE 20 : *Payments received by professors, teachers and research scholars* – 1. An individual who is, or immediately before visiting a Contracting State was, a resident of the other Contracting State and is present in the first-mentioned Contracting State for the primary purpose of teaching giving lectures or conducting research at a university, college, school or educational institution or scientific research institution approved by the Government of the first-mentioned Contracting State shall be exempt from tax in the first mentioned Contracting State, for a period of three years from the date of his arrival in the first-mentioned Contracting State, in respect of remuneration for such teaching, lectures or research.

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.

ARTICLE 21 : *Payments received by students, trainees and apprentices* – 1. A student, business apprentice or trainee who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education, training shall be exempt from tax in that first-mentioned State on the following payments or income received or derived by him for the purpose of his maintenance, education or training :

- (a) payments derived from sources outside that Contracting State for the purpose of his maintenance, education, study, research or training;
- (b) grants, scholarships or awards supplied by the Government or a scientific, educational, cultural or other tax-exempt organization; and
- (c) income derived from personal services performed in that Contracting State for the purpose of maintenance.

2. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article, for more than five consecutive years from the date of his first arrival in that Contracting State.

ARTICLE 22 : *Other income* – 1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that Contracting State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt within the foregoing Articles of this Agreement and arising in the other Contracting State may be taxed in that other Contracting State.

ARTICLE 23 : *Methods for the elimination of double taxation* – 1. In China, double taxation shall be eliminated as follows :

- (a) Where a resident of China derives income from India the amount of tax on that income payable in India in accordance with the provisions of this Agreement, may be credited against the Chinese tax imposed on that resident. The amount of credit, however, shall not exceed the amount of the Chinese tax on that income computed in accordance with the taxation laws and regulations of China.
- (b) Where the income derived from India is a dividend paid by a company which is a resident of India to a company which is a resident of China and which owns not less than 10 per cent of the shares of the company paying the dividend, the credit shall take into account the tax paid to India by the company paying the dividend in respect of its income.

2. In India, double taxation shall be eliminated as follows :

Where a resident of India derives income which, in accordance with the provisions of this Agreement, may be taxed in China, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in China whether directly or by deduction. Such deduction shall not, however, exceed that part of the income-tax (as computed before the deduction is given) which is attributable, as the case may be, to the income which may be taxed in China.

3. The tax paid in a Contracting State mentioned in paragraphs 1 and 2 of this Article shall be deemed to include the tax which would have been payable but for the legal provisions concerning tax reduction exemption or other tax incentives of the Contracting States for the promotion of economic development.

ARTICLE 24 : *Non-discrimination* – 1. 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 Contracting 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 Contracting State than the taxation levied on enterprises of that other Contracting State carrying on the same activities in the same circumstances or under the same conditions.

3. Where a Contracting State charges the profits of a permanent establishment which an enterprise of the other Contracting State has in the first-mentioned Contracting State at a rate of tax which is different from that imposed on the profits of a similar enterprise of the first-mentioned Contracting State, it shall not be construed as discrimination under this Article.

4. Nothing contained in this Article shall be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and deductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

5. Except where the provisions of paragraphs 1 of Article 9, paragraph 7 of Article 11, or paragraph 7 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State subject to the provisions of domestic laws of that Contracting State.

6. 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 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 the first-mentioned State are or may be subjected in the same circumstances and under the same conditions.

7. In this Article, the term taxation means taxes which are the subject of this Agreement.

ARTICLE 25 : *Mutual agreement procedure* – 1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

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 a satisfactory 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 which is not in accordance with the provisions of this Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law 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 the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.

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 paragraphs 2 and 3. When it seems advisable for reaching agreement, representatives of the competent authorities of the Contracting States may meet together for an oral exchange of opinions.

ARTICLE 26 : *Exchange of information* – 1. The competent authorities of the Contracting States shall exchange such information (including documents) as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement, insofar as the taxation thereunder is not contrary to this Agreement, in particular for the prevention of evasion of such taxes. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. 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 and administrative practice of that or of the other Contracting State;
- (b) to supply information or documents which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State; and
- (c) to supply information or documents 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 27 : *Diplomatic agents and consular officers* – Nothing in this Agreement shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

ARTICLE 28 : *Entry into force* – This Agreement shall enter into force on the thirtieth day after the date on which diplomatic notes indicating the completion of internal legal procedures necessary in each country for the entry into force of this Agreement have been exchanged. This Agreement shall have effect :

- (a) in China, in respect of income arising in any taxable year beginning on or after the first day of January next following the calendar year in which this Agreement enters into force;
- (b) in India, in respect of income arising in any previous year beginning on or after the first day of April next following the calendar year in which this Agreement enters into force.

ARTICLE 29 : *Termination* – This Agreement shall remain in force indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give written notice of termination to the other Contracting State through the diplomatic channels. In such event this Agreement shall cease to have effect :

- (a) in China, in respect of income arising in any taxable year beginning on or after the first day of January next following the calendar year in which the notice of termination is given;
- (b) in India, in respect of income arising in any previous year beginning on or after the first day of April next following the calendar year in which the notice is given;

PROTOCOL

At the signing of the Agreement between the Government of the Republic of India and the Government of the Peoples Republic of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income (hereinafter referred to as The Agreement) both sides have agreed upon the following which form an integral part of the Agreement :

1. With reference to paragraph (1d) of Article 3 :

It is understood that the term tax should not include any penalty imposed for non-compliance of the laws and regulations relating to the taxes to which this Agreement applies.

2. With reference to Article 8, the exemption shall also include:

- (i) in China, the business tax;
- (ii) in India, any tax similar to the business tax in China which may be imposed in India after signing of the Agreement.

3. With reference to Article 26:

The competent authorities of the Contracting States shall agree from time to time on the information or documents which shall be necessarily furnished on a routine basis.

Cyprus

Agreement for avoidance of double taxation of income

And

the prevention of fiscal evasion with Cyprus

Whereas the annexed Agreement between the Government of the Republic of India and the Government of the Republic of Cyprus for the Avoidance of Double Taxation with respect of taxes on income has entered into force on 21-12-1994, after the notification by both the Contracting States to each other of the completion of the procedures required by their laws for bringing into force the said Agreement in accordance with paragraph 1 of Article 30 of the said Agreement;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Agreement shall be given effect to in the Union of India.

Notification : No. GSR 805(E), dated 26-12-1995.

ANNEXURE

AGREEMENT BETWEEN THE REPUBLIC OF INDIA AND THE REPUBLIC OF CYPRUS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Government of the Republic of India and the Government of the Republic of Cyprus desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital have agreed as follows :

CHAPTER I – SCOPE OF THE AGREEMENT

ARTICLE 1 : *Personal scope* – This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2 : *Taxes covered* – 1. This Agreement shall apply to taxes on income and on capital imposed on behalf of Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The taxes on which this Agreement shall apply are :

(a) in India :

- (i) the income-tax including any surcharge thereon;
 - (ii) the wealth-tax;
- (hereinafter referred to as Indian tax);

(b) in Cyprus :

- (i) the income-tax;
 - (ii) the corporate income-tax;
 - (iii) the special contribution;
 - (iv) the capital gains tax;
 - (v) the immovable property tax;
- (hereinafter referred to as Cyprus tax).

4. This Agreement shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of the present Agreement in addition to, or in place of, the taxes referred to in paragraph 3. 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* – In this Agreement, unless the context otherwise requires :

- (a) the term India means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdictions, according to the Indian Law and in accordance with international law/the U.N. Convention on the Law of the Sea.
- (b) the term Cyprus means the Republic of Cyprus including the national territory, the territorial sea, the continental shelf, and any other area which in accordance with international law and the law of the Republic of Cyprus has been or may hereafter be designated as an area within which the Republic of Cyprus exercises sovereign rights or has jurisdiction or any other rights and duties;
- (c) the terms a Contracting State and the other Contracting State mean India or Cyprus as the context requires;
- (d) the term company means any body corporate or any entity which is treated as a company or body corporate under the taxation laws in force in the respective Contracting States;
- (e) the term competent authority means in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative; and in the case of Cyprus, the Minister of Finance or his authorised representative;
- (f) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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;
- (g) the term fiscal year means :
 - (i) in the case of India, previous year as defined under section 3 of the Income-tax Act, 1961;
 - (ii) in the case of Cyprus, year of assessment as defined under section 2 of the Income-tax Act, 1961 as amended;

- (h) the term international traffic means any transport by a ship or aircraft operated by an enterprise registered and having the headquarters (*i.e.*, effective management) in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (i) the term national means :
 - (i) in the case of India, any individual possession the nationality of India and any legal person, partnership or association deriving its status from the laws in force in India;
 - (ii) in the case of Cyprus, individuals possessing the citizenship of Cyprus and any person other than an individual deriving its status as such from the laws in force in Cyprus;
- (j) the term person includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States;
- (k) the term tax means Indian tax or Cyprus tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Agreement applies or which represents a penalty imposed relating to those taxes.

As regards the application of this Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which this Agreement applies.

ARTICLE 4 : *Resident* – 1. For the purposes of this Agreement, the term resident of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term does not include a person who is liable to tax in that State in respect only of income from sources in that State or on capital situated therein.

2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his status shall be determined as follows :

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre for vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national; and
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 State in which its place of effective management is situated.

ARTICLE 5 : *Permanent establishment* – 1. For the purposes of this Agreement, the term permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) a building site, construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continues for a period of more than twelve months.

3. Notwithstanding the preceding provisions of this Article, the term permanent establishment shall be deemed not to include :

- (a) the use of facilities solely for the purpose of storage, display or delivery 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, display or delivery;
- (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 of collecting information for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information or for scientific research, being activities solely of a preparatory or auxiliary character in the trade or business of the enterprise. However, this provision shall not be applicable where the enterprise maintains any other fixed place of business in the other Contracting State for any purpose or purposes other than the purposes specified in this paragraph; and
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

4. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of independent status to whom paragraph 5 applies – is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts on behalf of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprises, unless the activities of such person are limited to those mentioned in paragraph 3 which if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

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 provided that such person is acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly on behalf of that enterprise, he will not be considered as an agent of an independent status within the meaning of this paragraph.

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.

CHAPTER III – TAXATION OF INCOME

ARTICLE 6 : *Income from immovable property* – 1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall also 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 the 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, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to :

- (a) that permanent establishment;
- (b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or
- (c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.

The provisions of sub-paragraphs (b) and (c) above shall not apply if the enterprise proves that such sale or activity could not have been reasonably undertaken by the permanent establishment.

2. Subject to the provisions of paragraph 3, 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 attributable 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.

3. In determining the profits of a permanent establishment, there shall be allowed as deduction expenses which are incurred for the purposes of the business 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 in accordance with the provisions of and subject to the limitation of the tax laws of that State.

4. Insofar 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 the 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 contained 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 purposes 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 Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8 : *Shipping and air transport* – 1. Profits derived by an enterprise registered and having the headquarters (*i.e.*, effective management) in a Contracting State from the operation by that enterprise of ships or aircraft in international traffic shall be taxable only in that State.

2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall mean profits derived by an enterprise described in paragraph 1 from the transportation by sea or air respectively of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of ships or aircraft including :

- (a) the sale of tickets for such transportation on behalf of other enterprises;
- (b) other activity directly connected with such transportation; and
- (c) the rental of ships or aircraft incidental to any activity directly connected with such transportation.

3. Profits of an enterprise of a Contracting State described in paragraph 1 from the use, maintenance, or rental of containers (including trailers, barges, and related equipment for the transport of containers) used in connection with the operation of ships or aircraft in international traffic shall be taxable only in that State.

4. The provisions of paragraphs 1 and 3 shall also apply to profits from participation in pool, a joint business, or an international operating agency.

5. For the purposes of this Article interest on funds connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft, and the provisions of Article 11 (Interest) shall not apply in relation to such interest.

6. Gains derived by an enterprise of a Contracting State described in paragraph 1 from the alienation of ships, aircraft or containers owned and operated by the enterprise, the income from which is taxable only in that State, shall be taxed only in that State.

ARTICLE 9 : *Associated enterprises* – 1. 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.

2. Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of such liability by the exercise of a

discretion or the making of an estimate by the competent authority of that State in cases which, from the information available to the competent authority of that State, it is not possible or not practicable to determine the income to be attributed to an enterprise, provided that the law shall be applied, so far as the information available to the competent authority permits, consistently with the principles of this Article.

3. Where a Contracting State includes in the profits of an enterprise of that State, and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to that enterprise of the first mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting State shall, if necessary, consult each other.

ARTICLE 10 : *Dividends* – 1. Dividends paid by a company which is resident of a Contracting State to a resident of the other Contracting State may be taxed in that other 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 laws of that 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 owns at least ten per cent of the shares of the company paying the dividends; and
- (b) 15 per cent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

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 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 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 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 State, nor subject the companys undistributed profits to a tax on the companys undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11 : *Interest* – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2 :

(a) interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by :

- (i) the Government, a political sub-division or a local authority of the other Contracting State; or
 - (ii) the Central Bank of the other Contracting State or any agency or instrumentality (including a financial institution) wholly owned by the other Contracting State or political sub-division or local authority thereof;
- (b) interest arising in a Contracting State shall be exempt from tax in that Contracting State to the extent approved by the Government of that State if it is derived and beneficially owned by any person other than a person referred to in sub-paragraph (a), who is a resident of the other Contracting State provided that the transaction giving rise to the debt-claim has been approved in this regard by the Government of the first-mentioned Contracting State.

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 debtors 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 and 2 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 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 resident of 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 such 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 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 the other provisions of this Agreement.

ARTICLE 12 : *Royalties and fees for included services* – 1. Royalties and fees for included services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties and fees for included services may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties or fees for included services the tax so charged shall not exceed 15 per cent of the gross amount of the royalties or fees for included services.

3. The term royalties in this Article means payments or credits, whether periodical or not, and however described or computed, to the extent to which they are made as consideration for :

- (a) the use of, or the right to use any copyright, patent, design or model, plan, secret formula or process, trade mark or other like property or right;
- (b) the use of, or the right to use, any industrial, commercial or scientific equipment;
- (c) the supply of scientific, technical, industrial or commercial knowledge or information;
- (d) the use of, or the right to use :

- (i) motion picture films;
 - (ii) films or video tapes for use in connection with television; or
 - (iii) tapes for use in connection with radio broadcasting; or
- (e) total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph.

4. The term fees for included services in this Article means payments or credits, whether periodical or not, and however described or computed, to the extent to which they are made as consideration for :

- (a) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right as is mentioned in sub-paragraph (a) of paragraph (3), any such equipment as is mentioned in sub-paragraph (b) of paragraph (3), or any such knowledge or information as is mentioned in sub-paragraph (c) of paragraph (3);
- (b) rendering of any technical or consultancy services (including the provision of technical or other personnel) if such services make available technical knowledge, experience, skill, know-how or process or consist of the development and transfer of a technical plan or technical design.

5. The provisions of paragraphs (1) and (2) shall not apply if the beneficial owner of the royalties or fees for included services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for included services 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 or fees for included services are paid is effectively connected with such permanent establishment or fixed base. In such a case the provisions of Article 7 or Article 15, as the case may be, shall apply.

6. Royalties and fees for included services shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties or fees for included services, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment

or fixed base in connection with which the liability to pay the royalties or fees for included services was incurred, and such royalties or fees for included services are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the 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 royalties or fees for included services 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 the other provisions of this Agreement.

ARTICLE 13 : *Technical fees* – 1. Technical fees arising in a Contracting State which are derived by a resident of the other Contracting State may be taxed in that other State.

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

3. The term technical fees as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a technical, managerial or consultancy nature.

4. The provisions of paragraphs (1) and (2) shall not apply if the beneficial owner of the technical fees, being a resident of a Contracting State carries on business in the other Contracting State in which the technical fees arise through a permanent establishment situated therein, or performs in that other State independent personal services, and the technical fees are effectively connected with such permanent establishment or such services. In such a case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. Technical fees shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a statutory body thereof, or a resident of that State. Where, however, the person paying the technical fees, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the technical fees was incurred, and such technical fees are borne by that permanent establishment, then such technical fees shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where, by reason of a special relationship between the payer and the recipient or between both of them and some other person, the amount of the technical fees paid, exceeds for whatever reason, 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 a case, the excess part of the payments shall remain taxable according to the law of each Contracting State due regard being had to the other provisions of this Agreement.

ARTICLE 14 : *Capital gains* – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property, referred to in Article 6, and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains from the alienation of any property other than that mentioned in paragraphs 1, 2 and 3 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 15 : *Independent personal services* – 1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State except in the following circumstances when such income may also be taxed in the other Contracting State :

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in the relevant fiscal year; in that case only so much of the income as is derived from his activities performed in that other State may be taxed in that other 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, 20, 21 and 22, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if :

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the relevant fiscal year;

- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

ARTICLE 17 : *Directors fees* – Directors 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 may be taxed in that other State.

ARTICLE 18 : *Income earned by artistes 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 a 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 State.

2. While 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. Notwithstanding the provisions of paragraph 1, income derived by an entertainer or an athlete who is a resident of a Contracting State from his personal activities as such exercised in the other Contracting State, shall be taxable only in first-mentioned Contracting State, if the activities in the other Contracting State are supported wholly or substantially from the public funds of the first-mentioned Contracting State, including any of its political subdivisions or local authorities.

4. Notwithstanding the provisions of paragraph 2 and Articles 7, 15 and 16, where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such in a Contracting State accrues not to the entertainer or athlete himself but to another person, that income shall be taxable only in the other Contracting State, if that other person is supported wholly or substantially from the public funds of that other State, including any of its political sub-divisions or local authorities.

ARTICLE 19 : *Remuneration and pensions in respect of Government service* – 1.

(a) Remuneration other than a pension paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who :

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of that other State.

3. The provisions of Articles 16, 17 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

ARTICLE 20 : *Non-Government pensions and annuities* – 1. Any pension, other than a pension referred to in Article 19, or any annuity derived by a resident of

a Contracting State from sources within the other Contracting State may be taxed only in the first-mentioned Contracting State.

2. The term pension means a periodic payment made in consideration of past services or by way of compensation for injuries received in the course of performance of services.

3. 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 moneys worth.

ARTICLE 21 : *Payments received by students and apprentices* – 1. A student or business apprentice who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State and who is present in that other State solely for the purpose of his education or training, shall be exempt from tax in that other State on :

(a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training; and

(b) remuneration from employment in that other State, in an amount not exceeding US \$ 5,000 or its equivalent during any fiscal year, provided that such employment is directly related to his studies or is undertaken for the purpose of his maintenance.

2. The benefit of sub-paragraph (b) or paragraph (1) of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefit of sub-paragraph (b) of paragraph (1) of this Article for more than three consecutive years from the date of his first arrival in that other Contracting State.

ARTICLE 22 : *Payments received by professors, teachers and research scholars* – 1. Remuneration which a professor or teacher who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is

present in the first-mentioned State for a period not exceeding two years for the purpose of carrying out advanced study or research or for teaching at a university, receives for such work shall not be taxed in that State, provided that such remuneration is derived by him from outside that 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 resident of a Contracting State if he is a resident in that Contracting State in the fiscal year in which he visits the other Contracting State or in the immediately preceding fiscal year.

ARTICLE 23 : *Other income* – 1. Subject to the provisions of paragraph 2, items of income of a resident of a Contracting State, wherever arising, which are not expressly dealt with in the foregoing Articles of this Agreement, shall be taxable only in that Contracting State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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 income is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Agreement and arising in the other Contracting State may also be taxed in that other State.

ARTICLE 24 : *Capital* – 1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services may be taxed in that other State.

3. Capital represented by ships and aircraft operated in international traffic and by movable property pertaining to the operation of such ships and aircraft, shall 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 of a resident of a Contracting State shall be taxable only in that State.

CHAPTER IV – METHOD FOR ELIMINATION OF DOUBLE TAXATION

ARTICLE 25 : *Avoidance of double taxation* – 1. The laws in force in either of the Contracting States shall continue to govern the taxation of income and capital in the respective Contracting States except where express provision to the contrary is made in this Agreement.

2. Where a resident of India derives income or owns capital which, in accordance with the provisions of this Agreement, may be taxed in Cyprus, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in Cyprus whether directly or by deduction; and as a deduction from the tax on the capital of that resident an amount equal to the capital tax paid in Cyprus. Such deduction in either case shall not, however, exceed that part of the income-tax or capital tax (as computed before the deduction is given) which is attributable, as the case may be, to the income or the capital which may be taxed in Cyprus.

3. In the case of Cyprus, double taxation shall be avoided, subject to the provisions of the law of Cyprus regarding the allowance as a credit against Cyprus tax of tax payable in a territory outside Cyprus. Indian tax payable under the laws of India whether directly or by deduction in respect of profits, income or gains from sources within India shall be allowed as a credit against

any Cyprus tax payable in respect of that profit, income or gains. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is appropriate to such income derived in India.

4. The tax payable in a Contracting State mentioned in paragraph 2 and paragraph 3 of this Article shall be deemed to include the tax which would have been payable but for the tax incentives granted under the laws of the Contracting States and which are designed to promote economic development. For the purpose of paragraph 2 of Article 10 of the amount of tax shall be deemed to be 10 per cent or 15 per cent, as the case may be, of the gross amount of dividend, for the purposes of paragraph 2 of Article 11, the amount of tax shall be deemed to be 10 per cent of the gross amount of interest and for the purpose of paragraph 2 of Article 12, the amount of tax shall be deemed to be 15 per cent of the gross amount of royalties and fees for included services and for the purpose of paragraph 2 of Article 13, the amount of tax shall be deemed to be 10 per cent of the gross amount of technical fees.

5. When in accordance with any provision of this Agreement income derived by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

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 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 in the same circumstances. This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which an enterprise of the other

Contracting State has in the first-mentioned State at a rate which is higher than that imposed on the profits of a similar enterprise of the first-mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7 of this Agreement.

3. Nothing contained in this Article shall be construed as obliging a Contracting State to grant to persons not resident in that State any personal allowances, reliefs, reductions and deductions for taxation purposes which are by law available only to persons who are so resident.

4. 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 in the same circumstances.

5. In this Article, the term taxation means taxes which are the subject of this Agreement.

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 Agreement, 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. This case must be presented within three years of the date of receipt of notice of the action which gives rise to taxation not in accordance with the Agreement.

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 Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the national laws of the Contracting State.

3. The competent authorities of the Contracting State shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

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. 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.

ARTICLE 28 : *Exchange of information* – 1. The competent authorities of the Contracting States shall exchange such information (including documents) as is necessary for carrying out the provisions of the Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement, insofar as the taxation thereunder is not contrary to the Agreement, in particular for the prevention of fraud or evasion of such taxes. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchange of information shall be made, including, where appropriate, exchange of information regarding tax avoidance.

2. The exchange of information or documents 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 the information or documents 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 or documents which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State; and
- (c) to supply information or documents 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 : *Diplomatic and consular activities* – 1. Nothing in this Agreement shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreements.

CHAPTER VI – FINAL PROVISIONS

ARTICLE 30 : *Entry into force* – 1. Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Agreement. This Agreement shall enter into force on the date of the later of these notifications and shall thereupon have effect :

- (a) in India, in respect of income arising in any fiscal year beginning on or after the first day of April, 1993 and in respect of capital which is held at the expiry of any previous year beginning on or after the first day of April, 1993;
- (b) in Cyprus, in respect of income arising in any fiscal year beginning on or after the first day of January, 1993 and in respect of capital which is held at the expiry of any fiscal year beginning on or after the first day of April, 1993.

ARTICLE 31 : *Termination* – 1. This Agreement shall remain in force indefinitely but either of the Contracting States may on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from

the date of its entry into force, give the other Contracting State through diplomatic channels, written notice of termination and, in such event, this Agreement shall cease to have effect :

- (a) in India, in respect of income arising in any fiscal year beginning on or after the first day of April next following the calendar year in which the notice is given and in respect of capital which is held at the expiry of any fiscal year beginning on or after the first day of April next following the calendar year in which the notice of termination is given; and
- (b) in Cyprus, in respect of income arising in any fiscal year beginning on or after the first day of January next following the calendar year in which the notice is given and in respect of capital which is held at the expiry of any fiscal year next following the calendar year in which the notice of termination is given.

Czech Republic

Agreement for Avoidance of Double Taxation

And

Prevention of Fiscal Evasion with foreign countries – With Czech Republic

Whereas the annexed Convention between the Government of the Republic of India and the Government of the Czech Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital has come into force on the 27th day of September, 1999, on the notification by both the Contracting States to each other, under article 30 of the said Convention, of the completion of the procedures required under their respective laws for bringing into force of the said Convention;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961) and section 44A of the Wealth-tax Act, 1957 (27 of 1957), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in the Union of India.

Notification : No. GSR 811(E), dated 8-12-1999.

ANNEXURE

CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE CZECH REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Government of the Republic of India and the Government of the Czech Republic desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital and with a view to promoting economic cooperation between the two countries,

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. This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which the Convention shall apply are in particular:

(a) In India :

(i) the income-tax, including any surcharge thereon;

(ii) the wealth-tax,

(hereinafter referred to as Indian tax);

(b) In the Czech Republic :

(i) the tax on income of individuals;

(ii) the tax on income of legal persons;

(iii) the tax on immovable property,

(hereinafter referred to as Czech tax).

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes referred to in paragraph 3. The competent authorities of the Contracting States shall notify each other of significant changes which have been made in their respective taxation laws.

ARTICLE 3 : *General Definitions* – 1. For the purposes of this Convention, unless the context otherwise requires :

- (a) the term India means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with the international law, including the U.N. Convention on the Law of the Sea;
- (b) the term the Czech Republic means the territory of the Czech Republic over which, under Czech Legislation and in accordance with international law, the sovereign rights of the Czech Republic are exercised;
- (c) the term person includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States;
- (d) the term company means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (e) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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;
- (f) the term international traffic means any transport by a ship or aircraft operated by an enterprise which is a resident of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (g) the term competent authority means:
 - (i) in India : the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative;
 - (ii) in the Czech Republic, the Ministry of Finance or his authorised representative;
- (h) the term national means :
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
- (i) the term fiscal year means :
 - (i) in the case of India, previous year as defined under section 3 of the Income-tax Act, 1961;

- (i) in the case of the Czech Republic, calendar year;
- (j) the term tax means Indian tax or Czech tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty or fine imposed relating to those taxes;
- (k) the terms a Contracting State and the other Contracting State mean the Republic of India or the Czech Republic as the context requires.

2. As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

ARTICLE 4 : *Resident* – 1. For the purposes of this Convention, the term resident of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows :

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him, if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;

(d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 State in which its place of effective management is situated. If the State in which its place of effective management is situated cannot be determined, then the competent authorities of the Contracting States shall settle the question by mutual agreement.

ARTICLE 5 : *Permanent Establishment* – 1. For the purposes of this Convention, the term permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) a sales outlet;
- (h) a warehouse in relation to a person providing storage facilities for others; and
- (i) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on.

3. A building site or construction, assembly or installation project or supervisory activities in connection therewith constitute a permanent establishment only if such site, project or activities last more than six months.

4. Notwithstanding the preceding provisions of this Article, the term permanent establishment shall be deemed not to include :

- (a) the use of facilities solely for the purpose 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 of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person—other than an agent of an independent status to whom paragraph 7 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 Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person

- (a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
- (b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.

6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be

deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

8. 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 otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6 : *Income from immovable property* – 1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may also be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats, aircraft and motor vehicles shall not be regarded 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, the profits of the enterprise may also be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, 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.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes 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, in accordance with the provisions of and subject to the limitations of the tax laws of that State.

4. 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.

5. For the purposes 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.

6. 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 : *Shipping and Air Transport* – 1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. Profits derived by a transportation enterprise which is a resident of a Contracting State from the use, maintenance, or rental of containers (including trailers and other equipment for the transport of containers) used for the transport of goods or merchandise in international traffic shall be taxable only in that Contracting State unless the containers are used solely within the other Contracting State.

3. For the purposes of this Article, interest on funds directly connected with the operations of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft, and the provisions of Article 11 shall not apply in relation to such interest.

4. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9 : *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 10 : *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 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 laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State the tax so charged shall not exceed 10 per cent of the gross amount of the dividends. 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 or other rights, not being debt-claims, participating in profits, as well as income from other 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 14, 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 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 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 State, nor subject the companys undistributed profits to a tax on the companys undistributed profits,

even if the dividends paid or the undistributed profits consist wholly or partly or profits or income arising in such other State.

ARTICLE 11 : *Interest* – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 beneficial owner of the interest is a resident of the other Contracting State the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that Contracting State provided it is derived and beneficially owned by, or derived in connection with a loan or credit extended or endorsed by :

- (a) the Government, a political sub-division or a local authority of the other Contracting State; or
- (b) (i) in the case of India, the Reserve Bank of India, the Industrial Finance Corporation of India, the Industrial Development Bank of India, the Export Import Bank of India, the National Housing Bank, the Small Industries Development Bank of India and the Industrial Credit and Investment Corporation of India (ICICI); and
 - (ii) in the case of the Czech Republic, the Czech National Bank (CNB), the Czech Export Bank (CEB), the Export Guarantee and Insurance Company (EGIC), and the Konsolidation Bank (KB); or
- (c) any other institution as may be agreed upon from time to time between the competent authorities of the Contracting States.

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 debtors 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 and 2 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 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 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that 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 resident 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 such 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 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 the other provisions of this Convention.

ARTICLE 12 : *Royalties and Fees for Technical Services* – 1. Royalties or fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties or fees for technical services may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the beneficial owner of the royalties or fees for technical services is

a resident of the other Contracting State the tax so charged shall not exceed 10 per cent of the gross amount of the royalties or fees for technical services.

3. (a) 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 including cinematograph films, and films or tapes for television or radio broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or any industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.

(b) The term fees for technical services as used in this Article means payments of any kind received as a consideration for the rendering of any managerial, technical or consultancy services including the provision of services by technical or other personnel but does not include payments for services mentioned in Articles 14 and 15 of this Convention.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services 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 or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties or fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties or fees for technical services, 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 or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services 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 or fees for technical services, 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 the other provisions of this Convention.

ARTICLE 13 : *Capital Gains* – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may also be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may also be taxed in that other State.

3. Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in that State.

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from the alienation of shares other than those mentioned in paragraph 4 in a company which is a resident of a Contracting State may be taxed in that State.

6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14 : *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 State except in the following circumstances, when such income may also be taxed in the other Contracting State :

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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 State; or
- (b) if his stay in the other State is for a period or periods aggregating 183 days or more in any 12-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

ARTICLE 15 : *Dependent Personal Services* – 1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the

other Contracting State shall be taxable only in the first-mentioned State if all the following conditions are met :

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any 12-month period commencing or ending in the fiscal year concerned, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, by an enterprise of a Contracting State may be taxed in that State.

4. The term employer mentioned in paragraph 2(b) covers the person having right on the work produced and bearing the responsibility and risk connected with the performance of the work.

ARTICLE 16 : *Directors Fees* – Directors fees and other 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 may also be taxed in that other State.

ARTICLE 17 : *Artistes and Sportspersons* – 1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. The provisions of paragraphs 1 and 2, shall not apply to income from activities performed in a Contracting State by an entertainer or a sports person if the visit to that State is substantially supported by public funds of the other Contracting State or of political sub-divisions or local authorities thereof. In such case, the income is taxable only in the Contracting State of which the entertainer or sports person is a resident.

ARTICLE 18 : *Pensions* – Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

ARTICLE 19 : *Government Service* – 1. (a) Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who :

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a Political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

ARTICLE 20 : *Students and Apprentices* – 1. A student or business apprentice who is or was a resident of a Contracting State immediately before visiting the other Contracting State and who is present in that other Contracting State solely for the purpose of his education or training shall, besides grants, loans and scholarships, be exempt from tax in that other State on :

- (a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training; and
- (b) remuneration from employment in that other State, for an amount not exceeding the amount which is exempt from tax under the laws of that other Contracting State for any fiscal year, provided that such employment is directly related to his studies or is undertaken for the purpose of his maintenance.

2. The benefit of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article for more than seven consecutive years from the date of his first arrival in that other Contracting State.

ARTICLE 21 : *Professors, Teachers and Research Scholars* – 1. A professor or teacher who is or was a resident of a Contracting State immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college, school or other approved institution in that other Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his first arrival in that other 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 paragraph 1 the term approved institution means an institution which has been approved in this regard by the competent authority of the concerned State.

ARTICLE 22 : *Other Income* – 1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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 income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraph 1, if a resident of a Contracting State derives income from sources within the other Contracting State in the form of lotteries, crossword puzzles, races including horse races, card games and other games of any sort or gambling or betting of any form or nature whatsoever, such income may be taxed in the other Contracting State.

ARTICLE 23 : *Capital* – 1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may also be taxed in that other State.

3. Capital represented by ships or aircraft, operated in international traffic or by movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the enterprise operating such ships, aircraft or property is a resident.

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

ARTICLE 24 : *Elimination of Double Taxation* – 1. The laws in force in either of the Contracting State will continue to govern the taxation of income and of capital in the respective Contracting States except where provisions to the contrary are made in this Convention.

2. In the case of India double taxation shall be eliminated as follows:

Where a resident of India derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in the Czech Republic, India shall allow as a deduction from the tax on the income or capital of that resident an amount equal to the tax paid in the Czech Republic whether directly or by deduction at source. Such amount shall not however exceed that part of the tax, as computed before the deduction is given, which is attributable to the income or capital which may be taxed in the Czech Republic.

3. In the case of the Czech Republic double taxation shall be eliminated as follows :

Where a resident of the Czech Republic derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in India, the Czech Republic shall allow as a deduction from the tax on the income or capital of that resident an amount equal to the tax paid in India. Such deduction shall not, however, exceed that part of the tax as computed before the deduction is given, which is attributable to the income or capital which may be taxed in India.

4. The tax payable in the Contracting State mentioned in paragraphs 2 and 3 of this Article shall be deemed to include the tax which would have been payable but for the tax incentives granted under the laws of the Contracting State and which are designed to promote economic development.

5. Where, in accordance with any provision of this Convention, income derived or capital owned by a resident of a Contracting State is exempt from tax in that

State, such State may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

ARTICLE 25 : *Non-Discrimination* – 1. 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. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

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. This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which a company of the other Contracting State has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first-mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7 of this Convention.

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 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 the first-mentioned State are or may be subjected.

4. Except where the provisions of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursement paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of

a Contracting State to a resident of the other Contracting State shall, for the purpose determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

ARTICLE 26 : *Mutual Agreement Procedure* – 1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 25, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

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 a satisfactory 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 which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time-limits in the domestic law 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 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. 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.

ARTICLE 27 : *Exchange of Information* – 1. The competent authorities of the Contracting States shall exchange such information (including documents), as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. 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 and administrative practice of that or of the other Contracting State;
- (b) to supply information or documents which is 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 or documents which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, or documents the disclosure of which would be contrary to public policy.

ARTICLE 28 : *Collection Assistance* – 1. The Contracting States undertake to lend assistance to each other in the collection of taxes to which this Convention relates, together with interests, costs, and civil penalties relating to such taxes, referred to in this Article as a revenue claim.

2. Request for assistance by the competent authority of a Contracting State in the collection of a revenue claim shall include a certification by such authority that, under the laws of that State, the revenue claim has been finally determined. For the purposes of this Article, a revenue claim is finally determined when a Contracting State has the right under its internal law to collect the revenue claim and the taxpayer has no further rights to restrain collection.

3. 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.

4. Amount collected by the competent authority of a Contracting State pursuant to this Article shall be forwarded to the competent authority of the other Contracting State. However, the first-mentioned Contracting State shall be entitled to reimbursement of costs, if any, incurred in the course of rendering such assistance to the extent mutually agreed between the competent authorities of the two States.

5. Nothing in this Article shall be construed as imposing on either Contracting State the obligation to carry out administrative measures of a different nature from those used in the collection of its own taxes on those which would be contrary to its public policy.

6. Notwithstanding the provisions of Article 30 relating to entry into force of this Convention, the application of this Article shall commence on a date to be mutually agreed upon by the competent authorities of the Contracting State.

ARTICLE 29 : *Members of Diplomatic Missions and Consular Posts* – Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

ARTICLE 30 : *Entry into Force* – 1. The Contracting States shall notify each other in writing, through diplomatic channels, the completion of the procedure required by the respective laws for the entry into force of this Convention.

2. This Convention shall enter into force on the date of the later of the notifications referred to in paragraph 1 of this Article.

3. The provisions of this Convention shall have effect:

- (a) in India, in respect of income derived or capital held in any fiscal year beginning on or after the first day of April next following the calendar year in which the Convention enters into force; and
- (b) in the Czech Republic:
 - (i) in respect of taxes withheld at source, to income paid or credited on or after first January in the calendar year next following that in which the Convention enters into force;
 - (ii) in respect of other taxes on income and taxes on capital, to income or capital in any taxable year beginning on or after first January in the calendar year next following that in which the Convention enters into force.

4. On the entry into effect of this Convention, the application of the Agreement between the Government of the Czechoslovak Socialist Republic and the Government of India for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed at New Delhi on 27th January, 1986 shall, in relation between the Czech Republic and India, cease to have effect.

ARTICLE 31 : *Termination* – This Convention shall remain in force indefinitely until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year beginning after the expiration of five years from the date of entry into force of the Convention. In such event, the Convention shall cease to have effect:

- (a) in India, in respect of income derived in any previous year on or after the first April next following the calendar year in which the notice is given and in respect of capital held at the expiry of any previous year beginning on or after first April next following the calendar year in which the notice of termination is given;
- (b) in the Czech Republic,

- (i) in respect of taxes withheld at source, to income paid or credited on or after first January in the calendar year next following that in which the notice is given;
- (ii) in respect of other taxes on income and taxes on capital, to income or capital in any taxable year beginning on or after first January in the calendar year next following that in which the notice is given.

Denmark

Agreement for avoidance of double taxation

And

prevention of fiscal evasion with Denmark

Whereas the annexed Convention between the Government of the Republic of India and the Government of the Kingdom of Denmark for the avoidance of double taxation and the prevention of fiscal evasion, with respect to taxes on income and on capital has come into force on the 13th day of June, 1989, on the notification by both the Contracting States to each other of the completion of the constitutional requirements, as required by paragraph 1 of Article 30 of the said Convention;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964) and section 44A of the Wealth-tax Act, 1957 (27 of 1957), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in the Union of India.

Notification : No. GSR 853(E), dated 25-9-1989.

ANNEXURE

CONVENTION BETWEEN THE REPUBLIC OF INDIA AND THE KINGDOM OF DENMARK FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Government of the Republic of India and the Government of the Kingdom of Denmark;

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

Have agreed as follows :

ARTICLE 1 : *Personal scope* – The Convention shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2 : *Taxes covered* – 1. The taxes to which this Convention shall apply are:

(a) in India:

- (i) the income-tax including any surcharge thereon imposed under the Income-tax Act, 1961 (43 of 1961);
- (ii) the surtax imposed under the Companies (Profits) Surtax Act, 1964 (7 of 1964);
- (iii) the wealth-tax imposed under the Wealth-tax Act, 1957 (24 of 1957); (hereinafter referred to as Indian tax).

(b) in Denmark:

- (i) the income-tax to the State (ind-komotskatten til staten);
- (ii) the municipal income-tax (den kormmunal indkomstskat);
- (iii) the income-tax to the country municipalities (den amtskommunale Indkomstskat);
- (iv) the old age pension contribution (folkepensionsbidreget);
- (v) the seamens tax (smandsskatten);
- (vi) the special income-tax (den saerlige indkomstskat);
- (vii) the church tax (kirkes katten);
- (viii) the tax on dividends (udbytteskatten);
- (ix) the contribution to the sickness per diem fund (bidrag til dagpengefonden);
- (x) the hydrocarbon tax (kulbrinteskatten);
- (xi) the capital tax to the State (formueskatten til staten);

(hereinafter referred to as Danish tax).

2. The Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of 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 in

each other of any substantial changes which are made in their respective taxation laws.

ARTICLE 3 : *General definitions* – 1. In this Convention, unless the context otherwise requires :

- (a) the term India means the territory of India and includes territorial sea and the air space above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdictions, according to the Indian law and in accordance with international law.
- (b) the term Denmark means the territory of the Kingdom of Denmark and including the territorial sea of Denmark and the air space above it, as well as any other maritime area to the extent that that area in accordance with international law has been or may hereafter be designated under Danish laws as an area within which Denmark may exercise sovereign rights for the purpose of exploring and exploiting the natural resources of the sea bed or its Sub-soil and the superjacent waters and with regard to other activities for the economic exploitation and exploration of the area; the term does not comprise the Faroe Islands and Greenland;
- (c) the terms a Contracting State and the other Contracting State mean India or Denmark as the context requires;
- (d) the term tax means Indian tax or Danish tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty imposed relating to those taxes;
- (e) the term person includes an individual, a company and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States;
- (f) the term company means any body corporate or any entity which is treated as a company or body corporate under the taxation laws in force in the respective Contracting States;
- (g) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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;

- (h) the term competent authority means in the case of India, the Central Government in the Ministry of Finance, (Department of Revenue) or their authorised representative; and in the case of Denmark, the Minister for Inland Revenue, Customs and Excise or his authorised representative;
- (i) the term national means any individual possessing the nationality of a Contracting State and any legal person, partnership or association deriving its status from the laws in force in a Contracting State;
- (j) 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 the Convention by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

ARTICLE 4 – *Resident* – 1. For the purposes of this Convention, the term resident of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows :

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

- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 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 means a fixed place of business through which the business of the enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) a warehouse in relation to a person providing storage facilities for others;
- (h) a farm, plantation or other place where agriculture, forestry, plantation or related activities are carried on;
- (i) a premises used as a sales outlet or for receiving or soliciting orders;
- (j) an installation or structure used for the exploration of natural resources provided that the activities are carried on for a period or periods of 183 days or more in any twelve-month period;
- (k) a building site or construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or activities (together with other such sites, projects or activities, if any) continue for a period of 183 days or more.

3. Notwithstanding the preceding provisions of this Article, the term permanent establishment shall be deemed not to include :

- (a) the use of facilities solely for the purpose 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 of collecting information, for the enterprise; and
- (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 other activities which have a preparatory or auxiliary character, for the enterprise.

4. Notwithstanding the provisions of paragraphs 1 and 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 that State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise;
- (b) he has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise 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 and other enterprises controlling, controlled by, or subject to the same common control, as that 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 State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise itself or on behalf of that enterprise and other enterprises controlling, controlled by, or subject to the same common control, as that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

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 : *Income from immovable property* – 1. Income derived by a resident of a Contracting State from immovable property situated in the other Contracting State may be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and right to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall also 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, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to (a) that permanent establishment; (b) sales in that other State of goods or merchandise of the same or similar kind as these sold through that permanent establishment; or (c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.

2. Subject to the provisions of paragraph 3, 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 or the determination thereof presents exceptional difficulties, the profits attributable to the permanent establishment may be estimated 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 purposes of the business 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, in accordance with the provisions of and subject to the limitations of the taxation laws of that State. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges, for specific services performed or for management, or, except in the case of a

banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. Insofar 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 contained 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 State.

2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

3. The provisions of paragraphs 1 and 2 shall apply to profits derived by the Danish, Norwegian and Swedish air transport consortium, known as the Scandinavian Airlines System (SAS), but only to such part of the profit as corresponds to the shareholding in the consortium held by Det Danske Luftfartsselskab (DDL), the Danish partner of Scandinavian Airlines System (SAS).

4. For the purposes of this Article, interest on funds connected with the operation of aircraft in international traffic shall be regarded as profits derived from the operation of such aircraft, and the provisions of Article 12 shall not apply in relation to such interest.

5. The term operation of aircraft shall mean business of transportation by air of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of aircraft, including the sale of tickets for such transportation on behalf of other enterprises, the incidental lease of aircraft and any other activity directly connected with such transportation.

ARTICLE 9 : *Shipping* – 1. Profits derived from the operation of ships in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. Notwithstanding the provisions of paragraph 1, such profits may be taxed in the other Contracting State from which they are derived provided that the tax so charged shall not exceed :

- (a) during the first five fiscal years after the entry into force of this Convention, 50 per cent, and
- (b) during the subsequent five fiscal years, 25 per cent,

of the tax otherwise imposed by the internal law of that State. Subsequently, only the provisions of paragraph 1 shall be applicable.

3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency engaged in the operation of ships.

4. For the purposes of this Article :

- (a) interest on funds connected with the operation of ships in international traffic shall be regarded as income from the operation of such ships and the provisions of Article 12 shall not apply in relation to such interest ; and
- (b) profits from the operation of ships includes profits derived from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) in connection with the transport of goods or merchandise in international traffic.

ARTICLE 10 – *Associated enterprises* – 1. 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.

2. Where a Contracting State includes in the profits of an enterprise of that State and taxes accordingly profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax

charged therein on those profits. In determining such adjustment due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall, if necessary, consult each other.

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 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 laws of that State, but if the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed :

- (a) 15 per cent of the gross amount of the dividends if the beneficial owner is a company which owns at least 25 per cent of the shares of the company paying the dividends;
- (b) 25 per cent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

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 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 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 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 State, nor subject the company's undistributed profits to 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 State.

ARTICLE 12 – *Interest* – 1. Subject to the provisions of paragraph 4 of Article 8 and paragraph 4(a) of Article 9 interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 the tax so charged on interest payable in respect of a loan given or debt created after the date of entry into force of this Convention, shall not exceed :

- (a) 10 per cent of the gross amount, if such interest is paid on any loan of whatever kind granted by a bank, and
- (b) 15 per cent of the gross amount in all other cases.

3. Notwithstanding the provisions of paragraph 2 of this Article, interest arising in a Contracting State and derived by the Government of the other Contracting State, a political sub-division or local authority thereof, the Central Bank of that other Contracting State or any agency of that Government, or by any other resident of that other Contracting State with respect to debt-claims of that resident which are financed, guaranteed or insured by the Government of that other Contracting State, a political sub-division or local authority thereof, the Central Bank of that other Contracting State or any agency of that Government, shall be exempt from tax in the first-mentioned Contracting State.

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 debtors 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 and 2 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 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 resident 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 such 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 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 the other provisions of this Convention.

ARTICLE 13 – *Royalties and fees for technical services* – 1. Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties or fees for technical services the tax so charged shall not exceed 20 per cent of the gross amount of the royalties or fees for technical services.

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 including cinematograph film 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.

4. The term fees for technical services as used in this Article means payments of any amount to any person other than payments to an employee of the person making payments, in consideration for the services of a managerial, technical or consultancy nature, including the provision of services of technical or other personnel.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services 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, property or contract in respect of which the royalties or fees for technical services 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.

6. Royalties and fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a

local authority or a resident of that State. Where, however, the person paying their royalties or fees for the technical services, 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 or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of royalties or fees for technical services paid exceeds, the amount which would have been paid 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 the other provisions of this Convention.

ARTICLE 14 – *Capital gains* – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services; including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.

With respect to gains derived by the Danish, Swedish and Norwegian air transport consortium Scandinavian Airlines System (SAS), the provisions of this

paragraph shall apply only to such proportion of the gains as corresponds to the participation held in that consortium by Det Danske Luftfartsselskab (DDL), the Danish partner of Scandinavian Airlines System (SAS).

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from the alienation of shares other than those mentioned in paragraph 4 in a company which is a resident of a Contracting State may be taxed in that State provided that such shares represent at least 10 per cent of the share capital of that company.

6. Gains from the alienation of any property other than that mentioned in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 15 – *Independent personal services* – 1. Income derived by an individual who is a resident of a Contracting State from the performance of professional services or other independent activities of a similar character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State :

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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 State ; or
- (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in the fiscal year of that other State, only so much of the income as is derived from his activities performed in that other State may be taxed in that other 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, 18, 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 State, unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provision of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if :

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year of that other State;
- (b) the remuneration is paid by or on behalf of, an employer who is not a resident of the other State ; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

4. Where a resident of Denmark derives remuneration in respect of an employment exercised aboard an aircraft operated in international traffic by the Scandinavian Airlines System (SAS) consortium, such remuneration shall be taxable only in Denmark.

ARTICLE 17 – *Directors fees and remuneration of top level managerial officials* –

1. Directors 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 may be taxed in that other State.

2. Salaries, wages and other similar remuneration derived by a resident of a Contracting State in his capacity as an official in a top-level managerial position

of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 18 – *Entertainers 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 a 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 State.

2. Where income in respect of personal activities exercised by entertainer or 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. Notwithstanding the provisions of paragraph 1, income derived by an entertainer or an athlete who is a resident of a Contracting State from his personal activities, as such exercised in the other Contracting State, shall be taxable only in the first-mentioned Contracting State, if the activities in the other Contracting State are supported wholly or substantially from the public funds of the first-mentioned Contracting State, including any of its political sub-divisions or local authorities.

4. Notwithstanding the provisions of paragraph 2, and Articles 7, 15 and 16, where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such in a Contracting State accrues not to the entertainer or athlete himself but to another person, that income shall be taxable only in the other Contracting State, if that other person is supported wholly or substantially from the public funds of that other State, including any of its political sub-divisions or local authorities.

ARTICLE 19 – *Remuneration and pensions in respect of Government service* –

1. (a) Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who :

- (i) is a national of that State ; or
- (ii) did not become a resident of that State solely for the purpose of rendering the services.

2. Any pension paid by, or out of funds created by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

3. The provisions of Articles 16 and 17 shall apply to remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or local authority thereof.

ARTICLE 20 – *Students and apprentices* – 1. A student or business apprentice who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State and who is present in that other State solely for the purpose of his education or training, shall be exempt from tax in that other State on :

- (a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training ; and
- (b) remuneration from employment in that other State not exceeding 20,000 Danish Crowns or its equivalent in Indian currency during any fiscal year of that other State provided that such employment is directly related to his studies or is necessary for the purpose of his maintenance.

2. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken but in no event shall any individual have the benefits of this Article, for more than five consecutive years from the date of his first arrival in that other Contracting State.

ARTICLE 21 – *Other income* – 1. Subject to the provisions of paragraph 2, items of income of a resident of a Contracting State, wherever arising, which are not expressly dealt with in the foregoing articles of this Convention, shall be taxable only in that Contracting State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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 income 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.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention, and arising in the other Contracting State may be taxed in that other State.

ARTICLE 22 – *Capital* – 1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services may be taxed in that other State.

3. Capital represented by ships and aircraft operated in international traffic and by boats engaged in inland waterways transport, and by movable property pertaining to the operation of such ships, aircraft and boats, shall be taxable only in the Contracting State in which the enterprise is a resident.

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

ARTICLE 23 – *Avoidance of double taxation* – 1. The laws in force in either of the Contracting State shall continue to govern the taxation of income and capital in the respective Contracting States except where express provision to the contrary is made in this Convention.

2. Double taxation shall be avoided in the case of India as follows :

- (a) Where a resident of India derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Denmark, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in Denmark, whether directly or by deduction; and as a deduction from the tax on the capital of that resident an amount equal to the capital tax paid in Denmark. Such deduction in either case shall not, however, exceed that part of the income-tax or capital tax (as computed before the deduction is given) which is attributable, as the case may be, to the income or the capital which may be taxed in Denmark. Further, where such resident is a company by which surtax is payable in India, the deduction in respect of income-tax paid in Denmark shall be allowed in the first instance from income-tax payable by the company in India and as to the balance, if any, from surtax payable by it in India ;
- (b) Where a resident of India derives income or owns capital which, in accordance with the provisions of this Convention, shall be taxable only in Denmark, India may include this income or capital in the tax base but shall allow as a deduction from the income-tax or capital tax that part of the income-tax or capital tax which is attributable, as the case may be, to the income derived from or the capital owned in Denmark.

3. Double taxation shall be avoided in the case of Denmark as follows :

- (a) subject to the provisions of sub-paragraph (c), where a resident of Denmark derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in India, Denmark shall allow :

- (i) as a deduction from the tax on the income of that resident, an amount equal to the income-tax paid in India ;
 - (ii) as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in India ;
- (b) such deduction in either case shall not, however exceed that part of the income-tax or capital tax, as computed before the deduction is given, which is attributable, as the case may be, to the income or the capital which may be taxed in India ;
- (c) where a resident of Denmark derives income or owns capital which, in accordance with the provisions of this Convention shall be taxable only in India, Denmark may include this income or capital in the tax base, but shall allow as a deduction from the income-tax or capital tax that part of the income-tax or capital tax which is attributable, as the case may be, to the income derived from or the capital owned in India ;
- (d) for the purposes of the deduction referred to in sub-paragraph (a), the term income-tax paid in India shall be deemed to include any amount which would have been payable as Indian tax under the laws of India and in accordance with this Convention for any year but for an exemption from, or reduction of, tax granted for that year under :
 - (i) Sections 10(4), 10(4A), 10(4B), 10(6)(vii a), 10(15)(iv), 10A, 32A, 80HH, 80-I, 80J and 80L of the Income-tax Act, 1961 (43 of 1961), so far as they were in force on, and have not been modified since, the date of the signature of this Convention or have been modified only in minor respects so as not to affect its general character ; or
 - (ii) any other provisions which may be enacted hereafter granting a deduction in computing the taxable income or an exemption or reduction from tax which the competent authorities of the Contracting States agree to be for the purposes of the economic development of India, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character ;
- (e) for the purposes of deduction referred to in sub-paragraph (a), Indian tax on interest and royalties and fees for technical services shall in no case be considered as having been paid at a rate of less than,

- (i) in the case of interest
 - (a) 10 per cent in the case of banks ; and
 - (b) 15 per cent in other cases ; and
- (ii) 20 per cent in the case of royalties and fees for technical services.

ARTICLE 24 – *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 of 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 in the same circumstances and under the same conditions.

3. Nothing contained in this Article shall be construed as obliging a Contracting State to grant to persons not resident in that State any personal allowances, reliefs, reductions and deductions for taxation purposes which are by law available only to persons who are so resident.

4. Except where the provisions of paragraph 1 of Article 10, paragraph 7 of Article 12, or paragraph 7 of Article 13, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

5. 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 in the same circumstances and under the same conditions.

6. In this Article, the term taxation means taxes which are the subject of this Convention.

ARTICLE 25 – *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 domestic laws of those States, present his case to the competent authority of the Contracting State of which he is a resident. This case must be presented within three years of the date of receipt of notice of the action which gives rise to taxation not in accordance with the Convention.

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 avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic 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 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. When it seems advisable in order to reach an

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.

ARTICLE 26 – *Exchange of information* – 1. The competent authorities of the Contracting States shall exchange such information (including documents) as necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention, insofar as the taxation thereunder is not contrary to the Convention, in particular for the prevention of fraud or evasion of such taxes. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State. However, if the information is originally regarded as secret in the transmitting State, it shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Convention. Such persons or authorities shall use the information only for such purposes but may disclose the information in public court proceedings or in judicial decisions. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchange of information shall be made, including, where appropriate, exchange of information regarding tax avoidance.

2. The exchange of information or documents 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 the information or documents 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 or documents which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State ; and
- (c) to supply information or documents 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 27 – *Assistance in collection* – 1. The 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 State making the request.

2. In the case of a request for enforcement or 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 State in accordance with the laws applicable to the enforcement and collection of its taxes.

3. In the case of Indian tax, the request will be sent by the Central Board of Direct Taxes to the Danish Tax Directorate, Statshattedirektoratet, Post Box 100, DK-3460 Birkarod, Denmark, 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 Danish tax, the request will be sent by the Danish Tax Directorate, to the Central Board of Direct Taxes, (FTD), Department of Revenue, Ministry of Finance, North Block, New Delhi – 110 001, India and will be accompanied by such certificate as is required by the laws of Denmark 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 such assistance to the extent mutually agreed between the competent authorities of the two States.

ARTICLE 28 – *Diplomatic agents and consular officers* – Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

ARTICLE 29 – *Territorial extension* – 1. This Convention may be extended by common agreement either in its entirety or with such modifications as are agreed upon to any part of the territory of Denmark which is specifically excluded from the application of the Convention and which imposes taxes substantially similar in character to those to which the Convention applies. 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 through diplomatic channels or in any other manner in accordance with their constitutional procedures.

2. Unless otherwise agreed by both Contracting States, the termination of the Convention by one of them under Article 31 shall also terminate, in the manner provided for in that Article, the application of the Convention to any part of the territory of Denmark to which it has been extended under this Article.

ARTICLE 30 – *Entry into force* – 1. The Governments of the Contracting States shall notify to each other that the constitutional requirements for the entry into force of this Convention have been complied with.

2. This Convention shall enter into force on the date of the latter of the notifications referred to in paragraph 1 and its provisions shall have effect in respect of tax or the income year beginning on or after 1st January in the calendar year next following the year in which the latter of the notifications referred to in paragraph 1 is given, and subsequent income years.

3. The Agreement between the Governments of India and Denmark for the Avoidance of Double Taxation of Income, signed at Copenhagen on the 16th September, 1959, shall cease to have effect at the time when the provisions of this Convention shall be effective in accordance with the provisions of paragraphs 1 and 2.

ARTICLE 31 – *Termination* – This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplo-matic channels, by giving written notification of termination on or before the thirtieth day of June of any calendar year following after the period of five years from the year in which the Convention enters into force. In such event, the Convention shall cease to have effect, in respect of tax for the income year beginning on or after 1st January in the Calendar year next following the year in which the notification is given and subsequent income years.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed the present Convention.

DONE in duplicate at COPENHAGEN this 8th day of March, one thousand nine hundred and eighty-nine in the Hindi, Danish and English languages, all the texts being equally authentic. In case of divergence between any of the texts, the English text shall be the operative one.

PROTOCOL

The Government of India and the Government of the Kingdom of Denmark :

Having entered into a Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital :

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

(1) For the purposes of paragraph 3(e) of Article 23, it is understood that the rates of tax specified therein shall in no case exceed the rate of withholding tax applicable to such categories of income under the Indian tax laws.

(2) For the purposes of Article 27, a request for assistance in collection of taxes due from a taxpayer shall not be made unless such taxes aggregate to 2000 Danish Crowns or its equivalent in Indian currency or more.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed the present Protocol.

DONE in duplicate at COPENHAGEN this 8th day of March, one thousand nine hundred eighty-nine in Hindi, Danish and English languages, all the texts being equally authentic. In case of divergence between the three texts, English text shall be the operative one.

PROTOCOL

At the moment of signing the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital between the Government of the Republic of India and the Government of the Kingdom of Denmark the signatories have agreed that the following provisions shall form an integral part of the Convention :

1. The Convention has been extended to apply in its entirety to the territory of the Faroe Islands.
2. In the Convention the terms the Kingdom of Denmark and Denmark shall also apply to the Faroe Islands unless the context otherwise requires.
3. The taxes which in pursuance of the present protocol are the subject of the Convention shall include the following taxes which are levied on the Faroe Islands :
 - (a) Skat til landskassen (the provincial income-tax) ;
 - (b) Kommunalindkomstskat (the communal income-tax) ;
 - (c) Kirkeskat (the Church tax) ;

- (d) Udbytteskat (tax on dividends) ;
- (e) Ejendomsavanceafgift (tax on profit from real estate) ;
- (f) Royaltyafgift (tax on royalty).

4. The term competent authorities means in the case of the Faroe Islands the Faroe Local Government or the authority which on behalf of the Local Government has been authorized to handle questions with reference to the Convention.

5. This protocol shall enter into force on and have effect from the same date as the Convention.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed the present Protocol.

6. Done in duplicate at Copenhagen this 8th day of March, one thousand nine hundred and eighty-nine in Hindi, Danish and English languages, all the texts being equally authentic. In case of divergence between any of the texts, the English text shall be the operative one.

JUDICIAL ANALYSIS

· Where assessee, a Danish company, had undertaken to provide specific management services relating to construction which had been made part of the contract and which activity had been made inseparable from its contract of designing engineering erection and commissioning of Chemical Fertiliser Complex consisting of Ammonia Plant and Urea Plants, it could not be concluded that services rendered by assessee were purely technical in nature, enabling assessee to claim exemption under DTAA in respect of payments received by it for such services *Haldor Topsoe v. Dy. CIT* [1996] 59 ITD 313 (Mum. – Trib.).

Finland

Agreement for avoidance of double taxation with Finland

Whereas the annexed Convention between the Government of the Republic of India and the Government of the Republic of Finland for the avoidance of double taxation with respect to taxes on income and on capital has come into force on the notification by both the Contracting States to each other of the compliance of the constitutional requirements, as required by paragraph 1 of article 29 of the said Convention. Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964) and section 44A of the Wealth-tax Act, 1957 (27 of 1957), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in the Union of India.

Notification : *No. GSR 786(E), dated 20-11-1984, as amended by Notification No. 10671 [F. No. 501/13/80-FTD], dated 13-8-1998.*

TEXT OF THE ANNEXED CONVENTION, DATED 10-6-1983

The Government of the Republic of India and the Government of the Republic of Finland desiring to conclude a new Convention for the avoidance of double taxation with respect to taxes on income and on 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 the present Convention are :

(a) in Finland :

- (i) the state income taxes ;
 - (ii) the corporate income-tax ;
 - (iii) the communal tax ;
 - (iv) the church tax ;
 - (v) the tax withheld at source from interest ;
 - (vi) the tax withheld at source from non-residents income ; and
 - (vii) the state capital tax ;
- (hereinafter referred to as Finnish tax) ;

(b) in India :

- (i) the income-tax including any surcharge thereon; and
 - (ii) the wealth-tax ;
- (hereinafter referred to as Indian tax).

2. The convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of significant changes which have been made in their respective taxation laws.

ARTICLE 3 – *General definitions* – 1. For the purposes of this Convention, unless the context otherwise requires :

- (a) the term person includes an individual, a company and any other body of persons;
- (b) the term company means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (c) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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;
- (d) the term national means any individual possessing the nationality of a Contracting State, and any legal person, partnership and association deriving its status as such from the laws in force in a Contracting State;

- (e) 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;
- (f) the term competent authority means :
 - (i) in Finland, the Ministry of Finance, its authorised representative or the authority which, by the Ministry of Finance, is designated as competent authority;
 - (ii) in India, the Central Government in the Ministry of Finance (Department of Revenue), or their authorised representative;
- (g) the term fiscal year means :
 - (i) in Finland, the tax year as defined in the taxation laws of Finland relating to income-tax;
 - (ii) in India, the previous year as defined in section 3 of the Income-tax Act, 1961;
- (h) the term tax means Finnish tax or Indian tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which the Convention applies or which represents a penalty or interest imposed relating to those taxes.

2. As regards the application of the Convention by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that State concerning the taxes to which the Convention applies.

ARTICLE 4 – *Fiscal domicile* – 1. For the purposes of this Convention, the term resident of a Contracting State means any person, under the laws of that State, is liable to tax 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 status shall be determined as follows :

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to

him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);

- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States, or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 State in which its place of effective management is situated.

ARTICLE 5 – *Permanent establishment* – 1. For the purposes of the Convention, the term permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, a quarry or any other place of extraction of natural resources;
- (g) warehouse; and
- (h) premises used as a sales outlet or for receiving or soliciting orders.

3. The term permanent establishment, also includes

- (a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than six months;
- (b) a building site, a construction, assembly or installation project or supervisory activity being incidental to the sale of machinery or equipment, where such site, project or activity continues for a period not exceeding six months and the charges payable for the project or supervisory activity exceed 10 per cent of the sale price of the machinery or equipment.

4. Notwithstanding the preceding provisions of this article the term permanent shall be deemed not to include

- (a) the use of facilities solely for the purpose 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 of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information or for scientific research, being activities, solely of a preparatory or auxiliary character in the business of the enterprise.

5. Notwithstanding the provisions of paragraphs (1) and (2), where a person other than an agent of an independent status to whom paragraph (7) 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 Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person :

- (a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph (4) which, if exercised through a

fixed place of business, would not make the fixed place of business a permanent establishment under the provisions of that paragraph; or

- (b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.

6. Notwithstanding the preceding provisions of this article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risk situated therein through a person other than an agent of an independent status to whom paragraph (7) applies.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he shall not be considered an agent of an independent status within the meaning of this paragraph.

8. The fact that a company which is a resident to 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 otherwise), shall not of itself constitute either company or a permanent establishment of the other.

ARTICLE 6 – *Income from immovable property* – 1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. (a) The term immovable property shall, subject to the provisions of subparagraphs (b) and (c), have the meaning which it has under the law of the Contracting State in which the property in question is situated.

(b) The term immovable property shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources.

(c) Ships and aircraft shall not be regarded 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. Where the ownership of shares or other corporate rights in a company entitles the owner of such shares or corporate rights to the enjoyment of immovable property held by the company, the income from the direct use, letting, or use in any other form of such right of enjoyment may be taxed in the Contracting State in which the immovable property is situated.

5. 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, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to (a) that permanent establishment; (b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or (c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.

2. Subject to the provisions of paragraph (3) 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.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes 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, which are allowed under the provisions of the domestic law of the Contracting State in which the permanent establishment is situated. However, no such deduction shall be allowed in respect of amounts, if any paid, (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on money lent to the permanent establishment. Likewise, no account shall be taken, in determining the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management or, except in the case of a banking enterprise, by way of interest on money lent to the head office of the enterprise or any of its other offices.

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 contained 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 purposes 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. Income derived by an enterprise of a Contracting State from the operation of aircraft in international traffic shall be taxable only in that State.

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

3. For the purposes of this article

- (a) interest on funds connected with the operation of aircraft in international traffic shall be regarded as income from the operation of such aircraft ; and
- (b) the term operation of aircraft shall include transportation by air of persons, livestock, goods or mail, carried on by the owners or lessee or charterers of aircraft, including the sale of tickets for such transportation on behalf of other enterprises, the incidental lease of aircraft on a charter basis and any other activity directly connected with such transportation.

ARTICLE 9 – *Shipping* – 1. Income 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 State, but the tax chargeable in that other State on such income shall be reduced by an amount equal to fifty per cent of such tax.

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

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 State. Such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

2. However, as long as an individual resident in Finland is entitled to a tax credit in respect of dividends paid by a company resident in Finland, the following provisions of this paragraph shall apply in Finland instead of the provisions of paragraph 1.

Dividends paid by a company which is a resident of Finland to a resident of India shall be exempt from Finnish tax on dividends.

3. The provisions of paragraphs 1 and 2 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

4. The term dividends as used in this article means income from 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.

5. The provisions of paragraphs (1) and (2) shall not apply if the recipient 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.

6. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other 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 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 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 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 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 the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraphs 1 and 2,

- (a) interest arising in India shall be exempt from Indian tax if the interest is paid to
 - (i) the Bank of Finland; and

- (i) the Finnish fund for Industrial Cooperation Ltd. (FINNFUND) or any other similar institution, as may be agreed upon from time to time between the competent authorities of the Contracting States;
- (b) interest arising in Finland shall be exempt from Finnish tax if the interest is paid to
 - (i) the Reserve Bank of India;
 - (ii) National Housing Bank;
 - (iii) Small Industries Development Bank of India (SIDBI); and
 - (iv) EXIM Bank;
- (c) interest arising in a Contracting State on a loan guaranteed by any of the bodies mentioned or referred to in sub-paragraph (a) or (b) and paid to a resident of the other Contracting State shall be exempt for tax in the first-mentioned State.

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 debtors profits, and in particular, income from Government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds and debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1 and 2 shall not apply if the recipient 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 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 of 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 State itself, a political sub-division, a statutory body, a local authority or a resident of that State. Where, however, the person paying the interest, 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 indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the recipient 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 recipient in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In such a 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.

ARTICLE 13 – *Royalties and fees for technical services* – 1. Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and according to the laws of that State, but the tax so charged shall not exceed :

(a) in the case of royalties within sub-paragraph (a) of paragraph 3, and fees for technical services within sub-paragraphs (a) and (c) of paragraph 4 ;

(i) during the years 1997 to 2001 :

(aa) 15 per cent of the gross amount of such royalties or fees, for technical services when the payer of the royalties or, fees for technical services is the Government of the first-mentioned Contracting State or a political sub-division of that State, and

(bb) 20 per cent of the gross amount of such royalties or fees for technical services in all other cases; and

(ii) during subsequent years, 15 per cent of the gross amount of such royalties or fees for technical services; and

(b) in the case of royalties within sub-paragraph (b) of paragraph 3 and fees for technical services defined in sub-paragraph (b) of paragraph 4, 10 per cent of the gross amount of such royalties and fees for technical services.

3. For the purposes of this Article, the term royalties means :

- (a) payments of any kind received as a consideration for the use of, or the right to use, any copyright of a literary, artistic or scientific work, including cinematograph films or work on film, tape or otherwise means of reproduction for use in connection with radio or television broadcasting, any patent, trade-mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience; and
- (b) payments of any kind received as a consideration for the use of, or the right to use, any industrial, commercial or scientific equipment, other than income derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic.

4. For the purposes of paragraph 2, and subject to paragraph 5, the term fees for technical services means payments of any kind to any person in consideration for the rendering of any technical or consultancy services (including the provision of services of technical or other personnel) which :

- (a) are ancillary and subsidiary to the application or enjoyment of the right, property or information for which a payment described in sub-paragraph (a) of paragraph 3 is received; or
- (b) are ancillary and subsidiary to the enjoyment of the property for which a payment described in sub-paragraph (b) of paragraph 3 is received; or
- (c) make available technical knowledge, experience, skill, know-how or processes, or consist of the development and transfer of a technical plan or technical design.

5. The definitions of fees for technical services in paragraph 4 shall not include amounts paid :

- (a) for services that are ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of property, other than property described in sub-paragraph (a) of paragraph 3;
- (b) for services that are ancillary and subsidiary to the rental of ships, aircraft, containers or other equipment used in connection with the operation of ships, or aircraft in international traffic;
- (c) for teaching in or by educational institutions;
- (d) for services for the private use of the individual or individuals making the payment; or
- (e) to an employee of the person making the payments or to any individual or partnership for professional services as defined in Article 15.

6. The provisions of paragraphs (1) and (2) shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of a Contracting State carries on business in the other Contracting State in which the royalties or fees for technical services 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, property or contract in respect of which the royalties or fees for technical services 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.

7. Royalties and fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a statutory body, local authority or a resident of that State. Where, however, the person paying the royalties or fees for technical services, 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 obligation to make the payments was incurred, and such payments are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

8. Where, by reason of a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties or fees for technical services exceeds, for whatever reason, the amount which would have been paid 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 law of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 14 – *Capital gains* – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in paragraph 2 of article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains derived by a resident of a Contracting State from the alienation of shares or other corporate rights may be taxed in the Contracting State in which the company is registered.

3. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

4. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

ARTICLE 15 – *Independent personal services* – 1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character may be taxed in that State. Such income may

also be taxed in the other Contracting State if such services are performed in that other State and if

- (a) he is present in that other State for a period or periods aggregating to 90 days or more in the relevant fiscal year; or
- (b) he has a fixed base regularly available to him in that other State for the purpose of performing his activities;

but in each case only so much of the income as is attributable to those services.

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, 20 and 21, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised such remuneration as is derived therefrom may be taxed in that other State.

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

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

ARTICLE 17 – *Directors fees* – Directors fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or any other similar organ of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 18 – *Artistes 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 a 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 State.

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 if the visit to a contracting State of the entertainer or the athlete is directly or indirectly supported, wholly or substantially, from the public funds of the other contracting State, including a political sub-division, or a statutory body or a local authority of that other State.

ARTICLE 19 – *Pensions and social security payments* – Subject to the provisions of paragraph (2) of article 20, pensions and other similar remuneration in consideration of past employment paid by a resident of, and pensions and other payments made under a public scheme which is part of the social security system of a contracting State to a resident of the other contracting State shall be taxable only in the first-mentioned State.

ARTICLE 20 – *Government service* – (1) (a) Remuneration, other than a pension, paid by a contracting State or a statutory body or a local authority thereof to an individual in respect of services rendered to that State or body or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the contracting State of which the individual is a resident if the services are rendered in that State and the individual

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

(2)(a) Any pension paid by, or out of funds created by, a contracting State or a statutory body or a local authority thereof to an individual in respect of services rendered to that State or body or authority shall be taxable only in that State.

(b) However, such pensions shall be taxable only in the contracting State of which the individual is a resident if he is a national of that State.

3. The provisions of articles 16, 17 and 19 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a contracting State or a statutory body or a local authority thereof.

ARTICLE 21 – *Students and apprentices* – 1. Payments which a student of business, technical, agricultural or forestry apprentice who is or was immediately before visiting a contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

2. A student at a university or other institution for higher education in a Contracting State, or a business, technical, agricultural or forestry apprentice who is or was immediately before visiting the other Contracting State a resident of the first-mentioned State and who is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned, shall not be taxed in that other State in respect of remuneration for services rendered in that State, provided that the services are in connection with his studies or training and the remuneration constitutes earnings necessary for his maintenance. If he is present in that other State for a period or periods aggregating to 183 days or more in the calendar year

concerned, he shall be entitled to the same exemptions, reliefs or reductions in respect of taxes as are granted to residents of that State.

ARTICLE 22 – *Other income* – Items of income of a resident of a contracting State, wherever arising, not dealt with in the foregoing articles of this Convention shall be taxable only in that State except that, if such income is derived from sources in the other contracting State it may also be taxed in accordance with the law of that other State.

ARTICLE 23 – *Capital* – 1. Capital represented by immovable property referred to in paragraph (2) of article 6, owned by a resident of a contracting State and situated in the other contracting State, may be taxed in that other State.

2. Capital represented by shares or other corporate rights referred to in paragraph (4) of article 6 and owned by a resident of a contracting State may be taxed in the contracting State in which the movable property held by the company is situated.

3. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a contracting State has in the other contracting State or by movable property pertaining to a fixed base available to a resident of a contracting State in the other contracting State for the purpose of performing independent personal services may be taxed in that other State.

4. Capital represented by ships and aircraft operated in international traffic, and by movable property pertaining to the operation of such ships and aircraft, shall be taxable only in the contracting State in which the place of effective management of the enterprise is situated.

(5) Elements of capital of a resident of a contracting State not dealt with in the foregoing paragraphs of this article shall be taxable only in that State except that, if such elements are situated in the other contracting State they may also be taxed in accordance with the law of that other State.

ARTICLE 24 – *Elimination of double taxation* – 1. In Finland, double taxation shall be eliminated as follows :

- (a) Where a resident of Finland derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in India, Finland shall, subject to the provisions of sub-paragraph (b), allow :
 - (i) as a deduction from the tax on income of that person, an amount equal to the tax on income paid in India,
 - (ii) as a deduction from the tax on capital of that person, an amount equal to the tax on capital paid in India.Such deduction in either case shall not, however, exceed that part of the tax on income or on capital, as computed before the deduction is given, which is attributable, as the case may be, to the income of the capital which may be taxed in India.
- (b) Dividends paid by a company being a resident of India to a company which is a resident of Finland and which controls directly at least 10 per cent of the voting power in the company paying the dividends shall be exempt from Finnish tax.
- (c) Notwithstanding any other provision of this Convention, an individual who is a resident of India and under Finnish taxation law with respect to the Finnish taxes referred to in article 2 also is regarded as a resident of Finland may be taxed in Finland. However, Finland shall allow any Indian tax paid on the income or the capital as a deduction from Finnish tax in accordance with the provisions of sub-paragraph (a). The provisions of this sub-paragraph shall apply only to nationals of Finland.
- (d) Where in accordance with any provisions of the Convention, income derived or capital owned by a resident of Finland is exempt from tax in Finland, Finland may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

(2) For the purposes of paragraph 1, taxes paid in India shall be deemed to include any amount which would have been payable as Indian tax but for a deduction allowed in computing the taxable income or an exemption or reduction of tax granted for that year under

- (a) sections 10(4), 10(4A), 10(5B), 10(15)(iv) and 80-IA of the Income-tax Act, 1961 so far as they are in force or as modified only in minor respects so as not to affect their general character; or
- (b) any other provisions which may subsequently be enacted granting an exemption or reduction from tax which is agreed to by the competent authorities of the two contracting States.

(3) In India double taxation shall be eliminated as follows:

- (a) The amount of Finnish tax payable, under the laws of Finland and in accordance with the provisions of this Convention, whether directly or by deduction, by a resident of India, in respect of income which has been subjected to tax both in India and Finland shall be allowed as a credit against the Indian tax payable in respect of such income but in an amount not exceeding that proportion of Indian tax which such income bears to the entire income chargeable to Indian tax.
- (b) For the purposes of the credit referred to in sub-paragraph (a) above, where the resident of India is a company by which surtax is payable, the credit to be allowed against the Indian tax shall be allowed in the first instance against the income-tax payable by the company in India and, as to the balance, if any, against the surtax payable by it in India :

Provided that income which in accordance with the provisions of this convention is not to be subjected to tax may be taken into account in calculating the rate of tax to be imposed.

ARTICLE 25 – 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 in the same circumstances or under the same conditions. This provision shall not be construed as preventing a

contracting State from charging the profits of a permanent establishment which an enterprise of the other contracting State has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar enterprise of the first-mentioned Contracting State, nor as being in conflict with the provisions of paragraph (3) of article 7.

3. Nothing contained in this article shall be construed as obliging a contracting State to grant to individuals not resident in that State any personal allowances, reliefs and reductions for taxation purposes which are by law available only to individuals who are so resident.

4. Nothing contained in this article shall be construed as obliging a contracting State to compute the shipping profits in the same manner as is done in the case of enterprises of that State.

5. 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 State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

6. The provisions of this article shall apply to all taxes which are covered by this Convention.

ARTICLE 26 – *Mutual agreement procedure* – 1. Where a person considers that the actions of one or both of the contracting States result or will result, for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of article 25, to that of the contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

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 a satisfactory 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 which is 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. In particular, they may consult together for the purposes of reaching an agreement on the allocation of income in cases referred to in article 10. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. In the event the competent authorities reach an agreement referred to in paragraphs (2) and (3), taxes shall be imposed on such income, and refund or credit of taxes shall be allowed by the Contracting States in accordance with such agreement. It shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

5. 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. 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.

ARTICLE 27 – Exchange of information – 1. The competent authorities of the contracting States shall exchange such information (including documents) as is necessary for carrying out the provisions of this Convention or of the domestic laws of the contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention or for the prevention of the fraud or evasion of taxes. The exchange of information is not restricted by article 1. Any information received by a contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or

collection of, the enforcement of prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. 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 the administrative practice of that or of the other contracting State;
- (b) to supply information which is 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 28 – *Diplomatic agents and consular officers* – Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of the special agreements.

ARTICLE 29 – *Entry into force* – 1. The Government of the Contracting States shall notify each other that the constitutional requirements for the entry into force of this Convention have been complied with.

(2) The Convention shall enter into force thirty days after the date of the later of the notifications referred to in paragraph (1) and its provisions shall have effect

- (a) in Finland
 - (i) in respect of taxes withheld at source, to income derived on or after 1st January in the calendar year next following the year in which the Convention enters into force;
 - (ii) in respect of other taxes on income, and taxes on capital, to taxes chargeable for any taxable year beginning on or after 1st January, in

the calendar year next following the year in which the Convention enters into force;

- (b) in India, in respect of taxes for assessment years beginning on or after 1st April of the calendar year next following the year in which the Convention enters into force.

3. The Agreement between Finland and India for the avoidance of double taxation of income; signed at New Delhi on June 23, 1961, as amended by exchange of notes on August 16, 1979, shall cease to have effect at the time that the provisions of this Convention shall be effective in accordance with the provisions of paragraph 2.

ARTICLE 30 – *Termination* – This Convention shall remain in force until terminated by a contracting State. Either contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year following after the period of five years from the date on which the Convention enters into force. In such event the Convention shall cease to have effect

(a) in Finland:

- (i) in respect of taxes withheld at source, to income derived on or after 1st January in the calendar year next following the year in which the notice is given;
 - (ii) in respect of other taxes on income, and taxes on capital, to taxes chargeable for any taxable year beginning on or after 1st January in the calendar year next following the year in which the notice is given;
- (b) in India, in respect of taxes for any assessment year beginning on or after 1st April of the second calendar year following that in which the notice is given.

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

Done in duplicate at Helsinki on this 10th day of June, 1983, in the Hindi, Finnish and English languages, all the texts being equally authentic, except that in the case of divergence of interpretation the English text shall prevail.

NOTIFICATION

Whereas in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961) and section 44A of the Wealth-tax Act, 1957 (27 of 1957) read with item (i) of sub-paragraph (a) of paragraph 3 of Article 12 of the Convention between the Government of the Republic of India and the Government of the Republic of Finland for the avoidance of double taxation with respect to taxes on income and on capital, the competent authorities of the Republic of India and the Republic of Finland have agreed to include FINNVERA and Finnish Export Credit in the list of institutions mentioned in item (i) of sub-paragraph (a) of paragraph 3 of Article 12 of the said Convention.

And whereas the competent authority of the Republic of Finland *vide* their letter dated 15th February, 2007 has proposed to the competent authority of the Government of the Republic of India to consider to include FINNVERA and Finnish Export Credit to the list of those institutions referred in item (i) of sub-paragraph (a) of paragraph 3 of Article 12 of the Convention and the competent authority of India *vide* their letter D.O. No. 501/13/80-FTD-I, dated 28th August, 2007 has conveyed their consent to the said proposal and thereby constituting a mutual agreement between the competent authorities of the Contracting States in the matter as required under the said Convention.

Now, therefore, under the provisions of paragraph 3 of Article 12 of the Convention between the Government of the Republic of India and the Government of the Republic of Finland for the avoidance of double taxation with respect to taxes on income and on capital, interest arising in India shall be exempt from Indian tax if the interest is paid to FINNVERA or Finnish Export Credit on or after 28th day of August, 2007.

Notification : *No. 5/2008, dated 10-1-2008.*

France

Agreement for avoidance of double taxation with France

Whereas the annexed Convention between the Government of the Republic of India and the Government of the French Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital has come into force on the 1st day of August, 1994 on the notification by both the Contracting States to each other of the completion of the procedures required under their law for bringing into force of the said Convention in accordance with paragraph 1 of Article 30 of the said Convention.

(2) Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964) and section 44A of the Wealth-tax Act, 1957 (27 of 1957), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in the Union of India.

Notification : No. 9602 [F. No. 501/16/80-FTD], dated 6-9-1994, as amended by Notification No. SO 650(E), dated 10-7-2000.

ANNEXURE

CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE FRENCH REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Government of the Republic of India and Government of the French Republic, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on 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 to which this Convention shall apply are :

(a) in India :

- (i) the income-tax including any surcharge thereon ;
 - (ii) the surtax ; and
 - (iii) the wealth-tax,
- (hereinafter referred to as Indian tax) ;

(b) in France :

- (i) the income-tax (l'impôt sur le revenu) including any withholding tax, pre-payment (precompte) or advance payment with respect thereto ;
 - (ii) the corporation tax (l'impôt sur les sociétés) including any withholding tax, prepayment (precompte) and advance payment with respect thereto ; and
 - (iii) the wealth-tax (l'impôt sur la fortune).
- (hereinafter referred to as French tax).

2. The Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of 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.

ARTICLE 3 – *General definitions* – 1. In this Convention, unless the context otherwise requires :

- (a) the term India means the territory of India and includes the territorial sea and air space above it, as well as any other maritime zone in which India, according to the Indian law, has sovereign rights, other rights and jurisdictions in accordance with International law ;
- (b) the term France means the European and overseas departments of the French Republic including the territorial sea and the air space above it as well as the areas within which, in accordance with International law, the French Republic has

sovereign rights for the purpose of exploring and exploiting the natural resources of the sea bed and its sub-soil and of the superjacent waters ;

- (c) the terms a Contracting State and the other Contracting State mean India or France as the context requires ;
- (d) the term person includes an individual, a company and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States ;
- (e) the term company means any body corporate or any entity which is treated as a company or body corporate under the taxation laws in force in the respective Contracting States ;
- (f) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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 ;
- (g) the term competent authority means in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative; and in the case of France, the Minister in charge of the Budget or his authorised representative ;
- (h) the term national means any individual possessing the nationality of a Contracting State and any legal person, partnership or association deriving its status from the laws in force in that Contracting State ;
- (i) 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 ;
- (j) the term fiscal year in relation to Indian tax means previous year as defined in the Income-tax Act, 1961 (43 of 1961) and in relation to French income-tax means calendar year ;
- (k) the term tax means Indian tax or French tax as the context requires.

2. As regards the application of the Convention by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that Contracting State concerning the taxes to which the Convention applies.

ARTICLE 4 – *Resident* – 1. For the purposes of this Convention, the term resident of a Contracting State means any person who, under the laws of that Contracting State, is liable to tax 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 status shall be determined as follows :

- (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 (centre of vital interests) ;
- (b) if the Contracting State in which he 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) 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 national ;
- (d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (a) a place of management ;

- (b) a branch ;
- (c) an office ;
- (d) a factory ;
- (e) a workshop ;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources ;
- (g) a warehouse in relation to a person providing storage facilities for others ;
- (h) a premises used as a sales outlet ;
- (i) an installation or structure used for the exploration of natural resources provided that the activities continue for more than 183 days.

3. A building site or construction, installation or assembly project constitutes a permanent establishment only where such site or project continues for a period of more than six months.

4. Notwithstanding the preceding provisions of this Article, the term permanent establishment shall be deemed to include :

- (a) the use of facilities solely for the purpose 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 of collecting information, for the enterprise ;
- (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 other activities which have a preparatory or auxiliary character, for the enterprise ;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2 where a person other than an agent of an independent status to whom paragraph 6 applies is acting in one of the Contracting States 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 :

- (a) he has and habitually exercises in that Contracting State an authority to conclude contracts on behalf of the enterprise, unless, his activities are limited to the purchase of goods or merchandise for the enterprise ; or
- (b) he has no such authority, but habitually maintains in the first-mentioned Contracting State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.

6. 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 in that other Contracting State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph if it is shown that the transactions between the agent and the enterprise were not made under at arms length conditions.

7. The fact that a company which is a resident of one of the Contracting States 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 – *Income from immovable property* – 1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other Contracting State.

2. The term immovable property shall have the meaning which it has under the 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, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall also 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 one of the Contracting States shall be taxable only in that Contracting 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, the profits of the enterprise may be taxed in the other Contracting State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of one of the Contracting States carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed 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 or the determination thereof presents exceptional difficulties, the profits attributable to the permanent establishment may be estimated on the basis of an apportionment of the total profits of the enterprise to its various parts, provided,

however, that the result shall be in accordance with the principles contained in this Article.

3. (a) In determining the profits of a permanent establishment, there shall be allowed as deduction expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere, in accordance with the provisions of and subject to the limitations of the taxation laws of that Contracting State. Provided that where the law of the Contracting State in which the permanent establishment is situated imposes a restriction on the amount of the executive and general administrative expenses which may be allowed, and that restriction is relaxed or overridden by any Convention, Agreement or Protocol signed after 1-1-1990 between that Contracting State and a third State which is a member of the OECD, the competent authority of that Contracting State shall notify the competent authority of the other Contracting State of the terms of the corresponding paragraph in the Convention, Agreement or Protocol with that third State immediately after the entry into force of that Convention, Agreement or Protocol and, if the competent authority of the other Contracting State so requests, the provisions of that paragraph shall apply under this Convention from that entry into force.

(b) However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. 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.

5. 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.

6. 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 also apply to profits from the participation in a pool, a joint business or an international operating agency.

3. For the purpose of this article, interest on funds connected with the operation of aircraft in international traffic shall be regarded as profits derived from the operation of such aircraft, and the provisions of article 12 shall not apply in relation to such interest.

4. The term operation of aircraft shall mean business of transportation by air of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of aircraft, including the sale of tickets for such transportation on behalf of other enterprises, the incidental lease of aircraft and any other activity directly connected with such transportation.

ARTICLE 9 – *Shipping* – 1. Profits derived by an enterprise of a Contracting State from the operation of ships in international traffic shall be taxable only in that Contracting State.

2. Notwithstanding the provisions of paragraph 1, such profits may be taxed in the other Contracting State from which they are derived, provided the tax so charged shall not exceed :

- (a) during the first five fiscal years after the entry into force of this Convention, 50 per cent, and
- (b) during the subsequent five fiscal years, 25 per cent,

of the tax otherwise imposed by the internal law of that Contracting State. Subsequently, only the provisions of paragraph 1 shall be applicable.

3. The provisions of paragraphs 1 and 2 shall also apply to profits from the participation in a pool, a joint business or an international operating agency engaged in the operation of ships.

4. For the purposes of this article interest arising on funds connected, with the operation of ships in international traffic shall be regarded as profits derived from the operation of such ships, and the provisions of article 12 shall not apply in relation to such interest.

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 resident of a Contracting State to a resident of the other Contracting State may be taxed in that other Contracting State.

¹[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 laws of that Contracting State, but if the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.]

3. (a) A resident of India who receives dividends from a company which is a resident of France which, if received by a resident of France, would entitle such resident to a tax credit (avoir fiscal), shall be entitled from the French Treasury to a payment equal to such tax credit (avoir fiscal) subject to the deduction of tax as provided for under paragraph 2 of this article.

(b) The provisions of sub-paragraph (a) of this paragraph shall apply only to a resident of India who is :

(i) an individual ; or

(ii) a company which holds directly or indirectly less than 10 per cent of the capital of the French company paying the dividends.

(c) The provisions of sub-paragraph (a) of this paragraph shall not apply if the recipient of the payment from the French Treasury provided for in sub-paragraph (a) of this paragraph is not subject to Indian tax in respect of the payment.

(d) Payments from the French Treasury provided for under sub-paragraph (a) of this paragraph shall be deemed to be dividend for the purpose of this Convention.

4. When the prepayment (precompte) is levied in respect of dividends paid by a company which is a resident of France to a resident of India who is not entitled to the payment from the French Treasury referred to in paragraph 3 of this article with respect to such dividends, such resident shall be entitled to the refund of that prepayment, subject to the deduction of the withholding tax with respect to the refunded amount in accordance with paragraph 2 of this article.

5. As used in this article the term dividends means income from shares or other rights, not being debt-claims participating in profits, as well as income from other corporate rights treated in the same manner as income from shares by the taxation laws of the Contracting State of which the company making the distribution is a resident and any other item (other than interest which falls within the provisions of article 12) treated as a dividend or distribution under that law.

6. 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 Contracting 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.

7. 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 in so far as such dividends are paid to a resident of that other Contracting State or in so far 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 companys undistributed profits to a tax on the companys 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.

¹[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 beneficial owner of the interest, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.]

3. Notwithstanding the provisions of paragraph 2 :

- (a) interest arising in a Contracting State shall be exempt from tax in that Contracting State provided it is derived and beneficially owned by :
 - (i) the Government, a political sub-division or local authority of the other Contracting State; or
 - (ii) the Reserve Bank of India in the case of India and the Banque de France ²[*and Agence Francaise de Developpement*] in the case of France; or
 - (iii) any other institution as may be agreed from time to time between the competent authorities of the Contracting States;
- (b) interest arising in a Contracting State shall be exempt from tax in that Contracting State if it is beneficially owned by a resident of the other Contracting State and is derived in connection with a loan or credit extended or endorsed by :
 - (i) in the case of France, the Banque Francaise du Commerce Exterior, or the Compagnie Francaise dAssurance pour le Commerce Exterior (COFACE) ;
 - (ii) in the case of India, the Export-Import Bank of India ;
 - (iii) any institution of the other Contracting State in charge of the public financing of external trade.

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 debtors 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 and 2 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 Contracting State. Where, however, the person paying the interest, 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 indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such 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 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 the other provisions of this Convention.

ARTICLE 13 – *Royalties and fees for technical services and payments for the use of equipment* – 1. Royalties, fees for technical services and payments for the use of equipment arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.

¹[2. However, such royalties, fees and payments 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 these categories of income, the tax so charged shall not exceed 10 per cent of the gross amount of such royalties, fees and payments.]

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 including 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 information concerning industrial, commercial or scientific experience.

4. The term fees for technical services as used in this Article means payments of any kind to any person, other than payments to an employee of the person making the payments and to any individual for independent personal services mentioned in Article 15, in consideration for services of a managerial, technical or consultancy nature.

5. The term payments for the use of equipment as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, industrial, commercial or scientific equipment.

6. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, fees for technical services or the payments for the use of equipment being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties, fees for the technical services or the payments for the use of equipment 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 royalties, fees for technical services or the payments for the use of equipment are 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.

7. Royalties, fees for technical services or payments for the use of equipment 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, fees for technical services or the payments for the use of equipment, 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 contract under which the royalties, fees for technical services or the payments for the use of equipment, are paid was concluded and such royalties, fees for technical services or payments for the use of equipment, are borne by such permanent establishment or fixed base, then such royalties, fees for technical services or

payments for the use of equipment shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

8. 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, fees for technical services or the payments for the use of equipment, having regard to the royalties, technical services or the use of equipment 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 payment shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 14 – *Capital gains* – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property, referred to in article 6, and situated in the other Contracting State may be taxed in that other Contracting State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such fixed base, may be taxed in that other Contracting State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that Contracting State. For the purposes of this provision, immovable property pertaining to the industrial or commercial operation of such company shall not be taken into account.

5. Gains from the alienation of shares other than those mentioned in paragraph 4 representing a participation of at least 10 per cent in a company which is a resident of a Contracting State may be taxed in that Contracting State.

6. Gains from the alienation of any property other than that mentioned in paragraphs 1, 2, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 15 – *Independent personal services* : 1. Income derived by an individual or a partnership of individuals who is a resident of a Contracting State from the performance of professional services or other independent activities of a similar character shall be taxable only in that Contracting State except in the following circumstances when such income may also be taxed in the other Contracting State :

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in the relevant fiscal year; in that case, only so much of the income as is derived from his activities performed in that other Contracting State may be taxed in that other Contracting State.

2. The term professional services includes 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, 18, 19, 20, 21 and 22, 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 the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed 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 exercised in the other Contracting State shall be taxable only in the first-mentioned Contracting State if :

- (a) the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in the relevant fiscal year; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other Contracting State.

3. Notwithstanding the preceding provisions of this article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that Contracting State.

ARTICLE 17 – *Directors fees* – Directors 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 may be taxed in that other Contracting State.

ARTICLE 18 – *Income earned by entertainers 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 a 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.

2. Where income in respect of personal activities exercised by an entertainer or 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. Notwithstanding the provisions of paragraph 1, income derived by an entertainer or an athlete who is a resident of a Contracting State from his personal activities as such exercised in the other Contracting State, shall be taxable only in the first-mentioned

Contracting State, if the activities in the other Contracting State are supported wholly or substantially from the public funds of the first-mentioned Contracting State, including any of its political sub-division or local authorities.

4. Notwithstanding the provisions of paragraph 2 and articles 7, 15 and 16, where income in respect of personal activities exercised by an entertainer or any athlete in his capacity as such in Contracting State accrues not to the entertainer or athlete himself but to another person, that income shall be taxable only in the other Contracting State, if that other person is supported wholly or substantially from the public funds of that other Contracting State, including any of its political sub-divisions or local authorities.

ARTICLE 19 – *Remuneration and pensions in respect of Government service* – 1. (a) Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof or out of public funds of that Contracting State to an individual in respect of services rendered to that Contracting State or sub-division or authority shall be taxable only in that Contracting State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other Contracting State and the individual is a resident of that other Contracting State who is a national of that other Contracting State without being a national of the Contracting State to which the services are rendered.

2. Any pension paid by, or out of funds created by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that Contracting State or sub-division or authority shall be taxable only in that Contracting State.

3. The provisions of articles 16, 17 and 20 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or local authority thereof.

ARTICLE 20 – *Non-Government pensions and annuities* – 1. Any pension, other than a pension referred to in article 19, or any annuity derived by a resident of a Contracting

State from sources within the other Contracting State shall be taxable only in the first-mentioned Contracting State.

2. The term pension means a periodic payment made in consideration of past services or by way of compensation for injuries received in the course of performance of services.

3. 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 moneys worth.

4. Notwithstanding the provisions of paragraph 1, pensions paid and other payments made under a public scheme which is a part of the social security system of a Contracting State or a political sub-division or a local authority thereof shall be taxable only in that Contracting State.

ARTICLE 21 – *Payments received by students and apprentices* – A student or business apprentice who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State and who is present in that other Contracting State solely for the purpose of his education or training, shall be exempt from tax in that other Contracting State on payments made to him by persons residing outside that other Contracting State for the purposes of his maintenance, education or training.

ARTICLE 22 – *Payments received by professors, teachers and research scholars* – 1. A professor, teacher, or a research scholar who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college, school or other approved institution in that other Contracting State shall be taxable only 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 other 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 fiscal year in which he visits the other Contracting State or in the immediately preceding fiscal year.

4. For the purposes of paragraph 1, approved institution means an institution which has been approved as an educational or research institution by the appropriate authority of the concerned Contracting State.

ARTICLE 23 – *Other income* – 1. Subject to the provisions of paragraph 2, items of income of a resident of a Contracting State, wherever arising, which are not expressly dealt with in the foregoing articles of this Convention, shall be taxable only in that Contracting State.

2. The provisions of paragraph 1, shall not apply to income, other than income from immovable property as defined in paragraph 2 of article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the right or property in respect of which the income 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.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing articles of this Convention, and arising in the other Contracting State may be taxed in that of the Contracting State.

ARTICLE 24 – *Capital* – 1. Capital represented by immovable property referred to in article 6 or rights treated as immovable property, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other Contracting State.

2. Capital represented by shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that Contracting State. For the purposes of this

provision, immovable property pertaining to the industrial or commercial operation of such company shall not be taken into account.

3. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services may be taxed in that other Contracting State.

4. Capital represented by ships and aircraft operated in international traffic and by movable property pertaining to the operation of such ships and aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

5. All other elements of capital of a resident of a Contracting State shall be taxable only in that Contracting State.

ARTICLE 25 – *Elimination of double taxation* – 1. Double taxation shall be avoided in the following manner :

In the case of India :

- (a) Where a resident of India derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in France, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in France, whether directly or by deduction; and as a deduction from the tax on the capital of that resident an amount equal to the capital tax paid in France. Such deduction in either case shall not, however, exceed that part of the income-tax or capital tax (as computed before the deduction is given) which is attributable, as the case may be, to the income or the capital which may be taxed in France. Further, where such resident is a company by which surtax is payable in India, the deduction in respect of income-tax paid in France shall be allowed in the first instance from income-tax payable by the company in India and as to the balance, if any, from surtax payable by it in India.

- (b) Where a resident of India derives income which, in accordance with the provisions of this Convention, shall be taxable only in France, India may include this income in the tax base but shall allow as a deduction from the income-tax that part of the income-tax which is attributable to the income derived from France.

2. In the case of France :

- (a) Profits and other positive income arising in India and which are taxable in that Contracting State in accordance with the provisions of this Convention, are taken into account for the computation of the French tax where such income is received by a resident of France. The Indian tax shall not be deductible from such income. The beneficiary shall be entitled to a tax credit against French tax attributable to such income. Such tax credit shall be equal :
- (i) in the case of income referred to in paragraph 2 of article 9, articles 11, 12, 13, paragraph 5 of article 14, paragraph 3 of article 16, article 17, paragraphs 1 and 2 of article 18 and paragraph 3 of article 23, to the amount of tax paid in India in accordance with the provisions of those articles. However, it shall not exceed the amount of French tax attributable to such income ;
 - (ii) in the case of other income, to the amount of French tax attributable to such income, which is thus exempted. This provision shall apply also to remuneration referred to in article 19 and in paragraph 4 of article 20.
- (b) As regards the application of sub-paragraph (a) to income referred to in articles 12 and 13, where the amount of tax paid in India in accordance with the provisions of these articles exceeds the amount of French tax attributable to such income, the resident of France receiving such income may present his case to the French competent authority. If it appears that such a situation results in taxation which is not comparable to taxation on net income, that competent authority may allow the non-credited amount of tax paid in India as a deduction from the French tax levied on other income from foreign sources derived by that resident. The provisions of this sub-paragraph shall not apply where tax is deemed to be paid in India according to the provisions of sub-paragraphs (c) and (d).
- (c) For the purposes of the tax credit referred to in sub-paragraph (a) (i) the term tax paid in India shall be deemed to include any amount which would have been

payable as Indian tax under the laws of India, and within the limits provided for by this Convention, for any year but for an exemption from, or reduction of, tax granted for that year under :

- (i) section 10(4), 10(4B), 10(15)(iv) covering interest, section 10(6)(vii) covering salaries and section 80L covering interest and dividends, of the Income-tax Act, 1961 (43 of 1961), so far as they were in force on, and have not been modified since, the date of the signature of this Convention, or have been modified only in minor respects so as not to affect their general character ; or
 - (ii) any other provisions which may be enacted after this Convention enters into force granting a deduction in computing the taxable income or an exemption or reduction from tax which the competent authorities of the Contracting States agree to be for the purposes of the economic development of India, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character.
- (d) For the purposes of the tax credit referred to in sub-paragraph (c), where the Indian tax actually levied on interest arising in India is lower than the tax India may levy according to sub-paragraphs (a) and (b) of paragraph 2 of Article 12, then the amount of tax paid in India on such interest shall be deemed to have been paid at the rates of tax mentioned in the said provisions.
- However, if the general tax rates under Indian law applicable to the aforementioned interest are reduced below those mentioned in the foregoing sentence these lower rates shall apply for the purposes of that sentence.
- (e) Notwithstanding the provisions of sub-paragraphs (a) and (c), dividends paid by a company which is a resident of India to a company which is a resident of France, shall be exempt from French Corporation tax to the extent that the dividends would have been exempt under French law if both companies had been residents of France.
- (f) Residents of France who own capital taxable in India may also be taxed in France on such capital. The French tax is computed by allowing a tax credit equal to the amount of tax paid in India in accordance with the provisions of article 24. However, such credit shall not exceed the French tax attributable to such capital.

ARTICLE 26 – *Non-discrimination* – 1. Nationals of one of the Contracting States 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 the other Contracting State in the same circumstances are or may be subjected. The provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. Except where the provisions of paragraph 3 of Article 7 apply the taxation on a permanent establishment which an enterprise of one of the Contracting States 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.

3. The provision of paragraph 2 shall not be construed as obliging one of the Contracting States to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

4. Except where the provisions of Article 10, paragraph 7 of Article 12 or paragraph 8 of Article 13, apply, interest, royalties and other disbursements paid by an enterprise of one of the Contracting States to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned Contracting State.

Similarly, any debts of an enterprise of one of the Contracting States to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned Contracting State.

5. Enterprises of one of the Contracting States, 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 the first-mentioned Contracting State are or may be subjected.

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 his case to the competent authority of the Contracting State of which he is a resident. This case must be presented within three years of the date of receipt of notice of the action which gives rise to taxation not in accordance with the Convention.

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 avoidance of taxation not in accordance with the 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 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. 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.

5. The competent authorities of the Contracting States may, jointly or separately, if they consider it necessary, settle the mode of application of the Convention and, especially the requirements to which the residents of Contracting State shall be

subjected in order to obtain, in the other Contracting State, the tax reliefs or exemptions provided for by the Convention.

ARTICLE 28 – *Exchange of information* – 1. The competent authorities of the Contracting States shall exchange such information (including documents) as is necessary for carrying out the provisions of the Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention, insofar as the taxation thereunder is not contrary to the Convention, in particular, for the prevention of fraud or evasion of such taxes. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that Contracting State. However, if the information is originally regarded as secret in the transmitting State, it shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Convention. Such persons or authorities shall use the information only for such purposes but may disclose the information in public court proceedings or in judicial decisions.

2. 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 or documents 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 or documents 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 – *Diplomatic and consular activities* – 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 agreement concluded between the parties to this Convention.

ARTICLE 30 – *Entry into force* – 1. Each of the Contracting States shall notify to the other the completion of the procedure required by its law for the bringing into force of this Convention. This Convention shall enter into force on the first day of the second month following the date of reception of the later of these notifications and shall thereupon have effect :

(a) in India ;

(i) in respect of income arising in any fiscal year beginning on or after the first day of April following the calendar year in which the Convention enters into force ;

(ii) in respect of capital which is held on the last day of any fiscal year beginning on or after the first day of April following the calendar year in which the Convention enters into force ;

(b) in France :

(i) in respect of income arising in any calendar year or accounting period beginning on or after the first of January following the calendar year in which the Convention enters into force ;

(ii) in respect of capital owned on the first day in any calendar year following the calendar year in which the Convention enters into force.

2. The Agreement between the Government of French Republic and the Government of the Republic of India for the avoidance of double taxation in respect of taxes on income signed in Paris on March 26, 1969 shall be terminated and its provisions shall cease to have effect when the corresponding provisions of this Convention shall become effective.

ARTICLE 31 – *Termination* – 1. This Convention shall remain in force indefinitely. However, either Contracting State may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give the other Contracting State through diplomatic channels, written notice of termination and, in such event, this Convention shall cease to have effect :

(a) in India :

- (i) in respect of income arising in any fiscal year beginning on or after the first day of April following the calendar year in which the notice of termination is given ;
 - (ii) in respect of capital which is held on the last day of any fiscal year beginning on or after the first day of April following the calendar year in which the notice of termination is given ;
- (b) in France :
- (i) in respect of income arising in any calendar year or accounting period beginning on or after the first day of January following the calendar year in which the notice of termination is given ;
 - (ii) in respect of capital owned on the first day of any calendar year following the calendar year in which the notice of termination is given.

PROTOCOL

At the time of proceeding to the signature of the Convention between France and India for the avoidance of double taxation with respect to taxes on income and on capital, the undersigned have agreed on the following provisions which shall form an integral part of the Convention :

1. For the purposes of this Convention, it is understood that the words political sub-division wherever they occur shall mean political sub-division of India.

2. With respect to paragraph 1 of Article 7 (Business Profits), it is understood that if in both Indias new tax Conventions, Agreements or Protocols, with the United Kingdom and Federal Republic of Germany, it is provided that the profits of an enterprise of a Contracting State carrying on business through a permanent establishment in the other Contracting State may be taxed in that other Contracting State as are attributable directly or indirectly to that permanent establishment or attributable to: (a) Sales in that other Contracting State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or (b) other business activities carried on in that other State, of the same or similar kind as those effected through that permanent establishment, such provisions shall also apply to the extent so

provided to the present Convention with respect from the date from which the later of those two Conventions, Agreements or Protocols between India and United Kingdom and the Federal Republic of Germany enters into force. It is understood that only the provisions included in both new Conventions, Agreements or Protocols between India and U.K. and F.R.G. shall apply to the present Convention.

3. In respect of paragraphs 1 and 2 of Article 7, where an enterprise of one of the Contracting States sells goods or merchandise or carries on business in the other Contracting State through a permanent establishment situated therein, the profits of that permanent establishment shall not be determined on the basis of the total amount received by the enterprise, but shall be determined only on the basis of the remuneration which is attributable to the actual activity of the permanent establishment for such sales or business. Especially, in the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, when the enterprise has a permanent establishment, the profits of such permanent establishment shall not be determined on the basis of the total amount of the contract, but shall be determined only on the basis of that part of the contract which is effectively carried out by the permanent establishment in the Contracting State where the permanent establishment is situated. The profits related to that part of the contract which is carried out by the head office of the enterprise shall be taxable only in the Contracting State of which the enterprise is a resident.

4. It is understood that with respect to paragraph 2 of Article 7, no profits shall be attributed to a permanent establishment by reason of the facilitation of the conclusion of foreign trade or loan agreements or the mere signing thereof.

5. Where the law of the Contracting State in which a permanent establishment is situated imposes in accordance with the provisions of sub-paragraph (a) of paragraph 3 of Article 7 a restriction on the amount of the executive and general administrative expenses which may be allowed as a deduction in determining the profits of such permanent establishment, it is understood that in determining the profits of such permanent establishment, the deduction in respect of such executive and general

administrative expenses in no case shall be less than what is allowable under the Indian Income-tax Act as on the date of signature of this Convention.

6. Where tax has been levied at source in excess of the amount of tax chargeable under the provisions of Article 11, 12 or 13, applications for the refund of the excess amount of tax have to be lodged with the competent authority of the Contracting State having levied the tax, within a period of three years after the expiration of the calendar year in which the tax has been levied.

7. In respect of articles 11 (Dividends), 12 (Interest) and 13 (Royalties, fees for technical services and payments for the use of equipment), if under any Convention, Agreement or Protocol signed after 1-9-1989, between India and a third State which is a member of the OECD, India limits its taxation at source on dividends, interest, royalties, fees for technical services or payments for the use of equipment to a rate lower or a scope more restricted than the rate or scope provided for in this Convention on the said items of income, the same rate or scope as provided for in that Convention, Agreement or Protocol on the said items income shall also apply under this Convention, with effect from the date on which the present Convention or the relevant Indian Convention, Agreement or Protocol enters into force, whichever enters into force later.

8. It is understood that any amount which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty imposed relating to those taxes is not considered as an interest for the purposes of article 12 (Interest) and is not considered as tax for the purpose of article 25 (Elimination of double taxation).

9. In respect of Article 13 (Royalties, fees for technical services and payments for the use of equipments) notwithstanding the provisions of paragraph 2 of this Article, royalties, fees for technical services and payments for the use of equipment arising in France and paid to a resident of India, shall not be taxable in France.

10. It is understood that in case India applies a levy, not being a levy covered by Article 2, such as the Research and Development Cess on payments meant in Article 13, and if

after the signature of this Convention under any Convention or Agreement or Protocol between India and third State which is a member of the OECD, India should give relief from such levy, directly by reducing the rate or the scope of the levy, either in full or in part, or, indirectly by reducing the rate or the scope of the Indian tax allowed under the Convention, Agreement or Protocol in question on payments as meant in Article 13 of this Convention with the levy, either in full or in part, then, as from the date on which the relevant Indian Convention, Agreement or Protocol enters into force, such relief as provided for in that Convention, Agreement or Protocol shall also apply under this Convention.

11. As regards article 16 (Dependent Personal Services), it is understood that the provisions of this article apply to remuneration derived by a resident of a Contracting State in his capacity as an official in a top level managerial position of a company which is a resident of the other Contracting State. It is clear that in respect of the remuneration due from a resident of this other Contracting State, the provisions of paragraph 2 of article 16 shall not apply.

12. As regards the application of paragraph 1 of Article 26, it is understood that an individual, legal person, partnership or association which is a resident of a Contracting State shall not be deemed to be in the same circumstances as an individual, legal person, partnership or association which is a resident of the other Contracting State. This shall also apply where such individuals, legal persons, partnership or association are, in applying paragraph 1.1 of Article 3 (General definitions), deemed to be nationals of the Contracting State of which they are residents.

13. In respect of article 25 (Elimination of double taxation), it is understood that for the purposes of sub-paragraph 2(a)(i), income which is exempt totally or partially in India shall also be considered as income taxable in India.

Done in duplicate at Paris on this 29th day of September, one thousand nine hundred and ninety-two, in Hindi, French and English languages, all the texts being equally authentic.

JUDICIAL ANALYSIS

Note the following case laws :

- *See Advance Ruling P. No. 13 of 1995, In re* [1997] 94 Taxman 171 (AAR – New Delhi)
- Income earned in France by Indian resident assessee is includible in his total income for rate purposes – *Third ITO v. S.K. Sengupta* [1983] 5 ITD 326 (Indore – Trib.)
- Provisions of section 40A(5) were applicable to assessee-company which was French resident and had permanent establishment in India and it could not be said to be in violation of article III(3) of Double Taxation Avoidance Agreement entered into between Government of India and France *Banque National de Paris v. IAC* [1991] 39 ITD 224 (Bom. – Trib.).
- Specific provisions made in Double Taxation Avoidance Agreement between Government of French Republic and Indian Government would prevail over general provision contained in section 44D *Compagnie Francaise DEtudes Et De Construction v. IAC* [1984] 8 ITD 215 (Delhi – Trib.).
- Where article III of DTAA between India and France provided that consideration for acquisition of technical know-how would not be royalty but would be treated as commercial profit exempt from tax in India, lump sum payment made in instalments for acquisition of technical know-how, apart from royalty charges payable separately, was not taxable in India in view of article III *Graphite Vicarb India Ltd. v. ITO* [1992] 43 ITD 28 (Cal. – Trib.) (SB).
- Where the Government of India, through ITI, a Government undertaking, entered into four different agreements with assessee, a foreign company, for development and manufacture of electronic digital telephone switching equipment in India including supervision of installation and the assessee-company further entered into an agreement with an Indian company MCPL under which MCPL was to provide support services to French Engineers who were visiting India quite often, expenditure incurred by assessee-company had to be allowed as deduction in view of article XVI of Double

Taxation Avoidance Agreement and there was no reason to restrict it to 50 per cent as was done by IAC (Assessment)*Dy. CIT v. Alcate/* [1993] 47 ITD 275 (Delhi – Trib.).

· Where foreign company provided technical service on rigs owned by Indian company rigs could not be treated as place of management of foreign enterprise so as to conclude that foreign enterprise carried on business in India within meaning of article III of Double Taxation Avoidance Agreement between India and France*Boulder Christian v. ITO* [1993] 46 ITD 114 (Delhi – Trib.).

Germany

Agreement for avoidance of double taxation and prevention of fiscal evasion with Germany

Whereas the annexed Agreement between the Government of the Republic of India and the Government of the Federal Republic of Germany for the avoidance of double taxation with respect to taxes on income and capital has been concluded ;

And whereas the aforesaid Agreement was brought into force on the 26th day of October, 1996 after the completion by both the Contracting States to each other of the procedure required under their laws in accordance with article 28 of the said Agreement ;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961) and section 44A of the Wealth-tax Act, 1957 (27 of 1957), the Central Government hereby directs that all the provisions of the said Agreement shall be given effect to in the Union of India.

Notification : No. SO 836(E), dated 29-11-1996.*

ANNEXURE

AGREEMENT BETWEEN THE REPUBLIC OF INDIA AND THE FEDERAL REPUBLIC OF GERMANY FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND CAPITAL

Whereas the Government of the Federal Republic of Germany and the Government of the Republic of India desire to conclude an Agreement for the avoidance of double taxation with respect to taxes on income and capital and for promoting their mutual economic relations ;

Now, therefore, it is hereby agreed as follows :

ARTICLE 1 – *Personal scope* – This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2 – *Taxes covered* – 1. This Agreement shall apply to taxes on income and on capital imposed on behalf of a Contracting State, of a land or a political sub-division or local authority thereof, irrespective of the procedure in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, and the pay roll tax.

3. The existing taxes to which this Agreement shall apply are in particular :

(a) in the Federal Republic of Germany :

the Einkommensteuer (income-tax),

the Körperschaftsteuer (corporation-tax),

the Vermögensteuer (capital tax), and

the Gewerbesteuer (trade tax)

(hereinafter referred to as German tax);

(b) in the Republic of India,

the income-tax including any surcharge tax thereon (Einkommensteuer, einschl, darauf entfallender Zusatzsteuern), and the wealth-tax (Vermögensteuer)

(hereinafter referred to as Indian tax).

4. This Agreement shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of changes of importance which have been made in their respective taxation laws.

ARTICLE 3 – *General definitions* – 1. For the purposes of this Agreement, unless the context otherwise requires,

- (a) the term Federal Republic of Germany means the area in which the tax law of the Federal Republic of Germany is in force including the area of the sea-bed, its sub-soil and the superjacent water column adjacent to the territorial sea, insofar as the Federal Republic of Germany exercises their sovereign rights and jurisdiction in conformity with international law and its national legislation ;
- (b) the term Republic of India means the territory of the Republic of India and includes the territorial sea and airspace above it. For the purposes of this Agreement the term shall also cover any other maritime zone in which the Republic of India has sovereign rights, other rights and jurisdictions, according to the Indian law and in accordance with international law in particular as laid down in the UN Convention of the Law of the Sea ;
- (c) the terms a Contracting State and the other Contracting State mean the Federal Republic of Germany or the Republic of India as the context requires ;
- (d) the term person includes an individual, a company and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States ;
- (e) the term company means any body corporate or any entity which is treated as a company or body corporate under the taxation laws in force in the respective Contracting States ;
- (f) the term immovable property has the meaning which it has under the 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property ;
- (g) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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 ;
- (h) the term national means,

- (i) in respect of the Federal Republic of Germany any German within the meaning of Article 116, paragraph (1), of the Basic Law for the Federal Republic of Germany and any legal person, partnership and association deriving its status as such from the law in force in the Federal Republic of Germany ;
- (ii) in respect of the Republic of India any national of the Republic of India and any legal person, partnership and association deriving its status as such from the law in force in the Republic of India ;
- (l) the term international traffic means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State except when the ship or aircraft is operated solely between places in the other Contracting State ;
- (j) the term competent authority means in the case of the Federal Republic of Germany the Federal Ministry of Finance, and in the case of the Republic of India the Central Government in the Ministry of Finance (Department of Revenue) or its authorised representative ;
- (k) the term fiscal year means,
 - (i) in relation to Indian tax, the previous year as defined in the Income-tax Act, 1961 ;
 - (ii) in relation to German tax, the calendar year ;
- (l) the term tax means German tax or Indian tax as the context requires but shall not include interest or penalty imposed in relation to such taxes.

2. As regards the application of this Agreement by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which this Agreement applies.

ARTICLE 4 – *Resident* – 1. For the purposes of this Agreement, the term resident of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows :

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him, if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests) ;
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode ;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national ;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 State in which its place of effective management is situated.

ARTICLE 5 : *Permanent establishment* – 1. For the purposes of this Agreement, the term permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially,

- (a) a place of management ;
- (b) a branch ;
- (c) an office ;
- (d) a factory ;
- (e) a workshop ;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources, including an installation or structure used for the exploration or exploitation ;
- (g) a warehouse or sales outlet ;

- (h) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on ; and
- (i) a building site or construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or activities continue for a period exceeding six months.

3. An enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it provides services or facilities in connection with, or supplies plant and machinery on hire used for or to be used in the prospecting for or extraction or exploitation of mineral oils in that State.

4. Notwithstanding the preceding provisions of this Article, the term permanent establishment shall be deemed not to include,

- (a) the use of facilities solely for the purpose of storage, display or delivery 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, display or delivery ;
- (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 of collecting information, for the enterprise ;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character ;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 6 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 this person,

- (a) has and habitually exercises in that State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise ;
- (b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise ; or
- (c) habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise itself or for the enterprise and other enterprises controlling, controlled by, or subject to the same common control, as that enterprise.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business and in their commercial and financial relations to the enterprise no conditions are agreed or imposed which differ from those usually agreed between independent persons.

7. 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 otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6 – *Income from immovable property* – 1. Income derived by a resident of a Contracting State from immovable property situated in the other Contracting State may be taxed in that other State.

2. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

3. The provisions of paragraphs 1 and 2 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, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, 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.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions, expenses which are incurred for the purposes of the business 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, and according to the domestic law of the Contracting State in which the permanent establishment is situated.

4. Insofar as in a Contracting State and in exceptional cases the determination of the profits to be attributed to a permanent establishment in accordance with paragraph 2 is impossible or gives rise to unreasonable difficulties, nothing in paragraph 2 shall preclude the determination of the profits to be attributed to a permanent establishment by means of either apportioning the total profits of the enterprise to that permanent establishment or estimating on any other reasonable basis; the method of apportionment or estimation adopted shall, however, be such that the result shall be in accordance with the principles contained 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 purposes 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 Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

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. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

3. For the purposes of this Article, interest on funds connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft, and the provisions of Article 11 shall not apply in relation to such interest.

4. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9 – *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 10 : *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 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 laws of that State, but if the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

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

- (a) dividends on shares including income from shares, jouissance shares or jouissance rights, mining shares, founders shares or other rights, not being debt-claims, participating in profits, and
- (b) other income 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 14, 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 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 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 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 State.

ARTICLE 11 – *Interest* – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

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

3. Notwithstanding the provisions of paragraphs 1 and 2

- (a) interest arising in the Federal Republic of Germany and paid to the Government of the Republic of India, the Reserve Bank of India, the Industrial Finance Corporation of India, the Industrial Development Bank of India, the Export-Import Bank of India, National Housing Bank and Small Industries Development Bank of India shall be exempt from German tax;
- (b) interest arising in the Republic of India and paid to the Government of the Federal Republic of Germany, the Deutsche Bundesbank, the Kreditanstalt für Wiederaufbau or the Deutsche Investitions-und Entwicklungsgesellschaft (DEG) and interest paid in consideration of a loan guaranteed by HERMES-Deckung shall be exempt from Indian tax.

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 debtors 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, 2 and 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 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 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a land or political sub-division, a local authority or a resident of that State. Where, however, the person paying the interest, 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 indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the 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 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 the other provisions of this Agreement.

ARTICLE 12 – *Royalties and fees for technical services* – 1. Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

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

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, including 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.

4. The term fees for technical services as used in this Article means payments of any amount in consideration for the services of managerial, technical or consultancy nature, including the provision of services by technical or other personnel, but does not include payments for services mentioned in Article 15 of this Agreement.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services 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, property or contract in respect of which the royalties or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Royalties and fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a land or a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties or fees for technical services, 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 or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of royalties or fees for technical services paid exceeds the amount which would have been paid 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 the other provisions of this Agreement.

ARTICLE 13 – *Capital gains* – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains from the alienation of shares in a company which is a resident of a Contracting State may be taxed in that State.

5. Gains from the alienation of any property other than that referred to in paragraphs 1 to 4 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14 – *Independent personal services* – 1. Income derived by an individual who is a resident of a Contracting State from the performance of professional services or other independent activities of a similar character shall be taxable only in that State except in the following circumstances when such income may also be taxed in the other Contracting State :

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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 State ; or
- (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 120 days in the relevant fiscal year; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

ARTICLE 15 – *Dependent personal services* – 1. Subject to the provisions of Articles 16, 18, 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 in the other Contracting State only if the employment is exercised there.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if :

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned,
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and

- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State of which the enterprise operating the ship or aircraft is a resident.

ARTICLE 16 – *Directors fees* – Directors 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 may be taxed in that other State.

ARTICLE 17 – *Artistes and sportspersons* – 1. Notwithstanding the provisions of Articles 7, 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. However, such income shall not be taxed in the State mentioned in paragraph 1 if the said activities are exercised during a visit to that State by a resident of the other Contracting State and where such visit is financed directly or indirectly by that other State, a land, a political sub-division or a local authority thereof or by an organisation which in that other State is recognised as charitable organisation.

ARTICLE 18 – *Non-Government pensions* – Subject to the provisions of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

ARTICLE 19 – *Government service* – 1. (a) Remuneration other than a pension, paid by a Contracting State, a land, a political sub-division or a local authority thereof to an individual in respect of services rendered to that State, Land, sub-division or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State, if the services are rendered in that State and the individual is a resident of that State who :

(i) is a national of that State ; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by a Contracting State, a Land, a political sub-division or a local authority thereof to an individual in respect of services rendered to that State, Land, sub-division or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of and a national of that other State.

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State, a Land, a political sub-division or a local authority thereof.

4. The provisions of paragraph 1 shall likewise apply in respect of remuneration paid, under a development assistance programme of a Contracting State, a Land, a political sub-division or a local authority thereof, out of funds exclusively supplied by that State, Land, political sub-division or local authority, to a specialist or volunteer seconded to the other Contracting State with the consent of that other State.

ARTICLE 20 – *Teachers, students and trainees* – 1. An individual who visits a Contracting State at the invitation of that State or of a university, college, school, museum or other cultural institution of that State or under an official programme of cultural exchange for a period not exceeding two years solely for the purpose of teaching, giving lectures or carrying out research at such institution and who is, or was

immediately before that visit, a resident of the other Contracting State shall be exempt from tax in the first-mentioned State on his remuneration for such activity during the period of the first year from the date of his arrival and in the next year the exemption will be only in respect of remuneration derived by him from outside that State.

2. An individual who is present in a Contracting State solely :

- (a) as a student at a university, college or school in that Contracting State,
- (b) as a business apprentice (including in the case of the Federal Republic of Germany a Volontar or a Praktikant),
- (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, or
- (d) as a member of a technical cooperation programme entered into by the Government of that Contracting State, and who is, or was immediately before visiting that State, a resident of the other Contracting State, shall be exempt from tax in the first-mentioned Contracting State in respect of
 - (i) remittances from abroad for the purposes of his maintenance, education or training, and
 - (ii) remuneration from employment in that other State, in an amount not exceeding DM 7,200 (seven thousand two hundred Deutsche Mark) or its equivalent in Indian currency during any fiscal year, as the case may be provided that such employment is directly related to his studies or is undertaken for the purpose of his maintenance.

ARTICLE 21 – *Other income* – 1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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 income is paid is effectively connected with such permanent establishment

or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraph 1, if a resident of a Contracting State derives income from sources within the other Contracting State in the form of lotteries, crossword puzzles, races including horse races, card games and other games of any sort or gambling or betting of any form or nature whatsoever, such income may be taxed in the other Contracting State.

ARTICLE 22 – *Capital* – 1. Capital represented by immovable property, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.

3. Capital represented by ships and aircraft operated in international traffic and by movable property pertaining to the operation of such ships or aircraft, shall 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 of a resident of a Contracting State shall be taxable only in that State.

ARTICLE 23 – *Relief from Double taxation* – 1. Tax shall be determined in the case of a resident of the Federal Republic of Germany as follows :

- (a) Unless foreign tax credit is to be allowed under sub-paragraph (b), there shall be exempted from German tax any item of income arising in the Republic of India and any item of capital situated within the Republic of India, which, according to this Agreement, may be taxed in the Republic of India. The Federal Republic of

Germany, however, retains the right to take into account in the determination of its rate of tax the items of income and capital so exempted.

In the case of dividends exemption shall apply only to such dividends as are paid to a company (not including partnerships) being a resident of the Federal Republic of Germany by a company being a resident of the Republic of India at least 10 per cent of the capital of which is owned directly by the German company.

There shall be exempted from taxes on capital any shareholdings the dividends of which are exempted or, if paid, would be exempted, according to the immediately foregoing sentence.

(b) Subject to the provisions of German tax law regarding credit for foreign tax, there shall be allowed as a credit against German tax payable in respect of the following items of income arising in the Republic of India and the items of capital situated there, the Indian tax paid under the laws of the Republic of India and in accordance with this Agreement on :

- (i) dividends not dealt with in sub-paragraph (a) ;
- (ii) interest ;
- (iii) royalties and fees for technical services ;
- (iv) income in the meaning of paragraph 4 of Article 13 ;
- (v) directors fees ;
- (vi) income of artistes and sports persons.

(c) For the purpose of credit referred to in letter (ii) of sub-paragraph (b), the Indian tax shall be deemed to be 10 per cent of the gross amount of the interest, if the Indian tax is reduced to a lower rate or totally waived according to domestic law, irrespective of the amount of tax actually paid.

(d) The provisions of sub-paragraph (c) shall apply for the first 12 fiscal years for which this Agreement is effective.

(e) Notwithstanding the provisions of sub-paragraph (a) items of income dealt with in Articles 7 and 10 and gains derived from the alienation of the business property of a permanent establishment as well as the items of capital underlying such income shall be exempted from German tax only if the resident of the Federal Republic of

Germany can prove that the receipts of the permanent establishment or company are derived exclusively or almost exclusively from active operations.

In the case of items of income dealt with the Article 10 and the items of capital underlying such income the exemption shall apply even if the dividends are derived from holdings in other companies being residents of the Republic of India which carry on active operations and in which the company which last made a distribution has a holding of more than 25 per cent.

Active operations are the following; producing or selling goods or merchandise, giving technical advice or rendering engineering services, or doing banking or insurance business, within the Republic of India.

If this is not proved, only the credit procedure as per sub-paragraph (b) shall apply.

2. Tax shall be determined in the case of a resident of the Republic of India as follows :

Where a resident of the Republic of India derives income or owns capital which, in accordance with the provisions of this Agreement, may be taxed in the Federal Republic of Germany, the Republic of India shall allow as a deduction from the tax on such income of that resident an amount equal to the income-tax paid in the Federal Republic of Germany, whether directly or by deduction, and as a deduction from the tax on such capital of that resident an amount equal to the capital tax paid in the Federal Republic of Germany. Such deduction in either case shall not, however, exceed that part of the income-tax or capital tax (as computed before the deduction is given) which is attributable, as the case may be, to the income or the capital which may be taxed in the Federal Republic of Germany.

3. The laws in force in either of the Contracting States shall continue to govern the taxation of income and capital in the respective Contracting States except where express provision to the contrary is made in this Agreement.

ARTICLE 24 – *Non-discrimination* – 1. 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. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation of 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. This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which a company of the other Contracting State has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first-mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7 of this Agreement. Further, this provision shall not be construed as obliging Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes which it grants only to its own residents.

3. Except where the provisions of Article 9, paragraph 7 of Article 11, or paragraph 7 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

4. 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 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 the first-mentioned State are or may be subjected.

ARTICLE 25 – *Mutual agreement procedure* – 1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.

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 a satisfactory 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 which is not in accordance with this Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law 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 Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.

4. The competent authorities of the Contracting States may establish by mutual agreement the mode of application of the provisions of this Agreement regarding the exemption or reduction of taxes.

5. 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 26 – *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 Agreement. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws

of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. 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 and administrative practice of that or of the other Contracting State ;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State ; and
- (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 27 – *Diplomatic and Consular Privileges* – Nothing in this Agreement shall affect the fiscal privileges of members of a diplomatic mission, a consular post or an international organisation under the general rules of international law or under the provision of special agreements.

ARTICLE 28 – *Entry into force* – 1. The Government of the contracting States shall notify to each other that the legal requirements for the entry into force of this Agreement have been complied with.

2. This Agreement shall enter into force one month after receipt of the latter of the notifications referred to in paragraph 1 and shall have effect :

- (a) in the Federal Republic of Germany :
 - (i) in the case of taxes withheld at source on dividends, interest, royalties and fees for technical services, in respect of amounts paid on or after the first day of January of the calendar year next following that in which this Agreement enters into force ;

(i) in the case of other taxes, in respect of taxes levied for periods beginning on or after the first day of January of the calendar year next following that in which this Agreement enters into force ;

(b) in the Republic of India :

(i) in respect of income arising in any fiscal year beginning on or after the first day of April following the calendar year in which this Agreement enters into force ;

(ii) in respect of capital which is held on the last day of any fiscal year beginning on or after the first day of April following the calendar year in which this Agreement enters into force.

3. Upon the entry into force of this Agreement, the Agreement between the Government of the Federal Republic of Germany and the Government of India for the Avoidance of Double Taxation of Income signed on 18th March, 1959 and the Protocol amending the Agreement between the Government of the Federal Republic of Germany and the Government of India for the Avoidance of Double Taxation of Income signed on 28th June, 1984, along with the Exchange of Notes of the same date shall expire and shall cease to have effect as from the date on which the provisions of this Agreement commence to have effect.

ARTICLE 29 – *Termination* – This Agreement shall continue in effect indefinitely but either of the Contracting States may, on or before the thirtieth day of June, in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give the other Contracting State, through diplomatic channels, written notice of termination and, in such event, this Agreement shall cease to have effect :

(a) in the Federal Republic of Germany :

(i) in the case of taxes withheld at source on dividends, interest, royalties and fees for technical services, in respect of amounts paid on or after the first day of January of the calendar year next following that in which notice of termination is given ;

- (i) in the case of other taxes, in respect of taxes levied for periods beginning on or after the first day of January of the calendar year next following that in which notice of termination is given,
- (b) in the Republic of India :
 - (i) in respect of income arising in any fiscal year beginning on or after the first day of April following the calendar year in which the notice of termination is given ;
 - (ii) in respect of capital which is held on the last day of any fiscal year beginning on or after the first day of April following the calendar year in which the notice of termination is given.

In witness whereof the undersigned being duly authorised thereto, have signed the present Agreement.

Done at Bonn on June 19th, 1995 in two originals, each in the German, Hindi and English languages, all three texts being authentic. In case of divergent interpretation of the German and the Hindi texts, the English text shall prevail.

PROTOCOL

The Republic of India and the Federal Republic of Germany have agreed at the signing at Bonn on 19th June, 1995 of the Agreement between the two States for the avoidance of double taxation with respect to taxes on income and capital upon the following provisions which shall form an integral part of the said Agreement.

With reference to Article 7

1. (a) In the determination of the profits of a building site or construction, assembly or installation project there shall be attributed to that permanent establishment in the Contracting State in which the permanent establishment is situated only the profits resulting from the activities of the permanent establishment as such. If machinery or equipment is delivered from the head office or another permanent establishment of the enterprise (situated outside that Contracting State) or a third person (situated outside the Contracting State) in connection with those activities or independently therefrom there shall not be attributed to the profits of the

building site or construction, assembly or installation project the value of such deliveries.

- (b) Income derived by a resident of a Contracting State from planning, project, construction or research activities as well as income from technical services exercised in that State in connection with a permanent establishment situated in the other Contracting State, shall not be attributed to that permanent establishment.
- (c) In respect of paragraph 1 of Article 7, profits derived from the sale of goods or merchandise of the same or similar kind as those sold, or from other business activities of the same or similar kind as those effected, through that permanent establishment, may be considered attributable to that permanent establishment if it is proved that :
 - (i) this transaction has been resorted to in order to avoid taxation in the Contracting State where the permanent establishment is situated, and
 - (ii) the permanent establishment in any way was involved in this transaction.
- (d) It is understood that the deductions in respect of the head office expenses as referred to in paragraph 3 of Article 7 shall in no case be less than those allowable under the Indian Income-tax Act as on the date of entry into force of this Agreement.
- (e) No deduction shall be allowed in respect of amounts paid or charged (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of :
 - (i) royalties, fees or other similar payments in return for the use of patents or other rights ;
 - (ii) commission for specific services performed or for management ; and
 - (iii) interest on moneys lent to the permanent establishment except in case of a banking institution.

With reference to Article 8

2. For the purposes of Article 8, income from the operation of ships includes income derived from the use, maintenance or rental of containers (including trailers and

related equipment for the transport of containers) in connection with the transport of goods or merchandise in international traffic.

With reference to Article 10

3. For the purpose of taxation in the Federal Republic of Germany, the term dividends includes income derived by a sleeping partner (stiller Gesellschafter) from his participation as such and distributions on certificates of an investment fund or investment trust. For the purpose of taxation in the Republic of India, any income of a similar kind will be treated alike.

With reference to Articles 10 and 11

4. Notwithstanding the provisions of these Articles, dividends and interest may be taxed in the Contracting State in which they arise, and according to the law of that State,

- (a) if they are derived from rights or debt claims carrying a right to participate in profits (including income derived by a sleeping partner from his participation as such, from a partiarisches Darlehen and from Gewinnobligationen within the meaning of the tax law of the Federal Republic of Germany) and
- (b) under the condition that they are deductible in the determination of profits of the debtor of such income.

With reference to Article 13

5. In view of the position confirmed on behalf of the Government of the Federal Republic of Germany that the Deutsche Investitionsund Entwicklungsgesellschaft (DEG) is wholly owned by the Government of the Federal Republic of Germany and is exempted from paying income-tax in Germany, it is agreed that the long-term capital gains arising to the DEG due to alienation of shares in Indian companies will be exempt from taxation in India.

With reference to Article 23

6. (a) The exemption provided for in sub-paragraph (a) of paragraph 1 of Article 23 is granted irrespective of whether the income or capital concerned is effectively taxed in the Republic of India or not.
- (b) Where a company being a resident of the Federal Republic of Germany distributes incomes derived from sources within the Republic of India paragraph 1 of Article 23 shall not preclude the compensatory imposition of corporation tax on such distributions in accordance with the provisions of German tax law.
- (c) The Federal Republic of Germany shall avoid double taxation by a tax credit as provided for in paragraph (1b) of Article 23, and not by a tax exemption under paragraph (1a) of Article 23,
- (aa) if in the Contracting States income is placed under differing provisions of the Agreement or attributed to different persons (other than under Article 9) and this conflict cannot be settled by procedure pursuant to Article 25 and
- (i) if as a result of such placement or attribution the relevant income would be subject to double taxation ; or
 - (ii) if as a result of such placement or attribution the relevant income would remain untaxed or be subject only to inappropriately reduced taxation in the Republic of India and would (but for the application of this paragraph) remain exempt from tax in the Federal Republic of Germany ; or
- (bb) if the Federal Republic of Germany has, after due consultation and subject to the limitations of its internal law, notified the Republic of India through diplomatic channels of other items of income to which it intends to apply this paragraph in order to prevent the exemption of income from taxation in both Contracting States or other arrangements for the improper use of the Agreement.

In the case of a notification under sub-paragraph (bb), the Republic of India may, subject to notification through diplomatic channels, characterise such income under the Agreement consistently with the characterisation of that income by the Federal Republic of Germany. A notification made under this paragraph shall have effect only from the first day of the calendar year following the year in which it was transmitted and any legal prerequisites under the domestic law of the notifying State for giving it effect have been fulfilled.

With reference to Article 26

7. (a) It is also understood that in relation to the Agreement, the term information shall include documents. It is further understood that the German tax law provides for the transmission of information in terms of paragraph 3 of Article 117 of the Fiscal Code (Abgabenordnung) – upon request – and it would be possible to furnish information to the competent authority in the Republic of India under these provisions irrespective of this Article.
- (b) If personal data is exchanged under this Article, the following additional provisions shall apply subject to the domestic laws of each Contracting State :
- (i) The data supplying Contracting States shall be responsible for the accuracy of the data they supply. If it emerges that inaccurate data or data which should not have been supplied have been communicated, the receiving State shall be notified of this without delay. That State shall be obliged to correct or destroy said data;
 - (ii) The Contracting States shall be obliged to keep official records of the transmission and receipt of personal data ;
 - (iii) The Contracting States shall be obliged to take effective measures to protect the personal data communicated against unauthorised access, unauthorised alteration and unauthorised disclosure ;
 - (iv) Upon application, the person concerned shall be informed of the information stored about him and of the use planned to be made of it. There shall be no obligation to give this information if on balance it appears that the public interest in withholding it outweighs the interest of the person concerned in receiving it. In all other respects, the right of the person concerned to be informed of the data stored about him shall be governed by the domestic law of the Contracting State in whose sovereign territory the application for the information is made.

Done at Bonn on 19th June, 1995 in two originals, each in the German, Hindi and English languages, all three texts being authentic. In case of divergent interpretation of the German and the Hindi text, the English text shall prevail.

JUDICIAL ANALYSIS

See the following cases dealing with old agreements :

- Words subject to the provisions of paragraph (3) in article III(1) of Double Taxation Avoidance Agreement (between Federal Republic of Germany and India) would indicate that while industrial or commercial income of the foreign enterprise are not taxable in India, the rents, royalties, interests, dividends, etc., derived by the foreign enterprise from sources in India are taxable – *CIT v. Visakhapatnam Port Trust* [1983] 144 ITR 146 (AP).
- Words any other form of indebtedness from sources in the other territory could only mean interest arising or accruing as a separate source of income – *CIT v. Visakhapatnam Port Trust* [1983] 144 ITR 146 (AP).
- Mere supply of a plant by a foreign company whose assembly and erection are undertaken by purchaser under supervision of engineer deputed by supplier does not amount to foreign company having a permanent establishment – *CIT v. Visakhapatnam Port Trust* [1983] 144 ITR 146 (AP).
- A sub-contractor cannot be treated as an agent within meaning of article II(1)(i)(dd) of Double Taxation Avoidance Agreement between Federal Republic of Germany and India – *CIT v. Visakhapatnam Port Trust* [1983] 144 ITR 146 (AP).
- Where supplier of machinery had a permanent establishment in Germany where press was manufactured and certain services were rendered in connection with setting up of that press in India, this could not be treated as personal service in any way even if agreement for rendering service was embodied in a separate agreement; as such in view of agreement for avoidance of double taxation between Germany and India, tax was not deductible at source from amount paid to German company for such services – *Andrew Yule & Co. Ltd. v. CIT* [1994] 207 ITR 899 (Cal.).
- Fees for technical services is industrial or commercial profit and, therefore, would be entitled to exemption as per article III of DTA between India and Germany – *AEG Telefunken v. CIT* [1998] 233 ITR 129/101 Taxman 109 (Kar.).

- In case of a non-resident, who is a resident of Germany, income arising to him in India by way of royalties or technical charges could be taxed in India *Dy. CIT v. UHDE GmbH* [1996] 54 TTJ (Bom. – Trib.) 355.
- Expression laws in force occurring in Article XVI, para 1 of Agreement for Avoidance of Double Taxation between India and Federal German Republic, must mean the laws in force at the time the construction of a term is to be done and the term is not restricted to the law in force at the time of execution of the Agreement *ITO v. Leonhardt Andra UND Partner* [1987] 21 ITD 607 (Cal. – Trib.).
- Where assessee German resident had adopted calendar year for his assessment in Germany, for purpose of assessment of his income in India also, same should be taken as previous year in view of article II(1)(g) of Agreement for Avoidance of Double Taxation between Germany and India and financial year could not be taken as previous year on ground that he did not maintain accounts *M.G.K. Blum v. Second ITO* [1984] 7 ITD 643 (Bang. – Trib.).
- Where assessee was not concerned with actual installation of plant but mere supervision of same, which was not same thing as installation of project, assessee could not be said to be having a permanent establishment in India within the meaning of article II(1)(h)(cc) of AADT between Germany and India *UDHE GmbH v. Dy. CIT* [1997] 57 TTJ (Mum. – Trib.) 447.
- Where under supply and service agreement with Indian company for establishing a fertiliser project, assessee, a West German company, purchased bulk material for Indian company and charged from Indian company cost *plus* 4 per cent as procurement fee, procurement fee was not assessable as royalty and fee for technical services but was to be treated as industrial and commercial profit which was not taxable in view of Double Taxation Agreement between India and West Germany *Linde A.G. v. ITO* [1997] 62 ITD 330 (Mum. – Trib.).
- There is no merit in contention that only that amount of royalty that was derived from the operation of a mine, quarry, or any other extraction of natural resources as stated in article IX of the Double Taxation Avoidance Agreement alone was to be excluded

from industrial and commercial profits and there being no provision for exclusion of other kinds of royalties, any other receipt of royalty was not subject to taxation. As provided in article XVI(I), the law of respective States shall apply unless contrary is provided in the DTA. It means that if there was no provision for the treatment to be given to the royalty, other than the royalty under Article IX of the DTA, the same would be subject to Indian taxation and taxable in India under section 9(1)(viii) of the Act. DTA does not provide that any receipt, which does not fall in any of the clauses, would be taxable under the Income-tax Act or would be excluded from the purview of Indian taxation *G.U.J. Jaeger GmbH v. ITO* [1991] 37 ITD 64 (Bom. – Trib.).

- The contention that the consideration pertaining to the provision of recurring know-how would also be a part of industrial and commercial profits has no force. It would be in the nature of royalty and there being a specific exclusion of royalty from the definition of industrial and commercial profits, by Article III(3) of DTA, it would not enjoy the exemption on the ground that the assessee had no permanent establishment in India *G.U.J. Jaeger GmbH v. ITO* [1991] 37 ITD 64 (Bom. – Trib.).

- Rendering of consultancy service in India by non-resident in connection with industrial project would not amount to doing industrial or commercial activity within meaning of Double Taxation Avoidance Agreement between Federal Republic of Germany and India so as to make section 195 inapplicable to payments made by assessee to non-resident *Gujarat Narmada Valley Fertilisers Co. Ltd. v. ITO* [1982] 2 ITD 515 (Ahd.).

- Under no circumstances executive authority can make an item of income as of taxable nature with retrospective effect if the same is not provided in the protocol – *Tata Iron & Steel Co. Ltd. v. Dy. CIT* [1990] 100 Taxman 51 (Mag.)/62 TTJ (Mum.) 17.

- Words subject to the provisions of paragraph (3) in article III(1) of Double Taxation Avoidance Agreement (between Federal Republic of Germany and India) would indicate that while industrial or commercial income of the foreign enterprise are not taxable in India, the rents, royalties, interest, dividends, etc., derived by the foreign enterprise from sources in India are taxable *CIT v. Visakhapatnam Port Trust* [1983] 144 ITR 146 (AP).

- Words any other form of indebtedness from sources in the other income could only mean interest arising or accruing as a separate source of income *CIT v. Visakhapatnam Port Trust* [1983] 144 ITR 146 (AP).
- Mere supply of a plant by a foreign company whose assembly and erection are undertaken by purchaser under supervision of engineer deputed by supplier does not amount to foreign company having a permanent establishment *CIT v. Visakhapatnam Port Trust* [1983] 144 ITR 146 (AP).
- A sub-contractor cannot be treated as an agent within meaning of article II(I)(i)(dd) of Double Taxation Avoidance Agreement between Federation Republic of Germany and India *CIT v. Visakhapatnam Port Trust* [1983] 144 ITR 146 (AP).
- Where supplier of machinery had a permanent establishment in Germany where press was manufactured and certain services were rendered in connection with setting up of that press in India, this could not be treated as personal service in any way even if agreement for rendering service was embodied in a separate agreement; as such in view of agreement for avoidance of double taxation between Germany and India, tax was not deductible at source from amount paid to German company for such services *Andrew Yule & Co. Ltd. v. CIT* [1994] 207 ITR 899 (Cal.).
- Amendment to 1959/60 DTAA between India and Federal Republic of Germany by GSR No. 680(E), dated 26-8-1985 could not be made effective from 1-4-1984 *Tata Iron & Steel Co. Ltd. v. Dy. CIT* [1998] 100 Taxman 51 (Mum. – Trib.) (Tax. Mag.).

Greece

Agreement for avoidance of double taxation with Greece

Whereas the annexed Agreement between the Government of India and the Government of Greece for the avoidance of double taxation of income has been ratified and the instruments of ratification exchanged, as required by Article XX of the said Agreement ;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Agreement shall be given effect to in the Union of India.

Notification : No. GSR 394, dated 17-3-1967.

TEXT OF ANNEXED AGREEMENT DATED 11-2-1965

Whereas the Government of India and the Government of Greece desire to conclude an Agreement for the avoidance of double taxation of income ;

Now, therefore, it is hereby agreed as follows :

ARTICLE I – 1. The taxes which are the subject of the present Agreement are:

(a) in India: the income-tax, the super tax, the surcharge, imposed under the Income-tax Act, 1961 (43 of 1961)

(hereinafter referred to as Indian tax);

(b) in Greece :

the tax on physical persons and the income-tax on legal entities, and any special tax levied in Greece with reference to freight earned by shipping enterprises by the carriage of passengers, livestock or goods, imposed under the Royal Decrees No. 3323/1955 and 3843/1958 and the Law No. 1880/1951

(hereinafter referred to as Greek tax).

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

ARTICLE II – 1. In the present Agreement, unless the context otherwise requires,

(a) the term Greece means the territory of the Kingdom of Greece ;

- (b) the terms one of the territories and the other territory mean Greece or India as the context requires ;
- (c) the term person includes natural persons, companies and all other entities which are treated as taxable units under the tax laws in force in the respective territories ;
- (d) the term company means any entity which is treated as a body corporate or as a company for tax purposes ;
- (e) the term tax means the Greek tax or Indian tax, as the context requires ;
- (f) the terms resident of Greece and resident of India mean, respectively, a person who is resident in Greece for the purposes of Greek tax and not resident in India for the purposes of Indian tax, and a person who is resident in India for the purposes of Indian tax and not resident in Greece for the purposes of Greek tax :
 a company shall be regarded as resident in Greece if it is incorporated in Greece or its business is wholly managed and controlled in Greece; a company shall be regarded as resident in India if it is incorporated in India or its business is wholly managed and controlled in India ;
- (g) the terms Greek enterprise and Indian enterprise mean, respectively, an industrial or commercial enterprise or undertaking carried on by a resident of Greece and an industrial or commercial enterprise or undertaking carried on by a resident of India; and the terms enterprise of one of the territories and enterprise of the other territory mean a Greek enterprise or an Indian enterprise as the context requires ;
- (h) the term permanent establishment means a fixed place of business in which the business of the enterprise is wholly or partly carried on :
 - (aa) the term fixed place of business shall include a place of management, a branch, an office, a factory, a workshop, a warehouse, a mine, quarry or other place of extraction of natural resources ;
 - (bb) an enterprise of one of the territories shall be deemed to have a fixed place of business in the other territory if it carries on in that other territory a construction, installation or assembly project or the like ;
 - (cc) the use of mere storage facilities or the maintenance of a place of business exclusively for the purchase of goods or merchandise and not

- for any processing of such goods or merchandise in the territory of purchase, shall not constitute a permanent establishment ;
- (dd) a person acting in one of the territories for or on behalf of an enterprise of the other territory shall be deemed to be a permanent establishment of that enterprise in the first-mentioned territory, only if
- (1) he has and habitually exercises in the first-mentioned territory a general authority to negotiate and enter into contracts for or on behalf of the enterprise, unless the activities of the person are limited exclusively to the purchase of goods or merchandise for the enterprise, or
 - (2) he habitually maintains in the first-mentioned territory a stock of goods or merchandise belonging to the enterprise from which the person regularly delivers goods or merchandise for or on behalf of the enterprise, or
 - (3) he habitually secures orders in the first-mentioned territory wholly or almost wholly for the enterprise itself or for the enterprise and other enterprises which are controlled by it or have a controlling interest in it ;
- (ee) a broker of a genuinely independent status who merely acts as an intermediary between an enterprise of one of the territories and a prospective customer in the other territory shall not be deemed to be a permanent establishment of the enterprise in the last-mentioned territory ;
- (ff) the fact that a company, which is a resident of one of the territories has a subsidiary company which either is a resident of the other territory or carries on a trade or business in that other territory (whether through a permanent establishment or otherwise) shall not, of itself, constitute that subsidiary company a permanent establishment of its parent company ;
- (i) the term pension means a periodic payment made in consideration of services rendered or by way of compensation for injuries received;
- (j) 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 moneys worth ;

- (k) the term competent authority means in the case of India, the Central Government in the Ministry of Finance, Department of Revenue, or its authorised representative and in the case of Greece, the Ministry of Finance or its authorised representative.

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

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

2. There shall be attributed to the permanent establishment of an enterprise of one of the territories situated in the other territory the industrial or commercial profits which it might be expected to derive in that other territory if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arms length with the enterprise of which it is a permanent establishment. In any case, where the correct amount of profits attributable to a permanent establishment is incapable of determination or the ascertainment thereof presents exceptional difficulties, the profits attributable to the establishment may be estimated on a reasonable basis.

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

ARTICLE IV – Where

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

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

ARTICLE V – 1. Income derived from the operation of aircraft by an enterprise of one of the territories shall not be taxed in the other territory, unless the aircraft is operated wholly or mainly between places within that other territory.

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

ARTICLE VI – 1. When a resident of Greece, operating ships, derives profits from India through such operations carried on in India, such profits may be taxed in Greece as well as in India; but the tax so charged in India shall be reduced by an amount equal to 50 per cent thereof, and the reduced amount of Indian tax payable on the profits shall be allowed as a credit against Greek tax charged in respect of such income. The credit aforesaid shall not exceed the Greek tax charged in respect of such income.

2. (a) When a resident of India, operating ships, derives profits from Greece, through such operations carried on in Greece, such profits may be taxed in Greece as well as in India; but the tax so charged in Greece shall be reduced by an amount equal to 50 per cent thereof and the reduced amount of Greek tax payable shall be allowed as a credit against Indian tax charged in respect of such income. The credit aforesaid shall not exceed the Indian tax charged in respect of such income.

(b) Sub-clause (a) of clause (2) shall not, however, apply as long as the laws in Greece do not impose any tax on income derived from the operation of ships belonging to foreign enterprises operating in the Greek territory. In such cases, the profits referred to in sub-clause (a) of clause (2) may be taxed only in India.

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

4. The provisions of clause (1) shall not in the case of India affect the application of sub-sections (1) to (6) of section 172 of the Income-tax Act, 1961, for the assessment of profits from occasional shipping or tramp steamers; but the provisions of that clause will be applied, when an adjustment is to be made under sub-section (7) of the aforesaid section of the Income-tax Act, 1961, in such cases.

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

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

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

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

ARTICLE X – Income from immovable property may be taxed only in the territory in which the property is situated. For this purpose any rent or royalty or other income derived from the operation of a mine, quarry or any other place

of extraction of natural resources shall be regarded as income from immovable property.

ARTICLE XI – Capital gains derived from the sale, exchange or transfer of a capital asset, whether movable or immovable, may be taxed only in the territory in which the capital asset is situated at the time of such sale, exchange or transfer.

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

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

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

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

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

ARTICLE XIV – 1. Profits or remuneration for professional services or for services as an employee (including services as a director) performed in one of the territories by an individual who is a resident of the other territory may be taxed only in the territory in which such services are performed.

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

- (a) he is temporarily present in Greece for a period or periods not exceeding in the aggregate 183 days during the calendar year immediately preceding the relevant fiscal year,
- (b) the services are performed for or on behalf of a resident of India,
- (c) the profits or remuneration are subject to Indian tax, and
- (d) the profits or remuneration are not deducted in computing the profits of an enterprise chargeable to Greek tax.

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

- (a) he is temporarily present in India for a period or periods not exceeding in the aggregate 183 days during the relevant previous year,
- (b) the services are rendered for or on behalf of a resident of Greece,
- (c) the profits or remuneration are subject to Greek tax, and
- (d) the profits or remuneration are not deducted in computing the profits of an enterprise chargeable to Indian tax.

4. Where an individual permanently or predominantly performs services on ships or aircraft in international traffic operated by an enterprise of one of the territories, profits or remuneration from such services may be taxed only by the country of which the individual is resident.

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

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

- (a) as a student at a university, college or school in such other territory,
- (b) as a business apprentice, or

- (c) as the recipient of a grant, allowance or award for the primary purpose of study or research from a religious, charitable, scientific or educational organisation,

shall not be taxed in the other territory in respect of remittances from abroad for the purposes of his maintenance, education or training, in respect of a scholarship, and in respect of any amount representing remuneration for services rendered in that other territory, provided that such services are in connection with his studies or training or are necessary for the purpose of his maintenance.

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

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

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

4. The graduated rate of Greek tax to be imposed on residents of Greece and the graduated rate of Indian tax to be imposed on residents of India may be calculated as though income which under this Agreement is not subject to Greek or Indian tax, as the case may be, were included in the amount of the total income.

ARTICLE XVIII – The competent authorities shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of the present Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the

subject of the present Agreement. No information as aforesaid shall be exchanged by the competent authority of one of the territories which would disclose any trade, business, industrial or professional secret or any trade process to the authority of the other territory.

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

ARTICLE XX – 1. The present Agreement shall be ratified and the instruments of ratification shall be exchanged at New Delhi as soon as possible.

2. Upon exchange of the instruments of ratification, the present Agreement shall have effect

- (a) in India, for any year of assessment, beginning on or after the 1st April, 1964,
- (b) in Greece, for any fiscal year, beginning on or after the 1st January, 1964.

ARTICLE XXI – This Agreement shall continue in effect indefinitely but either of the Contracting Parties may on or before the 30th day of June in any calendar year after 1965 give to the other Contracting Party notice of termination, and in such event this Agreement shall cease to be effective

- (a) in India, for any year of assessment beginning on or after the 1st April in the calendar year next following such written notice of termination.
- (b) in Greece, for any fiscal year beginning on or after the 1st January next following such written notice of termination.

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

Done at New Delhi on the 11th day of February, 1965, in duplicate in the English language.

JUDICIAL ANALYSIS

- Where assessee-company, carrying on shipping business, entered into an agreement with HLL, a Greek company, and according to agreement, entire affairs of assessee-company were to be managed by HLL as their agents, assessee-company had to be treated as resident in Greece in terms of article II(I)(i) of Agreement for Avoidance of Double Taxation between India and Greece and was entitled to deduction of 50 per cent of tax charged in India in respect of its shipping business *Universal Cargo Carriers Inc. v. CIT* [1993] 70 Taxman 515/[1994] 205 ITR 215 (Cal.).
- Where remedy of claiming refund under sub-section (7) of section 172 was barred on account of expiry of time limit, claim for relief of tax provided under clause (1) of article VI of Agreement between Government of India and Government of Greece for avoidance of double taxation of income was not entertainable *Azolla Shipping Co. Ltd. v. ITO* [1986] 15 ITD 438 (Bom. – Trib.).

Hashemite Kingdom of Jordan

Agreement for Avoidance of Double Taxation

And

Prevention of Fiscal Evasion with foreign countries –

With Hashemite Kingdom of Jordan

Whereas the annexed convention between the Government of the Republic of India and the Government of the Hashemite Kingdom of Jordan for the

avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income has entered into force on the 16th day of October, 1999, in accordance with Article 29 of the said Convention, thirty days after the receipt of the later of the notifications by both the Contracting States to each other of the completion of the procedures required by their respective laws for bringing into force of the said Convention :

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in the Union of India.

Notification: No. GSR 810(E), dated 8-12-1999.

ANNEXURE

CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE HASHEMITE KINGDOM OF JORDAN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of India and the Government of the Hashemite Kingdom of Jordan desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and with a view to promoting economic cooperation between the two countries, 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. This Convention shall apply to taxes on income imposed on behalf of a Contracting State or of its political sub-divisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation

of movable or immovable property, and taxes on the total amounts of wages or salaries paid by enterprises.

3. The existing taxes to which the convention shall apply are in particular :

(a) In India :

the income-tax, including any surcharge thereon ;
(hereinafter referred to as Indian tax),

(b) In Jordan :

(i) the income-tax;
(ii) the distribution tax; and
(iii) the social service tax
(hereinafter referred to as Jordanian tax).

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes referred to in para 3. The competent authorities of the Contracting State shall notify each other of significant changes which have been made in their respective taxation laws.

ARTICLE 3 : *General Definitions* – 1. For the purposes of this Convention, unless the context otherwise requires :

- (a) the term India means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law, including the U.N. Convention on the Law of the Sea;
- (b) the term Jordan means the territories of the Hashemite Kingdom of Jordan, the territorial waters of Jordan and airspace above it, and the seabed and subsoil of the territorial waters, and includes any area extending beyond the limits of the territorial waters of Jordan, and the seabed and subsoil of any such area, which has been or may hereafter be designated, under the laws of Jordan, and in accordance with international law as an area over

which Jordan has sovereign rights for the purposes of exploring and exploiting the natural resources, whether living or non-living;

- (c) the term person includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States;
- (d) the term company means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (e) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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;
- (f) the term international traffic means any transport by a ship or aircraft operated by an enterprise which is a resident of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (g) the term competent authority means :
 - (i) in India : the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative;
 - (ii) in Jordan : the Minister of Finance or his authorised representative.
- (h) the term national means :
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State.
- (i) the term fiscal year means :
 - (i) in the case of India, previous year as defined under section 3 of the Income-tax Act, 1961;
 - (ii) in the case of Jordan the year as defined in Article 2 of the Income-tax Law (57 of 1985);
- (j) the term tax means Indian tax or Jordanian tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty or fine imposed relating to those taxes;

(k) the terms a Contracting State and the other Contracting State mean the Republic of India or the Hashemite Kingdom of Jordan as the context requires.

2. As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

ARTICLE 4 : *Resident* – 1. For the purposes of this Convention, the term resident of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows :

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode.
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 State in which its place of effective management is situated. If the State in which its place of effective management is situated cannot be determined, then the competent authorities of the Contracting States shall settle the question by mutual agreement.

ARTICLE 5 : *Permanent establishment* – 1. For the purposes of this Convention, the term permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of exploration, exploitation or extraction of natural resources;
- (g) a sales outlet;
- (h) a warehouse in relation to a person providing storage facilities for others; and
- (i) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on.

3. A building site or construction or assembly project or installation project or supervisory activities in connection therewith constitute a permanent establishment only if such site, project or activity lasts more than six months.

4. An enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it provides services or facilities in connection with, or supplies plant and machinery on hire used for or to be used in the prospecting for, or extraction or exploitation of mineral oils in that State.

5. Notwithstanding the preceding provisions of this Article, the term permanent establishment shall be deemed not to include :

- (a) the use of facilities solely for the purpose of storage, display or delivery 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, display or delivery;
- (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 of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

6. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 8 applies – is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 5 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

7. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated

therein through a person other than an agent of an independent status to whom paragraph 8 applies.

8. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

9. 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 otherwise), shall not of itself constitute either company or a permanent establishment of the other.

ARTICLE 6 : *Income from immovable property* – 1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may also be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats, aircraft and motor vehicles shall not be regarded 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, the profits of the enterprise may also be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, 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.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes 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, in accordance with the provisions of and subject to the limitations of the tax laws of that State.

4. No profit shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. For the purposes 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.

6. 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 : *Shipping and Air transport* – 1. Profits derived by an enterprise of a Contracting State from the operation by that enterprise of ships or aircraft in international traffic shall be taxable only in that State.

2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall mean profits derived by an enterprise described in paragraph 1 from the transportation by sea or air respectively of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of ships or aircraft including

- (a) the sale of tickets for such transportation on behalf of other enterprises;
- (b) other activity directly connected with such transportation; and
- (c) the rental of ships or aircraft incidental to any activity directly connected with such transportation.

3. Profits of an enterprise of a Contracting State described in paragraph 1 from the use, maintenance, or rental of containers (including trailers, barges, and related equipment for the transport of containers) used in connection with the operation of ships or aircraft in international traffic shall be taxable only in that State.

4. The provisions of paragraphs 1 and 3 shall also apply to profits from participation in a pool, a joint business or code sharing, or an international operating agency.

5. For the purposes of this Article, interest on funds connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft, and the provisions of Article 11 (Interest) shall not apply in relation to such interest.

6. Gains derived by an enterprise of a Contracting State described in paragraph 1 from the alienation of ships, aircraft or containers owned and operated by the

enterprise, the income from which is taxable only in that State, shall be taxed only in that State.

7. Notwithstanding the preceding provisions of this Article, income derived by an enterprise of a Contracting State from the operation of ships between the ports of the other Contracting State and the ports of third countries may be taxed in that other Contracting State, but the tax imposed in that other State shall, be reduced by an amount equal to 50% thereof.

ARTICLE 9 : *Associated Enterprises* – 1. 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.

2. Where a Contracting State includes in the profits of an enterprise of that State and taxes accordingly– profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first mentioned State if the conditions made between the two enterprises has been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall, if necessary consult each other.

ARTICLE 10 : *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 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 laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 10 per cent of the gross amount of the dividends. 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 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 14, 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 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 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 State, nor subject the companys undistributed profits to a tax on the companys undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11 : *Interest* – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the Contracting State shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by :

- (i) the Government, a political sub-division or a local authority of the other Contracting State; or
- (ii) the Central Bank of the other Contracting State; or any other bank or Governmental financial institutions/agencies that may be mutually agreed upon between the two Contracting States.

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 debtors 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 and 2 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 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 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that 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 resident 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 such 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 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 the other provisions of this Convention.

ARTICLE 12 : *Royalties and fees for technical services* – 1. Royalties or fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties or fees for technical services may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the recipient is the beneficial owner of the royalties or fees for technical services, the tax so charged shall not exceed 20 per cent of the gross amount of the royalties or fees for technical services.

3. (a) 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 including cinematograph films, and films or tapes or any other means of reproduction for television or radio broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or any industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

(b) The term fees for technical services means payment of any kind in consideration for the rendering of any managerial, technical or consultancy services including the provision of services by technical or other personnel but does not include payments for services mentioned in Articles 14 and 15 of this Convention.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services 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 or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties or fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties or fees for technical services, 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 or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the 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 or fees for technical services, 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 the other provisions of this Convention.

ARTICLE 13 : *Capital Gains* – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may also be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may also be taxed in that other State.

3. Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships, aircraft shall be taxable only in that State.

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4 shall be taxable only in the Contracting State of which the alienator is a resident, provided that such resident is subject to tax thereon in that State. If the resident is not subject to tax thereon, then such gains may be taxed in the other Contracting State.

ARTICLE 14 : *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 State except in the following circumstances, when such income may also be taxed in the other Contracting State :

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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 State; or
- (b) if his stay in the other State is for a period or periods aggregating 183 days or more in any 12-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State; or
- (c) if the remuneration for his activities in the other Contracting State is paid by a resident of that Contracting State or is borne by a permanent establishment or a fixed base situated in that Contracting State and exceeds in the fiscal year the equivalent of US \$ 2000.

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

ARTICLE 15 : *Dependent Personal Services* – 1. Subject to the provisions of Articles 16, 18 and 19, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if :

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any 12-month period commencing or ending in the fiscal year concerned, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and

(c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated by an enterprise which is a resident of a Contracting State in international traffic shall be taxable only in that Contracting State.

ARTICLE 16 : *Directors Fees* – Directors fees and other 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 may also be taxed in that other State.

ARTICLE 17 : *Artistes and Sportsmen* – 1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

3. The provisions of paragraphs 1 and 2, shall not apply to income from activities performed in a Contracting State by entertainers or sportsmen if the visit to that State is substantially supported by public funds of one or both of the Contracting States or of political sub-divisions or local authorities thereof. In such a case, the income is taxable only in the Contracting State of which the entertainer or sportsman is a resident.

ARTICLE 18 : *Pensions* – 1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State or a political sub-division or a local authority thereof shall be taxable only in that State.

ARTICLE 19 : *Government Service* – 1. (a) Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who :

(i) is a national of that State ; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of and a national of, that State.

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

ARTICLE 20 : *Students and Apprentices* – 1. A student or business apprentice who is or was a resident of a Contracting State immediately before visiting the other Contracting State and who is present in that other Contracting State solely for the purpose of his education or training shall be exempt from tax in that other State on :

- (a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training; and
- (b) remuneration from employment in that other State, in an amount not exceeding US \$ 500 or its equivalent amount during any fiscal year,

as the case may be, provided that such employment is directly related to his studies or is undertaken for the purpose of his maintenance.

2. The benefit of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article for more than five consecutive years from the date of his first arrival in that other Contracting State.

ARTICLE 21 : *Professors, Teachers and Research Scholars* – 1. A professor or teacher who is or was a resident of the Contracting State immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college, school or other approved institution in that other Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding one year from the date of his arrival in that other 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 20, an individual shall be deemed to be a resident of a Contracting State if he is resident in that State in the fiscal year in which he visits the other Contracting State or in the immediately preceding fiscal year.

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

ARTICLE 22 : *Other Income* – 1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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 income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraph 1, if a resident of a Contracting State derives income from sources within the other Contracting State in the form of lotteries, crossword puzzles, races including horse races, card games and other games of any sort or gambling or betting of any form or nature whatsoever, such income may be taxed in the other Contracting State.

ARTICLE 23 : *Elimination of Double Taxation* – 1. The laws in force in either of the Contracting State will continue to govern the taxation of income in the respective Contracting States except where provisions to the contrary are made in this Convention.

2. In the case of India double taxation shall be eliminated as follows:

Where a resident of India derives income which, in accordance with the provisions of this Convention, may be taxed in Jordan. India shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in Jordan whether directly or by deduction at source. Such amount shall not however exceed that part of the income-tax, as computed before the deduction is given, which is attributable to the income which may be taxed in Jordan.

3. In the case of Jordan, double taxation shall be eliminated as follows :

Where a resident of Jordan derives income which in accordance with the provisions of this Convention, may be taxed in India. Jordan shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in India.

Such deduction shall not however, exceed that part of the income-tax as computed before the deduction is given, which is attributable to the income which may be taxed in India.

4. The tax payable in the Contracting State mentioned in paragraphs 2 and 3 of this Article shall be deemed to include the tax which would have been payable but for the tax incentives granted under the Laws of the Contracting State and which are designed to promote economic development.

5. Income which in accordance with the provisions of this Convention, is not to be subjected to tax in a Contracting State, may be taken into account for calculating the rate of tax to be imposed in that Contracting State.

ARTICLE 24 : *Non-Discrimination* – 1. 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, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

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. This provision shall not be construed as preventing a Contracting State from granting to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

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 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 the first-mentioned State are or may be subjected.

4. Except where the provisions of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

5. The provisions of this Article shall, notwithstanding the provisions of Article 12 apply to taxes of every kind and description which are the subject of this Convention.

ARTICLE 25 : *Mutual Agreement Procedure* – 1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

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 a satisfactory 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 which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time-limits in the domestic law 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 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. 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.

ARTICLE 26 : *Exchange of Information* – 1. The competent authorities of the Contracting States shall exchange such information (including documents), as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. 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 and administrative practice of that or of the other Contracting State;

- (b) to supply information or documents which is 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 27 : *Collection Assistance* – 1. The Contracting States undertake to lend assistance to each other in the collection of taxes to which this Convention relates, together with interest, costs and civil penalties relating to such taxes referred to in this Article as a revenue claim.

2. Request for assistance by the competent authority of a Contracting State in the collection of a revenue claim shall include a certification by such authority that, under the laws of that State, the revenue claim has been finally determined. For the purposes of this Article, a revenue claim is finally determined when a Contracting State has the right under its internal law to collect the revenue claim and the taxpayer has no further rights to restrain collection.

3. Amounts collected by the competent authority of a Contracting State pursuant to this Article shall be forwarded to the competent authority of the other Contracting State. However, the first-mentioned Contracting State shall be entitled to reimbursement of costs, if any, incurred in the course of rendering such assistance to the extent mutually agreed between the competent authorities of the two States.

4. Nothing in this Article shall be construed as imposing on either Contracting State the obligation to carry out administrative measures of a different nature from those used in the collection of its own taxes or those which would be contrary to its public policy.

ARTICLE 28 : *Diplomatic Agents and Consular Officers* – Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

ARTICLE 29 : *Entry into Force* – 1. The Contracting States shall notify each other in writing, through diplomatic channels, the completion of the procedure required by the respective laws for the entry into force of this Convention.

2. This Convention shall enter into force thirty days after the receipt of the later of the notifications referred to in paragraph 1 of this Article.

3. The provisions of this Convention shall have effect :

- (a) in India, in respect of income arising in any fiscal year beginning on or after the first day of April next following the calendar year in which the Convention enters into force; and
- (b) in Jordan, in respect of income arising in any fiscal year beginning on or after the first day of January next following the calendar year in which the Convention enters into force

ARTICLE 30 : *Termination* – This Convention shall remain in force indefinitely until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year beginning after the expiration of five years from the date of entry into force of the Convention. In such event, the Convention shall cease to have effect :

- (a) in India, in respect of income arising in any previous year on or after the first day of April next following the calendar year in which the notice of termination is given;
- (b) in Jordan, in respect of income arising in any previous year on or after the first day of January next following the calendar year in which the notice of termination is given

PROTOCOL

At the signing of the Convention concluded today between the Government of the Republic of India and the Government of the Hashemite Kingdom of Jordan for the avoidance of double taxation and the prevention of fiscal evasion with

respect to taxes on income, the undersigned have agreed that the following provisions shall form an integral part of the said Convention :

ARTICLE 9 : *Associated Enterprises* – 1. With reference to paragraph 2 of Article 9, it is understood that the provisions shall not apply in the case of fraud or wilful default.

ARTICLE 17 : *Artists and Sportsmen* – 2. With reference to paragraph 3 of Article 17, it is understood that the provisions shall apply in respect of income derived by an artiste from the activities performed in the other Contracting State under the cultural agreements concluded between the Governments of the Contracting States.

ARTICLE 24 : *Non-discrimination* – 3. With reference to paragraph 3 of Article 24, it is understood that this provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which a company of the other Contracting State has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first-mentioned Contracting State.

Hungary

Agreement for Avoidance of Double Taxation

and

Prevention of Fiscal Evasion with Foreign Countries – With Hungary*

Whereas the annexed Convention between the Government of the Republic of India and the Government of the Republic of Hungary for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, has come into force on the 4th day of March, 2005, thirty days after the receipt of the later of the notifications by both the Contracting States to each other, under Article 28 of the said Convention, of the completion of the procedures required under their respective laws for the entry into force of this Convention.

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in the Union of India.

Notification : No. GSR 197(E), dated 31-3-2005.

ANNEXURE

CONVENTION BETWEEN THE REPUBLIC OF INDIA AND THE REPUBLIC OF HUNGARY FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Republic of Hungary and the Republic of India desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and with a view to promoting economic cooperation between the two countries, 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. This Convention shall apply to taxes on income imposed on behalf of a Contracting State, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amount of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which the Convention shall apply are in particular :

(a) in Hungary :

(i) the income-tax on individuals;

(ii) the corporation tax;

(iii) the dividend tax;

(hereinafter referred to as Hungarian tax);

(b) in India : the income-tax, including any surcharge thereon (hereinafter referred to as Indian tax).

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

ARTICLE 3 : GENERAL DEFINITIONS – 1. For the purposes of this Convention, unless the context otherwise requires :

(a) the term Hungary when used in a geographical sense means the territory of the Republic of Hungary;

(b) the term India means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law, including the U.N. Convention on the Law of the Sea;

(c) the terms Contracting State and the other Contracting State mean Hungary or India, as the context requires;

- (d) the term person includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States;
- (e) the term company means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (f) 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;
- (g) 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;
- (h) the term competent authority means :
 - (i) in the case of Hungary, the Minister of Finance or his authorised representative;
 - (ii) in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative;
- (i) the term national means :
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership, association, company or other entity deriving its status as such from the laws in force in a Contracting State.
- (j) the term fiscal year means :
 - (i) in the case of India, the financial year beginning on the first day of April;
 - (ii) in the case of Hungary, the calendar year;
- (k) the term tax means Indian tax or Hungarian tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty or fine imposed relating to those taxes.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the

taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

ARTICLE 4 : RESIDENT – 1. For the purposes of this Convention, the term resident of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation or any other criterion of a similar nature, and also includes that State and any local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows :

- (a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 State in which its place of effective management is situated. If the State in which its place of effective management is situated cannot be determined, then the competent authorities of the Contracting States shall settle the question by mutual agreement.

ARTICLE 5 : PERMANENT ESTABLISHMENT – 1. For the purposes of this Convention, the term permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop; and
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site or construction, installation or assembly project or supervisory activities in connection therewith constitute a permanent establishment only if such site, project or activity lasts more than nine months.

4. Notwithstanding the preceding provisions of this Article, the term permanent establishment shall be deemed not to include :

- (a) the use of facilities solely for the purpose of storage, display or delivery 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, display or delivery;
- (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 of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 6 applies – is acting 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 in respect of any activities which that person undertakes for the enterprise, if such a person :

- (a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
- (b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise; or
- (c) habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise itself or for the enterprise and other enterprises controlling, controlled by, or subject to the same control, as that enterprise.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

7. The fact that a company which is a resident of a Contracting State control 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 otherwise), shall not of itself constitute either company permanent establishment of the other.

ARTICLE 6 : INCOME FROM IMMOVABLE PROPERTY – 1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships and aircraft shall not be regarded 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 use 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, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, 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.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes 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.

4. 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.

5. For the purposes of the preceding paragraphs, the profit 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.

6. 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 : INTERNATIONAL TRANSPORT – 1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

The term profit shall include income derived by the enterprise from the use, maintenance or rental of containers operated in international traffic (including trailers, barges and related equipment for the transport of such containers) if such income is incidental to the profits of such enterprise from the operation of ships and aircraft in international traffic.

2. For the purposes of this Article, interest on bank accounts excluding term deposits earned on funds directly connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft, and the provisions of Article 11 shall not apply in relation to such interest.

3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9 : ASSOCIATED ENTERPRISES – 1. 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.

2. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has

been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10 : DIVIDENDS – 1. Dividends paid by a company which is resident of a Contracting State to a resident of the other Contracting State may be taxed in that other 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 laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 10 per cent of the gross amount of the dividends. 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 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 14, 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 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 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 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 State.

ARTICLE 11 : INTEREST – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by :

- (i) the Government, a political sub-division or a local authority of the other Contracting State; or
- (ii) the Central Bank of the other Contracting State; or
- (iii) (a) the Hungarian Exim Bank; or
 - (b) a resident of Hungary if the interest is paid in respect of a loan made, guaranteed or insured or a credit extended, guaranteed or insured by the Hungarian Exim Bank; or
- (iv) (a) the Export Import Bank of India (Exim Bank); or
 - (b) a resident of India if the interest is paid in respect of a loan made, guaranteed or insured or a credit extended, guaranteed or insured by the Export Import Bank of India (Exim Bank); or
- (v) any other bank or Government financial institution that may be mutually agreed upon between the two Contracting States.

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 debtors profits, and in particular, income from Government securities and income and 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 and 2 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 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 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that 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 resident 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 such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

7. Where, the 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 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 the other provisions of this Convention.

ARTICLE 12 : ROYALTIES AND FEES FOR TECHNICAL SERVICES – 1. Royalties or fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

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

3. (a) 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 including cinematograph films and films or tapes for radio or television

broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or transmission by satellite, cable, optic fibre or similar technology, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience.

(b) The term fees for technical services means payment of any kind in consideration for the rendering of any managerial, technical or consultancy services including the provision of services by technical or other personnel but does not include payments for services mentioned in Articles 14 and 15 of this Convention.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services 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 or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties or fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties or fees for technical services, 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 or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the 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 or fees for technical services, 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 the other provisions of this Convention.

ARTICLE 13 : CAPITAL GAINS – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

3. Gains, other than those dealt with in paragraph 2 of this Article, from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

4. Gains derived by an enterprise of a Contracting State from the alienation of ships or aircrafts operated in international traffic or movable property pertaining to the operation of such ships, aircraft shall be taxable only in that State.

5. Gains from the alienation of shares other than those mentioned in paragraph 2 in a company which is a resident of a Contracting State may be taxed in that State.

6. Gains from the alienation of any property other than that referred to in the preceding paragraphs of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14 : 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 State except in the following circumstances, when such income may also be taxed in the other Contracting State :

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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 State; or
- (b) if his stay in the other State is for a period or periods aggregating 183 days or more in any 12-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

ARTICLE 15 : DEPENDENT PERSONAL SERVICES – 1. Subject to the provisions of Articles 16, 18, 19 and 21, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if :

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, by an enterprise of a Contracting State may be taxed in that State.

ARTICLE 16 : DIRECTORS FEES – Directors fees and other 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 may be taxed in that other State.

ARTICLE 17 : ARTISTES AND SPORTSPERSON – 1. Notwithstanding the provisions of Articles 7, 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, income mentioned in this Article shall be exempt from tax in the Contracting State in which the activity of the entertainer or sportsperson is exercised provided that this activity is supported in a considerable part out of public funds of this State or of the other State or the activity is exercised under a cultural agreement between the Contracting States. In such a case, the income is taxable only in the Contracting State in which the artiste or the sportsperson is a resident.

ARTICLE 18 : PENSIONS – 1. Pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

2. Notwithstanding the provisions of the paragraph 1, pensions and other similar remunerations paid under the compulsory pension system of Hungary to a resident of India in consideration of past employment shall be taxable only in Hungary.

3. Notwithstanding the provisions of paragraph 1 any pension paid by, or out of funds created by India or a political sub-division, or a local authority thereof to a resident of Hungary in consideration of past employment shall be taxable only in India.

ARTICLE 19 : GOVERNMENT SERVICE – 1. (a) Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who :

- (i) is a national of that State; or
- (ii) did not become a resident of that State solely for the purpose of rendering the services.

2. The provisions of Articles 15, 16, 17 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

ARTICLE 20 : STUDENTS – 1. A student or business apprentice who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State and who is present in that other State solely for the purpose of his education or training, shall be exempt from tax in that other State on :

- (a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training; and
- (b) remuneration which he derives from an employment which he exercises in the other Contracting State if the employment is a requirement of his studies or apprenticeship.

2. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article, for more than seven consecutive years from the date of his first arrival in that other State.

ARTICLE 21 : PROFESSORS AND TEACHERS – 1. A professor or teacher who visits one of the Contracting States for a period not exceeding two years for the sole purpose of teaching or carrying out advanced study (including research) at a university, college or other approved institution in that Contracting State and who was immediately before that 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 he first visits that Contracting State for such purpose.

2. The preceding provisions of this Article shall not apply to remuneration which a professor or teacher receives for conducting research if the research is undertaken primarily for the private benefit of a specific person or persons.

3. For the purposes of paragraph 1 approved institution means an institution which has been approved in this regard by the competent authority of the concerned State. The Competent Authority of a Contracting State approving the institution shall intimate the name of the institution so approved to the Competent Authority of the other Contracting State.

ARTICLE 22 : OTHER INCOME – 1. Items of income of a resident of a Contracting State wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the beneficial owner of such income, being a resident of a Contracting State carries on business in the other Contracting State 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 income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraph 1, if a resident of a Contracting State derives income from sources within the other Contracting State in the form of lotteries, crossword puzzles, races including horse races, card games and other games of any sort or gambling or betting of any form or nature whatsoever, such income may be taxed in the other Contracting State.

ARTICLE 23 : ELIMINATION OF DOUBLE TAXATION – 1. In Hungary double taxation shall be eliminated as follows:

- (a) Where a resident of Hungary derives income which, in accordance with the provisions of this Convention may be taxed in India, Hungary shall, subject to the provisions of sub-paragraph (b) exempt such income from tax.
- (b) Where a resident of Hungary derives items of income which, in accordance with the provisions of Articles 10, 11 and 12 may be taxed in India, Hungary shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in India. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given which is attributable to such items of income which may be taxed in India.

2. In the case of India double taxation shall be eliminated as follows:

Where a resident of India derives income which, in accordance with the provisions of this Convention, may be taxed in Hungary, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in Hungary whether directly or by deduction at source. Such amount shall not however exceed that

part of the income-tax, as computed before the deduction is given, which is attributable to the income which may be taxed in Hungary.

3. Where in accordance with any provisions of this Convention income derived by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

ARTICLE 24 : NON-DISCRIMINATION – 1. 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. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

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. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 4 of Article 11, or paragraph 4 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

4. 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 more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

ARTICLE 25 : MUTUAL AGREEMENT PROCEDURE – 1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

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 a satisfactory 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 which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law 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 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 26 : EXCHANGE OF INFORMATION – 1. The competent authorities of the Contracting States shall exchange such information (including documents) as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1. Any information so received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. 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 and administrative practice of that or of the other Contracting State;
- (b) to supply information (including documents) 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 27 : DIPLOMATIC AGENTS AND CONSULAR OFFICERS – Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

ARTICLE 28 : ENTRY INTO FORCE – 1. The Contracting States shall notify each other in writing, through diplomatic channels, the completion of the procedure required by the respective laws for the entry into force of this Convention.

2. This Convention shall enter into force thirty days after the receipt of the later of the notifications referred to in paragraph 1 of this Article.

3. The provisions of this Convention shall have effect:

- (a) in India: in respect of income arising in any fiscal year beginning on or after the first day of April next following the calendar year in which the Convention enters into force; and
- (b) in Hungary: in respect of income arising in any fiscal year beginning on or after the first day of January next following the calendar year in which the Convention enters into force.

4. The Convention between the Government of the Peoples Republic of Hungary and the Government of the Republic of India for avoidance of double taxation with respect to taxes on income signed at New Delhi on 30th October, 1986 and the Protocol thereto signed on the same date shall cease to have effect when the provisions of this Convention become effective in accordance with the provisions of paragraph 3.

ARTICLE 29 : TERMINATION – This Convention shall remain in force indefinitely until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination in writing at least six months before the end of any calendar year beginning after the expiration of five years from the date of entry into force of the Convention. In such event, the Convention shall cease to have effect:

- (a) in India, in respect of income arising in any fiscal year beginning on or after the 1st April next following the calendar year in which the notice of termination is given;
- (b) in Hungary: in respect of income arising in any fiscal year beginning on or after the first day of January next following the calendar year in which the notice of termination is given.

PROTOCOL

At the moment of signing the Convention between the Republic of Hungary and the Republic of India for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, the undersigned have agreed that the following provisions shall form an integral part of the Convention:

With reference to Articles 6, 13 and 16 :

With reference to paragraph 1 of Article 6 and Article 13 it is understood that income from immovable property and capital gains on alienation of immovable property respectively may be taxed in both the Contracting States. With reference to Article 16 it is understood that Directors fees and other similar payments referred to in the said Article may be taxed in both the Contracting States.

With reference to Article 7 :

- (a) In the determination of the profits of a building site or construction, assembly or installation project there shall be attributed to that permanent establishment in the Contracting State in which the permanent establishment is situated only the profits resulting from the activities of the permanent establishment as such. If machinery or equipment is delivered from the head office or another permanent establishment of the enterprise (situated outside that Contracting State) or a third

person (situated outside that Contracting State) in connection with those activities or independently therefrom there shall not be attributed to the profits of the building site or construction, assembly or installation project the value of such deliveries.

- (b) With respect to paragraph 3 it is understood that the administrative and general expenses incurred outside India will be allowed as a deduction in accordance with the provisions of section 44C of the Indian Income-tax Act, 1961, as effective on the date of the signing of this Convention.

With reference to Article 10 :

When the company paying the dividends is a resident of India the tax on distributed profits shall be deemed to be taxed in the hands of the shareholders and it shall not exceed 10 per cent of the gross amount of dividend.

With reference to Articles 10, 11 and 12 :

In respect of Articles 10 (Dividends), 11 (Interest) and 12 (Royalties and fees for technical services), if under any Convention, Agreement or Protocol between India and a third State which is a member of the OECD, India limits its taxation at source on dividends, interest, royalties or fees for technical services to a rate lower or a scope more restricted than the rate or scope provided for in this Convention on the said items of income, the same rate or scope as provided for in that Convention. Agreement or Protocol on the said items of income shall also apply under this Convention.

With reference to Article 16 :

Remuneration received by a member of the Supervisory Board of a company as per the Act on Business Associations (Act CXLIV of 1997) of Hungary will be taxed in accordance with the provisions of Article 16.

With reference to Articles 20 and 21 :

For the purposes of these Articles, an individual shall be deemed to be a resident of a Contracting State if he is resident in that State in the fiscal year in which he visits the other Contracting State or in the immediately preceding fiscal year.

With reference to Article 24 :

- (a) It is understood that the provisions of Article 24 paragraph 2 shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which a company of the other Contracting State has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first-mentioned Contracting State, nor being in conflict with the provisions of paragraph 3 of Article 7. However, the difference in tax rate shall not exceed 13 percentage points.
- (b) Notwithstanding the provisions of Article 10 paragraph 5 and Article 24 paragraph 2, a company which is a resident of India and which has a permanent establishment in Hungary may be subject to tax in Hungary in addition to the tax on profits attributable to that permanent establishment.

However, such additional tax may not exceed 10 per cent of the profits of the enterprise attributable to the permanent establishment after deducting therefrom the tax on profits chargeable on the profits of a company which is a national of Hungary and imposed on the profits of the enterprise attributable to the permanent establishment by Hungary.

Iceland

Agreement for avoidance of double taxation and prevention of fiscal evasion with Iceland

Whereas the annexed Agreement between the Government of the Republic of

India and the Government of Iceland for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed in India on the 23rd day of November, 2007 shall come into force on the 21st day of December, 2007, being the date of receipt of the later of the notifications after completion of procedures as required by the respective laws for the entry into force of this Agreement, in accordance with Article 30 of the said Agreement.

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Agreement and Protocol annexed hereto shall be given effect to in the Union of India with effect from the 1st day of April, 2008.

Notification : *No. S.O. 241(E), dated 5-2-2008.*

ANNEXURE

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF ICELAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of India and the Government of Iceland, desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and with a view to promoting economic cooperation between the two countries, have agreed as follows :

Article 1

PERSONS COVERED

The agreement shall apply to persons who are residents of one or both of the Contracting States.

Article 2

TAXES COVERED

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its political sub-divisions or local authorities, irrespective of the manner in which they are levied.

2 There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property and taxes on the total amount of wages or salaries paid by enterprises.

3. The existing taxes to which the Agreement shall apply are in particular :

- (a) in India : the income tax, including any surcharge thereon
(hereinafter referred to as Indian tax) ;
- (b) in Iceland :
 - (i) the income taxes to the State (tekjuskattar rkissjs) ; and
 - (ii) the income tax to the municipalities (tsvar til sveitarflaganna),
(hereinafter referred to as Icelandic tax).

4. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their respective taxation laws

Article 3

GENERAL DEFINITIONS

1. For the purposes of this Agreement, unless the context otherwise requires:

- (a) the term India means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law, including the U.N. Convention on the Law of the Sea ;
- (b) the term Iceland means Iceland and, when used in a geographical sense, means the territory of Iceland, including its territorial sea, and any area beyond the territorial sea within which Iceland, in accordance with international law, exercises jurisdiction or sovereign rights with respect to the sea bed, its subsoil and its superjacent waters, and their natural resources ;
- (c) the terms Contracting State and the other Contracting State mean the Republic of India or Iceland as the context requires ;
- (d) the term person includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States ;
- (e) the term company means any body corporate or any entity that is treated as a body corporate for tax purposes ;
- (f) the term enterprise applies to the carrying on of any business ;
- (g) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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 ;
- (h) 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 ;
- (i) the term competent authority* means :

- (i) in India the Finance Minister, Government of India, or his authorised representative,
 - (ii) in Iceland : the Minister of Finance or his authorised representative.
- (j) the term national means :
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State ;
- (k) the term tax means Indian or Icelandic tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Agreement applies or which represents a penalty or fine imposed relating to those taxes ;
- (l) The term fiscal year means :
 - (i) in the case of India: the financial year beginning on the 1st day of April;
 - (ii) in the case of Iceland : the financial year beginning on the 1st day of January.

2. As regards the application of the Agreement at any time by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4

RESIDENT

1. For the purposes of this Agreement, the term resident of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature and also includes that State and any political sub-division or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows :

- (a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him, if he has a permanent home available to him in both States he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests) ;
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode ;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national ;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall endeavour to settle the question by mutual agreement.

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 only of the State in which its place of effective management is situated. If the State in which its place of effective management is situated cannot be determined, then the competent authorities of the Contracting States shall endeavour to settle the question by mutual agreement.

Article 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Agreement, the term permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term permanent establishment includes especially ;
 - (a) a place of management ;
 - (b) a branch ;
 - (c) an office ;
 - (d) a factory ;
 - (e) a workshop ;
 - (f) a sales outlet ;
 - (g) a warehouse in relation to a person providing storage facilities for others ;
 - (h) farm, plantation other place where agricultural forestry, plantation or related activities are carried on; and
 - (i) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
3.
 - (a) A building site or construction, installation or assembly project or supervisory activities in connection therewith constitutes a permanent establishment only if such site, project or activities last more than 9 months.
 - (b) The furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose constitutes a permanent establishment, but only where activities of that nature continue (for the same *or* connected project) within the country for a period or periods aggregating more than 90 days within any 12 month period.
4. Notwithstanding the preceding provisions of this Article the term permanent

establishment shall be deemed not to include :

- (a) the use of facilities solely for the purpose 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 of collecting information for the enterprise ;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character ;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person other than an agent of an independent status to whom paragraph 7 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 Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person :

- (a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or

- (b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise; or
- (c) habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise itself.

6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

8. 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 otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6

INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property situated in the other Contracting State may be taxed in that other State.
2. The term immovable property shall have the meaning which it has under the 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded 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, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, 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.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes 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, in accordance with the provisions of and subject to the limitations of the tax laws of that State. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges for specific services performed or for management, or, except in the case of banking enterprises, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. Insofar 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 contained 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 purposes 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 Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

SHIPPING AND AIR TRANSPORT

1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

3. Profits derived by a transportation enterprise which is a resident of a Contracting State from the use, maintenance, or rental of containers (including trailers and other equipment for the transport of containers) used for the transport of goods or merchandise in international traffic shall be taxable only in that Contracting State unless the containers are used solely within the other Contracting State.

4 The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9

ASSOCIATED ENTERPRISES

1. 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.

2. Where a Contracting State includes in the profits of an enterprise of the State and taxes accordingly profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

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 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 laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends. 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 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 14, 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 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 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 State, nor subject the companys undistributed profits to a tax on the companys undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11

INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State, provided that it is derived and beneficially owned by :

- (a) the Government, a political sub-division or a local authority of the other Contracting State; or
- (b)
 - (i) in the case of India, the Reserve Bank of India, the Export-Import Bank of India or the National Housing Bank; and
 - (ii) in the case of Iceland, the Central Bank of Iceland; or
- (c) any other institution as may be agreed upon from time to time between the competent authorities of the Contracting States through exchange of letters.

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 debtors 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 and 2 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 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 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, 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 indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the 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 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 the other provisions of this Agreement.

Article 12

ROYALTIES AND FEES FOR TECHNICAL SERVICES

1. Royalties or fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties or fees for technical services may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the beneficial owner of the royalties or fees for technical services is a resident of the other Contracting State the tax so charged shall not exceed 10 per cent of the gross amount of the royalties or fees for technical services.

3. (a) 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 including cinematograph films or films or tapes used for television or radio 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.

(b) The term fees for technical services as used in this Article means payments of any kind, other than those mentioned in Articles 14 and 15 of this Agreement as consideration for managerial or technical or consultancy services, including the provision of services of technical or other personnel.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services 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 or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5 (a) Royalties and fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself a political sub-division, a local authority, or a resident of that State. Where, however, the person paying the royalties or fees for technical services, 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 or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

(b) Where under sub-paragraph (a) royalties or fees for technical services do not

arise in one of the Contracting States, and the royalties relate to the use of, or the right to use, the right or property, or the fees for technical services relate to services performed, in one of the Contracting States, the royalties or fees for technical services shall be deemed to arise in that Contracting State.

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 or fees for technical services, 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 the other provisions of this Agreement.

Article 13

CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from the alienation of shares other than those mentioned in paragraph 4 in a company which is a resident of a Contracting State may be taxed in that State.

6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5, shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14

INDEPENDENT PERSONAL SERVICES

1. Income derived by an individual who is a resident of a Contracting State from the performance of professional services or other independent activities of a similar character shall be taxable only in that State except in the following circumstances when such income may also be taxed in the other Contracting State:

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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 State; or
- (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any period of 12 months, in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

Article 15

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived there from may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if :

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned; &
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, by an enterprise of a Contracting State may be taxed in that State.

Article 16

DIRECTORS FEES

Directors fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the Board of Directors in a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17

ARTISTES AND SPORTSPERSONS

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.
3. The provisions of paragraphs 1 and 2, shall not apply to income from activities performed in a Contracting State by entertainers or sportspersons if the activities are substantially supported by public funds of one or both of the Contracting States or of political sub-divisions or local authorities thereof. In such a case, the income shall be taxable only in the Contracting State of which the entertainer or sportsperson is a resident.

Article 18

PENSIONS

Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

Article 19

GOVERNMENT SERVICE

1. (a) Salaries, wages and other similar remuneration, other than a

pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

- (b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who :
 - (i) is a national of that State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.
- 2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.
- (b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of that State.
- 3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages and other similar remuneration and to pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

Article 20

PROFESSORS, TEACHERS AND RESEARCH SCHOLARS

- 1. A professor, teacher or research scholar who is or was a resident of the Contracting State immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college or other similar approved institution in that other Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival in

that other State.

2. This Article shall apply to income from research only if such research is undertaken by the individual in the public interest and not primarily for the benefit of some private person or persons.

3. For the purposes of this Article, an individual shall be deemed to be a resident of a Contracting State if he is resident in that State in the fiscal year in which he visits the other Contracting State or in the immediately preceding fiscal year.

Article 21

STUDENTS

1. A student who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State and who is present in that other Contracting State solely for the purpose of his education or training, shall besides grants, loans and scholarships be exempt from tax in that other State on:

- (a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training; and
- (b) remuneration from employment in that other State to the extent that it does not exceed the amount which is exempt from tax under the laws of that other Contracting State for any fiscal year; provided that such employment is directly related to his studies or is undertaken for the purposes of his maintenance.

2. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article for more than six consecutive years from the date of his first arrival in that other State.

Article 22

OTHER INCOME

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
3. Notwithstanding the provisions of paragraph 1, if a resident of a Contracting State derives income from sources within the other Contracting State in form of lotteries, crossword puzzles, races including horse races, card games and other games of any sort or gambling or betting of any nature whatsoever, such income may be taxed in the other Contracting State.

Article 23

METHODS FOR ELIMINATION OF DOUBLE TAXATION

Double taxation shall be eliminated as follows:

1. In India :
 - (a) Where a resident of India derives income which, in accordance with the provisions of this Agreement, may be taxed in Iceland, India shall allow as a deduction from the tax on the income of that resident, an amount equal to the tax paid in Iceland.

Such deduction shall not, however, exceed that portion of the tax as computed before the deduction is given which is attributable, as the case may be, to the

income which may be taxed in Iceland.

- (b) Where in accordance with any provision of the Agreement income derived by a resident of India is exempt from tax in India, India may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

2. In Iceland :

- (a) Where a resident of Iceland derives income which, in accordance with the provisions of this Agreement, may be taxed in India, Iceland shall allow as a deduction from the tax on the income of that resident, an amount equal to the tax paid in India.

Such deduction shall not, however, exceed that portion of the tax as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in India.

- (b) Where in accordance with any provision of the Agreement, income derived by a resident of Iceland is exempt from tax in Iceland, Iceland may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

Article 24

LIMITATION OF BENEFITS

1. Except as otherwise provided in this Article, a person (other than an individual), which is a resident of a Contracting State and which derives income from the other Contracting State shall be entitled to all the benefits of this Agreement otherwise accorded to residents of a Contracting State only if such a person is a qualified person as defined in paragraph 2 and meets the other conditions of this Agreement for the obtaining of any of such benefits.

2. A person of a Contracting State is a qualified person for a fiscal year only if such a person is either:

- (a) governmental entity; or
- (b) a company incorporated in either of the Contracting States, if
 - (i) the principal class of its shares is listed on a recognised stock exchange as defined in paragraph 5 of this Article or is regularly traded on, one or more recognised stock exchanges; or
 - (ii) at least 50% of the aggregate vote or value of the shares in the company is owned directly or indirectly by one or more individual residents of either of the Contracting States or/and by other persons incorporated in either of the Contracting States, at least 50% of the aggregate vote or value of the shares or beneficial interest of which is owned directly or indirectly by one or more individual residents of either of the Contracting States; or
- (c) a partnership or association of persons, at least 50% of whose beneficial interests is owned by one or more individuals residents of either of the Contracting States or/and by other persons incorporated in either of the Contracting States, at least 50% of the aggregate vote or value of the shares or beneficial interest of which is owned directly or indirectly by one or more individual residents of either of the Contracting States ; or
- (d) a charitable institution or other tax exempt entity whose main activities are carried on in either of the Contracting States ;

provided that the persons mentioned above will not be entitled to the benefits of the Agreement if more than 50% of the persons gross income for the taxable year is paid or payable directly or indirectly to persons who are not residents of either of the Contracting States in the form of payments that are deductible for the purpose of computation of tax covered by this Agreement in the persons State of residence (but not including arms length payment in the ordinary course of business for services or tangible property and payments in respect of financial obligations to a bank incurred in connection with a transaction entered into with the permanent establishment of the bank situated in either of the

Contracting States).

3. The provisions of paragraphs 1 and 2 shall not apply and a resident of a Contracting State will be entitled to benefits of the Agreement with respect to an item of income derived from the other Contracting State, if the person actively carries on business in the State of residence (other than the business of making or managing investments for the residents own account unless these activities are banking, insurance or security activities) and the income derived from the other Contracting States is derived in connection with or is incidental to that business and that resident satisfies the other conditions of this Agreement for the obtaining of such benefits.

4. A resident of a Contracting State shall nevertheless be granted the benefits of the Agreement if the competent authority of the other Contracting State determines that the establishment or acquisition or maintenance of such person and the conduct of its operations did not have as one of its principal purposes the obtaining of benefits under the Agreement.

5. For the purposes of this Article the term recognised stock exchange means

(a) in India :

- (i) the National Stock Exchange ;
- (ii) the Bombay Stock Exchange ;
- (iii) any other stock exchange recognised by the Securities and Exchange Board of India ;

(b) in Iceland :

- (i) the Icelandic stock exchange ;
- (ii) the stock exchanges of Amsterdam, Brussels, Copenhagen, Frankfurt, Hamburg, Helsinki, London, Oslo, Paris, Stockholm, Sydney, Tokyo and Toronto; and

(c) any other stock exchange which the competent authorities agree to recognise for the purposes of this Article.

6. Notwithstanding anything contained in paragraphs 2 to 5 above, any person

shall not be entitled to the benefits of this Agreement, if its affairs were arranged in such a manner as if it was the main purpose or one of the main purposes to avoid taxes to which this Agreement applies.

Article 25

NON-DISCRIMINATION

1. 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, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.
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. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 7 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

4. 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 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 the first-mentioned State are or may be subjected.
5. The provisions of this Article shall, notwithstanding the provisions of Article: 2, apply to taxes of every kind and description.

Article 26

MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 25, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.
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 a satisfactory 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 which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law 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 the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

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. 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.

Article 27

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information (including documents or certified copies of the documents) as is necessary for carrying out the provisions of this Agreement or of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political sub-divisions or local authorities insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in the first sentence of paragraph 1. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation.

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State ;
- (b) to supply information (including documents or certified copies of the documents) which is 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 (order public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 28

ASSISTANCE IN THE COLLECTION OF TAXES

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. The term revenue claim as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political sub-divisions or local authorities, insofar

as the taxation there under is not contrary to this Agreement of any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall only be brought before the courts or administrative bodies of that State. Nothing in this Article shall be construed as

creating or providing any right to such proceedings before any court or administrative body of the other Contracting State.

7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be :

- (a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or
- (b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection,

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

8. In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation :

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State ;
- (b) to carry out measures which would be contrary to public policy (order public) ;
- (c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice ;
- (d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

Article 29

MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

Article 30

ENTRY INTO FORCE

1. The Contracting States shall notify each other in writing, through diplomatic channels, of the completion of the procedures required by the respective laws for the entry into force of this Agreement.
2. This Agreement shall enter into force on the date of the later of the notifications referred to in paragraph 1 of this Article.
3. The provisions of this Agreement shall have effect :
 - (a) in India:
 - (i) with respect to taxes withheld at source, for amounts paid or credited on or after 1st April of the calendar year next following that in which the Agreement enters into force; and
 - (ii) with respect to taxes on income for any fiscal year beginning on or after 1st April of the calendar year next following that in which the Agreement enters into force ;
 - (b) in Iceland :
 - (i) in respect of taxes withheld at source, on income derived on or after 1st January in the calendar year next following the year in which the later notice is given ;
 - (ii) in respect of other taxes on income, for taxes chargeable for any tax year beginning on or after 1st January in the calendar year next following the year in which the later notice is given.

Article 31

TERMINATION

This Agreement shall remain in force indefinitely until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year beginning after the expiration of five years from the date of entry into force of the Agreement. In such event, the Agreement shall cease to have effect :

(a) in India :

- (i) with respect to taxes withheld at source, for amounts paid or credited on or after 1st April of the calendar year next following that in which the notice of termination of the Agreement is given; and
- (ii) with respect to taxes on income for any fiscal year beginning on or after 1st April of the calendar year next following that in which the notice of termination of the Agreement is given ;

(b) in Iceland :

- (i) in respect of taxes withheld at source, on income derived on or after 1st January in the calendar year next following the year in which the notice is given ;
- (ii) in respect of other taxes on income, for taxes chargeable for any tax year beginning on or after 1st January in the calendar year next following the year in which the notice is given.

PROTOCOL

TO

THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND
THE GOVERNMENT OF ICELAND FOR THE AVOIDANCE OF DOUBLE TAXATION

AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

At the moment of signing the Agreement between the Government of the Republic of India and the Government of Iceland for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, the undersigned have agreed that the following provisions shall form an integral part of the Agreement.

I. Ad Article 2 Paragraph 2

The Icelandic social security charge Tryggingargjald shall not be regarded as taxes on the total amounts of wages or salaries paid by enterprises.

II. Ad Article 8

For the purposes of this Article and within the meaning of paragraph 14 of the OECD Commentary (2005) on Article 8, interest on investments directly connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft if they are integral to the carrying on of such business, and the provisions of Article 11 shall not apply in relation to such interest.

III. Ad Article 10 (Dividends), 11 (Interest), 12 (Royalties and Fees for Technical Services), or 13 (Capital Gains)

A corporation of one of the Contracting States deriving dividends, interest, royalties, or capital gains from sources within the other Contracting States shall not be entitled to the benefits of Article 10 (Dividends), 11 (Interest), 12 (Royalties and Fees for Technical Services), or 13 (Capital Gains) if ;

(a) By reason of special measures the tax imposed on such corporation by the first-mentioned Contracting State with respect to such dividends, interest, royalties, or capital gains is substantially less than the tax generally imposed by such Contracting State on corporate profits; and

(b) 25 percent or more of the capital of such corporation is held of record or is otherwise determined, after consultation between the competent authorities

of the Contracting States, to be owned directly or indirectly, by one or more persons who are not individual residents of the first-mentioned Contracting State.

IV. Ad Article 25 Paragraph 2

The provisions of paragraph 2 of Article 25 of this Agreement, shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which a company of the other Contracting State has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first-mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7. It is also provided that in no case the differences in the two rates, referred to above will exceed 10 percentage points.

Indonesia

Agreement for avoidance of double taxation with Indonesia

Whereas the annexed Agreement between the Government of the Republic of India and the Government of the Republic of Indonesia for the avoidance of double taxation and

the prevention of fiscal evasion with respect to taxes on income has entered into force on the 19th December, 1987 on the notification by both the Contracting States to each other of the completion of the procedures required by their laws, as specified by article 26 of the said Agreement;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961) and section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964), the Central Government hereby directs that all the provisions of the said Agreement shall be given effect to in the Union of India.

Notification : No. GSR 77(E), dated 4-2-1988.

TEXT OF ANNEXED AGREEMENT, DATED 7-8-1987

The Government of the Republic of India and the Government of the Republic of Indonesia desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows :

ARTICLE 1 – *Personal scope* – This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2 – *Taxes covered* – 1. The taxes to which this Agreement shall apply are :

(a) in India :

(i) the income-tax including any surcharge thereon imposed under the Income-tax Act, 1961 (43 of 1961) ;

(ii) the surtax imposed under the Companies (Profits) Surtax Act, 1964 (7 of 1964) ;

(hereinafter referred to as Indian Tax) ;

(b) in Indonesia :

the income-tax imposed under the Undangundang Pajak Penghasilan 1984 (Law No. 7 of 1983) and to the extent provided in such income-tax law, the company tax imposed under the Ordonansi Pajak Perseroan 1925 (State Gazette No. 319 of 1925 as lastly amended by Law No. 8 of 1970) and the tax imposed under the Undangundang Pajak atas Bunga, Dividen dan Royalty 1970 (Law No. 10 of 1970) ;

(hereinafter referred to as Indonesian Tax)

2. The agreement shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of the present Agreement 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.

ARTICLE 3 – *General definitions* – 1. In this Agreement, unless the context otherwise requires :

- (a) the term India means the territory of India and includes the territorial sea and air space above it, as well as any other maritime zone which India has sovereignty, sovereign rights, other rights and jurisdiction according to the Indian Law and in accordance with International Law, particularly the United Nations Convention on the Law of the Sea, 1982 ;
- (b) the term Indonesia comprises the territory of the Republic of Indonesia as defined in its laws and the adjacent areas over which the Republic of Indonesia has sovereignty, sovereign rights or jurisdiction in accordance with international law, particularly the provisions of the United Nations Convention on the Law of the Sea, 1982 ;
- (c) the terms a Contracting State and the other Contracting State mean India or Indonesia as the context requires;
- (d) the term tax means Indian tax or Indonesian tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Agreement applies or which represents a penalty imposed relating to those taxes ;
- (e) the term person includes an individual, a company and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States ;
- (f) the term company means any body corporate or any entity which is treated as a company or body corporate under the taxation laws in force in the respective Contracting States ;

- (g) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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 ;
- (h) 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 ;
- (i) the term competent authority means in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative ;
and in the case of Indonesia, the Minister of Finance or his authorised representative ;
- (j) the term national means any individual, possessing the nationality of a Contracting State and any legal person, partnership or association deriving its status from the laws in force in the Contracting State.

2. As regards the application of the Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Agreement applies.

ARTICLE 4 – *Resident* – 1. For the purposes of this Agreement, the term of resident of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his status shall be determined as follows :

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);

- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode ;
- (c) if he has an habitual abode in both States or in neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall settle the question by mutual agreement keeping in view its place of incorporation, place of effective management and other relevant factors.

ARTICLE 5 – *Permanent establishment* – 1. For the purposes of this Agreement, the term permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (a) a place of management ;
- (b) a branch ;
- (c) an office ;
- (d) a factory ;
- (e) a workshop ;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources ;
- (g) a building site or construction, installation or assembly project or supervisory activities in connection therewith, but only where such site, project or activity continues for a period of more than 183 days.

3. Notwithstanding the preceding provisions of this article, the term permanent establishment shall be deemed not to include :

- (a) the use of facilities solely for the purpose 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 ; and
- (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. Where a person (other than an agent of an independent status to whom the provisions of paragraph 7 apply) 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 in respect of any activities which that person undertakes for the enterprise, if :

- (a) that person has, and habitually exercises in the first-mentioned State, an authority to conclude contracts on behalf of the enterprise ; or
- (b) that person maintains the first-mentioned Contracting State a stock of goods or merchandise belonging to the enterprise from which he regularly delivers goods or merchandise on behalf of the enterprise.

5. An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it furnishes services, including consultancy services in that other Contracting State through employees or other personnel other than an agent of an independent status to whom the provisions of paragraph 7 apply provided that activities of that nature continue (for the same or a connected project) within the country for a period or periods aggregating more than 91 days in any twelve-month period.

6. An insurance enterprise of a Contracting State shall, except with regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in that other State or insures risks situated therein

through an employee or through a representative who is not an agent of an independent status within the meaning of paragraph 7.

7. 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 provided that such persons are acting in the ordinary course of their business. However, then the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

8. The fact that a company which is 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 other-wise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6 – *Income from immovable property* – 1. Income derived by a resident of a Contracting State from immovable property, including income from agriculture or forestry, situated in the other Contracting State may be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall also 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 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, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to (a) that permanent establishment, (b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment.

2. Subject to the provisions of paragraph 3, 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 attributable 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

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business 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. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or

other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. Insofar 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 contained 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 purposes 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 Agreement, then the provisions of those articles shall not be affected by the provisions of this article.

ARTICLE 8 – *Shipping and air transport* – 1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. The provisions of paragraph 1 of this article shall also apply to profits from participation in a pool, a joint business or an international operating agency.

3. For the purposes of this article, interest on funds connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft and the provisions of article 11 shall not apply in relation to such interest.

4. The term operation of ships or aircraft shall mean business of transportation of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of ships or aircraft, including the sale of tickets for such transportation on behalf of other enterprises, the incidental lease of ships or aircraft and any other activity directly connected with such transportation.

ARTICLE 9 – *Associated enterprises* – 1. 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.

2. Where a Contracting State includes in the profits of an enterprise of that State and taxes accordingly profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of the Agreement and the competent authorities of the Contracting States shall, if necessary, consult each other.

ARTICLE 10 – *Dividends* – 1. Dividends paid by a company which is resident of a Contracting State to a resident of the other Contracting State may be taxed in that other 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 laws of that 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 dividends if the beneficial owner is a company which owns at least twenty-five per cent of the shares of the company paying the dividends ;

(b) 15 per cent of the 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 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 14, 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 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 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 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 State.

ARTICLE 11 – *Interest* – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount or the interest.

3. Notwithstanding the provisions of paragraph 2 :

(a) interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by :

(i) the Government, a political sub-division or a local authority of the other Contracting State ; or

(ii) the Central Bank or any agency or instrumentality (including a financial institution) wholly owned by the other Contracting State or political sub-division or local authority thereof ;

(b) interest arising in a Contracting State shall be exempt from tax in that Contracting State to the extent approved by the Government of that State if it is derived and beneficially owned by any person [other than a person referred to in subparagraph (a)] who is a resident of the other Contracting State, provided that the transaction giving rise to the debt-claim has been approved in this regard by the Government of the first-mentioned Contracting State.

4. The term interest as used in this article means income from debt-claims of every kind (including interest on deferred payments sales) whether or not secured by mortgage and whether or not carrying a right to participate in the debtors 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 and 2 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 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 provision of article 7 or article 14, 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 resident 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 such 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 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 the other provisions of this Agreement.

ARTICLE 12 – *Royalties* – 1. Royalties in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 15 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, including cinematograph film, 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.

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 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that 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 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 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 the other provisions of this Agreement.

ARTICLE 13 – *Capital gains* – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.

4. Gains from the alienation of any property other than that mentioned in paragraphs 1, 2 and 3 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14 – *Independent personal services* – 1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State except in the following circumstances when such income may also be taxed in the other Contracting State :

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 91 days in any twelve month period; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

ARTICLE 15 – *Dependent personal services* – 1. Subject to the provisions of articles 16, 17, 18, 19, 20 and 21 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State, if :

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period ; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State ; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State shall be taxable only in that State.

ARTICLE 16 – *Directors fees* – Directors fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the Board of Directors (by whatever name called) of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 17 – *Entertainers and athletes* – 1. Notwithstanding the provisions of articles 14 and 15, income derived by a resident of a Contracting State as an entertainer such as a 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 State.

2. While 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, 14 and 15 be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. Notwithstanding the provisions of paragraph 1, income derived by an entertainer or an athlete who is a resident of a Contracting State from his personal activities as such exercised in the other Contracting State, shall be taxable in the first-mentioned Contracting State if :

- (a) the activities in the other Contracting State are supported wholly or substantially from the public funds of the first-mentioned Contracting State, including any of its political sub-divisions or local authorities, or
- (b) the activities in the other Contracting State are in pursuance of a special programme for cultural exchange agreed upon between the Governments of the two Contracting States.

4. Notwithstanding the provisions of paragraph 2 and articles 7, 14 and 15 where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such in a Contracting State accrues not to the entertainer or athlete himself but to another person, that income shall be taxable only in the other Contracting State if :

- (a) that other person is supported wholly or substantially from the public funds of that other State, including any of its political sub-divisions or local authorities, or
- (b) the activities are exercised by an individual, being a resident of the other Contracting State, in pursuance of a special programme for cultural exchange agreed upon between the Governments of the two Contracting States and that other person to whom income therefrom accrues is a resident of the other Contracting State.

ARTICLE 18 – *Remuneration and pensions in respect of Government service* – 1. Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State. However such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who :

(a) is a national of that State ; or

(b) did not become a resident of that State solely for the purpose of rendering the services.

2. Any pension paid by, or out of funds created by, a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State. However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that other State.

3. The provisions of articles 15, 16 and 17 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

ARTICLE 19 – *Non-Government pensions and annuities* – 1. Any pension, other than a pension referred to in article 18, or any annuity derived by a resident of a Contracting State from sources within the other Contracting State may be taxed only in the first-mentioned Contracting State.

2. Notwithstanding, the provisions of paragraph 1, pensions paid out of a pension fund approved by the Government of a Contracting State (or its authorised Agency) to a resident of the other Contracting State in consideration of past employment may be taxed in the first-mentioned State.

3. The term pension means a periodic payment made in consideration of past services or by way of compensation for injuries received in the course of performance of services.

4. 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 moneys worth.

ARTICLE 20 – *Students and apprentices* – 1. A student or business apprentice who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State and who is present in that other State solely for the purpose of his education or training, shall be exempt from tax in that other State on :

- (a) payments made to him by persons residing outside that other State for the purpose of his maintenance, education or training ; and
- (b) remuneration from employment in that other State, in an amount not exceeding Rs. 20,000 or Rs. 20,00,000 during any twelve-month period, as the case may be, provided that such employment is directly related to his studies or is undertaken for the purpose of his maintenance.

2. The benefits of this article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken but in no event shall any individual have the benefits of this article for more than five consecutive years from the date of his first arrival in that other Contracting State.

ARTICLE 21 – *Professors, teachers and Research Scholars* – 1. A professor or teacher who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college, school or other approved institution in that other Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival in that other 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 20, an individual shall be deemed to be a resident of a Contracting State if he is resident in that Contracting State in the year of

income, in which he visits the other Contracting State or in the immediately preceding year of income.

4. For the 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.

ARTICLE 22 – *Other income* – 1. Subject to the provisions of paragraph 2, items of income of resident of a Contracting State, wherever arising, which are not expressly dealt with in the foregoing articles of this Agreement, shall be taxable only in that Contracting State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right of property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of article 7 or article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Agreement and arising in the other Contracting State may also be taxed in that other State.

ARTICLE 23 – *Elimination of double taxation* – 1. The laws in force in either of the Contracting States shall continue to govern the taxation of income in the respective Contracting States except where provisions to the contrary are made in this Agreement.

2. The amount of Indonesian tax payable, under the laws of Indonesia and in accordance with the provisions of this Agreement, whether directly or by deduction, by a resident of India, in respect of profits or income arising in Indonesia, which have been subjected to tax both in India and in Indonesia, shall be allowed as a credit against the Indian tax payable in respect of such profits or income provided that such

credit shall not exceed the Indian tax (as computed before allowing any such credit) which is appropriate to the profits or income arising in Indonesia. Further, 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.

3. The term Indonesian tax payable shall be deemed to include the amount of Indonesian tax which would have been paid if the Indonesian tax had not been exempted or reduced in accordance with the special incentive measures under Article 33 of Law No. 7 of 1983 (Undangundang Pajak Penghasilan, 1984) which are designed to promote economic development in Indonesia, effective on the date of signature of this Agreement, or which may be introduced in the future in modification of, or in addition to, the existing provisions for promoting economic development in Indonesia, and such other incentive measures which may be agreed upon from time to time by the Contracting States.

4. The amount of Indian tax payable under the laws of India and in accordance with the provisions of this Agreement, whether directly or by deduction, by a resident of Indonesia, in respect of profits or income arising in India, which has been subjected to tax both in India and in Indonesia, shall be allowed as a credit against Indonesian tax payable in respect of such profits or income provided that such credit shall not exceed the Indonesian tax (as computed before allowing any such credit) which is appropriate to the profits or income arising in India.

5. The term Indian tax payable shall be deemed to include the amount of Indian tax which would have been paid, if the Indian tax had not been exempted or reduced in accordance with the special incentive measures under the provisions of the Income-tax Act, 1961 (43 of 1961), which are designed to promote economic development in India, effective on the date of signature of this agreement, or which may be introduced in the future in modification of, or in addition to, the existing provisions for promoting economic development in India, and such other incentive measures which may be agreed upon from time to time by the Contracting States.

1ARTICLE 24 – *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 in the same circumstances.

3. Nothing contained in this article shall be construed as, obliging a Contracting State to grant to persons not resident in that State any personal allowances, reliefs, reductions and deductions for taxation purposes which are by law available only to persons who are so resident.

4. 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 in the same circumstances.

5. In this article, the term taxation means taxes which are the subject of this Agreement.

ARTICLE 25 – *Mutual agreement procedure* – 1. Where a person 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 Agreement, 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. This case must be presented within three years of the date of receipt of notice of the action which gives rise to taxation not in accordance with the Agreement.

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

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. 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.

ARTICLE 26 – *Exchange of information* – 1. The competent authorities of the Contracting States shall exchange such information (including documents) as is necessary for carrying out the provisions of the Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement, insofar as the taxation thereunder is not contrary to the Agreement, in particular, for the prevention of fraud or evasion of such taxes. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State. However, if the information is originally regarded as secret in the transmitting State, it shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Agreement. Such persons or authorities shall use the information only for such purposes but may disclose the information in public court proceedings or in judicial decisions. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the

matters in respect of which such exchange of information shall be made, including, where appropriate, exchange of information regarding tax avoidance.

2. The exchange of information or documents 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 the information or documents 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 or documents 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 or documents 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 27 – *Diplomatic and consular activities* – Nothing in this Agreement 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 28 – *Entry into force* – Each of the Contracting State shall notify to the other the completion of the procedures required by its law for the bringing into force of this Agreement. This Agreement shall enter into force on the date of the later of these notifications and shall thereupon have effect :

- (a) in India, in respect of income arising in any previous year beginning on or after the first day of April next following the calendar year in which the later of the notifications is given ;
- (b) in Indonesia, in respect of income arising in any year of income beginning on or after the first day of January next following the calendar year in which the later of the notifications is given.

ARTICLE 29 – *Termination* – This Agreement shall remain in force indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give the other Contracting State through diplomatic channels, written notice of termination and, in such event, this Agreement shall cease to have effect :

- (a) in India, in respect of income arising in any previous year beginning on or after the 1st day of April next following the calendar year in which the notice is given ;
- (b) in Indonesia, in respect of income arising in any year of income beginning on or after the 1st day of January next following the calendar year in which the notice of termination is given.

Ireland

Agreement for avoidance of double taxation and prevention of fiscal evasion with Ireland

Whereas the annexed Convention between the Government of the Republic of India and the Government of Ireland for the Avoidance of Double Taxation and for the Prevention of Fiscal Evasion with respect to taxes on income and capital gains has entered into force on 26th December, 2001, thirty days after the receipt of the later of the notifications by both the Contracting States to each other of the completion of the procedure required by their respective laws, as required by Article 28 of the said Convention.

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in the Union of India.

Notification: No. 45/2002 [F. No. 503/6/99-FTD], dated 20-2-2002.

ANNEXURE

CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF IRELAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND FOR THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS

The Government of the Republic of India and the Government of Ireland, desiring to conclude a Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income and capital gains and with a view to promoting economic co-operation between the two countries, 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. This Convention shall apply to taxes on income and capital gains imposed on behalf of a Contracting State or of its political sub-divisions or local authorities irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and capital gains all taxes imposed on total income, or on elements of income including taxes on gains from the alienation of movable or immovable property.

3. The existing taxes to which the Convention shall apply are in particular :

(a) In India :

the income-tax including any surcharge thereon;
(hereinafter referred to as Indian tax);

(b) In Ireland :

(i) the income-tax;
(ii) the corporation tax; and
(iii) the capital gains tax
(hereinafter referred to as Irish tax).

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes referred to in paragraph 3. The competent authorities of the Contracting States shall notify each other of significant changes which have been made in their respective taxation laws.

ARTICLE 3 : *General Definitions* – 1. For the purposes of this Convention, unless the context otherwise requires :

(a) the term India means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law, including the U.N. Convention on the Law of the Sea;

(b) the term Ireland includes any area outside the territorial waters of Ireland which, in accordance with international law, has been or may hereafter be

designated under the laws of Ireland concerning the Continental Shelf, as an area within which the rights of Ireland with respect to the sea and subsoil and their natural resources may be exercised;

- (c) the term person includes an individual, a company, a trust, a partnership which is treated as a taxable unit under the Income-tax Act, 1961 (43 of 1961) of India, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States;
- (d) the term company means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (e) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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;
- (f) 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;
- (g) the term competent authority means :
 - (i) in the case of India : the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative;
 - (ii) in the case of Ireland : the Revenue Commissioners or their authorised representative;
- (h) the term national means :
 - (i) in relation to Ireland, any citizen of Ireland and any legal person, association or other entity deriving its status as such from the laws in force in Ireland;
 - (ii) in relation to India (A) any individual possessing the nationality of India; (B) any legal person, partnership or association deriving its status as such from the laws in force in India;
- (i) the term fiscal year means :
 - (i) in the case of India, previous year as defined under section 3 of the Income-tax Act, 1961;

- (ii) in the case of Ireland, a year beginning with the sixth day of April in one year and ending with the fifth day of April in the following year;
- (j) The term tax means Indian tax or Irish tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty or fine imposed relating to those taxes;
- (k) the terms a Contracting State, one of the Contracting States and the other Contracting State mean Ireland or the Republic of India, as the context requires, and the term Contracting States means Ireland and the Republic of India.

2. As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

ARTICLE 4 : *Resident* – 1. For the purposes of this Convention, the term resident of a Contracting State means any person who, under the laws of that State, is liable to tax 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 status shall be determined as follows :

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;

(d) if he is a national of both States or of neither of them the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 State in which its place of effective management is situated. If the State in which its place of effective management is situated cannot be determined, then the competent authorities of the Contracting States shall settle the question by mutual agreement.

ARTICLE 5 : *Permanent Establishment* – 1. For the purposes of this Convention, the term permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction or exploration of natural resources;
- (g) an installation or structure used for the exploration or exploitation of natural resources;
- (h) a sales outlet;
- (i) a warehouse in relation to a person providing storage facilities for others; and
- (j) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on.

3. A building site or construction or assembly project or supervisory activities in connection therewith constitute a permanent establishment only if such site, project or activity last more than six months.

4. An enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it provides services or facilities in connection with, or supplies plant and machinery on hire used for or to be used in, the prospecting for, or extraction or exploitation of mineral oils in that State.

5. Notwithstanding the previous provisions of this Article, the term permanent establishment shall be deemed not to include :

- (a) the use of facilities solely for the purpose of storage, display or delivery 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, display or delivery;
- (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 of collecting information for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

6. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 8 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 Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:

- (a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 5 which, if exercised through a

fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or

- (b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise; or
- (c) habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise itself or for the enterprise and other enterprises controlling, controlled by, or subject to the same control as that enterprise.

7. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 8 applies.

8. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, if the activities of such an agent are carried out wholly or almost wholly for the enterprise and the conditions made or imposed between them in their commercial and financial relations differ from those which would have been made or imposed if this had not been the case, that agent shall not be considered to be an agent of an independent status for the purpose of this paragraph.

9. 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 otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6 : *Income from immovable property* – 1. Income derived by a resident of a Contracting State from immovable property (including income from

agriculture or forestry) situated in the other Contracting State may also be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the laws of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, live stock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats, aircraft and motor vehicles shall not be regarded 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, the profits of the enterprise may also be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, 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.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, whether in the State in which the permanent establishment is situated or elsewhere. Executive and general administrative expenses shall be allowed as deductions in accordance with the taxation laws of that State. Nothing in this paragraph shall, however, authorise a deduction for expenses which would not be deductible if the permanent establishment were a separate enterprise.

4. 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.

5. For the purposes 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.

6. 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 : *Shipping and air transport* – 1. Profits derived by an enterprise of a Contracting State from the operation or rental of ships or aircraft in international traffic and the rental of containers and related equipment which is incidental to the operation of ships or aircraft in international traffic shall be taxable only in that Contracting State.

2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

3. For the purposes of this Article, interest on funds connected directly with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft; and the provisions of Article 11 shall not apply in relation to such interest, provided that such funds are incidental to that operation.

4. Notwithstanding the preceding provisions of this Article, profits derived by an enterprise of a Contracting State from the operation of ships between the ports of the other Contracting State and the ports of third countries may be taxed in that other Contracting State, but the tax imposed in that other State shall be reduced by an amount equal to two-thirds thereof.

ARTICLE 9 : *Associated Enterprises* – 1. 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.

2. Where a Contracting State includes in the profits of an enterprise of that State and taxes accordingly profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10 : *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 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 laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 10 per cent of the gross amount of the dividends. 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 includes income from shares or other rights, not being debt-claims, participating in profit, 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 dividend 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 14, 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 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 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 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 State.

ARTICLE 11 : *Interest* – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that Contracting State provided it is derived and beneficially owned by, or derived in connection with a loan or credit extended, guaranteed or insured by:

- (a) the Government, a political sub-division, a statutory body or a local authority of the other Contracting State; or
- (b) (i) in the case of India, the Reserve Bank of India, the Industrial Finance Corporation of India, the Industrial Development Bank of India, the Export-Import Bank of India, the National Housing Bank, the Small Industries Development Bank of India and the Industrial Credit and Investment Corporation of India (ICICI); and
 - (ii) in the case of Ireland, the Central Bank of Ireland; or
- (c) any other similar institution as may be agreed from time to time between the Competent Authorities of the Contracting States.

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 debtors 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, but does not include any income which is treated as a dividend under Article 10. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1 and 2 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 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 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that 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 resident 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 such 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 relationships, 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 the other provisions of this Convention.

ARTICLE 12 : *Royalties and fees for technical services* – 1. Royalties or fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

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

3. (a) 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 including cinematograph films or films or tapes 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, other than an aircraft, or for information concerning industrial, commercial or scientific experience;

(b) The term fees for technical services means payment of any kind in consideration for the rendering of any managerial, technical or consultancy services including the provision of services by technical or other personnel but does not include payments for services mentioned in Articles 14 and 15 of this Convention.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services 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 or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties or fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties or fees for technical services, 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 or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the 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 or fees for technical services, 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 the other provisions of this Convention.

ARTICLE 13 : *Capital gains* – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may also be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may also be taxed in that other State.

3. Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in that State.

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from the alienation of shares other than those mentioned in paragraph 4 in a company which is a resident of a Contracting State may be taxed in that Contracting State.

6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14 : *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 State except in the following circumstances, when such income may also be taxed in the other Contracting State:

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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 State; or
- (b) if his stay in the other State is for a period or periods aggregating 183 days or more in any 12-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

ARTICLE 15 : *Dependent personal services* – 1. Subject to the provisions of Articles 16, 18, 19 and 21, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any 12-month period commencing or ending in the fiscal year concerned, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and

(c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

ARTICLE 16 : *Directors fees* – Directors fees and other 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 may also be taxed in that other State.

ARTICLE 17 : *Artistes and sportspersons* – 1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to some other person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. The provisions of paragraphs 1 and 2, shall not apply to income from activities performed in a Contracting State by entertainers or sportspersons if the visit to that State is substantially supported by public funds of one or both of the Contracting States or of political sub-divisions or local authorities thereof. In such a case, the income is taxable only in the Contracting State of which the entertainer or sportsperson is a resident.

ARTICLE 18 : *Pensions and annuities* – 1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment and any annuity paid to

such a resident in consideration of past employment shall be taxable only in that 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 moneys worth.

ARTICLE 19 : *Government service* – 1. (a) Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State;

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

ARTICLE 20 : *Students and apprentices* – 1. A student or business apprentice who is or was a resident of a Contracting State immediately before visiting the other Contracting State and who is present in that other Contracting State solely

for the purpose of his education or training shall be exempt from tax in that other State on:

- (a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training; and
- (b) remuneration from employment in that other State to the extent that it does not exceed the amount which is exempt from tax under the laws of that other Contracting State for any fiscal year; provided that such employment is directly related to his studies or is undertaken for the purposes of his maintenance.

2. The benefit of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article for more than six consecutive years from the date of his first arrival in that other Contracting State.

ARTICLE 21 : *Professors, teachers and research scholars* – 1. A professor, teacher or research scholar who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college or other similar institution in that other Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his first arrival in that other State for such purpose.

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 20, an individual shall be deemed to be a resident of a Contracting State if he is a resident in that Contracting State in the fiscal year in which he visits the other Contracting State or in the immediately preceding fiscal year.

ARTICLE 22 : *Other income* – 1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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 income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14 as the case may be, shall apply.

3. Notwithstanding the provisions of paragraph 1, if a resident of a Contracting State derives income from sources within the other Contracting State in the form of winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or gambling or betting of any form or nature whatsoever such income may be taxed in the other Contracting State.

ARTICLE 23 : *Elimination of double taxation – 1.* The laws in force in either of the Contracting States will continue to govern the taxation of income in the respective Contracting States except where provisions to the contrary are made in this Convention.

2. Subject to the provisions of the laws of India regarding the allowance as a credit against Indian tax of tax paid in a territory outside India (which shall not affect the general principle hereof), the amount of Irish tax paid, under the laws of Ireland and in accordance with the provisions of this Convention, whether directly or by deduction, by a resident of India, in respect of income from sources within Ireland which has been subjected to tax both in India and Ireland shall be allowed as a credit against the Indian tax payable in respect of such income but in an amount not exceeding that proportion of Indian tax which such income bears to the entire income chargeable to Indian tax.

3. Subject to the provisions of the laws of Ireland regarding the allowance as a credit against Irish tax of tax payable in a territory outside Ireland (which shall not affect the general principle hereof)

- (a) Indian tax payable under the laws of India and in accordance with this Convention, whether directly or by deduction, on profits, income and gains from sources within India (excluding in the case of a dividend tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any Irish tax computed by reference to the same profits, income and gains by reference to which Indian tax is computed.
- (b) In the case of a dividend paid by a company which is a resident of India to a company which is a resident of Ireland and which controls directly or indirectly 25 per cent or more of the voting power in the company paying the dividend, the credit shall take into account [in addition to any Indian tax creditable under the provisions of sub-paragraph (a)] Indian tax payable by the company in respect of the profits out of which such dividend is paid.

4. (a) For the purposes of sub-paragraph (b) of paragraph 3, the term Indian tax payable shall be deemed to include 75 per cent of the Indian tax which would have been paid but for any exemption or reduction of tax granted under incentive provisions contained in Indian law designed to promote economic development to the extent that such exemption or reduction is granted for profits from industrial or manufacturing activities, or from the development, maintenance and operation of infrastructure facilities, or from agriculture, fishing or tourism (including restaurants and hotels), provided that such incentive provisions remain in substance unchanged since the date of signature of this Convention and that the activities have been carried out within India.

(b) The provisions of sub-paragraph (a) shall cease to apply after twelve years from the date of entry into force of this Convention.

(c) Should India amend in substance its incentive provisions in relation to the activities specified in sub-paragraph (a) or introduce any new incentive provisions in relation to such activities, India may request in writing that this paragraph should apply to such amended or new provisions. Likewise, India may request in writing an extension of the time-limit in sub-paragraph (b). Upon receipt of such request, Ireland shall enter into negotiations with India for such purposes.

5. For the purposes of paragraphs 2 and 3, profits, income and gains owned by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with the provisions of this Convention shall be deemed to arise from sources in that other Contracting State.

6. Income which in accordance with the provisions of this Convention is not to be subjected to tax in a Contracting State may be taken into account for calculating the rate of tax to be imposed in that Contracting State on other income.

ARTICLE 24 : *Non-discrimination* – 1. 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. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

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 State to any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

4. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

ARTICLE 25 : *Mutual agreement procedure* – 1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic laws of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

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 a satisfactory 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 which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law 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 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. 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.

ARTICLE 26 : *Exchange of information* – 1. The competent authorities of the Contracting States shall exchange such information including documents, as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting State concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention in

particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Article 1.

Any information so exchanged by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of the State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. 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 and administrative practice of that or of the other Contracting State;
- (b) to supply information or documents 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 27 : *Diplomatic agents and consular officials* – Nothing in this convention shall affect the fiscal privileges of diplomatic agents or consular officials under the general rules of international law or under the provisions of special agreements.

ARTICLE 28 : *Entry into force* – 1. The Contracting States shall notify each other in writing, through diplomatic channels, of the completion of the procedure required by the respective laws for the entry into force of this Convention.

2. This Convention shall enter into force thirty days after the receipt of the later of the notifications referred to in paragraph 1.

3. The provisions of this Convention shall have effect :

- (a) in India, in respect of income arising in any fiscal year beginning on or after the first day of April next following the calendar year in which the Convention enters into force; and
- (b) in Ireland :
 - (i) in respect of income-tax and capital gains tax, for any year of assessment beginning on or after the sixth day of April in the year next following the date on which this Convention enters into force;
 - (ii) in respect of corporation tax, for any financial year beginning on or after the first day of January in the year next following the year in which this Convention enters into force.

ARTICLE 29 : *Termination* – This Convention shall remain in force indefinitely unless terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year beginning after the expiration of five years from the date of entry into force of the Convention. In such event, the Convention shall cease to have effect :

- (a) in India, in respect of income arising in any fiscal year on or after the first day of April next following the calendar year in which the notice is given :
- (b) in Ireland :
 - (i) in respect of income-tax and capital gains tax, for any year of assessment beginning on or after the sixth day of April in the year next following the calendar year in which the notice is given ;
 - (ii) in respect of corporation tax, for any financial year beginning on or after the first day of January next following the calendar year in which the notice is given.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done in duplicate at New Delhi on this 6th day of November in 2000, in the Hindi and English languages, both the texts being equally authentic. In case of divergence between the two texts, the English text shall prevail.

PROTOCOL

At the signing of the Convention between the Government of the Republic of India and the Government of Ireland for the Avoidance of Double Taxation and for the Prevention of Fiscal Evasion with respect to taxes on income and capital gains, the undersigned have agreed that the following shall form an integral part of the Convention :

With reference to Articles 3 and 23

1. Where a person resident in Ireland is a member of a partnership which is resident in India and by virtue of this Convention any profits, income or gains of the partnership are relieved from tax in Ireland, the Convention shall not affect any liability to tax in Ireland of such person in respect of such persons share of any profits, income or gains of the partnership; any such share of profits, income or gains shall be treated for the purposes of Article 23 as profits, income or gains from sources in India and the appropriate part of the Indian tax borne by the partnership shall be allowed as a credit against any Irish tax computed by reference to the said share of the profits, income or gains.

With reference to Article 7

2. If, in accordance with the laws of a Contracting State, profits are attributed to a permanent establishment of an enterprise carrying on insurance business, 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; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in Article 7.

With reference to Article 24

3. The provisions of this Article shall not be construed as preventing India from charging the profits of a permanent establishment of an Irish company in India at a rate of tax which is higher than that imposed on the profits of a similar Indian company, nor as being in conflict with the provisions of paragraph 3 of Article 7 of this Convention.

With reference to collection assistance

4. It is understood that at the date of signature of this Convention, the laws of Ireland do not permit it to lend assistance in the collection of taxes on income, profits or gains of another country. However, if after the date of signature of this Convention, the laws of Ireland in this respect change and Ireland enters into an arrangement with another country to permit such assistance in collection, then Ireland shall inform the Indian competent authority and, if requested by such authority, shall immediately enter into negotiations for the purpose of incorporating provisions with regard to collection assistance in this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done in duplicate at New Delhi on this 6th day of November in 2000, in the Hindi and English languages, both the texts being equally authentic. In case of divergence between the two texts, the English text shall prevail.

ADDENDUM TO NOTIFICATION 45/2002 [F. NO. 503/6/99-FTD], DATED 20-2-2002.

In the Notification No. 45/2002 of the Government of India, in the Ministry of Finance (Department of Revenue), Number G.S.R. 105(E), dated the 20th February, 2002 published in the Gazette of India, (Extraordinary), in Part-II, section 3, sub-section (i), dated the 20th February, 2002, the Exchange of Letters between the Indian and the Irish authorities as annexed shall form part of the aforesaid notification.

ANNEXURE

The Department of Foreign Affairs presents its compliments to the Embassy of India and has the honour to refer to the Convention between the Government of Ireland and the Government of the Republic of India for the Avoidance of Double Taxation and for the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains which was signed in New Delhi on 6th November, 2000 and ratified by the Government of the Republic of India on

November 9, 2000 and which has yet to be ratified by the Irish Government, and to make, on behalf of the Government of Ireland, the following proposal for the purpose of its application.

The Government of Ireland proposes that the references in Article 3(1)(i) to a year beginning with the sixth day of April in one year and ending with the fifth day of April in the following year should read the calendar year.

The Government of Ireland also proposes that the references in article 28(3)(b)(i) to the sixth of April in the year next following should be read as the first day of January in the year next following. By reason of the amendment, the Convention between the Government of Ireland and the Government of the Republic of India would then take effect for all taxes covered by it from January 1, 2002.

Finally, the Government of Ireland also proposes that the references in Article 29(b)(i) to the sixth of April in the year next following should be read as the first day of January in the year next following.

If the foregoing proposals are acceptable to the Government of the Republic of India, the Department of Foreign Affairs has the honour to suggest that the present Note and the reply of the Government of the Republic of India to that effect shall be regarded as constituting an agreement between the two Governments in this matter which shall enter into force at the same time as the entry into force of the Convention.

The Department of Foreign Affairs avails itself of this opportunity to renew to the Embassy of India the assurances of its highest consideration.

The Embassy of India, Dublin, presents its compliments to the Department of Foreign Affairs of the Government of Ireland and with reference to their Note Verbale No. 348/764, dated 3rd September, 2001, regarding the Convention for Avoidance of Double Taxation and the Prevention of Fiscal Evasion, signed between India and Ireland, has the honour to convey that the concerned authorities in India have informed that the Government of India has accepted

the amendments to the convention suggested by the Government of Ireland *vide* the Note Verbale under reference above.

This information may please be conveyed to the Department of Revenue, Government of Ireland, so that these amendments can come into effect from the date as stipulated in the Note Verbale dated 3rd September, 2001, from the esteemed Department.

The Embassy of India avails itself of this opportunity to renew to the Department of Foreign Affairs, Government of Ireland the assurances of its highest consideration.

Notification : *No. GSR 212(E), dated 19-3-2002.*

Israel

the annexed Convention between the Government of the Republic of India and the Government of the State of Israel for the avoidance of double taxation and for the prevention of fiscal evasion with respect to taxes on income and on capital has entered into force on the 15th May, 1996, after the notification by both the Contracting States to each other of the completion of the procedures required under their laws for bringing into force of the said Convention in accordance with Article 29 of the said Convention.

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), and section 44A of the Wealth-tax Act, 1957 (27 of 1957), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in the Union of India.

Notification : No. GSR 256(E), dated 26-6-1996.

ANNEXURE

CONVENTION BETWEEN THE REPUBLIC OF INDIA AND THE STATE OF ISRAEL FOR THE AVOIDANCE OF DOUBLE TAXATION AND FOR THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Government of the Republic of India and the Government of the State of Israel,

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on 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. This Convention shall apply to taxes on income imposed on behalf of a Contracting State or of its political sub-divisions or

local authorities and to taxes on capital imposed on behalf of a Contracting State, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which the Convention shall apply are in particular :

(a) In India :

(i) the income-tax, including any surcharge thereon ; and

(ii) the wealth-tax,

(hereinafter referred to as Indian tax) ;

(b) In Israel :

(i) the income-tax ;

(ii) the company tax ;

(iii) the capital gains tax ;

(iv) the tax imposed upon gains from the alienation of immovable property according to the Land Appreciation Tax Law ; and

(v) taxes imposed on real property according to the Property Tax Law,
(hereinafter referred to as Israeli tax).

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of significant changes which have been made in their respective taxation laws.

ARTICLE 3 : *General definitions* – 1. For the purposes of this Convention, unless the context otherwise requires :

(a) the term India means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has

sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law, including the U.N. Convention on the Law of the Sea ;

- (b) the term Israel means the State of Israel, and when used in a geographical sense, means the territory and the territorial sea over which it exercises its State sovereignty and jurisdiction, as well as the continental shelf, the exclusive economic zone and that part of the sea-bed and sub-soil under the sea over which it exercises sovereign rights according to the international law ;
- (c) the term person includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting State ;
- (d) the term company means any body corporate or any entity which is treated as a body corporate for tax purposes ;
- (e) the terms a Contracting State and the other Contracting State mean the Republic of India or the State of Israel as the context requires ;
- (f) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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 ;
- (g) the term international traffic means any transport by a ship or aircraft operated by an enterprise which is a resident of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State ;
- (h) the term competent authority means :
 - (i) in India: the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative ;
 - (ii) in Israel: the Minister of Finance or his authorised representative;
- (i) the term national means :
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State ;
- (j) the term fiscal year means :

- (i) in the case of India, the twelve-month period beginning on the 1st of April ;
 - (ii) in the case of Israel, the twelve-month period beginning on the 1st of January ;
 - (k) the term tax means Indian tax or Israeli tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty imposed relating to those taxes.
2. (a) As regards the application of the Convention by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.
- (b) If as a result of the application of sub-paragraph (a), the meaning of a term under the laws of a Contracting State is different from the meaning of that term under the laws of the other Contracting State, or if the meaning of such term is not readily determinable under the laws of one of the Contracting States, the competent authorities of the Contracting States may agree upon a common meaning of that term.
- (c) If, in a particular case, the application of the Convention fails to prevent double taxation because the Contracting States have differing rules with respect to the source of the category of income involved, the competent authorities of the Contracting States may reach agreement as to the source of income in the particular case so as to eliminate double taxation.

ARTICLE 4 : *Resident* – 1. For the purposes of this Convention, the term resident of a Contracting State means any person who, under the laws of that State, is liable to tax 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 status shall be determined as follows :

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with

which his personal and economic relations are closer (centre of vital interests) ;

- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode ;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national ;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 State in which its place of effective management is situated. If the State in which its place of effective management is situated cannot be determined, then the competent authorities of the Contracting States shall settle the question by mutual agreement.

ARTICLE 5 : *Permanent establishment* – 1. For the purposes of this Convention, the term permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (a) a place of management ;
- (b) a branch ;
- (c) an office ;
- (d) a factory ;
- (e) a workshop ; and
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site or construction or assembly project or supervisory activities in connection therewith constitute a permanent establishment only if such site, project or activity last more than six months.

4. Notwithstanding the preceding provisions of this Article, the term permanent establishment shall be deemed not to include :

- (a) the use of facilities solely for the purpose of storage, display or delivery 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, display or delivery ;
- (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 of collecting information, for the enterprise ;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character ;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 6 applies – is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this place of business a permanent establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other of an independent status, provided that such persons are acting in the ordinary course of their business, and in their commercial and financial relations with the enterprise, no conditions are agreed or imposed which differ from those usually agreed between independent persons.

7. 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 otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6 : *Income from immovable property* – 1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may also be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded 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, the profits of the enterprise may also be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, 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.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes 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.

4. Insofar 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 contained 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 purposes 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 : *Shipping and air transport* – 1. Profits from the operation of ships and aircraft in international traffic shall be taxable only in the Contracting State of which the enterprise is a resident.

2. The term profits shall include derived by the enterprise from the rental of ships and aircraft operated in international traffic. Such term shall also include income derived by the enterprise from the use, maintenance or rental of containers operated in international traffic (including trailers, barges and related equipment for the transport of such containers) if such income is incidental to the profits of the enterprise from the operation of ships and aircraft in international traffic.

3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

4. For the purposes of this Article, interest on funds connected with the operation of ships or aircraft in international traffic shall be regarded as income or profits derived from the operation of such ships or aircraft and the provisions of Article 11 shall not apply in relation to such interest.

5. The term operation of ships and aircraft shall mean business of transportation by ships or air of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of ships and aircraft, including the sale of tickets for such transportation on behalf of other enterprises, the incidental lease of ships and aircraft and any other activity directly connected with such transportation.

ARTICLE 9 : *Associated enterprises* – 1. 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 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.

2. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits where that other State considers the adjustment justified. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10 : *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 other 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 laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

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, jouissance shares or jouissance rights, mining shares, founders 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 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 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 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 State, nor subject the companys undistributed profits to a tax on the companys undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11 : *Interest* – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraphs 1 and 2, interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State, if the interest is paid in respect of

- (a) a bond, debenture or other similar obligation of the Government of the first-mentioned Contracting State or a political sub-division or local authority thereof ; or
- (b) a loan made, refinanced, guaranteed or insured, or a credit extended, refinanced, guaranteed or insured by
 - (i) in the case of India, the Reserve Bank of India,
 - (ii) in the case of Israel, the Bank of Israel, or
 - (iii) other governmental agencies or lending institutions as may be specified and agreed in an exchange of notes between the competent authorities of the Contracting States.

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 debtors 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, 2 and 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 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 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 resident 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 such 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 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 the other provisions of this Convention.

ARTICLE 12 : *Royalties* – 1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that 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 including cinematograph film, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

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 perform 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 State itself, a political sub-division, a local authority or a resident of that 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 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 the other provisions of this Convention.

ARTICLE 13 : *Fees for technical services* – 1. Fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

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

3. The term fees for technical services as used in this Article means payments of any kind received as a consideration for services of a managerial, technical or consultancy nature, including the provision of services by technical or other

personnel, but does not include payments for services mentioned in Article 16 of this Convention.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State, in which the fees for technical services arise, through a permanent establishment situated therein, or perform in that other State independent personal services from a fixed base situated therein, and the right, property or contract in respect of which the fees for technical services 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. Fees for technical services shall be deemed to arise in a Contracting State when the services are rendered in that State and the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the fees for technical services, 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 fees for technical services was incurred, and such fees for technical services are borne by such permanent establishment or fixed base, then such fees for technical services shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, by reason of special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of fees for technical services paid exceeds the amount which would have been paid 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 the other provisions of this Convention.

7. The provisions of paragraphs 1 to 6 of this Article shall not apply to payments relating to services mentioned hereinbelow :

- (i) Services that are ancillary and subsidiary, and inextricably and essentially linked, to a sale of property ;
- (ii) Services that are ancillary and subsidiary to the rental of ships, aircraft, containers or other equipment used in connection with the operation of ships or aircraft in international traffic ;
- (iii) Teaching in or by an educational institution ;
- (iv) Services for the personal use of the individual or individual making the payments ; or
- (v) Professional services as defined in Article 15.

ARTICLE 14 : *Capital gains* – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may also be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may also be tax in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State or which the enterprise is a resident.

4. Gains from the alienation of shares or similar rights being shares in a company, the assets of which consist principally of immovable property situated in a Contracting State, may be taxed in that State. Gains from the alienation of an interest in a partnership, trust or estate, the property of which consists principally of immovable property situated in a Contracting State, may also be taxed in that State.

5. Gains derived by a resident of a Contracting State from the sale, exchange or other disposition, directly or indirectly, or shares other than those mentioned in paragraph 4, or similar rights in a company which is a resident of the other Contracting State may also be taxed in that other State.

6. Gains from the alienation of any property other than that referred to in paragraphs 1 to 5, shall be taxable only in the Contracting State of which the alienator is a resident.

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 State except in the following circumstances, when such income may also be taxed in the other Contracting State :

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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 State ; or
- (b) if his stay in the other state is for a period or periods exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other 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, 20 and 21, 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 State unless the employment is exercised in the other Contracting State.

If the employment is so exercised, such remuneration as is derived therefrom may also be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if :

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned,
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- (c) the remuneration is not borne by a permanent establishment of a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic may also be taxed in the Contracting State of which the enterprise is a resident.

ARTICLE 17 : *Directors fees* – Directors fees and other 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 may also be taxed in that other State.

ARTICLE 18 : *Artistes and sportspersons* – 1. Notwithstanding the provisions of Articles 15 and 16, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsman 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 sportsperson are exercised.

3. Notwithstanding the provisions of paragraph 1, income derived by an entertainer or a sportsperson who is a resident of a Contracting State from his personal activities as such exercised in the other Contracting State, shall be taxable only in the first-mentioned Contracting State, if the activities in the other Contracting State are supported wholly or substantially from the public funds of the first-mentioned Contracting State, including any of its political sub-divisions or local authorities.

4. Notwithstanding the provisions of paragraph 2 and Articles 7, 15 and 16, where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such in a Contracting State accrues not to the entertainer or sportsperson himself but to an other person, that income shall be taxable only in the other Contracting State, if that other person is supported wholly or substantially from the public funds of that other State, including any of its political sub-divisions or local authorities.

ARTICLE 19 : *Pensions* – Subject to the provisions of paragraph 2 of Article 20, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

ARTICLE 20 : *Government service* – 1. (a) Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who :

(i) is a national of that State ; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of that State.

3. The provisions of Articles 16, 17 and 19 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

ARTICLE 21 : *Professors, teachers and students* – 1. Remuneration received for education or scientific research by an individual who is or was immediately before visiting a Contracting State a resident of other Contracting State and who is present in the first-mentioned State for the purpose of scientific research or for teaching at an educational institution shall be exempt from tax in the first-mentioned State. This exemption shall be granted for a period that shall not exceed two years from the date on which the teacher or researcher first entered the first-mentioned State for the purpose of engaging in scientific research or for teaching. This Article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

2. (a) Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

(b) Payments which a student or business apprentice receives as remuneration from employment in the first-mentioned State, in an amount not exceeding a sum equivalent to 3,000 US dollars in the currency of the first-mentioned State during any fiscal year shall be exempt from tax in the first-mentioned State.

The benefit of this paragraph shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this paragraph for more than three consecutive years from the date of his first arrival in the first-mentioned Contracting State.

ARTICLE 22 : *Other income* – 1. Items of income of a resident of a Contracting State, wherever arising not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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 income 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.

3. Notwithstanding the provisions of paragraph 1, any winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any form or nature whatsoever may also be taxed in the Contracting State where they arise.

ARTICLE 23 : *Capital* – 1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may also be taxed in that other State.

3. Capital represented by ships and aircraft operated in international traffic, and by movable property pertaining to the operation of such ships and aircraft, shall be taxable only in the Contracting State of which the enterprise is a resident.

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

ARTICLE 24 : *Elimination of double taxation* – 1. Subject to the laws of Israel from time to time in force regarding the allowance as a credit against Israeli tax or tax paid in any country other than Israel (which shall not affect the general provision contained in this paragraph), Indian tax paid in respect of income derived from or capital owned in India shall be allowed as a credit against Israeli tax payable in respect of that income or capital. The credit shall not, however, exceed that portion of Israeli tax which the income or capital from sources within India be as to the entire income or capital, as the case may be, subject to Israeli tax.

2. Where a resident of India derives income or owns capital which, in accordance with the provisions of this convention, may be taxed in Israel, India shall allow :

- (a) as a deduction from the tax on the income of that resident, an amount equal to the income-tax paid in Israel, whether directly or by deduction.
- (b) as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in Israel.

Such deduction in either case shall not, however, exceed that part of the income-tax or capital tax, as computed before the deduction is given, which is attributable, as the case may be, to the income or the capital which may be taxed in Israel.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, where, a resident of a Contracting State derives income by way of dividends on shares of companies resident in the other Contracting State, the first-mentioned Contracting State shall allow credit of 15 per cent of gross amount of such dividend from the tax payable.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, where a resident of a Contracting State derives income by way of interest from any source in other Contracting State, the first-mentioned Contracting State shall

allow a credit of 10 per cent of the gross amount of such interest from the tax payable.

5. Where in accordance with any provision of the Convention income derived or capital owned by a resident of a Contracting State is exempt from tax in that State, such state may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

ARTICLE 25 : *Non-discrimination* – 1. Nationals of 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. This provision shall notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting State.

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. This provision shall not be construed as preventing a Contracting State from charging the profits of permanent establishment which a company of the other Contracting State has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first-mentioned Contracting State, nor as being in conflict with the provision of paragraph 3 of Article 7 of this Convention.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, paragraph 6 of Article 12, or paragraph 6 of Article 13, apply interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining

the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

4. 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 State to any taxation or any requirements connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

ARTICLE 26 : *Mutual agreement procedure* – 1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 25, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

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 a satisfactory 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 which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting State.

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. 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.

ARTICLE 27 : *Exchange of information* – 1. The competent authorities of the Contracting States shall exchange such information (including documents), as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use, the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. 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 and administrative practice of that or of the other Contracting State ;
- (b) to supply information which is not obtainable under the laws or in the normal course of 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 28 : *Diplomatic agents and consular officers* – Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

ARTICLE 29 : *Entry into force* – 1. The Contracting State shall notify the other Contracting State in writing, through diplomatic channels, upon the completion of their respective legal procedures to bring this Convention into force.

2. The Convention shall enter into force on the date of the letter of such notifications and its provisions shall have effect :

(a) in the Republic of India :

(i) in respect of taxes withheld at source on dividends, interest, royalties and fees for technical services, as defined in Articles 10, 11, 12 and 13, respectively, for amounts paid or credited on or after the first day of the month next following that in which the Convention enters into force ;

(ii) in respect of taxes on income, and taxes on capital, for fiscal years beginning on or after the first day of April, 1994 ; and

(b) in the State of Israel :

(i) in respect of taxes withheld at source on dividends, interest, royalties and fees for technical services, as defined in Articles 10, 11, 12 and 13, respectively, for amounts paid or credited on or after the first day of the month next following that in which the Convention enters into force ;

(ii) in respect of taxes on income, and taxes on capital, for taxable periods beginning on or after the first day of January, 1994.

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

(a) in the Republic of India :

(i) in respect of taxes withheld at source on dividends, interest, royalties and fees for technical services, as defined in Articles 10, 11, 12 and 13, respectively, for amounts paid or credited on or after the first day of

- April, next following the calendar year in which the notice of termination is given ; and
- (ii) in respect of taxes on income, and taxes on capital, of fiscal years beginning on or after the first day of April, next following the calendar year in which the notice of termination is given ; and
- (b) in the State of Israel :
- (i) in respect of taxes withheld at source on dividends, interest, royalties and fees for technical services, as defined in Articles 10, 11, 12 and 13, respectively, for amounts paid or credited on or after the first day of January, next following the calendar year in which the notice of termination is given ; and
 - (ii) in respect of taxes on income, and taxes on capital, for taxable periods beginning on or after the first day of January, next following the calendar year in which the notice of termination is given.

In witness whereof the undersigned, duly authorised hereto, have signed this Convention.

Done at New Delhi on 29th January, 1996 in two original copies, each in the Hindi, Hebrew and English languages, all the texts being equally authentic. In the case of any divergence in interpretation, the English text shall prevail.

PROTOCOL

At the signing today of the Convention between the Republic of India and the State of Israel for the Avoidance of Double Taxation and for the Prevention of Fiscal Evasion with respect of Taxes on Income and on Capital, the undersigned have agreed upon the following provisions, which shall form an integral part of the Convention.

1. Nothing in the provisions of paragraph 3 of Article 7 shall be interpreted as precluding a Contracting State from determining executive and administrative expenses of a head office incurred outside that Contracting State according to the provisions of internal laws as they exist at the time of the signing of this Convention. However, should future changes in the domestic law of a Contracting State further restrict the deduction of such expenses in any

manner, then the two Contracting States shall consult each other for purposes of amending this paragraph.

2. The competent authorities of the Contracting States shall initiate the proper procedure to review the provisions of Articles 12 and 13 (Royalties and fees for technical services, respectively) after a period of five years from the date of entry into force of this Convention. However, if under any Convention or Agreement between India and any third State which enters into force after 1-1-1995, India limits its taxation at source or Royalties or Fees for Technical Services or Interest or Dividends to a rate lower or a scope more restricted than the rate or scope provided for in this Convention, the same rate or scope as provided for in that Convention or Agreement on the said items of income shall also apply under this Convention with effect from the date on which the present Convention comes into force or the relevant Indian Convention or Agreement, whichever enters into force later.

3. In respect of paragraph 2 of Article 25, it is understood that if India enters into an Agreement or Convention for the avoidance of double taxation with a third State after 1-1-1995, whereby the difference in the rates of tax between enterprises of a permanent establishment of a company of a country other than India and that of India is removed or reduced, then, a corresponding reduction shall be effected in respect of rates of taxes on profits according to the enterprises of a company which is a resident of Israel.

In witness whereof the undersigned, duly authorised hereto, have signed this Protocol.

Done at New Delhi on 29th January, 1996, in two original copies, each in the Hindi, Hebrew and English languages, all the texts being equally authentic. In the case of any divergence in interpretation, the English text shall prevail.

Italy

Agreement for avoidance for double taxation

and

prevention of fiscal evasion with Italy

Whereas the annexed Convention between the Government of the Republic of India and the Government of the Republic of Italy for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income has entered into force on 23-11-1995 after the exchange of instruments of ratification by the Contracting States in accordance with paragraph 1 of Article 30 of the said Convention;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in the Union of India.

Notification : No. GSR 189(E), dated 25-4-1996.

ANNEXURE

CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE REPUBLIC OF ITALY FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of India and the Government of the Republic of Italy.

Desiring to conclude an Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income.

Have agreed as follows :

CHAPTER I – 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 taxes to which the Convention shall apply are :

(a) in the case of India :

1. the Income-tax including any surcharge thereon ; and
2. the surtax ;

(hereafter referred to as Indian tax) ;

(b) in the case of Italy :

1. the personal income-tax ;
2. the corporate income-tax ; and
3. the local income-tax ;

even if they are collected by withholding taxes at the source.

(hereafter referred to as Italian Tax).

2. The Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of the present Convention in addition to, or in place of, the taxes referred to in paragraph 1 of this Article.

3. At the end of each year, the competent authorities of the Contracting States shall notify to each other any changes which have been made in their respective taxation laws which are the subject of this Convention and furnish copies of relevant enactments and regulations.

CHAPTER II – DEFINITIONS

ARTICLE 3 : *General definitions* – 1. For the purposes of this Convention, unless the context otherwise requires :

- (a) the term India means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdictions, according to the Indian law and in accordance with International Law ;
- (b) the term Italy means the Republic of Italy including the territorial waters of Italy and airspace above them, as well as any area beyond the said territorial waters,

specifically it includes the sea-bed and the subsoil contiguous to the territory of the peninsula and the Italian islands situated beyond the territorial waters within bounds indicated by the Italian law on the exploration and the exploitation of their natural resources ;

- (c) the terms a Contracting State and the other Contracting State mean India or Italy, as the context require ;
- (d) the term tax means Indian tax or Italian tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty imposed relating to those taxes ;
- (e) the term person shall have the meaning assigned to it in the taxation laws in force in the respective Contracting States ;
- (f) the term company means any body corporate or any entity which is treated as a company or a body corporate under the taxation laws of the respective Contracting States ;
- (g) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean, 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 ;
- (h) the term fiscal year in relation to Indian tax means previous year as defined in the Income-tax Act, 1961 (43 of 1961) ;
- (i) the term international traffic means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State ;
- (j) the term national means any individual possessing the nationality of a Contracting State and any legal person, partnership or association deriving its status from the law in force in the Contracting State ;
- (k) the term competent authority means in the case of India, the Central Government in the Ministry of Finance (Deptt. of Revenue) or their authorised representative, and in the case of Italy, the Ministry of Finance.

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

ARTICLE 4 : *Fiscal domicile* – 1. For the purposes of this Convention the term resident of a Contracting State means any person who is a resident of that State in accordance with the taxation laws of that State.

2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his residential status for the purposes of this Convention 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 (hereinafter referred to as his centre of vital interests) ;
- (b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he does not have 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 national ;
- (d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1, a person other than an individual is a resident of both the Contracting State, 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 means a fixed place of business through which the business of the enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (a) a place of management ;
- (b) a branch ;
- (c) an office ;
- (d) a factory ;
- (e) a workshop ;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources ;
- (g) a warehouse in relation to a person providing storage facilities for others ;
- (h) a premises used as a sales outlet or for receiving or soliciting orders ;
- (i) an installation or structure used for the exploration or exploitation of natural resources ;
- (j) a building site or construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or activities (together with other such sites, project or activities, if any) continue for a period of more than six months, or where such project or supervisory activity, being incidental to the sale of machinery or equipment, continues for a period not exceeding six months and the charges payable for the project or supervisory activity exceed 10 per cent of the sale price of the machinery and equipment :

Provided that for the purpose of this paragraph, an enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it provides services or facilities in connection with or supplies plant and machinery on hire used or to be used in, the prospecting for, or extraction or production of mineral oils in the State.

3. Notwithstanding the preceding provisions of this Article, the term Permanent establishment shall be deemed not to include :

- (a) the use of facilities solely for the purpose 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 of collecting information, for the enterprise ;
- (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.

However, the provisions of sub-paragraphs (a) to (e) shall not be applicable where the enterprise maintains any other fixed place of business in the other Contracting State for any purposes other than the purposes specified in the said sub-paragraphs.

4. Notwithstanding the provisions of paragraphs 1 and 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 that State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise ;
- (b) he has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise ;
- (c) he habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise itself or for the enterprise and other enterprise controlling, controlled by, or subject to the same common control, as that enterprise; or
- (d) in so acting, he manufactures or processes in that State for the enterprise goods or merchandise belonging to 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 State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise itself or on behalf of that enterprise and other enterprise controlling controlled by, or subject to the same common control, as that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

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 otherwise), shall not of itself constitute either company a permanent establishment of the other.

CHAPTER III – TAXATION OF INCOME

ARTICLE 6 : *Income from immovable property* – 1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the 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 and forestry, rights to which the provisions of general law respective landed property apply. Usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources shall also be considered as immovable property. Ships, boats and aircraft shall not be regarded 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, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to (a) that permanent establishment; (b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or (c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.

2. Subject to the provisions of paragraph 3, 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 or of the determination thereof presents exceptional difficulties, the profits attributable to the permanent establishment may be estimated on a reasonable basis.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deduction expenses which are incurred for the purposes of the business 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.

4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for purpose of export to the enterprise of which it is the permanent establishment.

5. For the purposes 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.

6. 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. Income derived from the operation of aircraft in international traffic by an enterprise of one of the Contracting States shall not be taxed in the other Contracting State.

2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

3. For the purposes of this Article :

- (a) interest of funds connected with the operation of aircraft in international traffic shall be regarded as income from the operation of such aircraft ; and
- (b) the term operation of aircraft shall mean business of transportation by air of persons, livestock, goods or mail, carried on by the owners or lessees or charterers of aircraft, including the sale of tickets for such transportation on behalf of other enterprises, the incidental lease of aircraft and any other activity directly connected with such transportation.

ARTICLE 9 : *Shipping* – 1. Income of an enterprise of a Contracting State from the operation of ships in international traffic shall be taxable only in that State.

2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency engaged in the operation of ships.

3. For the purpose of this Article, interest on funds connected with the operation of ships in international traffic shall be regarded as income from the operation of such ships and the provisions of Article 12 shall not apply in relation to such interest.

4. For the purpose of paragraph 1 of this Article, income from the operation of ships in international traffic shall include :

- (a) profits derived from the rental on a full or bareboat basis of ships if such rental profits are incidental to the operation of ships in international traffic, and
- (b) profits derived from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) in connection with the transport of goods or merchandise in international traffic.

5. Paragraph 1 shall not apply to profits arising as a result of coastal traffic.

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 resident of a Contracting State to a resident of the other Contracting State may be taxed in that other 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 laws of that State, but if the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed :

- (a) 15 per cent of the gross amount of the dividends if the beneficial owner is a company which owns at least 10 per cent of the shares of the company paying the dividends ;
- (b) 25 per cent of the 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 provisions of paragraph 2(a) would apply in respect of dividends arising out of the investment made after the date of signature of the Convention.

4. The term dividends as used in this Article means income from shares, jouissance shares or jouissance rights, mining shares, founders 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 taxation laws of the State of which the company making the distribution is a resident.

5. 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 a case, the dividends shall be taxable in that other Contracting State according to its own law.

6. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other 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 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 State, nor subject the companys undistributed profits to a tax on the companys undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other 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 both the Contracting States.

2. Notwithstanding the provisions of paragraph 1, the tax chargeable in a Contracting State on interest arising in that State and paid to a resident of the other Contracting State in respect of loans or debts shall not exceed 15 per cent of the gross amount of such interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State if :

- (a) the payer of the interest is the Government of that Contracting State or a local authority thereof, or
- (b) the interest is paid to any agency or instrumentality (including a financial institution) which may be agreed upon in this behalf by the two Contracting States.

4. The term interest as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the State in which the income arises.

5. The provisions of paragraphs 1 and 2 shall not apply if the recipient 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 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 a case, the interest shall be taxable in that other Contracting State according to its own law.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political or administrative sub-division, a local authority or a resident of that State. Where, however, the person paying the interest, 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 indebtedness on which the interest is paid was

incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, 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 recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 13 : *Royalties and fees for technical services* – 1. Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, or fees for technical services, the tax so charged shall not exceed 20 per cent of the gross amount of the royalties or fees for technical services.

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, including cinematograph film 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.

4. The term fees for technical services as used in this Article means payments of any amount to any person other than payments to an employee of the person making payments, in consideration for the services of a managerial, technical or consultancy nature, including the provisions of services of technical or other personnel.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services 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, property or contract in respect of which the royalties or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such a case, the royalties or fees for technical services shall be taxable in that other Contracting State according to its own law.

6. Royalties and fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a political or administrative sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties or fees for technical services, 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 or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the 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 royalties or fees for technical services paid exceeds the amount which would have been paid 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 the other provisions of this Convention.

ARTICLE 14 : *Capital gains* – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships and aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from the alienation of shares other than those mentioned in paragraph 4 in a company which is a resident of a Contracting State may be taxed in that State.

6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 15 : *Independent personal services* – 1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character may be taxed in that State. Such income may also be taxed in the other Contracting State if such services are performed in that other State and if :

- (a) he is present in that other State for a period or periods aggregating 183 days in the relevant fiscal year, or
- (b) he has a fixed base regularly available to him in that other State for the purpose of performing his activities but only so much of the income as is attributable to that fixed base.

2. The term professional services includes 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, 18, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if :

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerning ;
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State ; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft in international traffic, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

ARTICLE 17 : *Directors fees* – Directors 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 may be taxed in that other Contracting State.

ARTICLE 18 : *Artistes 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 a 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 State.

2. Where income in respect of personal activities exercised by an entertainer or 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. Notwithstanding the provisions of paragraph 1, income derived by an entertainer or an athlete who is a resident of a Contracting State from personal activities as such exercised in the other Contracting State, shall be taxable only in the first-mentioned Contracting State, if the activities in the other Contracting State are supported wholly or substantially from the public funds of the first-mentioned Contracting State, including any of its political sub-division or local authorities.

4. Notwithstanding the provisions of paragraph 2 and Articles 7, 15 and 16, where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such in a Contracting State accrues not to the entertainer or athlete himself but to another person, that income shall be taxable only in the other Contracting State, if that other person is supported wholly or substantially from the public funds of that other State, including any of its political sub-division or local authorities.

ARTICLE 19 : *Pensions* – Subject to the provisions of paragraph 2 of Article 20, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment may be taxed in both the Contracting States.

ARTICLE 20 : *Government service* – 1. (a) Remuneration, other than a pension, paid by a Contracting State or a political or administrative sub-division or a local authority thereof to any individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State, who :

(i) is a national of that State, or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political or administrative sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a national of and a resident of that State.

3. The provisions of Articles 16, 17, 18 and 19 shall apply to remunerations and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political or administrative sub-division or a local authority thereof.

ARTICLE 21 : *Professors, teachers and researchers* – 1. A professor or teacher who makes a temporary visit to a Contracting State for a period not exceeding two years for the purpose of teaching or conducting research at a university, college, school or other educational institution, owned by the Government or non-profit organizations, and who is, or immediately before such visit was, a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State in respect of remuneration for such teaching or research.

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.

ARTICLE 22 : *Students and trainees* – 1. An individual who is a resident of a Contracting State and visits the other Contracting State solely :

(a) as a student at a university, college or other recognised educational institution in that other Contracting State, or

(b) as a business apprentice, or

- (c) for the purpose of study, research or training, as a recipient of a grant, allowance or award, from a governmental, religious, charitable, scientific or educational organization,

shall be exempt from tax in that other Contracting State :

- (i) on his remuneration and all remittances from abroad for the purposes of maintenance, education or training ;
- (ii) on the grant, allowance or award; and
- (iii) in respect of remuneration for an employment in that other Contracting State for such period of time as may be necessarily required for the completion of study, research or training, as the case may be.

2. An individual who is a resident of a Contracting State and who visits the other Contracting State for a period not exceeding one year as employee of, or under contract with, an enterprise of the first-mentioned Contracting State or an organization referred to in paragraph 1 for the primary purpose of acquiring technical, professional or business experience from a person other than such enterprise or organization shall be exempt from tax in that other Contracting State in respect of remuneration for an employment in that other Contracting State for such a period, to the extent such remuneration does not exceed 5,000,000 Italian Liras or its equivalent in Indian rupees, as the case may be, in any year.

ARTICLE 23 : *Other income* – Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention may be taxed in both the Contracting States.

CHAPTER IV

ARTICLE 24 : *Method for elimination of double taxation* – 1. The laws in force in either of the Contracting States will continue to govern the taxation of income in the respective Contracting States except where provisions to the contrary are made in this Convention.

2. It is agreed that double taxation shall be avoided in accordance with the following paragraphs of this Article.

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

(b) For the purposes of the credit referred to in sub-paragraph (a) above, where the resident of India is a company by which surtax is payable, the credit to be allowed against Indian tax shall be allowed in the first instance against the income-tax payable by the company in India and, as to the balance, if any, against the surtax payable by it in India.

4. (a) If a resident of Italy owns items of income which are taxable in India, Italy, in determining its income taxes specified in Article 2 of this Convention, may include in the basis upon which such taxes are imposed the said items of income, unless specific provisions of this Convention otherwise provide.

In such a case, Italy shall deduct from the taxes so calculated the Indian tax on income, but in an amount not exceeding that proportion of the aforesaid Italian tax which such items of income bear to the entire income.

On the contrary, no deduction will be granted if the item of income is subjected in Italy to a final withholding tax by request of the recipient of the said income in accordance with the Italian law.

(b) For the purposes of paragraphs 3 and 4 of this Article, where tax on business profits, dividends, interests, royalties or fees for technical services arising in a Contracting State is exempted or reduced in accordance with the taxation laws of that State, such tax which has been exempted or reduced shall be deemed to have been paid.

5. Income which is in accordance with the provisions of this Convention is not to be subjected to tax in a Contracting State may be taken into account for calculating the rate of tax to be imposed in that Contracting State on other income.

CHAPTER V – SPECIAL PROVISIONS

ARTICLE 25 : *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 State than the taxation levied on enterprises of that other State carrying on the same activities in the same circumstances or under the same conditions.

3. Nothing contained in this Article shall be construed as obliging a Contracting State to grant to persons not resident in that State any personal allowances, reliefs and reductions for taxation purposes which are by law available only to persons who are so resident.

4. 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 in the same circumstances and under the same conditions.

5. In this Article, the term taxation means taxes which are the subject of this Convention.

ARTICLE 26 : *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. The claim must

be lodged within two years from the date of the assessment or of the withholding of tax at the source, whichever is the later.

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. 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.

ARTICLE 27 : *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 of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is not contrary to the Convention as well as to prevent fraud or evasion of such taxes. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. 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 the administrative practice of that or of the other Contracting State ;
- (b) to supply information which is 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 28 : *Diplomatic and consular activities* – 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 29 : *Refunds* – 1. Tax withheld at source in a Contracting State shall be refunded on application by or on behalf of the taxpayer or by the State of which he is a resident if such resident is entitled to a refund of that tax under the provisions of this Convention.

2. Application for refund shall be made within the time limit fixed by the law of the Contracting State in which the tax has been withheld and shall be accompanied by a certificate of the Contracting State of which the taxpayer is a resident certifying that the conditions required for entitlement to the refund have been fulfilled.

3. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this Article, in accordance with the provisions of Article 26 of this Convention.

CHAPTER VI FINAL PROVISIONS

ARTICLE 30 : *Entry into force* – 1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Rome as soon as possible.

2. This Convention shall enter into force on the date of exchange of instruments of ratification and its provisions shall have effect :

- (a) in India, in respect of income assessable in any previous year commencing on or after the first day of April of the calendar year next following the calendar year in which the Convention enters into force ;
- (b) in Italy, in respect of income assessable in any taxable period commencing on or after the first day of January of the calendar year next following the calendar year in which the Convention enters into force.

3. The existing Agreement between the Government of India and the Government of Italy for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed at Rome on 12th January, 1981 shall cease to have effect at the time when the provisions of this Convention shall be effective in accordance with the provisions of paragraph 2.

ARTICLE 31 : *Termination* – This Convention shall remain in force indefinitely, but either of the Contracting States may on or before 30th June 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 India, in respect of income assessable for any taxable period (previous year) commencing on or after the 1st day of April in the calendar year next following that in which such notice is given.
- (b) in Italy, in respect of income assessable for any taxable period commencing on or after the 1st day of January in the calendar year next following that in which such notice is given.

PROTOCOL

To the Convention between the Government of the Republic of India and the Government of the Republic of Italy for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

At the signing of the Convention concluded today between the Government of the Republic of Italy 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 undersigned have agreed upon the following additional provisions which shall form an integral part of the said Convention.

It is understood :

- (a) that, with reference to Article 7, paragraph 3, the expression expenses which are incurred for the purposes of the business of the permanent establishment means the expenses directly connected with the activity of the permanent establishment, and royalties, commission and interest to the extent of the actual amount of expenses reimbursed, and in both cases as admissible in accordance with the provisions of the taxation laws of the Contracting State in which the permanent establishment is situated ;
- (b) that, with reference to Article 12, paragraph 2, the expression loans or debts means, in the case of India, loans or debts approved in this behalf by the Government of India ;
- (c) that, with reference to Article 20, the remuneration paid to an individual in respect of services rendered to the Bank of Italy, to the Italian State Railways (FF.SS.), to the Italian State Post undertaking (PP.TT.), to the Italian Foreign Trade Institution (I.C.E.), to the Italian Tourism Body (E.N.I.T.), and to any corresponding Indian body or institution, are covered by the provisions concerning Government service and, consequently, by paragraphs 1 and 2 of the aforesaid Article.

Other public bodies or institutions may also be included in the preceding list by mutual agreement between the competent authorities of the Contracting States ;

- (d) that, with reference to Article 24, paragraph 4(b), tax exempted or reduced means, in the case of India, any amount which would have been payable, in respect of a taxable year as Indian tax but for a deduction allowed in computing the taxable income or an exemption or reduction of tax granted for that year under :
 - (i) Sections 10(4), 10(4A), 10(4B), 10(15)(iv), 10A, 32AB, 80HH, 80HHC, 80-I and 80U of the Income-tax Act, 1961 (43 of 1961), 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 ;

- (i) any other provision which may subsequently be made granting an exemption or reduction from tax which is agreed by the competent authorities of the Contracting States to be of a substantially similar character, if it has been modified only in minor respects so as not to affect its general character ;
- (e) that, with reference to Article 26, paragraph 1, the expression notwithstanding the remedies provided by the national laws means that the mutual agreement procedure is not alternative to the national ordinary proceedings which shall be, in any case, preventively initiated, when the claim is related to an assessment of taxes not in accordance with this Convention ;
- (f) that, with reference to paragraph 3 of Article 29, the provisions herein contained shall not be construed as preventing the competent authorities of the Contracting States from mutually agreeing upon a different procedure for the granting of tax benefits provided by this Convention.

JUDICIAL ANALYSIS

· The assessee (an Italian company) had entered into a technical collaboration agreement with Modipan, an Indian company. Under the agreement the assessee was to supply copies of specifications and/or drawings for the modification of the equipment installed at Modis for achieving the results. As per clause (3) of the agreement the assessee was to make available outside India for use by the Modis any improvements which were successfully developed and put into commercial use by the assessee in the field. For that purpose the assessee was required to permit annual technical visits to its plant, relevant parts of its research centre, any factory in Italy as specified by a specified number of technicians of Modis for a specified period per year, the cost of which was to be borne by Modis. In clause (4) of the Agreement the assessee was required to depute its technicians twice a year to the Modis plant to inspect the plant, progress and assess the problems, if any, at the cost of Modis. Clause 9 of the agreement bound Modis not to engage any technician of the assessee without its previous written consent during the term of the agreement and for a further period of 5 years. As per article III, the term of agreement was five years and it was provided that even after the expiry of 5 years and for a further period of 5 years, the secrecy clause shall continue to be in force. Article IV of the agreement dealt with

secrecy and bound Modis to condition that all designs, etc., supplied by the assessee and any knowledge received as a result of implementation of the agreement should be kept confidential and to be used by Modis only and enjoined upon Modis not to divulge or disclose directly or indirectly to any third party without prior written consent of the assessee. The agreement provided for renewal at the expiry of the term of the agreement on the terms to be mutually agreed upon. The question was whether the payment received by the assessee under the agreement was royalty within the meaning of Double Taxation Avoidance Agreement between Italy and India.

It was *held* that viewed in the context of terms of agreement, it could not be said that the assessee parted with its property in the form of designs/technical detail, formula, etc., forever in favour of Modi in consideration of the amount received. The assessee continued to hold property right in the information/designs, formula, etc., under the agreement with Modi and also bound Modis fully not to pass on the information, formula, etc., supplied to anybody else without written consent of the assessee, which could not be in the case of an outright sale. Therefore, the amount received was royalty under the terms of DTAA between India and Italy and, therefore, taxable as such in India *Asstt. CIT v. Snla Fibre SPA* [1996] 55 TTJ (Delhi) 554.

Japan

Agreement for avoidance of double taxation and prevention of fiscal evasion with Japan

Whereas the annexed Convention between the Government of the Republic of India and the Government of Japan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income has come into force on the 29th December, 1989 after the exchange of Instruments of Ratification as required by paragraph 1 of Article 28 of the said Convention.

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in the Union of India.

Notification : No. GSR 101(E), dated 1-3-1990, as amended by Notification Nos. SO 753(E), dated 16-8-2000 (w.r.e.f. 1-10-1999), SO 1136(E), dated 19-7-2006, w.r.e.f. 28-6-2006 and SO 2528(E), dated 8-10-2008, (w.r.e.f. 1-10-2008).

ANNEXURE

CONVENTION BETWEEN THE GOVERNMENT OF JAPAN 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 Japan and the Government of the Republic of India, desiring to conclude a new Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows :

ARTICLE 1 – This Convention shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2 – 1. The taxes which are the subject of this Convention are :

(a) In Japan :

(i) the income-tax ; and

(ii) the corporation tax

(hereinafter referred to as Japanese tax) ;

(b) In India :

the income-tax including any surcharge thereon

(hereinafter referred to as Indian tax).

2. This Convention shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Convention in addition to, or in place of those referred to in paragraph 1. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws within a reasonable period of time after such changes.

ARTICLE 3 – 1. For the purposes of this Convention, unless the context otherwise requires :

(a) the term Japan, when used in a geographical sense, means all the territory of Japan, including its territorial sea, in which the laws relating to Japanese tax are in force, and all the area beyond its territorial sea, including the sea-bed and subsoil thereof, over which Japan has jurisdiction in accordance with international law and in which the laws relating to Japanese tax are in force ;

(b) the term India means the territory of India including the territorial sea and any other maritime zone in which India has sovereign rights according to the Indian law and in accordance with International law ;

(c) the terms a Contracting State and the other Contracting State mean Japan or India, as the context requires ;

(d) the term tax means Japanese tax or Indian tax, as the context requires ;

(e) the term person includes an individual, a company and any other body of persons ;

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

(g) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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 ;

(h) the term nationals means :

(i) in respect of Japan :

all individuals possessing the nationality of Japan and all juridical persons created or organised under the laws of Japan and all organisations without juridical personality treated for the purposes of Japanese tax as juridical persons created or organised under the laws of Japan ;

(ii) in respect of India :

(a) all individuals possessing the nationality of India ;

(b) all legal persons, partnerships and associations deriving their status as such from the laws in force in India ;

(i) 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 ; and

(j) the term Competent authority means :

(i) in Japan, the Minister of Finance or his authorised representative ;

(ii) in India, the Central Government in the Ministry of Finance, Department of Revenue, or their authorised representative.

2. As regards the application of this Convention by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State concerning the taxes to which this Convention applies.

ARTICLE 4 – 1. For the purposes of this Convention, the term resident of a Contracting State means any person who, under the laws of that Contracting State, is liable to tax therein by reason of his domicile, residence, place of head or main office or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph 1 a person is a resident of both Contracting States, then the competent authorities of Contracting States shall determine by mutual agreement the Contracting State of which that person shall be deemed to be a resident for the purposes of this Convention.

ARTICLE 5 – 7. For the purposes of this Convention, the term permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (a) a place of management ;
- (b) a branch ;
- (c) an office ;
- (d) a factory ;
- (e) a workshop ;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources ;
- (g) a warehouse in relation to a person providing storage facilities for others;
- (h) a farm, plantation or other place where agriculture, forestry, plantation or related activities are carried on ;
- (i) a store or other sales outlet ; and
- (j) an installation or structure used for the exploration of natural resources, but only if so used for a period of more than six months.

3. A building site or construction, installation or assembly project constitutes a permanent establishment only if it lasts for more than six months.

4. An enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it carries on supervisory activities in that Contracting State for more than six months in connection with a building site or construction, installation or assembly project which is being undertaken in that Contracting State.

5. Notwithstanding the provisions of paragraphs 3 and 4 an enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it provides services or facilities in that Contracting State for more than six months in connection with the exploration, exploitation or extraction of mineral oils in that Contracting State.

6. Notwithstanding the provisions of the preceding paragraphs of this article, the term permanent establishment shall be deemed not to include :

- (a) the use of facilities solely for the purpose 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 of collecting information, for the enterprise ;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character.

7. Notwithstanding the provisions of paragraphs 1 and 2, where a person other than an agent of an independent status to whom paragraph 8 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 Contracting State, if

- (a) he has and habitually exercises in that Contracting State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to those mentioned in paragraph 6 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph ;
- (b) he has no such authority, but habitually maintains in the first-mentioned Contracting State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise ; or

(c) he habitually secures orders in the first-mentioned Contracting State, wholly or almost wholly for the enterprise itself or for the enterprise and other enterprises controlling, controlled by, or subject to the same common control as that enterprise.

8. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that Contracting State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

9. 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 – 7. Income derived by a resident of a Contracting State from immovable property situated in the other Contracting State may be taxed in that other Contracting State.

2. The term immovable property shall have the meaning which it has under the laws 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 and forestry, rights to which the provisions of general law respecting immovable property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded 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 – 1. The profits of an enterprise of a Contracting State shall be taxable only in that Contracting 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, the profits of the enterprise may be taxed in that other Contracting State but only so much of them as is directly or indirectly attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, 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.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere.

4. Insofar 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 contained 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 purposes of the provisions of the preceding paragraphs of this article, 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 – 1. Profits from the operation of aircraft in international traffic carried on by an enterprise of a Contracting State shall be taxable only in that Contracting State.

2. Profits from the operation of ships in international traffic carried on by an enterprise of a Contracting State shall be taxable only in that Contracting State.

3. Notwithstanding the provisions of paragraph 2, such profits may be taxed in the other Contracting State from which they are derived during a period of first ten taxable years or previous years, as the case may be, for which this Convention shall have effect provided that the tax so charged shall not exceed

(a) during the first five years, 50 per cent,

(b) during the remaining five years, 25 per cent,

of the tax otherwise imposed by the taxation law of that other Contracting State.

4. The provisions of the preceding paragraphs of this article shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

5. The provisions of this article shall, notwithstanding the provisions of article 2, apply to the enterprise tax in Japan and to any tax similar to the said enterprise tax if and when such a tax is imposed in India.

ARTICLE 9 – 1. 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.

2. Where a Contracting State includes in the profits of an enterprise of that Contracting State and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other Contracting State and where the competent authorities of the Contracting States agree, upon consultations, that all or part of the profits so included are profits which would have accrued to the enterprise of the first-mentioned Contracting State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Contracting State shall make an appropriate adjustment to the amount of the tax charged therein on those agreed profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention.

ARTICLE 10 – 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.

¹[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 laws of that Contracting State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.*

The provisions of 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 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 taxation laws of the Contracting 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 Contracting 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 14, 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 that other Contracting State.

ARTICLE 11 – 7. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.

¹[2. *However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.*]

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and derived by the Government of the other Contracting State, a political sub-division or a local authority thereof, the Central Bank of that other Contracting State or any financial institution wholly owned by that Government, or by any resident of the other Contracting State with respect to debt-claims guaranteed or indirectly financed by the Government of that other Contracting State, a political sub-division or a local authority thereof, the Central Bank of that other Contracting State or any financial institution wholly owned by that Government shall be exempt from tax in the first-mentioned Contracting State.

4. For the purposes of paragraph 3, the terms the Central Bank and financial institution wholly owned by the Government mean :

²[(a) in the case of Japan

(i) the Bank of Japan;

³[(ii) *International business unit of Japan Finance Corporation*;

(iii) the Japan International Co-operation Agency; and

(iv) such other financial institutions the capital of which is wholly owned by the Government of Japan as may be agreed upon from time to time between the Governments of the two Contracting States.]

(b) in the case of India :

(i) the Reserve Bank of India ;

(ii) the Export-Import Bank of India ;

(iii) such other financial institution the capital of which is wholly owned by the Government of India as may be agreed upon from time to time between the Governments of the two Contracting States.

5. 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 debtors 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.

6. The provisions of paragraphs 1, 2 and 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 14, as the case may be, shall apply.

7. Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political sub-division or a local authority thereof or a resident of that Contracting State. Where, however, the person paying the interest, 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 indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

8. 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 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 the other provisions of this Convention.

ARTICLE 12 – 1. Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.

¹[2. *However, such royalties and fees for technical services 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 or fees for technical*

services, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties or fees for technical services.]

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 including cinematograph films and films or tapes 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.

4. The term fees for technical services as used in this article means payments of any amount to any person other than payments to an employee of a person making payments and to any individual for independent personal services referred to in article 14, in consideration for the services of a managerial, technical or consultancy nature, including the provisions of services of technical or other personnel.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services arise, through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the right, property or contract in respect of which the royalties or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of article 7 or article 14, as the case may be, shall apply.

6. Royalties and fees for technical services shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political sub-division, a local authority thereof or a resident of that Contracting State. Where, however, the person paying the royalties or fees for technical services, 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 or fees for technical services was incurred, and such royalties or fees for technical services are

borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

7. Where, by reason of special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties or fees for technical services, 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 the other provisions of this Convention.

ARTICLE 13 – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in article 6 and situated in the other Contracting State may be taxed in that other Contracting State.

2. Gains from the alienation of any property, other than immovable property, forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of any property, other than immovable property, pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in that other Contracting State.

3. Unless the provisions of paragraph 2 are applicable, gains derived by a resident of a Contracting State from the alienation of shares of a company which is a resident of the other Contracting State may be taxed in that other Contracting State.

4. Gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic and any property, other than immovable property, pertaining to the operation of such ships or aircraft shall be taxable only in that Contracting State.

5. Gains derived by a resident of a Contracting State from the alienation of any property other than that referred to in paragraphs 1 to 4, shall be taxable only in that Contracting State.

ARTICLE 14 – 7. 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 unless he has a fixed base regularly available to him in the Contracting State for the purpose of performing his activities or he is present in that other Contracting State for a period or periods exceeding in the aggregate 183 days during any taxable year or previous year as the case may be. If he has such a fixed base or remains in that other Contracting State for the aforesaid period or periods, the income may be taxed in that Contracting State but only so much of it as is attributable to that fixed base or is derived in that other Contracting State during the aforesaid period or periods.

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 15 – 7. Subject to the provisions of articles 16, 18, 19, 20 and 21, 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 the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed 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 exercised in the other Contracting State shall be taxable only in the first-mentioned Contracting State, if :

- (a) the recipient is present in that other Contracting State for a period or periods not exceeding in the aggregate 183 days during any taxable year or previous year, as the case may be ; 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 borne by a permanent establishment or a fixed base which the employer has in that other Contracting State.

(3) Notwithstanding the provisions of paragraphs 1 and 2, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that Contracting State.

ARTICLE 16 – Directors fees and other 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 may be taxed in that other Contracting State.

ARTICLE 17 – 1. Notwithstanding the provisions of articles 14 and 15, income derived by an individual who is a resident of a Contracting State as an entertainer such as a theatre, motion picture, radio or television artist, and 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.

Such income shall, however, be exempt from tax in that other Contracting State if such activities are exercised by an individual who is a resident of the first-mentioned Contracting State pursuant to a special programme for cultural exchange agreed upon between the Governments of the two Contracting States.

2. Where income in respect of personal activities exercised in a Contracting State by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person who is a resident of the other Contracting State, that income may notwithstanding the provisions of articles 7, 14 and 15, be taxed in the first-mentioned Contracting State.

Such income shall, however, be exempt from tax in the first-mentioned Contracting State if such activities are exercised pursuant to a special programme for cultural exchange agreed upon between the Governments of the two Contracting States.

ARTICLE 18 – Subject to the provisions of paragraph 2 of article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that Contracting State.

ARTICLE 19 – 1. (a) Remuneration other than a pension, paid by a Contracting State, or a political sub-division or a local authority thereof, to an individual in respect of services rendered to that Contracting State, or a political sub-division or a local authority thereof, in the discharge of functions of a governmental nature, shall be taxable only in that Contracting State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other Contracting State and the individual is a resident of that other Contracting State who :

- (i) is a national of that other Contracting State; or
- (ii) did not become a resident of that other Contracting State solely for the purpose of performing the services.

2. (a) Any pension paid by, or out of funds to which contributions are made by, a Contracting State, or a political sub-division or a local authority thereof, to an individual in respect of services rendered to that Contracting State, or a political sub-division or a local authority thereof, shall be taxable only in that Contracting State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that other Contracting State.

3. The provisions of articles 15,16,17 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State, or a political sub-division or a local authority thereof.

ARTICLE 20 – Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall be exempt from tax in the first-mentioned Contracting

State, provided that such payments are made to him from outside that first-mentioned Contracting State.

ARTICLE 21 – 1. A professor or teacher who makes a temporary visit to a Contracting State for a period not exceeding two years for the purpose of teaching or conducting research at a university, college, school or other accredited educational institution, and who is, or immediately before such visit was, a resident of the other Contracting State shall be taxable only in that other Contracting State in respect of remuneration for such teaching or research.

2. The article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

ARTICLE 22 – 1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing articles of this Convention shall be taxable only in that Contracting State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of article 7 or article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing articles of this Convention and arising in the other Contracting State may be taxed in that other Contracting State.

ARTICLE 23 – 1. The laws in force in either of the Contracting States shall continue to govern the taxation of income in the respective Contracting State except where express provisions to the contrary are made in this Convention.

2. Double taxation shall be avoided in the case of India as follows :

- (a) Where a resident of India derives income which, in accordance with the provisions of this Convention, may be taxed in Japan, India shall allow as a deduction from the tax on the income of that resident an amount equal to the Japanese tax paid in Japan, whether directly or by deduction. Such deduction in either case shall not, however, exceed that part of the income-tax (as computed before the deduction is given) which is attributable, as the case may be, to the income which may be taxed in Japan. Further, where such resident is a company by which surtax is payable in India, the deduction in respect of income-tax paid in Japan shall be allowed in the first instance from income-tax payable by the company in India and as to the balance, if any, from surtax payable by it in India.
- (b) Where a resident of India derives income which, in accordance with the provisions of this Convention, shall be taxable only in Japan, India may include this income in the tax base but shall allow as a deduction from the income-tax that part of the income-tax which is attributable, as the case may be, to the income derived from Japan.

3. Subject to the laws of Japan regarding the allowance as a credit against Japanese tax of tax payable in any country other than Japan :

- (a) Where a resident of Japan derives income from India which may be taxed in India in accordance with the provisions of this Convention, the amount of Indian tax payable in respect of that income shall be allowed as a credit against the Japanese tax imposed on that resident. The amount of credit, however, shall not exceed that part of the Japanese tax which is appropriate to that income.
- (b) Where the income derived from India is a dividend paid by a company which is a resident of India to a company which is a resident of Japan and which owns not less than 25 per cent either of the voting shares of the company paying the dividend, or of the total shares issued by that company, the credit shall take into account the Indian tax payable by the company paying the dividend in respect of its income.

¹[***]

ARTICLE 24 – 1. Nationals of a Contracting State shall 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 Contracting State in the same circumstances are or may be subjected. This provision shall, notwithstanding the provisions of article 1, also apply to persons who are not residents of one or both of the Contracting States.

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.

This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of article 9, paragraph 8 of article 11, or paragraph 7 of article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first mentioned Contracting State.

4. 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 the first-mentioned Contracting State are or may be subjected.

5. In this article, the term taxation means taxes which are the subject of this Convention.

ARTICLE 25 – 1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic laws of those Contracting States present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Convention.

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 a satisfactory 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 provisions of this Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic 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.

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 of this article.

ARTICLE 26 – 1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is not contrary to the provisions of this Convention, or for the prevention of fiscal evasion or fraud with respect to such taxes. Any information so exchanged shall be treated as secret and shall be disclosed only to persons or authorities, including Courts, involved in the assessment or collection of, the enforcement or prosecution in respect of, the taxes covered by this Convention or the determination of appeals in relation thereto.

2. 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 and the administrative practice of that or of the other Contracting State ;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State ; or
- (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 27 – Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

ARTICLE 28 – 1. This convention shall be ratified and the instruments of ratification shall be exchanged at Tokyo as soon as possible.

2. This Convention shall enter into force on the thirtieth day after the date of the exchange of instruments of ratification and shall have effect :

(a) In Japan :

as regards income for any taxable year beginning on or after the first day of January of the calendar year next following that in which this Convention enters into force ; and

(b) in India :

as regards income for any previous year beginning on or after the first day of April of the calendar year next following that in which this Convention enters into force.

3. The Agreement between Japan and India for the Avoidance of Double Taxation in respect of Taxes on Income signed at New Delhi on January 5, 1960 shall terminate and cease to have effect in respect of income to which this Convention applies under the provisions of paragraph 2.

ARTICLE 29 – This Convention shall continue in effect indefinitely but either Contracting State may, on or before the thirtieth day of June of 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 the diplomatic channel, written notice of termination and, in such event, this Convention shall cease to have effect :

(a) In Japan :

as regards income for any taxable year beginning on or after the first day of January of the calendar year next following that in which notice of termination is given; and

(b) In India :

as regards income for any previous year beginning on or after the first day of April of the calendar year next following that in which the notice of termination is given.

In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed this Convention.

Done at New Delhi in duplicate on this seventh day of March, 1989 in the Hindi, Japanese and English languages, all the three texts being equally authentic. In case of any divergence of interpretations, the English text shall prevail.

For the Government of Japan :

For the Government of the Republic of India :

(Indian Note)

Excellency,

I have the honour to refer to sub-paragraph (c) of paragraph 3 of article 23 of the Convention between the Government of the Republic of India and the Government of Japan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income which was signed today and to confirm, on behalf of the Government of the Republic of India, the following understanding reached between the Government of the Republic of India and the Government of Japan :

The measures set forth in the following sections of the Income-tax Act, 1961 (43 of 1961) of India, are the special incentive measures designed to promote economic development in India, effective on the date of signature of this Convention referred to in the said sub-paragraph :

(i) Section 10(15)(iv)

- relating to exemption from tax on certain interest ;

(ii) Section 10A

- relating to special, provision in respect of newly established industrial undertakings in free trade zones ;

(iii) Section 32AB

- relating to investment deposit account, etc., with respect to investment in plant and machinery, etc. ;

(iv) Section 80HH

- relating to reduction in respect of profits and gains from newly established industrial undertakings or hotel business in backward areas ;

(v) Section 80-I

- relating to reduction in respect of profits and gains from industrial undertakings after a certain date, etc.

I have further the honour to request Your Excellency to be good enough to confirm the foregoing undertaking on behalf of the Government of Japan.

I avail myself to this opportunity to extend to Your Excellency the assurance of my highest consideration.

(Japanese Note)

Excellency,

I have the honour to acknowledge the receipt of Your Excellencys Note of todays date which reads as follows :

(Indian Note)

I have further the honour to confirm the undertaking contained in Your Excellency's Note, on behalf of the Government of Japan.

I avail myself of this opportunity to renew to Your Excellency, the assurance of my highest consideration.

(Japanese Note)

Excellency,

I have the honour to refer to the Convention between the Government of Japan 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 which was signed today and to confirm, on behalf of the Government of Japan the following understanding reached between the two Governments :

2. With reference to sub-paragraph (d) of paragraph 1 of article 3 of the Convention the term tax shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty imposed relating to these taxes.

3. With reference to sub-paragraph (e) of paragraph 1 of article 3 of the Convention, in the case of India, the term person shall include a partnership and a Hindu undivided family.

4. With reference to paragraph 5 of article 5 of the Convention, the term services or facilities referred to therein shall include the supply of plant and machinery on hire or to be used in the exploration, exploitation or extraction of mineral oils.

5. It is understood that the provisions of paragraph 6 of article 5 of the Convention shall apply to the use of facilities solely for the purpose of delivery of goods or merchandise belonging to the enterprise or to the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of delivery unless sales of such goods or merchandise are effected in that other Contracting State.

6. With reference to paragraph 1 of article 7 of the Convention, it is understood that by using the term directly or indirectly attributable to the permanent establishment, profits arising from transactions in which the permanent establishment has been involved shall be regarded as attributable to the permanent establishment to the extent appropriate to the part played by the permanent establishment in those transactions. It is also understood that profits shall be regarded as attributable to the permanent establishment to the above-mentioned extent, even when the contract or order relating to the sale or provision of goods or services in question is made or placed directly with the overseas head office of the enterprise rather than with the permanent establishment.

7. With reference to paragraph 3 of article 7 of the Convention, it is understood that in India the deductions in respect of the executive and general administrative expenses as referred to in the said paragraph shall be allowed in accordance with the domestic law of India, but such deductions shall in no case be less than what are allowable under the Indian Income-tax Act as effective on the date of signature of this Convention.

8. With reference to paragraph 3 of article 7 of the Convention, no deduction shall be allowed in respect of amounts paid or charged (other than reimbursement of actual expenses) by a permanent establishment of an enterprise to the head office of the enterprise or any other offices thereof, by way of :

- (a) royalties, fees or other similar payments in return for the use of patents or other rights, or for the use of know-how;
- (b) commission or other charges, for specific services performed or for management; and
- (c) interest on moneys lent to the permanent establishment; except where the enterprise is a banking institution.

9. With reference to article 8 of the Convention,

- (i) interests on funds temporarily deposited in connection with the operation of ships or aircrafts in international traffic shall be regarded as income from the operation

of such ships or aircraft and the provisions of article 11 shall not apply in relation to such interest; and

- (ii) income from the operation of ships or aircraft includes income derived from the use maintenance or rental of containers (including traders and related equipment for the transport of containers) in connection with the transport of goods or merchandise in international traffic.

10. With reference to paragraph 5 of article 8 of the Convention, if a local authority of India thereof introduces any taxes of a character substantially similar to the enterprise tax in Japan after the date of signature of this Convention, the two Governments shall consult with a view to amending paragraph 5 of article 8 on a reciprocal basis in such manner as may be considered appropriate.

I have further the honour to request Your Excellency to be good enough to confirm the foregoing understanding on behalf of Your Excellencys Government.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

(Indian Note)

Excellency,

I have the honour to acknowledge the receipt of Your Excellencys Note of todays date which reads as follows :

(Japanese Note)

I have further the honour to confirm the understanding contained in Your Excellencys Note, on behalf of the Government of the Republic of India.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed this Convention.

Done at New Delhi in duplicate on this seventh day of March, 1989, in the Hindi, Japanese and English languages, all the three texts being equally authentic. In case of any divergence of interpretations, the English text shall prevail.

For the Government of the Republic

For the Government of
Japan

of India.

(Sd.) Eijiro Noda

(Sd.) G.N. Gupta

New Delhi, March 7,
1989.

Excellency,

I have the honour to refer to sub-paragraph (c) of paragraph 3 of article 23 of the Convention between the Government of the Republic of India and the Government of Japan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income which was signed today and to confirm, on behalf of the Government of the Republic of India, the following understanding reached between the Government of the Republic of India and the Government of Japan :

The measures set forth in the following sections of the Income-tax Act, 1961 (43 of 1961) of India, are the special incentive measures designed to promote economic development in India, effective on the date of signature of this Convention referred to in the said sub-paragraph :

(i) Section 10(15)(iv)

– relating to exemption from tax on certain interest;

(ii) Section 10A

– relating to special provision in respect of newly established industrial undertakings in free trade zones;

(iii) Section 32AB

– relating to investment deposit account, etc., with respect to investment in plant and machinery, etc.;

(iv) Section 80HH

- relating to deduction in respect of profits and gains from newly established industrial undertakings or hotel business in backward areas;

(v) Section 80-I

- relating to deduction in respect of profits and gains from industrial undertakings after a certain date, etc.;

I have further the honour to request Your Excellency to be good enough to confirm the foregoing understanding on behalf of the Government of Japan.

I avail myself of this opportunity to extend to Your Excellency the assurance of my highest consideration.

(Sd.) G.N. Gupta,
Chairman,
Central Board of Direct Taxes,
Ministry of Finance

His Excellency Mr. Eijiro Noda,

Ambassador Extraordinary and

Plenipotentiary of Japan to India.

New Delhi, March 7, 1989

Excellency,

I have the honour to acknowledge the receipt of Your Excellencys Note of todays date which reads as follows :

I have the honour to refer to sub-paragraph (c) of paragraph 3 of article 23 of the Convention between the Government of the Republic of India and the Government of Japan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income which was signed today and to confirm, on behalf of the

Government of the Republic of India, the following understanding reached between the Government of the Republic of India and the Government of Japan :

The measures set forth in the following sections of the Income-tax Act, 1961 (43 of 1961), of India are the special incentive measures designed to promote economic development in India, effective on the date of signature of this Convention referred to in the said sub-paragraph :

(i) Section 10(15)(iv)

- relating to exemption from tax on certain interest;

(ii) Section 10A

- relating to special provision in respect of newly established industrial undertakings in free trade zones;

(iii) Section 32AB

- relating to investment deposit account, etc., with respect to investment in plant and machinery, etc.;

(iv) Section 80HH

- relating to deduction in respect of profits and gains from newly established industrial undertakings or hotel business in backward areas;

(v) Section 80-I

- relating to deduction in respect of profits and gains from industrial undertakings after a certain date, etc.;

I have further the honour to request Your Excellency to be good enough to confirm the foregoing understanding on behalf of the Government of Japan. I have further the honour to confirm the understanding contained in Your Excellency's Note on behalf of the Government of Japan.

I avail myself of this opportunity to extend to Your Excellency the assurance of my highest consideration.

(Sd.) Eihiro Noda,
Ambassador

Extraordinary and
Plenipotentiary of Japan
to India

His Excellency Mr. G.N. Gupta,

Chairman,

Central Board of Direct Taxes,

Ministry of Finance.

New Delhi, March 7, 1989.

Excellency,

I have the honour to refer to the Convention between the Government of Japan 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 which was signed today and to confirm, on behalf of the Government of Japan, the following understanding reached between the two Governments :

1. With reference to sub-paragraph (b) of paragraph 1 of article 2 of the Convention, any taxes which are identical or substantially similar to the surtax imposed under the Companies (Profits) Surtax Act, 1964 but abolished subsequently, and which are imposed in India after the date of signature of the Convention shall be regarded as the identical or, substantially similar taxes referred to in paragraph 2 of article 2 of the Convention.

2. With reference to sub-paragraph (d) of paragraph 1 of article 3 of the Convention, the term tax shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which the Convention applies or which represents a penalty imposed relating to these taxes.

3. With reference to sub-paragraph (e) of paragraph 1 of article 3 of the Convention, in the case of India, the term person shall include a partnership and Hindu undivided family.

4. With reference to paragraph 5 of article 5 of the Convention, the term services or facilities referred to therein shall include the supply of plant and machinery on hire used or to be used in the exploration, exploitation or extraction of mineral oils.

5. It is understood that the provisions of paragraph 6 of article 5 of the Convention shall apply to the use of facilities solely for the purpose of delivery of goods or merchandise belonging to the enterprise or to the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of delivery unless sales of such goods or merchandise are effected in that other Contracting State.

6. With reference to paragraph 1 of article 7 of the Convention, it is understood that by using the term directly or indirectly attributable to the permanent establishment, profits arising from transactions in which the permanent establishment has been involved shall be regarded as attributable to the permanent establishment to the extent appropriate to the part played by the permanent establishment in those transactions. It is also understood that profits shall be regarded as attributable to the permanent establishment to the above-mentioned extent, even when the contract or order relating to the sale or provision of goods or services in question is made or placed directly with the overseas head office of the enterprise rather than with the permanent establishment.

7. With reference to paragraph 3 of article 7 of the Convention, it is understood that in India the deductions in respect of the executive and general administrative expenses as referred to in the said paragraph shall be allowed in accordance with the domestic law of India, but such deductions shall in no case be less than what are allowable under the Indian Income-tax Act as effective on the date of signature of the Convention.

8. With reference to paragraph 3 of article 7 of the Convention, no deduction shall be allowed in respect of amounts paid or charged (other than reimbursement of actual

expenses) by a permanent establishment of an enterprise to the head office of the enterprise or any other offices thereof, by way of :

- (a) royalties, fees or other similar payments in return for the use of patents or other rights, or for the use of know-how;
- (b) commission or other charges, for specific services performed or for management; and
- (c) interest on moneys lent to the permanent establishment; except where the enterprise is a banking institution.

9. With reference to article 8 of the Convention,

- (i) interest on funds temporarily deposited in connection with the operation of ships or aircraft in international traffic shall be regarded as income from the operation of such ships or aircraft and the provisions of article 11 shall not apply in relation to such interest; and
- (ii) income from the operation of ships or aircraft includes income derived from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) in connection with the transport of goods or merchandise in international traffic.

10. With reference to paragraph 5 of article 8 of the Convention, if a local authority of India introduces any taxes of a character substantially similar to the enterprise tax in Japan after the date of signature of the Convention, the two Governments shall consult with a view to amending paragraph 5 of article 8 on a reciprocal basis in such manner as may be considered appropriate.

I have further the honour to request Your Excellency to be good enough to confirm the foregoing understanding on behalf of Your Excellency Government.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

(Sd.) Eijiro Noda,
Ambassador Extraordinary

and
Plenipotentiary of Japan to
India

His Excellency Mr. G.N. Gupta,

Chairman,

Central Board of Direct Taxes,

Ministry of Finance.

New Delhi, March 7, 1989.

Excellency,

I have the honour to acknowledge the receipt of Your Excellencys Note of todays date which reads as follows :

I have the honour to refer to the Convention between the Government of Japan 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 which was signed today and to confirm, on behalf of the Government of Japan, the following understanding reached between the two Governments :

1. With reference to sub-paragraph (b) of paragraph 1 of article 2 of the Convention, any taxes which are identical or substantially similar to the surtax imposed under the Companies (Profits) Surtax Act, 1964 but abolished subsequently, and which are imposed in India after the date of signature of the Convention shall be regarded as the identical or, substantially similar taxes referred to in paragraph 2 of article 2 of the Convention.

2. With reference to sub-paragraph (d) of paragraph 1 of article 3 of the Convention, the term tax shall not include any amount which is payable in respect of any default or

omission in relation to the taxes to which the Convention applies or which represents a penalty imposed relating to these taxes.

3. With reference to sub-paragraph (e) of paragraph 1 of article 3 of the Convention, in the case of India, the term person shall include a partnership and a Hindu undivided family.

4. With reference to paragraph 5 of article 5 of the Convention, the term services or facilities referred to therein shall include the supply of plant and machinery on hire used or to be used in the exploration, exploitation or extraction of mineral oils.

5. It is understood that the provisions of paragraph 6 of article 5 of the Convention shall apply to the use of facilities solely for the purpose of delivery of goods or merchandise belonging to the enterprise or to the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of delivery unless sales of such goods or merchandise are effected in that other Contracting State.

6. With reference to paragraph 1 of article 7 of the Convention, it is understood that by using the term directly or indirectly attributable to the permanent establishment, profits arising from transactions in which the permanent establishment has been involved shall be regarded as attributable to the permanent establishment to the extent appropriate to the part played by the permanent establishment in those transactions. It is also understood that profits shall be regarded as attributable to the permanent establishment to the above-mentioned extent, even when the contract or order relating to the sale or provision of goods or services in question is made or placed directly with the overseas head office of the enterprise rather than with the permanent establishment.

7. With reference to paragraph 3 of article 7 of the Convention, it is understood that in India the deductions in respect of the executive and general administrative expenses as referred to in the said paragraph shall be allowed in accordance with the domestic law of India, but such deductions shall in no case be less than what are allowable under the Indian Income-tax Act as effective on the date of signature of the Convention.

8. With reference to paragraph 3 of article 7 of the Convention, no deduction shall be allowed in respect of amounts paid or charged (other than reimbursement of actual expenses) by a permanent establishment of an enterprise to the head office of the enterprise or any other offices thereof, by way of :

- (a) royalties, fees or other similar payments in return for the use of patents or other rights, or for the use of know-how;
- (b) commission or other charges, for specific services performed or for management; and
- (c) interest on moneys lent to the permanent establishment; except where the enterprise is a banking institution.

9. With reference to the article 8 of the Convention,

- (i) interest on funds temporarily deposited in connection with the operation of ships or aircraft in international traffic shall be regarded as income from the operation of such ships or aircraft and the provisions of article 11 shall not apply in relation to such interest; and
- (ii) income from the operation of ships or aircraft includes income derived from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) in connection with the transport of goods or merchandise in international traffic.

10. With reference to paragraph 5 of article 8 of the Convention, if a local authority of India introduces any taxes of a character substantially similar to the enterprise tax in Japan after the date of signature of the Convention, the two Governments shall consult with a view to amending paragraph 5 of article 8 on a reciprocal basis in such manner as may be considered appropriate.

I have further the honour to request Your Excellency to be good enough to confirm the foregoing understanding on behalf of Your Excellencys Government.

I have further the honour to confirm the understanding contained in Your Excellencys Note, on behalf of the Government of the Republic of India.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

(Sd.) G.N. Gupta,
Chairman,
Central Board of Direct Taxes,
Ministry of Finance.

His Excellency Mr. Eijiro Noda,
Ambassador of Extraordinary and
Plenipotentiary of Japan to India.

(Sd.) P.K. Appachoo,
Joint Secretary to the
Government of India.

Kazakhstan

Agreement for avoidance of double taxation and prevention of fiscal evasion with Kazakhstan

Whereas the annexed Convention between the Government of the Republic of Kazakhstan 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 and on capital will enter into force, on the second day of the October, 1997, thirty days after the receipt of the later of notification by both the Contracting States to each other of the completion of the procedures required under their laws for bringing into force of the said Convention in accordance with Article 30 of the said Convention;

Now, therefore, in exercise of the powers conferred under section 90 of the Income-tax Act, 1961 (43 of 1961) and section 44A of the Wealth-tax Act, 1957 (27 of 1957), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in the Union of India.

Notification: No. GSR 633(E), dated 31-10-1997.

ANNEXURE

CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE REPUBLIC OF KAZAKSTAN FOR THE AVOIDANCE OF DOUBLE TAXATION AND FOR THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Government of the Republic of India and the Government of the Republic of Kazakhstan desiring to conclude a Convention for the avoidance of double taxation and for the prevention of fiscal evasion with respect to taxes on income and on 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* – This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its political subdivisions or local authorities irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises as well as taxes on capital appreciation.

3. The existing taxes to which the Convention shall apply are in particular :

(a) in the Republic of Kazakhstan :

- (i) the tax on income of legal persons and individuals;
 - (ii) the tax on the property of legal persons and individuals;
- (hereafter referred to as Kazakhstan tax);

(b) in the Republic of India;

- (i) the income-tax, including any surcharge thereon; and
 - (ii) the tax on capital (the wealth-tax);
- (hereafter referred to as Indian tax).

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws.

ARTICLE 3 : *General Definitions* – 1. For the purposes of this Convention, unless the context otherwise requires :

(a) the terms :

- (i) Kazakhstan means the Republic of Kazakhstan, and when used in a geographical sense, the term Kazakhstan includes the territorial waters, and also the exclusive economic zone and continental shelf in which Kazakhstan, for certain purposes, may exercise sovereign rights and

- jurisdiction in accordance with international law and in which the laws relating to Kazakhstan tax are applicable;
- (ii) India means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign right, other rights and jurisdiction, according to the Indian law and in accordance with international law including the U.N. Convention on the Law of the Sea;
 - (b) the term person includes an individual, a company, a body of persons or any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States;
 - (c) the term company means any body corporate or any entity which is treated as a body corporate for tax purposes;
 - (d) the terms a Contracting State and the other Contracting State mean Kazakhstan or India, as the context requires;
 - (e) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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;
 - (f) the term international traffic means any transport by a ship or aircraft operated by an enterprise which is a resident of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
 - (g) the term competent authority means :
 - (i) in Kazakhstan : the Ministry of Finance or its authorised representative;
 - (ii) in India : the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative;
 - (h) the term national means :
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership or any other association deriving its status as such from the laws in force in a Contracting State;
 - (i) the term fiscal year means :

- (i) in the case of India, previous year as defined under section 3 of the Income-tax Act, 1961;
- (ii) in the case of Kazakstan, the calendar year;
- (j) the term tax means Indian tax or Kazak tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty imposed relating to those taxes.

2. As regards, the application of the Convention at any time by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has at that time under the law of that State concerning the taxes to which the Convention applies.

ARTICLE 4 : *Resident* – 1. For the purposes of this Convention, their term resident of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation, or any other criterion of similar nature.

But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his status shall be determined as follows :

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre or vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;

(d) if he is a national of both States or of neither of them the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 State in which its place of effective management is situated. If the State in which its place of effective management is situated cannot be determined, then the competent authorities of the Contracting States shall settle the question by mutual agreement.

ARTICLE 5 : *Permanent Establishment* – 1. For the purposes of this Convention, the term permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) a sales outlet;
- (h) a warehouse in relation to a person providing storage facilities for others; and
- (i) a farm, plantation or other place where agricultural forestry, plantation or related activities are carried on.

3. The term permanent establishment also includes :

- (a) a building site or construction or installation or assembly project, or supervisory activities connected therewith, only if such site, project or activity lasts for more than 12 months, and

- (b) an installation or structure used for the exploration of natural resources, or supervisory activities connected therewith, or a drilling rig or ship used for the exploration of natural resources, only if such use or activity lasts for more than 12 months.

4. Notwithstanding the preceding provisions of this Article, the term permanent establishment shall be deemed not to include :

- (a) the use of facilities solely for the purpose of storage, display or delivery 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, display or delivery;
- (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 of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character; or
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 7 applies – is acting on behalf of an enterprise of the other Contracting State and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State, shall except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or it insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

8. The fact that a company which is a resident of a Contracting State control 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 otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6 : *Income from immovable property* – 1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may also be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded 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, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on or has carried 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.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes 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, in accordance with the provisions of and subject to the limitations of the tax laws of that State.

The permanent establishment shall not be allowed a deduction for amounts paid to its head office or any of the other offices of the resident by way of royalties, fees or other similar payment in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or by way of interest on moneys lent to the permanent establishment.

4. 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.

5. Where profits include items of income or capital gains 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.

6. For the purposes of 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.

ARTICLE 8 : *Shipping and Air Transport* – 1. Profits derived by an enterprise which is a resident of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. Profits derived by a transportation enterprise which is a resident of a Contracting State from the use, maintenance, or rental of containers (including trailers and other equipment for the transport of containers) used for the transport of goods or merchandise in international traffic shall be taxable only in that Contracting State unless the containers are used solely within the other Contracting State.

3. For the purposes of this Article, interest on funds connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft, and the provisions of Article 11 shall not apply in relation to such interest. The provisions of this paragraph will, however, not apply to interest on fixed deposits with a bank.

4. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9 : *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 and 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 10 : *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 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 laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 10 per cent of the gross amount of the dividends. 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 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 14, 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 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 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 State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

6. Profits of a company of a Contracting State carrying on business in the other Contracting State through a permanent establishment situated therein may, after having been taxed under Article 7, be taxed on the remaining amount in the Contracting State in which the permanent establishment is situated at a rate that does not exceed the rate set forth in paragraph 2 of this Article.

ARTICLE 11 : *Interest* – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 and the beneficial owner of the interest is a resident of other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State, provided it is derived and beneficially owned by :

- (i) the Government, a political sub-division or a local authority of the other Contracting State ; or
- (ii) the Central Bank of the other Contracting State or any other governmental bank or financial institution/agency that may be mutually agreed upon between the two Contracting States.

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 debtors 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 and 2 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 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 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that 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 resident 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 such interest shall be deemed to arise in the 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 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 the other provisions of this Convention.

ARTICLE 12 : *Royalties and Fees for Technical Services* – 1. Royalties or fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

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

3. (a) 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 including software, cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience, and payments for the use of, or the right to use industrial, commercial or scientific equipment.

(b) The term fees for technical services means payment of any kind in consideration for the rendering of any managerial, technical or consultancy services including the provision of services by technical or other personnel but does not include payments for services mentioned in Articles 14 and 15 of this Convention.

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 14, as the case may be, shall apply.

5. Royalties or fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying

the royalties or fees for technical services, 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 or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the 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 or fees for technical services, 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 the other provisions of this Convention.

ARTICLE 13 : *Capital Gains* – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains derived by a resident of Contracting State from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that Contracting State.

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from the alienation of shares other than those mentioned in paragraph 4 of a company which is a resident of a Contracting State may be taxed in that State.

6. Gains from the alienation of any property other than that referred to in the preceding paragraphs, shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14 : *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 State except in the following circumstances, when such income may also be taxed in the other Contracting State :

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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 State; or
- (b) if his stay in the other State is for a period or periods aggregating 183 days or more in any 12-months period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

ARTICLE 15 : *Dependent Personal Services* – 1. Subject to the provisions of Articles 16, 18 and 19, 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 State unless the employment is exercised in the other

Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State, if :

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any 12-months period commencing or ending in the fiscal year concerned, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, may be taxed in the Contracting State in which the enterprise operating the ship or aircraft is a resident.

ARTICLE 16 : *Directors Fees* – Directors fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or a similar body of a company which is a resident of the other Contracting State may also be taxed in that other State.

ARTICLE 17 : *Artistes and Sportpersons* – 1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportperson in his capacity as such accrues not to the entertainer or sportperson himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportperson are exercised.

3. The provisions of paragraphs 1 and 2, shall not apply to income from activities performed in a Contracting State by entertainers or sportpersons if the visit to that State is substantially supported by public funds of one or both of the Contracting States or of political sub-divisions or local authorities thereof. In such a case, the income is taxable only in the Contracting State of which the entertainer or sportperson is a resident.

ARTICLE 18 : *Persons and other payments* – 1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment and any annuity paid to such a resident shall be taxable only in that State.

2. The term annuity means a stated sum payable to an individual periodically at stated times during its 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 19 : *Government Service* – 1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15, 16 and 18 shall apply to salaries, wages and other similar remuneration and to pensions, in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or local authority thereof.

ARTICLE 20 : *Students and Apprentices* – 1. A student or business apprentice who is or was a resident of a Contracting State immediately before visiting the other Contracting State and who is present in that other Contracting State solely for the purpose of his education or training shall, besides grants, loans and scholarships, be exempt from tax in that other State on :

- (a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training; and
- (b) remuneration from employment in that other State for an amount not exceeding the amount which is exempt from tax under the laws of that other Contracting State for any fiscal year,

as the case may be, provided that such employment is directly related to his studies or is undertaken for the purpose of his maintenance.

2. The benefit of this Article shall extend only for such period of time as may be reasonably or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article for more than seven consecutive years from the date of his first arrival in that other Contracting State.

ARTICLE 21 : *Professors, Teachers and Research Scholars* – 1. A professor or teacher who is or was a resident of the Contracting State immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college, school or other approved institution in that other Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival in that other 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 20, an individual shall be deemed to be a resident of a Contracting State if he is resident in that State in the fiscal year in which he visits the other Contracting State or in the immediately preceding fiscal year.

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

ARTICLE 22 : *Other Income* – 1. Items of income of a resident of a Contracting State, wherever arising not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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 income is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraph 1, if a resident of a Contracting State derives income from sources within the other Contracting State in the form of lotteries, crossword puzzles, races including horse races, card games and other games or any sort of gambling or betting of any form or nature whatsoever, such income may be taxed in the other Contracting State.

ARTICLE 23 : *Capital* – 1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State may be taxed in that other State.

2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may also be taxed in that other State.

3. Capital represented by ships and aircraft operated in international traffic, and by movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that Contracting State in which the enterprise operating such ships or aircraft is a resident.

ARTICLE 24 : *Elimination of Double Taxation – 1.* The laws in force in either of the Contracting States will continue to govern the taxation of income in the respective Contracting States except where provisions to the contrary are made in this Convention.

2. In the case of Kazakhstan, double taxation shall be avoided as follows :

- (a) Where a resident of Kazakhstan derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in India, Kazakhstan shall allow :
 - (i) as a deduction from the tax on the income of that resident, an amount equal to the income-tax paid in India;
 - (ii) as a deduction from the tax on capital of that resident, an amount equal to the tax on capital paid in India.

The amount of the tax to be deducted pursuant to the above provision shall not exceed the tax which would have been charged on the same income in Kazakhstan under the rates applicable thereon.

3. In the case of India, double taxation shall be avoided as follows :

- (a) Where a resident of India derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Kazakhstan, India shall allow :

- (i) as a deduction from the tax on the income of that resident, an amount equal to the income-tax paid in Kazakhstan;
- (ii) as a deduction from the tax on capital of that resident, an amount equal to the tax on capital paid in Kazakhstan.

The amount of the tax to be deducted pursuant to the above provision shall not exceed the tax which would have been charged on the same income in India under the rates applicable thereon.

4. Income or capital which, in accordance with the provisions of this Convention, is not to be subjected to tax in a Contracting State, may be taken into account for calculating the rate of tax to be imposed in that Contracting State.

5. The tax paid in a Contracting State shall be deemed to include the tax which would have been paid but for any exemption or reduction of tax granted under incentive provisions contained in the law of that Contracting State designed to promote economic development to the extent that such exemption or reduction is granted for profits from industrial or manufacturing activities or from agriculture, fishing or tourism (including restaurants and hotels), provided that the activities have been carried out within that Contracting State.

ARTICLE 25 : *Non-discrimination* – 1. 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. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

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. This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which a company of the other Contracting State has in the first–

mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first-mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7 of this Convention.

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 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 the first-mentioned State are or may be subjected.

4. Except where the provisions of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

ARTICLE 26 : *Mutual Agreement Procedure* – 1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 25, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and it is not itself able to arrive at a satisfactory 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 which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time-limits in the domestic law of the Contracting State.

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. 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.

ARTICLE 27 : *Exchange of Information* – 1. The competent authorities of the Contracting States shall exchange such information (including documents) as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. 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 and administrative practice of that or of the other Contracting State;
- (b) to supply information or documents which is 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 28 : *Assistance in Collection – 1.* The Contracting States undertaken to lend assistance to each other in the collection of taxes to which this Convention relates together with interest, costs, and civil penalties relating to such taxes, referred to in this Article as a revenue claim.

2. Request for assistance by the competent authority of a Contracting State in the collection of a revenue claim shall include a certification by such authority that under the laws of that State, the revenue when claim has been finally determined. For the purposes of this Article, a revenue claim is finally determined when a Contracting State has the right under its internal law to collect the revenue claim and the taxpayer has no further rights to restrain collection.

3. Amounts collected by the competent authority of a Contracting State pursuant to this Article shall be forwarded to the competent authority of the other Contracting State. However, the first-mentioned Contracting State shall be entitled to reimbursement of costs, if any, incurred in the course of rendering such assistance to the extent mutually agreed between the competent authorities of the two States.

4. Nothing in this Article shall be construed as imposing on either Contracting State the obligation to carry out administrative measures of a different nature from those which used in the collection of its own taxes or those which would be contrary to its public policy (ordre public).

ARTICLE 29 : *Member of Diplomatic Missions and Consular Posts* – Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

ARTICLE 30 : *Entry into force* – 1. The Contracting States shall notify each other in writing through diplomatic channels, the completion of the procedure required by the respective laws for the entry into force of this Convention. This Convention shall enter into force thirty days after the receipt of the later of the notifications.

2. The provisions of this Convention shall have effect :

- (a) in India in respect of income derived or capital held in any fiscal year beginning on or after the first day of April next following the calendar year in which the Convention enters into force ; and
- (b) in Kazakhstan in respect of income derived or capital held in any fiscal year beginning on or after the first day of January next following the calendar year in which the Convention enters into force.

ARTICLE 31 : *Termination* – This Convention shall remain in force indefinitely until terminated by one of the Contracting States. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the expiry of five years from the date of entry into force of the Convention. In such event, the Convention shall cease to have effect :

- (a) in India, in respect of income arising in any previous year on or after the first day of April next following the calendar year in which the notice is given and in respect of capital which is held at the expiry of any previous year beginning on or after the first day of April next following the calendar year in which the notice of termination is given; and
- (b) in Kazakhstan, in respect of income arising in any fiscal year on or after the first day of January next following the calendar year in which the notice is given and in respect of capital which is held at the expiry of any fiscal year beginning on or after the first day of January next following the calendar year in which the notice of termination is given.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto, have signed this Convention.

DONE, in duplicate at New Delhi, this 9th day of December, 1996, in Hindi, Kazak, Russian and English languages, all texts being equally authentic. In case of divergence between the texts, the English text shall prevail.

(Sd.) (P. Chidambaram)

For the Government of the
Republic of India

(Sd.) (A. Eximov)

For the Government of the
Republic of Kazakhstan

PROTOCOL

At the signing of the Convention between the Government of the Republic of India and the Government of the Republic of Kazakhstan for the avoidance of double taxation and for the prevention of fiscal evasion with respect to taxes on income and on capital, the undersigned have agreed that the following shall form an integral part of the Convention.

With reference to Article 7:

In respect of paragraphs 1 and 2 of Article 7, where an enterprise of one of the Contracting States sells goods or merchandise or carries on business in the other Contracting State through a permanent establishment situated therein, the profits of that permanent establishment shall not be determined on the basis of the total amount received by the enterprise, but shall be determined only on the basis of the remuneration which is attributable to the actual activity of the permanent establishment for such sales or business. Especially, in the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, when the enterprise has a permanent establishment, the profits of such permanent establishment shall not be determined on the basis of the total amount of the contract, but shall be determined only on the basis of that part of the contract which is effectively carried out by the permanent establishment in the Contracting State where the permanent establishment is situated.

With reference to Articles 10, 11 and 12:

In respect of Articles 10, 11 and 12, if under any Convention, Agreement or Protocol between the Governments of Republic of Kazakhstan and the Republic of India with a third State, either Kazakhstan or India limit their taxation on dividends (single rate), interest, royalties or fees for technical services to a rate lower or a scope more restricted than the rate or scope provided for in this Convention on the said items of income, the same rate or scope as provided for in that Convention. Agreement or Protocol on the said items of income shall also apply under this Convention.

In witness whereof, the undersigned, being duly authorized thereto, have signed this Protocol.

Done in duplicate at New Delhi, this 9th day of December, 1996, in the Hindi, Kazak, Russian and English languages, all texts being equally authentic. In case of divergence between the texts, the English text shall prevail.

(Sd.) (P. Chidambaram)

For the Government of the
Republic of India

(Sd.) (A. Eximov)

For the Government of the
Republic of Kazakhstan

Kenya

Agreement for avoidance of double taxation of income and the prevention of fiscal evasion with Kenya

Whereas the Government of India and the Government of Kenya have concluded a Convention, as set out in the Annexure hereto, for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;

And whereas all the requirements have been completed in India and Kenya as are necessary to give the said Convention the force of law in India and Kenya respectively, as required by paragraph (1) of Article 30 of the said Convention;

And whereas the diplomatic notes to this effect have been exchanged between the said two Governments, as required by paragraph (2) of Article 30 of the said Convention;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961) and section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in the Union of India.

Notification : No. GSR 665(E), dated 20-8-1985.

TEXT OF ANNEXED AGREEMENT, DATED 12-4-1985

The Government of India and the Government of the Republic of Kenya desiring to conclude a Convention to avoid double taxation and to prevent fiscal evasion with respect to taxes on income have agreed upon the following measures:

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. This Convention shall apply to taxes on income imposed on behalf of each Contracting State, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income including taxes on gains from the alienation of movable or immovable property, and taxes on the total amounts of wages or salaries paid by enterprises.

3. The existing taxes to which the Convention shall apply are, in particular,

- (a) in the case of India, the income-tax including any surcharge thereon imposed under the Income-tax Act, 1961 (43 of 1961); and the surtax imposed under the Companies (Profits) Surtax Act, 1964 (7 of 1964) (hereinafter referred to as Indian tax),
- (b) in the case of Kenya, the income-tax imposed under the Income-tax Act (Cap. 70) (hereinafter referred to as Kenyan tax).

4. This Convention shall apply also to any identical or substantially similar taxes on income which are imposed after the date of signature of this Convention in addition to, or in place of, the existing taxes. The Contracting States shall notify each other of significant changes which have been made in their respective taxation laws.

ARTICLE 3 – *General definitions* – 1. In this Convention unless the context otherwise requires:

- (a) the term Kenya means the Republic of Kenya, including any area outside the territorial waters of Kenya which, in accordance with international law, has been or may be designated, under the laws of Kenya concerning the Continental Shelf as an area over which Kenya may exercise sovereign rights with respect to the exploration for and exploitation of natural resources;
- (b) the term India means the territory of India and includes the territorial sea and air space above it as well as any other maritime zone referred to in the Territorial Waters Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (Act No. 80 of 1976), in which India has certain rights and to the extent that these rights can be exercised therein as if such maritime zone is a part of the territory of India ;

- (c) the terms a Contracting State and the other Contracting State mean Kenya or India as the context requires ;
- (d) the term tax means Kenyan tax or Indian tax as the context requires, but shall not include any tax which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty imposed relating to those taxes ;
- (e) the term person means an individual, a company and any other body of persons treated as an entity for tax purposes ;
- (f) the term company means any body corporate or any entity which is treated as a body corporate for tax purposes ;
- (g) the terms Kenyan enterprise and Indian enterprise mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of Kenya and an industrial or commercial enterprise or undertaking carried on by a resident of India and the terms enterprise of a Contracting State and enterprise of the other Contracting State mean a Kenyan enterprise or an Indian enterprise, as the context requires;
- (h) the term national means any individual possessing the nationality of Kenya or India as the case may be and all legal persons, partnerships and associations deriving their status as such from the law in force in Kenya or India, as the case may be;
- (i) the term competent authority means :
 - (a) in the case of Kenya, the Minister of Finance or his authorised representative ;
 - (b) in the case of India, the Ministry of Finance (Department of Revenue) ;
- (j) the term international traffic means any voyage of a ship or aircraft operated by an enterprise of a Contracting State, except where the voyage is confined solely to places within the other Contracting State.

2. In the application of the provisions of this Convention by a Contracting State any term not otherwise defined herein 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 the present Convention.

ARTICLE 4 – *Fiscal domicile* – 1. For the purpose 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 residential 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 States with which his personal and economic relations are closer (hereinafter referred to as his centre of vital interests).
- (b) If the Contracting State in which he has his centre of vital interests cannot be determined, or if he does not have 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 States of which he is a national.
- (d) If he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph (1) a company is a resident of both Contracting States, then this case shall be determined in accordance with the following rules :

- (a) It shall be deemed to be a resident of the Contracting State of which it is a national.
- (b) If it is a national of neither of the Contracting States then it shall be deemed to be a resident of a Contracting State in which its place of effective management is situated.

4. Where by reason of the provisions of paragraph (1) a person other than an individual or a company is a resident of both Contracting States, it shall then 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 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 mine, oil-well, quarry or other place of extraction of natural resources;
- (g) a farm, plantation or other place where agricultural, forest, plantation or related activities are carried on ;
- (h) a building site or construction or assembly project which exists for more than six months;
- (i) the provision of supervisory activities for more than six months on a building site or construction or assembly project.

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

- (a) the use of facilities solely for the purpose 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;

(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. A person acting in a Contracting State for or on behalf of an enterprise of the other Contracting State – other than an agent of an independent status to whom the provisions of paragraph (6) apply – shall be deemed to be a permanent establishment in the first-mentioned State if

- (a) he has, and habitually exercises in that State, an 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 maintains in that first-mentioned State a stock of goods or merchandise belonging to that enterprise from which he regularly fulfils orders on behalf of that enterprise.

5. An insurance enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it collects premiums in that other State or insures risks therein through an employee or through a representative who is not an agent of independent status within the meaning of paragraph (6).

6. An enterprise of a Contracting States shall not be deemed to have a permanent establishment in the other Contracting States 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. However, where the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise he would not be considered an agent of an independent status within the meaning of this paragraph.

7. 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 otherwise), shall not of itself constitute either company, a permanent establishment of the other.

ARTICLE 6 – *Income from immovable property* – 1. Income from immovable property including income from agriculture or forestry may be taxed in the Contracting State in which such property is situated.

2. For the purposes of this Convention, the term immovable property shall be defined in accordance with the 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 and forestry, right to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as, consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded 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 and to profits from the alienation of such 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 professional 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 or has carried on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to (a) that permanent establishment, (b) sales in the other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment, or (c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.

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 the permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprises 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.

3. In the determination of the profits of a permanent establishment there shall be allowed as deduction expenses which are incurred for the purposes of the business 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.

4. Insofar as it has been customary in a Contracting State, according to its law, 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 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 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 State for the enterprise.

6. For the purposes 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 the Contracting State in which the place of effective management of the enterprise is situated.

2. The provisions of paragraph (1) of this article shall also apply to a share of the profits from the operation of aircraft in international traffic derived by an enterprise of a Contracting State through participation in a pooled service, in a joint air transport operation or in an international operating agency.

3. For the purposes of paragraph (1), interests on funds directly connected with the operation of aircraft in international traffic shall be regarded as income from the operation of such aircraft, and the provisions of article 12 shall not apply in relation to such interest.

ARTICLE 9 – *Shipping* – Profits derived by an enterprise of a Contracting State from the operation of ships in international traffic may be taxed in both Contracting States according to the law of each Contracting State :

Provided that where such an enterprise derives profit from such operation in the other Contracting State,

- (a) such profits shall be deemed to be an amount not exceeding five per cent of the full amount received by the enterprise on account of the carriage of passengers or freight embarked in that other State;
- (b) the tax chargeable in that other State shall be reduced by an amount equal to fifty per cent thereof.

ARTICLE 10 – *Associated enterprises* – 1. 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.

2. Where profits on which an enterprise of a Contracting State has been charged to tax in that State are also included in the profits of an enterprise of the other Contracting State and taxed accordingly, and the profits so included are profits which would have accrued to that enterprise of the other State, if the conditions made between the enterprises had been those which would have been made between independent enterprises, then the first-mentioned State shall make an appropriate adjustment to the amount of tax charged on those profits in the first-mentioned State. In determining such an adjustment due regard shall be had to the other provisions of this Convention in relation to the nature of the income.

ARTICLE 11 – *Dividends* – 1. Dividends paid by a company which is resident of a Contracting State to a resident of the other Contracting State may be taxed in that other 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 law of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 15 per cent of the gross amount.

3. The term dividends as used in this article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights assimilated to income from shares or any other item which is deemed to be a dividend or distribution of a company by the taxation law of the Contracting State of which the company making the distribution is a resident.

4. The provisions of paragraph (2) shall not apply if the recipient 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 professional services from a fixed base situated therein, and the holding by virtue of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of article 7 or article 16, 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 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 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 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 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 State.

2. However, such interest may be taxed in the Contracting State in which it arises, and according to the law of that State, but the tax so charged in the Contracting State in which the interest arises, shall not exceed 15 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph (2), interest arising in a Contracting State and paid to the Government of the other Contracting State or local authority thereof, the Central Bank of that other Contracting State, or any agency wholly owned by that Government or local authority, shall be exempt from tax of the first-mentioned Contracting State. The competent authorities of the Contracting State may determine by mutual agreement any other governmental institution to which this paragraph shall apply.

4. The term interest as used in this article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and other debt-claims

of every kind as well as all other incomes assimilated to income from money lent by the taxation law of the Contracting State in which the income arises.

5. The provisions of paragraph (2) shall not apply if the recipient 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 State professional 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 a case, the provisions of article 7 or article 16, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that 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 resident 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 that interest is borne by that permanent establishment or fixed base, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

7. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, 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 recipient in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount in that case, the excess part of the payment shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

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 State.

2. However, such royalties may be taxed in the Contracting State in which they arise, and according to the law of that State, but the tax so charged in the

Contracting State in which the royalties arise, shall not exceed 20 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 (including cinematograph films, and films or tapes 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.

4. The provisions of paragraph (2) shall not apply if the recipient 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 herein, or performs in that other State professional 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 a case, the provisions of article 7 or article 16, 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 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, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of royalties paid, 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 recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the

payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 14 – *Capital gains* – 1. Gains from the alienation of immovable property, as defined in paragraph (2) of article 6 may be taxed in the Contracting State in which such property is situated.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in that other State.

3. Notwithstanding the provisions of paragraph (2) gains by an enterprise of a Contracting State from the alienation of ships and aircraft which it operates in international traffic and movable property pertaining to the operation of such ships and aircraft shall be taxable only in that State.

4. Gains from the alienation of

- (a) shares of a company, the property of which consists principally of immovable property situated in a Contracting State, and
- (b) interest in a partnership or a trust, the property of which consists principally of immovable property situated in a Contracting State,

may be taxed in that State. For the purposes of this paragraph the term immovable property includes the shares of a company referred to in subparagraph (a) or an interest in a partnership or a trust referred to in subparagraph (b).

(5) Gains derived by a resident of a Contracting State from the alienation of any property other than those mentioned in paragraphs (1), (2), (3) and (4) shall be taxable only in that State.

ARTICLE 15 – *Management and professional fees* – 1. Management or professional fees arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such management or professional fees may be taxed in the Contracting State in which they arise, and according to the law of that State, but the tax so charged shall not exceed 17 per cent of the gross amount of the management or professional fees.

3. The term management or professional fees as used in this article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a managerial, technical, professional or consultancy nature.

4. The provisions of paragraph (2) shall not apply if the recipient of the management or professional fees, being a resident of a Contracting State, has in the other Contracting State in which the management or professional fees arise a permanent establishment with which the services giving rise to the management or professional fees are effectively connected. In such a case the provisions of article 7 shall apply.

5. Management or professional fees 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 management or professional fees, whether he is a resident of that State or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the management or professional fees was incurred and such management or professional fees are borne by such permanent establishment then such management or professional fees shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where, owing to a special relationship between the payer and the beneficial owner of the management or professional fees or between both of them and some other person, the amount of the management or professional fees paid, having regard to the service 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 that case the excess part of the payment shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 16 – *Independent personal services* – 1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless

- (a) he has a fixed base regularly available to him in the other Contracting State for the purposes of performing his activities, in which case so much of the income may be taxed in that other State as is attributable to that fixed base; or
- (b) he is present in the other Contracting State for the purpose of performing his activities for a period or periods exceeding in the aggregate 183 days in the calendar year concerned in the case of Kenya or the previous year concerned in the case of India, in which case so much of the income may be taxed in that other State as is attributable to the activities performed in that other State.

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

ARTICLE 17 – *Dependent personal services* – 1. Subject to the provisions of articles 18, 19, 20, 21, 22 and 23, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in the other State.

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

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned, and

- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this article, remuneration in respect of an employment exercised aboard a ship or aircraft in international traffic, may be taxed only in the Contracting State in which the place of effective management of the enterprise is situated.

ARTICLE 18 – *Directors fees* – Directors 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 other Contracting State may be taxed in that other State.

ARTICLE 19 – *Artistes and athletes* – 1. Notwithstanding the provisions of articles 7, 16 and 17, income derived by public entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which those activities are exercised.

2. Notwithstanding anything contained in this Convention, where the services of public entertainer or an athlete mentioned in paragraph (1) are provided in a Contracting State by an enterprise of the other Contracting State, the profits derived by that enterprise from providing those services may be taxed in the first-mentioned State.

3. The provisions of paragraphs (1) and (2) shall not apply to services of public entertainers and athletes. If their visit to a Contracting State is supported wholly or substantially from public funds of the other Contracting State.

ARTICLE 20 – *Government service* – 1. (a) Remuneration, other than a pension, paid 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 shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the Contracting State of which the recipient is a resident if the services are rendered in that State and the recipient did not become a resident of that State solely for the purpose of performing the services.

2. The provisions of paragraph (1), shall not apply to remuneration in respect of services rendered in connection with any trade or business carried on by one of the Contracting States or a political sub-division or a local authority thereof.

ARTICLE 21 : *Pensions* – 1. Any pension [other than a pension of the kind referred to in paragraph (2) of this article] and any annuity, derived from sources within a Contracting State by an individual who is a resident of the other Contracting State may be taxed in the first-mentioned Contracting State, but if the individual is subject to tax in the other Contracting State in respect of the pension or annuity the tax so charged in the first-mentioned Contracting State shall not exceed the lower of

- (a) 5 per cent of the pension or annuity; or
- (b) the amount of tax chargeable on the pension or annuity in the other Contracting State.

2. Pensions paid by, or out of funds created by, a Contracting State to an individual for services rendered to that Contracting State in the discharge of governmental functions may be taxed only in that Contracting State.

3. 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 moneys worth.

ARTICLE 22 – *Students and apprentices* – 1. A student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned Contracting State solely for the purposes of his education or training shall be exempt from tax in the first-mentioned Contracting State on payments made to him by

persons residing outside that first-mentioned Contracting State for the purposes of his maintenance, education or training.

2. The benefits of this article shall extend only for such period of time as may be reasonably or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this article for more than three consecutive years.

ARTICLE 23 – Professors and teachers – 1. A professor or teacher who visits a Contracting State for a period not exceeding one year for the purpose of teaching or conducting research at a University, College, School or other Educational 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 in respect of which he is subject to tax in the other Contracting State. However, any remuneration for such work received from sources outside the State shall not be deductible in the first-mentioned 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.

ARTICLE 24 – Income not expressly mentioned – 1. Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing articles of this Convention in respect of which he is subject to tax in that State shall be taxable only in that State.

2. However, if such income is derived by a resident of a Contracting State from sources in the other Contracting State, such income may also be taxed in the State in which it arises, and according to the law of that State.

ARTICLE 25 – Method of elimination of double taxation – 1. The laws in force in either of the Contracting States will continue to govern the taxation of income in the respective Contracting States except where provisions to the contrary are made in this Convention.

2. (a) The amount of Kenyan tax payable under the laws of Kenya and in accordance with the provision of this Convention, whether directly or by deduction, by a resident of India, in respect of income from sources within Kenya which has been subjected to tax both in India and in Kenya, shall be allowed as a credit against the Indian tax payable in respect of such income, provided that such credit shall not exceed the Indian tax (as computed before allowing any such credit) which is appropriate to the income derived from sources within Kenya; 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;

(b) For the purposes of the credit referred to in sub-paragraph (a) above, the term Kenyan tax payable shall be deemed to include any amount which would have been payable as Kenyan tax for any year but for: (i) any investment deduction granted under paragraph 24 of the Second Schedule to the Income-tax Act, cap. 470; (ii) the lower corporation rate of income-tax provided by paragraph 2(b) of the Third Schedule to the Income-tax Act, cap. 470; (iii) any other provisions which may subsequently be enacted granting an exemption or reduction of tax which the competent authorities of the Contracting States agreed to be for the purpose of economic development.

3. (a) The amount of Indian tax payable, under the laws of India and in accordance with the provisions of this Convention, whether directly or by deduction, by a resident of Kenya, in respect of income from sources within India which has been subjected to tax both in India and Kenya, shall be allowed as a credit against Kenyan tax payable in respect of such income provided that such credit shall not exceed the Kenyan tax (as computed before allowing any such credit) which is appropriate to the income derived from sources within India.

(b) For the purposes of the credit referred to in sub-paragraph (a) above, the term Indian tax payable shall be deemed to include any amount by which Indian tax has been reduced by the special incentive measures set forth in the following sections of the Income-tax Act, 1961:

- (a) sections 10(4), 10(4A), 10(6)(vii), 10(15)(iv), 10A, 32A, 33A, 35B, 35CC, 80HH, 80-I, 80K, 80L, and
- (b) any other provisions, which may subsequently be enacted granting a deduction from taxable income or exemption from or reduction of tax which the competent authorities of the Contracting States agree to be for the purposes of economic development.

4. Where under this Convention a resident of a Contracting State is exempt from tax in that Contracting State in respect of income derived from the other Contracting State then the first-mentioned Contracting State may, in calculating tax in the remaining income of that person apply the rate of tax which would have been applicable if the income exempted from tax in accordance with this Convention had not been so exempted.

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 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. Nothing in this article shall be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

4. 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 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.

5. In this article the term taxation means taxes which are the subject of this Convention.

6. Notwithstanding the provisions of the foregoing paragraphs, a company which is a resident of India and which has a permanent establishment in Kenya shall remain subject to an additional rate of tax in accordance with the provisions of Kenyan law, but such additional rate shall not exceed 7.5 per cent. however, such a company will not be subjected 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.

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 States, present his case to the competent authority of the State of which he is a resident. The case must be presented within three years of the date of such action or the latest of such actions as the case may be.

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 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.

4. The competent authorities of the Contracting States may communicate directly with each other for the purposes of applying the provisions of this convention. When it seems advisable in order to reach agreement to have a

normal exchange of opinions, such exchange may take place through a commission consisting of representatives of the competent authorities of the Contracting States.

ARTICLE 28 – *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 preventing fraud or fiscal evasion concerning taxes covered by this Convention insofar 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 or collection 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.

ARTICLE 29 – *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 agreements.

ARTICLE 30 – *Entry into force* – 1. This Convention shall come into force on the date when the last of all such things shall have been done in India and Kenya as are necessary to give the Convention the force of law in India and Kenya respectively.

2. The contracting States shall notify each other of the completion of the requirements mentioned in paragraph (1) of this article. The exchange of

diplomatic notes certifying that this requirement has been completed shall take place at.....

3. Upon the exchange of such diplomatic notes, this convention shall have effect

(a) in Kenya,

(i) in respect of taxes withheld at the source on amounts paid or credited to non-residents on or after 1st January in the calendar year following the year in which all the required formalities are completed;

(ii) in respect of other taxes on income arising for the year of income commencing on or after the 1st January in the calendar year in which all the required formalities are completed;

(b) in India, in respect of income assessable for any assessment year commencing on or after 1st day of April, in the year in which all the required formalities are completed.

ARTICLE 31 – *Termination* – This Convention shall continue in effect indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give the other Contracting State, through diplomatic channels, written notice of termination and, in such event, this Convention shall cease to have effect

(a) in Kenya,

(i) in respect of taxes withheld at the source on amounts paid or credited to non-residents on or after the 1st day of January in the calendar year next following that in which the notice is given;

(ii) in respect of other taxes on income arising for the year of income next following that in which the notice of termination is given, and subsequent years;

(b) in India, in respect of income assessable for the assessment year commencing on the 1st day of April in the second calendar year next following the calendar year in which the notice is given, and subsequent years.

Korea

Agreement for avoidance of double taxation of income and the prevention of fiscal evasion with Korea

Whereas the annexed Convention between the Government of the Republic of India and the Government of the Republic of Korea for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income has been ratified and the instruments of ratification exchanged, as required by paragraph (1) of article 29 of the said Convention, on 1st August, 1986;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), and section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in Union of India.

Notification : No. GSR 111(E), dated 26-9-1986, as amended by GSR 986(E), dated 20-12-1990.

TEXT OF ANNEXED AGREEMENT DATED 19-7-1985

The Government of the Republic of India, and the Government of the Republic of Korea, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, 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 Convention shall apply to taxes on income imposed on behalf of each Contracting State irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property and taxes on the total amounts of wages or salaries paid by enterprises.

3. The existing taxes to which the Convention shall apply are :

1(a) In the case of Korea

(i) the income-tax;

- (ii) the corporation tax; and
- (iii) the inhabitant tax;
- (hereinafter referred to as Korean tax);
- (b) In the case of India,
 - (i) the income-tax including any surcharge thereon imposed under the Income-tax Act, 1961 (43 of 1961);
 - (ii) the surtax imposed under the Companies (Profits) Surtax Act, 1964 (7 of 1964) ;
 - (hereinafter referred to as Indian tax).

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of this convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

ARTICLE 3 – *General definitions* – 1. In this Convention, unless the context otherwise requires

- (a) the terms a Contracting State and the other Contracting State mean Korea or India as the context requires;
- (b) the term tax means Korean tax or Indian tax, as the context requires;
- (c) the term person includes an individual, a company and any other body of persons which is treated as an entity for tax purposes;
- (d) the term company means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (e) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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;
- (f) the term competent authority means, in the case of Korea the Minister of Finance or his authorised representative; and in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or its authorised representative;

- (g) the term national means any individual possessing the nationality of a Contracting State and any legal person, partnership, association or other entity deriving its status as such from the laws in force in the Contracting State;
- (h) 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 either 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 – *Fiscal domicile* – 1. For the purposes of the Convention the term resident of a Contracting State means any person who under the laws of that State, is liable to taxation therein by reason of his domicile, residence, place of head or main office, 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 status shall be determined as follows :

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him, if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 State in which its place of effective management is situated. In case of doubt the competent authorities of the Contracting States shall settle the question by mutual agreement.

ARTICLE 5 – *Permanent establishment* – 1. For the purposes of this Convention, the term permanent establishment means a fixed place of business through which the business of an 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; and
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. The term permanent establishment likewise encompasses a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than nine months.

4. Notwithstanding the preceding provisions of this article, the term permanent establishment shall be deemed not to include

- (a) the use of facilities solely for the purpose of storage, display or delivery 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, display or delivery;
- (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;

- (e) the maintenance of a fixed place of business solely for the purpose of advertising, the supply of information, scientific research or any other activity, if it has a preparatory or auxiliary character in the trade or business of the enterprise;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e) of this paragraph, provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs (1) and (2) if a person – other than an agent of independent status to whom paragraph (6) applies – is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise unless the activities of such person are limited to those mentioned in paragraph (4) which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment by virtue of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that 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.

7. 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 otherwise) shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6 – *Income from immovable property* – 1. Income from immovable property may be taxed in the Contracting State in which such property is situated.

2. The term immovable property shall be defined in accordance with the 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 and forestry, rights to which the provisions of general law respecting landed property, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work mineral deposits, sources and other natural resources, ships, boats and aircraft shall not be regarded 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 (5) 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 the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph (3), 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.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes 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, which are allowed under the provisions of the domestic law of the Contracting State in which the permanent establishment is situated.

4. 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.

5. For the purposes 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.

6. Where income or 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.

[1](#)ARTICLE 8 – *Air transport* – 1. Profits from the operation of aircraft in international traffic carried on by an enterprise of a Contracting State shall be taxable only in that State.

2. The provisions of paragraph (1) shall also apply to profits derived from the participation in a pool, a joint business or in an international operating agency.

3. For the purposes of this article, the term operation of aircraft shall include transportation by air of persons, livestock, goods or mail carried on by the owners or lessees or charterers of aircraft, including the sale of tickets for such transportation on behalf of other enterprises, the incidental lease of aircraft on a charter basis and any other activity directly connected with such transportation.

[1](#)ARTICLE 9 – *Shipping transport* – 1. Profits derived by an enterprise of a Contracting State from the operation of ships in international traffic shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph (1) of this article, profits derived from the operation of ships in international traffic may be taxed in the Contracting State in which such operation is carried on; but the tax so charged shall not exceed 50 per cent of the tax otherwise imposed by the internal law of that State.

3. The provisions of paragraphs (1) and (2) of this article shall also apply 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 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 laws of that State, but if the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed :

- (a) 15 per cent of the gross amount of the dividends if the beneficial owner is a company which owns directly at least 20 per cent of the capital of the company paying the dividends ;
- (b) 20 per cent of the 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, 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 cases 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 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 State or insofar as the holding in respect so which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the companys undistributed profits to a tax on the companys undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly or profits or income arising in such other 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 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 beneficial owner of the interest the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph (2) of this article :

- (a) where the interest is paid to a bank carrying on a *bona fide* banking business which is a resident of the other Contracting State and is the beneficial owner of the interest, the tax charged in the Contracting State in which the interest arises shall not exceed 10 per cent of the gross amount of the interest ;
- (b) where the interest is paid to the Government of one of the Contracting States or a political sub-division or local authority or the Central Bank or the Export-Import Bank of that State, it shall not be subjected to tax by the State in which it arises.

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 debtors 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.

5. The provisions of paragraphs (1), (2) and (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 State independent personal services from a fixed base situated therein, and the debt-claims in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such cases 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 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 resident 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 such interest shall be deemed to arise in the State in which the permanent establishment or the fixed base is situated.

7. Where, owing to 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 last-mentioned amount. In such cases, 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.

ARTICLE 13 – *Royalties and fees for technical services* – 1. Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties and fees for technical services may also be taxed in that Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties or fees for technical services, the tax so charged shall not exceed 15 per cent of the gross amount of the royalties or fees for technical services.

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 including 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.

4. The term fees for technical services as used in this article means payments of any kind to any person, other than payments to an employee of the person making the payments and to any individual for independent personal services mentioned in article 15, in consideration for services of a managerial, technical or consultative nature, including the provision of services of technical or other personnel.

5. The provisions of paragraphs (1) and (2) of this article shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services arise through a permanent establishment

situated therein, or perform in that other State independent personal services from a fixed base situated therein, and the right, property or contract in respect of which the royalties or fees for technical services and paid is effectively connected with such permanent establishment or fixed base. In such cases the provisions of article 7 or article 15, as the case may be, shall apply.

6. Royalties and fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties or fees for technical services, whether he is a resident of a Contracting State or not has in a Contracting State a permanent establishment of a fixed base in connection with which the obligation to make the payments was incurred and the payments are borne by the permanent establishment or fixed base, then the royalties or fees for technical services shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

7. Where, owing to a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties or fees for technical services paid, 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 recipient in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In such cases, the excess part of the payments shall remain taxable according to the law of each Contracting State due agreed being had to the other provisions of this Convention.

ARTICLE 14 – *Capital gains* – 1. Capital gains from the alienation of immovable property, as defined in paragraph (2) of article 6 or from the alienation of shares in a company the assets of which consist principally or immovable property, may be taxed in the State in which such property is situated.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purposes of

performing professional services including such gains from the alienation of such a permanent establishment (alone or together) with the whole enterprise or of such a fixed base may be taxed in the other State.

3. Notwithstanding the provisions of paragraph (2), gains by an enterprise of a Contracting State from the alienation of ships and aircraft which it operates in international traffic and movable property pertaining to the operation of such ships and aircraft shall be taxable only in that State.

4. Gains from the alienation of any property, other than those mentioned in preceding paragraphs of this Article, shall be taxable only in the Contracting State of which the alienator is a resident.

5. The term alienation shall mean alienation in accordance with the law of the Contracting State in which the property in question is situated.

ARTICLE 15 – *Independent personal services* – 1. Income derived by an individual who is a resident of a Contracting State from the performance of professional services or other independent activities of a similar character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other Contracting State but only so much of it as is attributable to that fixed base.

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, 20, 21 and 22, 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 State unless the employment is exercised, in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the previous year or taxation year concerned, as the case may be; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this article, remuneration derived by a resident of a Contracting State in respect of an employment exercised aboard a ship or aircraft operated in international traffic shall be taxable only in that State.

ARTICLE 17 – *Directors fees and remuneration of top-level managerial officials* – 1. Directors fees and other 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 may be taxed in that other State.

2. Salaries, wages and other similar remuneration derived by a resident of a Contracting State in his capacity as an official in top-level managerial position of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 18 – *Artistes and athletes* – 1. Notwithstanding the provisions of article 15, income derived by a resident of a Contracting State as an entertainer, such as a 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 State.

2. Where income in respect of personal activities exercised by an entertainer or 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 and 15, 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, a political sub-division or a local authority thereof.

ARTICLE 19 – *Pensions* – Subject to the provisions of paragraphs (2) and (3) of Article 20, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

ARTICLE 20 – *Government functions* – 1. (a) Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof, to an individual in respect of service rendered to that State or sub-division or, authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

(i) is a national of that State ; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by or out of funds created by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such pensions shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of articles 16, 17 and 19 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

4. The provisions of paragraph (1) of this article shall likewise apply in respect of remuneration or pensions paid, in the case of Korea, by the Bank of Korea, the Export-Import Bank of Korea and the Korea Trade Promotion Corporation and in the case of India, by the Reserve Bank of India and the EXIM Bank of India, and by organizations recognized by and agreed between the competent authorities of the Contracting States.

ARTICLE 21 – *Payments received by students and apprentices* – 1. A student or business apprentice who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State and who is present in that other State solely for the purpose of his education or training shall be exempt from tax in that other State on :

- (a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training, and
- (b) remuneration from employment in that other State, in an amount not exceeding one million and seven hundred thousand Korean Won or its equivalent in Indian currency during any previous year or the taxation year, as the case may be, provided that such employment is directly related to his studies or is undertaken for the purpose of his maintenance.

2. The benefits of this article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this article for more than five consecutive years from the date of his first arrival in that other Contracting State.

ARTICLE 22 – *Professors, teachers and research scholars* – 1. An individual who is or was a resident of a Contracting State immediately before making a visit to the other Contracting State, and who, at the invitation of any university, college, school or other similar educational institution, which is recognised by the competent authority in that other State, visits that other State solely for the purpose of teaching or research or both at such educational institutions shall be exempt from tax in that other State on his remuneration for such teaching or research, for a period not exceeding two consecutive years from the date of his first arrival in that other 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.

ARTICLE 23 – *Other income* – Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention, shall be taxable only in that State.

ARTICLE 24 – *Elimination of double taxation* – 1. In the case of a resident of Korea, double taxation shall be avoided as follows:

Subject to the provisions of Korean tax law regarding the allowance as a credit against Korean tax of tax payable in any country other than Korea (which shall not affect the general principle hereof), the Indian 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 India and in accordance with this Convention, whether directly or by deduction, in respect of income from sources within India shall be allowed as a credit against Korean tax payable in respect of that income. The credit shall not, however, exceed that proportion of Korean tax which the income from sources within India bears to the entire income subject to Korean tax.

2. For the purposes of paragraph (1), the term Indian tax payable shall be deemed to include the amount of Indian tax which would have been payable in accordance with Indian tax laws but for the exemption or reduction, of Indian tax in accordance with the laws relating to incentives for the promotion of economic development in India which were in force on the date of signature of this Convention or any other provisions which may subsequently be introduced in India in modification of, or in addition to, these laws so far as they are agreed by the competent authorities of the Contracting States, provided that the amount of the tax referred to in this paragraph shall not, however, exceed :

- (a) in the case of dividends referred to in paragraph (2) (a) of article 11 an amount of 15 per cent of the gross amounts of such dividends and, in the case of dividends referred to in paragraph (2)(b) of article 11 an amount of 20 per cent of the gross amount of such dividends ;
- (b) in the case of interest referred to in paragraph (2) of Article 12 on amount of 15 per cent of the gross amount of such interest and in the case of interest referred

to in paragraph (3) (a) of Article 12 an amount of 10 per cent of the gross amount of such interest; and

- (c) in the case of royalties referred to in paragraph (2) of Article 12 an amount of 15 per cent of the gross amount of such royalties.

3. 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 Korean 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 Korea and in accordance with this Convention, whether directly or by deduction, in respect of income from sources within Korea 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 Korea bears to the entire income subject to Indian tax.

14. For the purposes of paragraph (3), the term Korean tax payable shall be deemed to include the amount of Korean tax which would have been payable in accordance with Korean tax laws but for the exemption or reduction of Korean tax in accordance with the laws relating to incentives for the promotion of economic development in Korea which were in force on the date of signature of this Convention or any other provisions which may subsequently, be introduced in Korea in modification of, or in addition to those laws so far as they are agreed by the competent authorities of the Contracting States, provided that the amount of the tax referred to in this paragraph shall not, however, exceed :

- (a) in the case of dividends referred to in paragraph (2)(a) of article 11 an amount of 15 per cent of the gross amount of such dividends and in the case of dividends referred to in paragraph (2)(b) of Article 11 an amount of 20 per cent of the gross amount of such dividends ;
- (b) in the case of interest referred to in paragraph (2) of article 12 an amount of 15 per cent of the gross amount of such interest and in the case of interest referred to in paragraph (3)(a) of Article 12 an amount of 10 per cent of the gross amount of such interest; and
- (c) in the case of royalties referred to in paragraph (2) of Article 13 an amount of 15 per cent of the gross amount of such royalties.

ARTICLE 25 – *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.

This provision shall not be constituted as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of article 10, paragraph (7) of article 12, or paragraph (7) of article 13 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same condition as if they had been paid to a resident of the first-mentioned State.

4. 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.

5. The provisions of this article shall, notwithstanding the provisions of article 2, apply to taxes of every kind and description.

ARTICLE 26 – *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 or, if his case comes under paragraph (7) of Article 25, to that of the Contracting State of which he is a national. This case must be presented within three years from the first notification of the action giving rise to taxation not in accordance with the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself about 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 which is not in accordance with the 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 the Convention. They may also consult together for the elimination or 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. 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.

ARTICLE 27 – *Exchange of information* – 1. The competent authorities of the Contracting States shall exchange such information (including documents) as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention, insofar as the taxation thereunder is not contrary to the Convention in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State.

However, if the information is originally regarded as secret in the transmitting State it shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Convention. Such persons or authorities shall use the information only for such purposes but may disclose the information in public court, proceedings or in judicial decisions. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchanges of information shall be made, including where appropriate, exchanges of information regarding tax avoidance.

2. 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 and administrative practice of that or of the other Contracting State ;
- (b) to supply information which is 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 28 – *Diplomatic agents and consular officers* – Nothing in this Convention shall affect the fiscal privileges of diplomatic agents and consular officers under the general rules or international law or under the provisions of special agreements.

ARTICLE 29 – *Entry into force* – 1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Seoul as soon as possible.

The Convention shall enter into force on the thirtieth day after the date of exchange of the instruments of ratification.

2. This Convention shall have effect

- (a) in Korea,

- (i) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after the first day of January of the calendar year next following that in which the Convention is initialled ; and
 - (ii) in respect of other taxes for taxation years beginning on or after the first day of January of the calendar year next following that in which the Convention is initialled,
- (b) in India,
- (i) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after the first day of April of the calendar year next following that in which the Convention is initialled ; and
 - (ii) in respect of other taxes for previous years beginning on or after the first day of April of the calendar year next following that in which the Convention is initialled.

ARTICLE 30 – *Termination* – The Convention shall remain in force indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of ten years from the date of its entry into force, give the other Contracting State through diplomatic channels, written notice of termination and, in such event, this Convention shall cease to have effect

- (a) in Korea,
- (i) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after the first day of January next following the calendar year in which the notice of termination is given ; and
 - (ii) in respect of other taxes for taxation years beginning on or after the first day of January next following the calendar year in which the notice of termination is given.
- (b) in India,
- (i) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after the first day of April next following the calendar year in which the notice of termination is given ; and

- (ii) in respect of other taxes for previous years beginning on or after the first day of April next following the calendar year in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed the present Convention.

DONE in duplicate at New Delhi this 19th day of July, 1985 on three original copies each in the Hindi, Korean and English languages, all the texts being equally authentic. In case of divergence between the three texts, the English text shall be the operative one.

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Kuwait

Comprehensive Agreement

Agreement for avoidance of double taxation and prevention of fiscal evasion with Kuwait

Whereas the annexed Agreement between the Government of the Republic of India and the Government of the State of Kuwait for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed in India on the 15th day of June, 2006 shall come into force on the 17th day of October, 2007, being the date of receipt of the later of the notifications after completion of the procedures as required by the respective laws for the entry into force of this Agreement, in accordance with Article 30 of the said Agreement.

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Agreement annexed hereto shall be given effect to in the Union of India with effect from the 1st day of April, 2008.

Notification : No. SO 2000(E), dated 27-11-2007.

ANNEXURE

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE STATE OF KUWAIT FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of India and the Government of the State of Kuwait, desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and with a view to promoting economic co-operation between the two countries,

Have agreed as follows:

ARTICLE 1 : *Persons Covered* – This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2 : *Taxes Covered* – 1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its political sub-divisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property and taxes on the total amounts of wages or salaries paid by enterprises.

3. The existing taxes to which the Agreement shall apply are in particular:

(a) in the case of India:

the income-tax, including any surcharge thereon;

(hereinafter referred to as Indian tax);

(b) in the case of Kuwait:

(1) the corporate Income-tax;

(2) the contribution from the net profits of the Kuwaiti shareholding companies payable to the Kuwait Foundation for Advancement of Science (KFAS);

(3) the Zakat;

(4) the tax subjected according to the Supporting of National Employees law (hereinafter referred to as Kuwaiti tax).

4. This Agreement shall apply also to any identical or substantially similar taxes which are imposed under the laws of a Contracting State after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws.

ARTICLE 3 : *General Definitions* – 1. For the purposes of this Agreement, unless the context otherwise requires:

(a) the terms a Contracting State and the other Contracting State mean the Republic of India or the State of Kuwait as the context requires;

(b) the term India means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with inter-national law, including the U.N. Agreement on the Law of the Sea;

(c) the term Kuwait means the territory of the State of Kuwait including any area beyond the territorial sea which in accordance with international law has been or may hereafter be designated, under the laws of Kuwait, as an area over which Kuwait may exercise sovereign rights or jurisdiction;

(d) the term person includes an individual, a company, a body of persons and any other entity (which is treated as a taxable unit under the taxation laws in force in the respective Contracting States);

(e) the term company means any body corporate or any entity that is treated as a body corporate for tax purposes;

(f) the term enterprise applies to the carrying on of any business;

(g) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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;

(h) 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;

(i) the term competent authority means:

(j) in India : the Central Government in the Ministry of Finance (Department of Revenue) or its authorized representative;

(ii) in Kuwait: the Minister of Finance or an authorized representative of the Minister of Finance;

(j) the term national means:

(i) any individual possessing the nationality of a Contracting State;

(ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;

(k) the term tax means Indian or Kuwaiti tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Agreement applies or which represents a penalty or fine imposed relating to those taxes;

(l) the term fiscal year means the financial year beginning on the 1st day of April.

2. As regards the application of the Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Agreement applies and any meaning under the applicable tax laws of that State shall prevail over a meaning given to the term under other laws of that State.

ARTICLE 4 : *Resident* – 1. For the purposes of this Agreement, the term resident of a Contracting State means:

(a) in the case of India : any person who, under the laws of the State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State;

(b) in the case of Kuwait : an individual who is a Kuwaiti national or an Indian national and who is present in Kuwait for a period or periods totalling in the aggregate at least 183 days in the fiscal year concerned, and a company or an entity which is incorporated in Kuwait and is liable to tax therein.

2. For the purposes of paragraph 1, a resident of a Contracting State shall include all of the following:

(a) the Government of that Contracting State and any political sub-division or local authority thereof;

(b) any governmental institution created in that Contracting State under public law such as a corporation, Central Bank, fund, authority, foundation, agency or other similar entity, which is wholly owned and controlled directly by the Government of that Contracting State.

3. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

(a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);

(b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;

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

(d) if his status cannot be determined under the provisions of sub-*paras* (a) to (c), the competent authorities of the Contracting States shall settle the question by mutual agreement.

4. 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 only of the Contracting State in which its place of effective management is situated. If the State in which its place of effective management is situated cannot be determined, then the competent authorities of the Contracting States shall endeavour to settle the question by mutual agreement.

ARTICLE 5 : *Permanent Establishment* – 1. For the purposes of this Agreement, the term permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a sales outlet;
- (g) a warehouse in relation to a person providing storage facilities for others;
- (h) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and
- (i) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on.

3. A building site or construction, installation or assembly project or supervisory activities in connection therewith constitutes a permanent establishment only if such site, project or activities last 183 days or more in any twelve-month period.

4. The furnishing of services, including consultancy or managerial services, by an enterprise of a Contracting State through employees or other personnel engaged by the enterprise for such purpose, in the other Contracting State constitutes a permanent establishment only if activities of that nature continue for a period or periods aggregating 183 days or more within any twelve-month period.

5. Notwithstanding the preceding provisions of this Article the term permanent establishment shall be deemed not to include :

(a) the use of facilities solely for the purpose of storage, display or delivery 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, display or delivery;

(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 of collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

(f) the maintenance of a fixed place of business solely for any combination of activities, mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

6. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 9 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 Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:

(a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph, or

(b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise;

(c) habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise itself or for such enterprise and other enterprises which are controlled by it or have a controlling interest in it;

(d) in so acting, he manufactures or processes in that Contracting State goods and merchandise belonging to the enterprise.

7. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 9 applies.

8. 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 broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise and other enterprises, which are controlled by it or have a controlling interest in it, he shall not be considered an agent of an independent status within the meaning of this paragraph.

9. 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 by itself constitute either company a permanent establishment of the other.

ARTICLE 6 : *Income from Immovable Property* – 1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other Contracting State.

2. The term immovable property shall have the meaning which it has under the 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded 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 in that other Contracting State. If the enterprise carries on or has carried on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, 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.

3. In determining the profits of a permanent establishment, there shall be allowed deductions those deductible expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere, in accordance with any applicable tax law or regulations of that State. Hence, no such deduction shall be allowed in respect of amounts, if any, charged or paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment.

4. 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.

5. Insofar 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 contained in this Article.

6. For the removal of doubts, it is hereby clarified that if the information available to the tax authority of a Contracting State is inadequate to determine the profits to be attributed to the permanent establishment of a person, nothing in this Article shall affect the application of any law or regulations of that Contracting State relating to the determination of the tax liability of that permanent establishment by making of an estimate by the tax authority of that Contracting State of the profits to be subject to the tax of that permanent establishment by the tax authority of that Contracting State, provided that such law or regulations shall be applied, taking into account the information available to the tax authority, consistently with the principles of this Article.

7. For the purposes 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.

8. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8 : *Shipping and Air Transport* – 1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall, be taxable only in that State.

2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

3. For the purpose of this Article, profits from the operation of ships or aircraft in international traffic include all of the following:

- (a) Profits from the rental on a bareboat basis of ships or aircraft;
- (b) Profits from the use, maintenance or rental of containers, including trailers and related equipment for the transport of containers, used for the transport of goods or merchandise;

where such rental or such use, maintenance or rental, as the case may be, is incidental to the operation of ships or aircraft in international traffic.

4. For the purposes of this Article interest on funds directly connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft if they are incidental to the carrying on of such business, and the provisions of Article 11 shall not apply in relation to such interest.

5. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

6. It is understood that the provisions of this Article shall replace the provisions of the agreement between the Government of the Republic of India and the Government of the State of Kuwait for the avoidance of double Taxation of income derived from international Air Transport Signed on 21st April, 1982.

ARTICLE 9 : *Associated Enterprises* – 1. 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.

2. Where a Contracting State includes in the profits of an enterprise of the State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so

included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10 : *Dividends* – 1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State who is the beneficial owner of such dividends may be taxed in that other 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 laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 10 per cent of the gross amount of the dividends. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. Notwithstanding the provisions of paragraphs 1 and 2, dividends paid by a company which is a resident of a Contracting State shall not be taxable in that Contracting State if the beneficial owner of the dividends is:

(a) the Government, a political sub-division or a local authority of the other Contracting State; or

(b) the Central Bank of the other Contracting State; or

(c) other governmental agencies or governmental financial institutions as may be specified and agreed to in an exchange of notes between the competent authorities of the Contracting States.

4. The term dividends as used in this Article means income from shares including jouissance shares or jouissance rights, mining shares, founders 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.

5. 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 14, as the case may be, shall apply.

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

ARTICLE 11 : *Interest* – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State who is the beneficial owner of such interest may be taxed in that other 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 beneficial owner of the interest, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraphs 1 and 2, interest paid by a company which is a resident of a Contracting State shall not be taxable in that Contracting State if the beneficial owner of the interest is:

(a) the Government, a political sub-division or a local authority of the other Contracting State; or

(b) the Central Bank of the other Contracting State; or

(c) other governmental agencies or financial institutions as may be specified and agreed to in an exchange of notes between the competent authorities of the Contracting States.

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 debtors 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 and 2 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 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 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, 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 indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the 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 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 the other provisions of this agreement.

ARTICLE 12 : *Royalties* – 1. Royalties or fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties or fees for technical services may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the beneficial owner of the royalties or fees for technical services is a resident of the other Contracting State the tax so charged shall not exceed 10 per cent of the gross amount of the royalties or fees for technical services.

3. (a) 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 including cinematograph films or films or tapes used for television or radio broadcasting, any patent, trademark, 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.

(b) The term fees for technical services as used in this Article means payments of any kind, other than those mentioned in Articles 14 and 15 of this Agreement as consideration for managerial or technical or consultancy services, including the provision of services of technical or other personnel.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services 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 or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties or fees for technical services shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties or fees for technical services, 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 or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the 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 or fees for technical services, 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 the other provisions of this agreement.

ARTICLE 13 : *Capital Gains* – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or

with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from the alienation of shares other than those mentioned in paragraph 4 in a company which is a resident of a Contracting State may be taxed in the State in which the company issuing the shares is resident.

6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5, shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14 : *Independent Personal Services* – 1. Income derived by an individual who is 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 unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities or if his stay in the other Contracting State is for a period or periods amounting to or exceeding 183 days in the aggregate in any fiscal year. If he has or had such a fixed base, or such a stay in the other Contracting State the income may be taxed in the other Contracting State but only so much of it as is attributable to that fixed base or income derived from activities performed in that State.

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

ARTICLE 15 : *Dependent Personal Services* – 1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned, and

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

(c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, by an enterprise of a Contracting State shall be taxable only in that State.

4. An individual who is both a national of a Contracting State and an employee of an enterprise of that Contracting State the principal business of which is the operation of aircraft in international traffic, and such individual derives remuneration in respect of duties performed in the other Contracting State shall be taxable only in the first-mentioned Contracting State in respect of the remuneration derived from his employment with the enterprise.

ARTICLE 16 : *Directors' Fees* – Directors fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the

board of directors or other similar organ of a company which is a resident of the other Contracting State shall be taxable only in that other State.

ARTICLE 17 : *Artistes and Sportsmen* – 1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. The provisions of paragraphs 1 and 2, shall not apply to income derived by entertainers or sportsmen who are residents of a Contracting State from personal activities as such exercised in the other Contracting State if their visit to and activities in that other Contracting State are substantially supported from the public funds of the first-mentioned or both Contracting States including those of any political sub-division, a local authority or statutory body thereof, nor to income derived by a non-profit making organisation 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, founders or members.

ARTICLE 18 : *Pensions and Annuities* – 1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration and annuities paid to an individual who is a resident of a Contracting State in consideration of past employment shall be taxable only in that Contracting State.

2. As used in this Article:

(a) the terms pensions and other similar remuneration mean periodic payments made after retirement in consideration of past employment or by way of compensation for injuries received in connection with past employment.

(b) the term annuity means a stated sum payable to an individual 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 moneys worth.

ARTICLE 19 : *Government Service* – 1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages and other similar remuneration and to pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

ARTICLE 20 : *Professors, Teachers and Research Scholars* – 1. A professor, teacher or research scholar who is or was a resident of the Contracting State immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college or other

similar institution in that other Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival in that other State.

2. This Article shall apply to income from research only if such research is undertaken by the individual in the public interest and not primarily for the benefit of some private person or persons.

3. For the purposes of this Article, an individual shall be deemed to be a resident of a Contracting State if he is resident in that State in the fiscal year in which he visits the other Contracting State or in the immediately preceding fiscal year.

ARTICLE 21 : *Students and Trainees* – 1. Payments which a student or trainee who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that Contracting State.

2. Notwithstanding the provisions of paragraph 1, remuneration which a student or trainee who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned Contracting State solely for the purpose of his education or training derives from temporary services rendered in the first-mentioned Contracting State shall not be taxed in that Contracting State, provided that such services are in connection with his education or training and that the remuneration for such services is necessary to supplement the resources available to him for the purpose of his maintenance.

3. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken.

ARTICLE 22 : *Other Income* – 1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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 income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

ARTICLE 23 : *Elimination of Double Taxation* – 1. The laws in force in either of the Contracting States shall continue to govern the taxation in the respective Contracting State except where provisions to the contrary are made in this agreement.

2. It is agreed that double taxation shall be avoided in accordance with the following paragraphs of this Article:

(a) in the case of India :

Where a resident of India derives income which, in accordance with the provisions of this Agreement, may be taxed in both – Kuwait and India, India shall allow as a deduction from the tax on the income of that resident, an amount equal to the income-tax paid in Kuwait.

Such deduction in either case shall not, however, exceed that part of the tax on income as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in Kuwait.

(b) in the case of Kuwait:

Where a resident of Kuwait derives income which, in accordance with the provisions of this Agreement, may be taxed in both – India and Kuwait,

Kuwait shall allow as a deduction from the tax on the income of that resident, an amount equal to the income-tax paid in India.

Such deduction in either case shall not, however, exceed that part of the tax on income as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in India.

3. The tax payable in the Contracting State mentioned in paragraph 2 of this Article shall be deemed to include the tax which would have been payable but for the tax incentives granted under the laws of the Contracting State and which are designed to promote economic development.

ARTICLE 24 : *Non-discrimination* – 1. Individuals possessing the nationality 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 individuals possessing the nationality of that other Contracting State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

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 State, carrying on the same activities in the same circumstances. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents. This provision shall not be construed as preventing a Contracting State from charging the profits of a Permanent Establishment which a company of the other Contracting State has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first-mentioned Contracting State, nor being in conflict with the provisions of Para 3 of Article 7.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 7 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

4. Nothing in this Article shall be interpreted as imposing a legal obligation on a Contracting State to extend to the residents of the other Contracting State, the benefit of any treatment, preference or privilege which may be accorded to any third State or its residents by virtue of the formation of a customs union, economic union, a free trade area or any regional or sub-regional arrangement relating wholly or mainly to taxation or movement of capital to which such the first-mentioned Contracting State may be a party.

5. 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 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 the capital of which is wholly or partly owned or controlled directly or indirectly by one or more residents of first-mentioned State are or may be subjected.

6. In this Article, the term taxation means taxes, which are the subject of this agreement.

ARTICLE 25 : *Mutual Agreement Procedure* – 1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the agreement.

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 a satisfactory 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 which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law 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 the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

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. 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.

ARTICLE 26 : *Exchange of Information* – 1. The competent authorities of the Contracting States shall exchange such information (including documents or certified copies of the documents) as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. 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 and administrative practice of that or of the other Contracting State;

(b) to supply information which is 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 (order public).

3. The Contracting State shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this paragraph.

ARTICLE 27 : *Limitation of Benefits* – A resident of a Contracting State shall not be entitled to the benefits of this Agreement if its affairs were arranged with the primary purpose to take benefits of this Agreement. The case of legal entities not having *bona fide* business activities shall be covered by the provisions of this Article.

ARTICLE 28 : *Miscellaneous Rules* – 1. The provisions of this Agreement shall not be construed to restrict in any manner any exclusion, exemption, deduction, credit or other allowance now or hereafter accorded either:

(a) by the laws of a Contracting State in the determination of the tax imposed by that Contracting State;

(b) by any other special arrangement on taxation in connection with the economic or technical co-operation between the Contracting States.

2. The competent authorities of each Contracting State may prescribe regulations in order to carry out the provisions of this Agreement.

ARTICLE 29 : *Members of Diplomatic Missions and Consular Posts* – Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

ARTICLE 30 : *Entry into Force* – 1. The Contracting States shall notify each other in writing, through diplomatic channels, of the completion of the procedures required by the respective laws for the entry into force of this Agreement.

2. This Agreement shall enter into force on the date of the later of the notifications referred to in paragraph 1 of this Article.

3. The provisions of this Agreement shall have effect in respect of income derived in any fiscal year beginning on or after the first day of April next following the calendar year in which the Agreement enters into force.

ARTICLE 31 : *Duration and Termination* – This agreement shall remain in force for a period of five years and shall continue in force thereafter for a similar period or periods unless either Contracting State notifies the other in writing, six months before the expiry of the initial or any subsequent period, of its intention to terminate this Agreement. In such event, this Agreement shall cease to have effect in both Contracting States in respect of income derived in any fiscal year on or after the first day of April next following the calendar year in which the notice is given.

In witness whereof the respective plenipotentiaries of both Contracting States have signed this Agreement.

Done at New Delhi on 15th day of June, 2006, corresponding to 19th Jamad al awal, 1427 H, two originals, each in the Hindi, Arabic and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

PROTOCOL

The Republic of India and the State of Kuwait on signing at New Delhi on 15th day of June, 2006, corresponding to 19th Jamad al awal, 1427 H, the

Agreement for the Avoidance of Double Taxation with respect of taxes on income have agreed upon the following provisions which shall form as integral part of the said Agreement.

In respect of paragraphs 1 and 2 of Article 7, it is understood that when an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein the profits of that permanent establishment shall be determined on the basis of that part of the receipt which is attributable to the actual activity of the permanent establishment for such sales or business. The sales, business or supplies executed outside the Contracting State in which the permanent establishment is situated shall not be taken into consideration in determining the profits of the permanent establishment. Likewise in the case of contracts for survey, constructions or installations, the profits of a permanent establishment shall not be determined on the total amount of the contract, but shall be determined only on the basis of that part of the contract, which is effectively carried out by the permanent establishment in the State where the permanent establishment is situated. The profits related to that part of the contract, which is carried out by the head office of the enterprise shall be taxable only in the State of which the enterprise is a resident.

Done at New Delhi on 15th day of June, 2006, corresponding to 19th Jamad al awal, 1427 H, two originals, each in the Hindi, Arabic and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

Limited Agreements with respect to Income of Airlines/Merchant Shipping

Agreement for avoidance of double taxation of income derived from international air transport with Kuwait

Whereas the annexed Agreement between the Government of the Republic of India and the Government of the State of Kuwait for the avoidance of double taxation of income derived from international air transport has come into force on the notification by both the Contracting States to each other of completion

of the procedures required by their respective laws, as required by Article 5 of the said Agreement;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961) and section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964), the Central Government hereby directs that all the provisions of the said Agreement shall be given effect to in the Union of India.

Notification : No. GSR 302(E), dated 31-3-1983.

TEXT OF ANNEXED AGREEMENT, DATED 27-1-1982

The Government of India and the Government of Kuwait desiring to conclude an Agreement for the avoidance of double taxation of income derived from international air transport have agreed as follows :

ARTICLE 1 – 1. The existing taxes to which this Agreement shall apply are :

(a) in the case of Kuwait,

- (i) the income-tax imposed under the Income-tax Decree No. 3 of 1955;
- (ii) the additional income-tax imposed under the Law No. 34 of 1970 (hereinafter referred to as Kuwaiti tax);

(b) in the case of India,

- (i) the income-tax including any surcharge thereon imposed under the Income-tax Act, 1961 (43 of 1961);
 - (ii) the surtax imposed under the Companies (Profits) Surtax Act, 1964 (7 of 1964);
- (hereinafter referred to as Indian tax).

2. This Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the taxes referred to in paragraph (1) of this article.

ARTICLE 2 – 1. In this Agreement, unless the context otherwise requires :

- (a) the term Kuwait means the territory of Kuwait and includes the territorial sea and air space above it;

- (b) the term India means the territory of India and includes the territorial sea and air space above it as well as any other maritime zone referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (Act No. 80 of 1976), in which India has certain rights and to the extent that these rights can be exercised therein as if such maritime zone is a part of the territory of India;
- (c) the terms a Contracting State and the other Contracting State mean Kuwait or India, as the context requires;
- (d) the term tax means Kuwaiti tax or Indian tax, as the context requires;
- (e) the term enterprise of a Contracting State means an airline which is authorised by the Government of that State by a general or special arrangement between the two Contracting States to operate scheduled or non-scheduled flights between or beyond their territories;
- (f) the term international traffic means any transport by an aircraft operated by an enterprise of a Contracting State, except when the aircraft is operated solely between places in the other Contracting State;
- (g) the expression operation of aircraft means a business of carriage by air of persons, livestock, baggage, cargo or mail and includes the sale of tickets and air-way bills for, and the provision of services connected with, such carriage either for the enterprise itself or for any other enterprise engaged in such operations.

2. In the application of the provisions of this Agreement by one of the Contracting States, any term used but not defined herein shall, unless the context otherwise requires, have the meaning which it has under the laws in force in that State relating to the taxes which are the subjects of this Agreement.

ARTICLE 3 – 1. Profits derived by an enterprise of a Contracting State from the operation of aircraft in international traffic shall be exempt from tax in the other Contracting State.

2. The provisions of paragraph (1) shall also apply to the share of profits from the operation of aircraft in international traffic derived by an enterprise of a

Contracting State through participation in a pooled service, in a joint air transport operation or in an international operating agency.

3. For the purpose of paragraph (1), interest on funds directly connected with the operation of aircraft in international traffic shall be regarded as income from the operation of aircraft.

ARTICLE 4 – The laws in force in either of the Contracting States will continue to govern the assessment and taxation of income in the Contracting States except where express provision to the contrary is made in this Agreement.

ARTICLE 5 – 1. This Agreement shall be approved in accordance with the laws in force in each of the Contracting States. It shall enter into force thirty days after the exchange of letters certifying that the proper procedure was fulfilled in each Contracting State. The exchange of letters shall take place at New Delhi.

2. The provisions of this Agreement shall have effect in respect of the earnings arising from January 1, 1967.

3. No action would be taken to reopen assessments in respect of the period prior to January 1, 1967.

ARTICLE 6 – This Agreement shall continue in effect indefinitely but either Contracting State may, on or before the thirtieth day of June in any calendar year after the year 1986 give notice of termination to the other Contracting State and in such event this Agreement shall cease to be effective :

- (a) in Kuwait, in respect of any year of tax commencing on or after the 1st day of July of the second calendar year following the year in which the notice is given;
- (b) in India, in respect of any assessment year commencing on or after the 1st day of April of the second calendar year following the year in which the notice is given.

Kyrgyz Republic

Agreement for Avoidance of Double Taxation and Prevention of Fiscal Evasion with Foreign Countries – With Kyrgyz Republic

Whereas the annexed Agreement between the Government of the Republic of India and the Government of the Kyrgyz Republic for the avoidance of double taxation and for the prevention of fiscal evasion with respect to taxes on income has come into force on the 10th January, 2001, thirty days after the date of receipt of the latter of the notifications by the Contracting States to each other of the completion of the procedure required by the respective laws for the entry into force of this Agreement in accordance with Article 29 of the said Agreement;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Agreement shall be given effect to in the Union of India.

Notification : No. GSR 75(E), dated 7-2-2001.

ANNEXURE

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE KYRGYZ REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND FOR THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of India and the Government of the Kyrgyz Republic desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and with a view to promoting economic co-operation between the two countries have agreed as follows :

ARTICLE 1 : *Personal Scope* – This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2 : *Taxes covered* – 1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property and taxes on the total amounts of wages or salaries paid by enterprises.

3. The existing taxes to which the Agreement shall apply are in particular :

(a) in India:

the income-tax, including any surcharge thereon;
(hereinafter referred to as Indian tax).

(b) in Kyrgyzstan :

(i) tax on profits and income of legal persons;
(ii) income-tax on physical persons;
(hereinafter referred to as Kyrgyz tax);

4. The Agreement shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes referred to in paragraph 3. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws.

ARTICLE 3 : *General Definitions* – 1. For the purposes of this Agreement, unless the context otherwise requires :

- (a) the term India means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law, including the U.N. Convention on the law of the Sea;
- (b) the term Kyrgyzstan means the Kyrgyz Republic when used in the geographical terms the term Kyrgyzstan means the territory on which the

Kyrgyz Republic exercises sovereign rights and jurisdiction in accordance with Kyrgyz law and in accordance with International Law;

- (c) the term person includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States;
- (d) the term company means any corporate entity which is treated as a body corporate for tax purposes and includes in particular joint stock companies, limited companies or any other enterprise treated as company under Kyrgyz law;
- (e) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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;
- (f) the term international traffic means any transport by an aircraft operated by an enterprise which is a resident of a Contracting State, except when the aircraft is operated solely between places in the other Contracting State;
- (g) the term competent authority means :
 - (i) in India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorized representative;
 - (ii) in Kyrgyz Republic, the Ministry of Finance or their authorized representative;
- (h) the term national means :
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State.
- (i) the term fiscal year means :
 - (i) in the case of India, the financial year beginning on the first day of April;
 - (ii) in the case of Kyrgyzstan, the calendar year;
- (j) the term tax means Indian tax or Kyrgyz tax, as the context requires, but shall not include any amount which is payable in respect of any default or

omission in relation to the taxes to which this Agreement applies or which represents a penalty or fine imposed relating to those taxes;

- (k) the terms a Contracting State and the other Contracting State mean the Republic of India or the Kyrgyz Republic as the context requires.

2. As regards the application of the Agreement by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Agreement applies.

ARTICLE 4 : *Resident* – 1. For the purposes of this Agreement, the term resident of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows :

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 State in which its place of effective management is situated. If the State in which its place of effective management is situated cannot be determined, then the competent authorities of the Contracting States shall settle the question by mutual agreement.

ARTICLE 5 : *Permanent Establishment* – 1. For the purposes of this Agreement, the term permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) a sales outlet;
- (h) a warehouse in relation to a person providing storage facilities for others; and
- (i) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on.

3. A building site, a construction, assembly or installation project, or supervisory activities connected therewith, only if such site, or project or activity lasts for more than six months.

4. An enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it provides services or facilities in connection with, or supplies plant and machinery on hire used for or to be used in the prospecting for, or extraction or exploitation of mineral oils in that State.

5. Notwithstanding the preceding provisions of this article, the term permanent establishment shall be deemed not to include :

- (a) the use of facilities solely for the purpose of storage, display or delivery 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, display or delivery;
- (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 of collecting information for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character; or
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

6. Notwithstanding the provisions of paragraphs 1 and 2, where a person other than an agent of an independent status to whom paragraph 8 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 Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person :

- (a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 5 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraphs; or
- (b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise; or

(c) habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise itself or for the enterprise and other enterprises controlling, controlled by, or subject to the same control, as that enterprise.

7. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or it insures risks situated therein through a person other than an agent of an independent status to whom paragraph 8 applies.

8. An enterprise shall not be deemed to have a permanent establishment in a 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, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

9. 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 otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6 : *Income from immovable property* – 1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the 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 and forestry, rights to which the

provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft or road and railway vehicles shall not be regarded 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.

5. Where the ownership of shares or other corporate rights in a company entitles the owner of such shares or corporate rights to the enjoyment of immovable property held by the company, the income from direct use, letting, or use in any other form of such right to enjoyment may be taxed in the Contracting State, in which the immovable property is situated.

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, the profits of the enterprise may also be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, 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.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business 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, in accordance with the provisions of and subject to the limitations of the tax laws of that State.

4. 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.

5. For the purposes 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.

6. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8 : *International traffic* – 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. Profits derived by a transportation enterprise which is a resident of a Contracting State from the use, maintenance, or rental of containers (including trailers and other equipment for the transport of containers) used for the transport of goods or merchandise in international traffic shall be taxable only in that Contracting State unless the containers are used solely within the other Contracting State.

3. For the purposes of this Article, interest on funds connected with the operation of aircraft in international traffic shall be regarded as profits derived from the operation of such aircraft, and the provisions of Article 11 shall not apply in relation to such interest.

4. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9 : *Associated Enterprises* – 1. 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 not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall, if necessary consult each other.

ARTICLE 10 : *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 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 laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

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 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 14, 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 State may not impose any tax on the dividends paid by the company, except in so far as such dividends are paid to a resident of that other 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 State, nor subject the companys undistributed profits to a tax on the companys undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11 : *Interest* – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 beneficial owner of the interest, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by :

- (i) the Government of the other Contracting State; or
- (ii) the Central Bank of the other Contracting State or Governmental financial institutions that may be mutually agreed upon between the two Contracting States.

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 debtors 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 and 2 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 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 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself or a resident of that State. Where, however, the person paying the interest, 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 indebtedness on which the interest is paid was incurred and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the 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 last-mentioned amount. In such a 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 Agreement.

ARTICLE 12 : *Royalties and fees for technical services* – 1. Royalties or fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties or fees for technical services may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the recipient is the beneficial owner of the royalties or fees for technical services, the tax so charged shall not exceed 15 per cent of the gross amount of the royalties or fees for technical services.

3. (a) The term royalties as used in this Article means payments of any kind received as a consideration for :

- (i) the use of, or the right to use, any copyright of literary, artistic or scientific work including software, cinematograph and video films or records or tapes for television or radio;
- (ii) any patent, design or model, plan, secret formula or process, trade mark or for information (know-how) concerning industrial, commercial, or scientific experience; or
- (iii) the use of, or right to use, any industrial, commercial or scientific equipment.

(b) the term fees for technical services as used in this Article, means payment of any kind in consideration for the rendering of any managerial, technical or consultancy services including the provision of services by technical or other personnel but does not include payments for services mentioned in Articles 14 and 15 of this Agreement.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services 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 or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such a case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties or fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself or a resident of that State. Where, however, the person paying the royalties or fees for technical services, 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 or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the 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 or fees for technical services, 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 the other provisions of this Agreement.

ARTICLE 13 : *Capital gains* – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may also be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains derived by a resident of Contracting State from the alienation of aircraft operated in international traffic or movable property pertaining to the operation of such aircraft, shall be taxable only in the Contracting State in which the enterprise is a resident.

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from the alienation of shares other than those mentioned in paragraph 4 of a company which is a resident of a Contracting State may be taxed in that State.

6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14 : *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 State except in the following circumstances, when such income may also be taxed in the other Contracting State :

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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) if his stay in the other State is for a period or periods aggregating 183 days or more in any 12 month period commencing or ending in the fiscal year concerned, in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

ARTICLE 15 : *Dependent personal services* – 1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by an individual who is a resident of Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if :

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any 12 month period commencing or ending in the fiscal year concerned; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard an aircraft operated in international traffic by an enterprise which is a resident of a Contracting State may be taxed in that State.

ARTICLE 16 : *Directors fees* – Directors fees and other 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 may be taxed in that other State.

ARTICLE 17 : *Artistes and sportspersons* – 1. Notwithstanding the provisions of Articles 14 and 15, the income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. The provisions of paragraphs 1 and 2, shall not apply to income from activities performed in a Contracting State by entertainers or sportspersons if the visit to that State is substantially supported by public funds of one or both of the Contracting State or the activity is exercised within the framework of cultural or sports co-operation agreement between the Contracting States. In such a case, the income is taxable only in the Contracting State of which the entertainer or sportsperson is a resident.

ARTICLE 18 : *Pensions and other payments* – 1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration and annuities paid to a resident of a Contracting State shall be taxable only in that 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 moneys worth.

ARTICLE 19 : *Government Service* – 1.(a) Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority

thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that other State who :

- (i) is a national of that State; or
- (ii) did not become a resident of that State solely for the purpose of rendering the services.

2.(a) Any pension paid by, or out of funds created by, a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15, 16 and 18 shall apply to, remuneration and pensions, in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

ARTICLE 20 : *Students – 1.* A student or business apprentice who is or was a resident of a Contracting State immediately before visiting the other Contracting State and who is present in that other Contracting State solely for the purpose of his education or training shall be exempt from tax in that other State on :

- (a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training; and
- (b) remuneration from employment in that other State for an amount not exceeding the amount which is exempt from tax under the laws of that other Contracting State for any fiscal year, as the case may be, provided that such employment is directly related to his studies or is undertaken for the purpose of his maintenance.

2. The benefit of this Article shall extend only for such period of time as may be reasonably or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article for more than five consecutive years from the date of his first arrival in that other Contracting State.

ARTICLE 21 : *Professors, teachers and research scholars* – 1. A professor or teacher who is or was a resident of a Contracting State immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college, school or other approved institution in that other Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival in that other 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 20, an individual shall be deemed to be a resident of a Contracting State if he is resident in that State in the fiscal year in which he visits the other Contracting State or in the immediately preceding fiscal year.

4. For the purposes of paragraph 1:

- (a) the teaching or research assignment should be approved by the Governments of the Contracting States;
- (b) approved institution means an institution which has been approved in this regard by the Government of the concerned State.

ARTICLE 22 : *Other Income* – 1. Items of income of a resident of a Contracting State, wherever arising, not dealt within the foregoing Articles of this Agreement shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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 income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraph 1, if a resident of a Contracting State derives income from sources within the other Contracting State in the form of lotteries, crossword puzzles, races including horse races, card games and other games or any sort of gambling or betting of any form or nature whatsoever, such income may be taxed in the other Contracting State.

ARTICLE 23 : *Method for elimination of double taxation* – 1. Where a resident of a Contracting State derives income which, in accordance with the provisions of this Agreement, may be taxed in the other Contracting State, the first-mentioned State shall allow as a deduction from the tax on the income of that resident, an amount equal to the income-tax paid in that other State. Such deduction shall not, however, exceed that part of the income-tax as computed before the deduction is given, which is attributable to the income which may be taxed in that other State.

2. In the case of India, the tax payable in the Contracting State mentioned in paragraph 1 of this Article shall be deemed to include the tax which would have been payable but for the tax incentives granted under the laws of the Contracting State and which are designed to promote economic development.

3. Where in accordance with any provision of the Agreement income derived by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

ARTICLE 24 : *Non-discrimination* – 1. 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 in particular with respect to residence, are or may be subjected.

This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both the Contracting States.

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. This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which a company of the other Contracting State has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first-mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7 of this Agreement. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

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 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 the first-mentioned State are or may be subjected.

4. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

ARTICLE 25 : *Mutual agreement procedure* – 1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he

is a resident or, if he comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

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 a satisfactory 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 which is not in accordance with this Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting State.

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 Agreement. They shall also consult each other for the elimination of double taxation in cases not provided for in the Agreement.

4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

ARTICLE 26 : *Exchange of information* – 1. The competent authorities of the Contracting States shall exchange such information (including certified copies of documents) as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting State concerning taxes covered by the Agreement, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1. Any information received by the competent authority of a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes to which the Agreement

applies and shall be used only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on the competent authority of 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 (including certified copies of documents) which is 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 27 : *Collection assistance* – 1. The Contracting States undertake to lend assistance to each other in the collection of taxes to which this Agreement relates together with interest, costs, and civil penalties relating to such taxes, referred to in this article as a revenue claim.

2. Request for assistance by the competent authority of a Contracting State in the collection of a revenue claim shall include a certification by such authority, that, under the laws of that State, the revenue claim has been finally determined. For the purposes of this article, a revenue claim is finally determined when a Contracting State has the right under its internal law to collect the revenue claim and the taxpayer has no further rights to restrain collection.

3. Amounts collected by the competent authority of a Contracting State pursuant to this article shall be forwarded to the competent authority of the other Contracting State. However, the first-mentioned Contracting State shall be entitled to reimbursement of costs, if any, incurred in the course of rendering such assistance to the extent mutually agreed between the competent authorities of the two States.

4. Nothing in this article shall be construed as imposing on either Contracting State the obligation to carry out administrative measures of a different nature from those used in the collection of its own taxes or those which would be contrary to its public policy.

ARTICLE 28 : *Diplomatic and consular officials* – Nothing in this Agreement 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 29 : *Entry into force* – 1. The Contracting States shall notify each other in writing through diplomatic channels, the completion of the procedure required by the respective laws for the entry into force of this Agreement. It shall enter into force thirty days after the date or receipt of the latter of the notifications.

2. The provisions of this Agreement shall have effect:

- (a) in India, in respect of income arising in any fiscal year beginning on or after the first day of April next following the calendar year in which the Agreement enters into force; and
- (b) in Kyrgyzstan ;
 - (i) in respect of taxes withheld at source, in relation to taxable amount paid on or after the first day of January following the calendar year in which the Agreement enters into force;
 - (ii) in respect of other Kyrgyz taxes in relation to profits and income arising in the calendar year following the calendar year in which the Agreement enters into force and in subsequent calendar years.

ARTICLE 30 : *Termination* – This Agreement shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving written notice of termination at least six months before the end of any calendar year after the expiration of five years from the date of entry into force of the Agreement. In such event, the Agreement shall cease to have effect:

- (a) in India, in respect of income arising in any previous year on or after the first day of April next following the calendar year in which the notice of termination is given; and
- (b) in Kyrgyzstan ;
 - (i) in respect of taxes withheld at source, in relation to taxable amount paid on or after the first day of January following the calendar year in which the notice of termination is given;
 - (ii) in respect of other Kyrgyz taxes in relation to profits and income arising in the calendar year following the calendar year in which the notice of termination is given and in subsequent calendar years.

In witness whereof, the undersigned, being duly authorized thereto, have signed this Agreement.

Done in duplicate at New Delhi, this thirteenth day of April, 1999, in Hindi, Kyrgyz, Russian and English languages, all four texts being equally authentic. In case of divergence between the texts, the English text shall prevail.

PROTOCOL

At the signing of the Agreement between the Government of the Republic of India and the Government of the Kyrgyz Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, the undersigned have agreed that the following shall form an integral part of the Agreement.

1. With reference to Article 6 it is understood that income from immovable property may be taxed in both the Contracting States.
2. With reference to Article 11 paragraph 3(i) it is understood that Government in the case of India shall include a political sub-division.
3. With reference to Article 11 paragraph 6 and Article 12 paragraph 5 it is understood that in the case of India interest, royalties or fees for technical services shall be deemed to arise in a Contracting State if the payer is a political sub-division of that State.

Libya

Agreement for Avoidance of Double Taxation and Prevention of Fiscal Evasion with Libyan Arab Jamahiriya

Whereas the annexed Convention between the Socialist Peoples Libyan Arab Jamahiriya 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 has been ratified and the instruments of ratification exchanged as required by Article 25 of the said Convention ;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961) and section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in the Union of India.

Notification : No. GSR 22(E), dated 1-7-1982.

TEXT OF ANNEXED CONVENTION, DATED 2-3-1981

CHAPTER I – SCOPE OF THE CONVENTION

ARTICLE 1 – *Taxes covered* – 1. This Convention shall apply to taxes on income imposed on behalf of each Contracting State or local authorities, irrespective of the manner in which they are levied.

2. They shall be regarded as taxes on income – all taxes imposed on total income, or on elements of income.

3. The existing taxes to which this Convention shall apply are :

(A) With regard to the Socialist Peoples Libyan Arab Jamahiriya :

- (i) real estate revenue tax ;
- (ii) agricultural revenue tax ;
- (iii) taxes on commercial, industrial and professional profits, which comprise
 - (a) taxes on profits realised from commercial, industrial and professional activities,

- (b) taxes on companies ;
 - (iv) taxes on profits realised by practising fee professions ;
 - (v) taxes on wages, salaries and the like ;
 - (vi) taxes on income realised abroad ;
 - (vii) general tax on income ;
 - (viii) al-jihad tax (deference tax) ;
 - (ix) income arising from depositing money in banks and savings accounts.
- (B) With regard to the Republic of India :
- (i) the income-tax including any surcharge thereon imposed under the Income-tax Act, 1961 (43 of 1961) ;
 - (ii) the surtax imposed under the Companies (Profits) Surtax Act, 1964 (7 of 1964).

4. The Convention shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes. At the end of each year, the competent authorities of the Contracting States shall notify to each other any changes which have been made in their respective taxation laws.

CHAPTER II – DEFINITIONS

ARTICLE 2 – *General definitions* – 1. In this Convention, unless the context otherwise requires,

- (a) the terms a Contracting State and the other Contracting State mean India or Libya, as the context requires ;
- (b) the term person comprises an individual, a company and any other body of persons ;
- (c) the term Company means any body corporate or any entity which is treated as a body corporate for tax purposes ;
- (d) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise by a resident of the other Contracting State ;

(e) the term competent authority with respect to the Socialist Peoples Libyan Arab Jamahiriya means the Ministry of Treasury, and with respect to India means the Ministry of Finance (Department of Revenue).

2. 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.

3. As regards the application of the 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 the Convention.

ARTICLE 3 – *The tax home* – Without prejudice to the provisions of this Convention, the Tax Home of any income shall be deemed to be the Contracting State in which the income arises.

ARTICLE 4 – *Permanent establishment* – 1. For the 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 mine, quarry or other place of extraction of natural resources,
- (g) a building or building site which continues for a period of more than three months.

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

- (a) the use of facilities solely for the purpose of storage and 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 and display ;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by any other 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 ;
- (e) the maintenance of a fixed place of business solely for the purposes 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. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State other than an agent of an independent status to whom paragraph (5) applies shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in that 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 State through a broker, general commission agent or any other agent of an independent status, where such persons are acting independently 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 State (whether through a permanent establishment or otherwise) shall not itself constitute for either company a permanent establishment of the other.

CHAPTER III – TAXATION OF INCOME

ARTICLE 5 – *Income from immovable property* – 1. Income from immovable property may be taxed in the Contracting State in which such property is situated.

2. The term immovable property shall be defined in accordance with the law of the Contracting State in which the property in question is situated.

ARTICLE 6 – *Business profits* – 1. The profits of an enterprise of a Contracting State shall be taxable in the State where the enterprise is situated and also in the State where it has a permanent establishment, in which case, the tax shall be limited to the profits attributable to the permanent establishment.

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 condition and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In the determination of the profits of a permanent establishment there shall be allowed as deduction expenses which are incurred for the purpose of the permanent establishment whether such expenses have been incurred in the State in which the permanent establishment is situated or elsewhere in accordance with regulations of the State in which the income is taxable.

4. No profit shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. 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.

6. Where profits include items of income which are dealt with separately in the other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 7 – *Shipping and air transport* – 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.

ARTICLE 8 – *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.

It is to be understood that the procedures available in the respective laws of each Contracting State in this regard shall be applied.

ARTICLE 9 – *Dividends* – 1. Dividends paid by a company which is registered in one of the Contracting States may be taxed in that State.

2. The term dividends shall be defined in accordance with the law of the Contracting State in which the company in question is registered.

ARTICLE 10 – *Interest* – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the Contracting State where it arises.

2. The provisions of paragraph (1) shall not apply if the recipient of the interest being a resident of a Contracting State, has in the other Contracting State in which the interest

arises, a permanent establishment with which the debt-claim from which the interest arises is effectively connected. In such a case, the provisions of article 6 shall apply.

3. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or resident of that State.

ARTICLE 11 – *Royalties* – 1. Royalties arising in a Contracting State may be taxable in that State.

2. The term royalties as used in this article means payments of any kind as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, any patent, trade mark, design or model, plan, secret formula or process or for the use of, the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience.

3. The term royalties as used in this article shall exclude rentals and other income in respect of cinematographic films. Such rentals and income shall, for the purpose of this Convention, be considered the profits from business.

ARTICLE 12 – *Independent personal services* – 1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other Contracting State but only so much of it as is attributable to that fixed base.

2. The term professional services means independent activities according to the laws and regulations in force in each Contracting State.

ARTICLE 13 – *Dependent personal services* – Salaries, wages, and similar emoluments arising in one of the Contracting States may be taxable in the State where the services giving rise to that income are performed but if such income is realised from work carried out on a ship or aircraft operating in the field of international transport, it shall

only be taxable in the State where the place of effective management of the enterprise is situated.

ARTICLE 14 – *Directors fees* – Directors 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 may be taxed in that other State.

ARTICLE 15 – *Artistes and athletes* – Notwithstanding the provisions of articles 12 and 13, income derived by public entertainers, such as theatre, motion picture, radio or television artistes and musicians, and by athletes from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

ARTICLE 16 – *Pensions* – Pensions and other similar income paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

ARTICLE 17 – *Government functions/civil services* – 1. Remuneration paid by the Government of one of the Contracting States to any individual for services rendered to that Government in the discharge of governmental functions shall be exempt from tax in the other State if the individual is not resident in that other State or is resident in the other State solely for the purpose of rendering those services, so provided, however, that such an individual has the nationality of that Contracting State.

2. The provision of this article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the Government for purpose of profits.

3. In this article, Government shall be deemed to include public corporation and any other similar parastatal bodies.

ARTICLE 18 – *Students* – 1. Payments which a student or business apprentice who is or was formerly a resident of a Contracting State and who is present in the other Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that other

State, provided that such payments are made to him from sources outside that other State.

2. The provision of this article shall also apply to the income which the student or business apprentice may derive from an employment in the other Contracting State : provided that such employment is related to his study or training and/or that the income deriving therefrom is required by the student or trainee to meet his living expenses.

ARTICLE 19 – *Professors, teachers and researchers* – A professor, teacher or research worker from one of the Contracting States who receives remuneration for teaching or carrying out research work during a period of temporary residence not exceeding three months at a university, college or other institute of higher education or scientific research in the other Contracting State shall be exempt from tax in that other State, in respect of that remuneration, provided that the period of three months may be extended by similar periods.

CHAPTER IV – ELIMINATION OF DOUBLE TAXATION

ARTICLE 20 – *Tax credits* – 1. When a resident of a Contracting State derives income which has also suffered tax in the other Contracting State, the first-mentioned State shall allow a deduction from its tax on the income of that person equal to the tax in the other Contracting State : provided that the deduction shall not exceed that part of the tax, as computed before the deduction is given which is applicable to the income taxed in the other Contracting State.

2. Nothing in this Article contained shall prevent the granting of such further relief as may be appropriate under the provisions of the law of either Contracting State in respect of any amount by which the tax in case of the States exceeds the credit allowed on its account in the other State in accordance with the provisions of this Article.

CHAPTER V – SPECIAL PROVISIONS

ARTICLE 21 – *Non-discrimination* – 1. The nationals of a Contracting State shall not be subjected in 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 term national means

- (a) all individuals possessing the nationality of a Contracting State ;
- (b) all legal persons, partnerships and associations deriving their status as such from the law in force in a Contracting State.

3. The taxation of 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. The provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reduction for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

4. 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 requirements 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.

ARTICLE 22 – *Mutual agreement procedure* – 1. Where a resident of a Contracting State considers that the actions of one or both 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 purposes of reaching an agreement in the sense of the preceding paragraphs. 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.

ARTICLE 23 – *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 and of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is in accordance with this Convention. Information shall also be exchanged as is necessary for the prevention of fiscal evasion of taxes which are the subject of 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 or collection of the taxes which are the subject of the 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.

ARTICLE 24 – *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 agreements.

CHAPTER VI – FINAL PROVISIONS

ARTICLE 25 – *Entry into force* – The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect from the tax year commencing after the said ratification.

Any agreement reached shall be implemented notwithstanding any time limits in the national laws of the Contracting State.

ARTICLE 26 – *Termination* – This Convention remains in force until denounced by one of the Contracting States. Either Contracting State may denounce the Convention through diplo-matic channels by giving notice of termination at least 6 months before the end of any calendar year beginning 5 years after the agreement enters into force. In such event the Convention shall cease to have effect after the end of the calendar year during which notice of the denouncing of the Convention is given by one Contracting State to the other.

In witness of the agreement reached as above, the signatories have today signed this Convention by virtue of the authority delegated to them for this purpose by their respective Governments.

Done in duplicate at Tripoli, on March 2, 1981 corresponding to 25, Rabiul Akhar 1390 P.D. in the English, Hindi and Arabic languages, all texts being equally authoritative except in the case of doubt, the English text shall prevail.

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JUDICIAL ANALYSIS

· Where assessee had already paid TDS amounting to Rs. 21,150 in foreign currency on his foreign income against his tax liability of Rs. 14,496, as computed in India under the Act, no demand for tax could have been made against the assessee/*ITO v. Dr. B.K. Jain* [1995] [52 ITD 367](#) (Jp.) (SMC).

Luxembourg

NOTIFICATION

SECTION 90 OF INCOME-TAX ACT

Section 90 of the Income-tax Act, 1961 – Double taxation agreement – Agreement for Avoidance of Double Taxation and Prevention of Fiscal Evasion with Foreign Countries – Agreement with Government of Grand Duchy of Luxembourg

NOTIFICATION NO. 78/2009 [F.NO. 503/1/96-FTD-I], DATED 12-10-2009

WHEREAS, an Agreement and the Protocol between the Government of Republic of India and the Government of the Grand Duchy of Luxembourg for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital was signed at New Delhi on the 2nd day of June, 2008;

AND WHEREAS, the date of entry into force of the said Agreement is the 9th day of July, 2009, being the date of later of the notifications of completion of the procedures as required by the respective laws for entry into force of the said Agreement, in accordance with paragraph 2 of Article 32 of the said Agreement;

AND WHEREAS, sub-paragraph (a) of paragraph 3 of Article 32 of the said Agreement provides that the provisions of the said Agreement shall have effect in India in respect of the taxes withheld at source, to income derived on or after 1 April of the calendar year next following the year in which the Agreement enters into force; and in respect of other taxes on income, and taxes on capital, to taxes chargeable for any taxable year beginning on or after 1 April of the calendar year next following the year in which the Agreement enters into force;

NOW, THEREFORE, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961) and section 44A of the Wealth-tax Act, 1957 (27 of 1957), the Central Government hereby directs that all the

provisions of the said Agreement and the Protocol, as annexed, shall be given effect to in the Union of India with effect from 1st day of April, 2010.

ANNEXURE

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE GRAND DUCHY OF LUXEMBOURG FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Government of the Republic of India and the Government of the Grand Duchy of Luxembourg, desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital and with a view to promoting economic cooperation between the two countries, have agreed as follows:

Article 1 : PERSONS COVERED – This Agreement shall apply to persons who are residents of one or both of the Contracting States.

Article 2 : TAXES COVERED – 1. This Agreement shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property and taxes on the total amounts of wages or salaries paid by enterprises.

3. The existing taxes to which the Agreement shall apply are in particular:

(a) in India,

(i) the income-tax, including any surcharge thereon; and

(ii) the wealth-tax, including any surcharge thereon; (hereinafter referred to as Indian tax);

(b) in Luxembourg,

- (i) the income-tax on individuals (*limpot sur le revenu des personnes physiques*);
 - (ii) the corporation tax (*limpot sur le revenu des collectivites*);
 - (iii) the capital tax (*limpot sur la fortune*); and
 - (iv) the communal trade tax (*limpot commercial communal*);
- (hereinafter referred to as Luxembourg tax).

4. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their respective taxation laws.

Article 3 : GENERAL DEFINITIONS – 1. For the purposes of this Agreement, unless the context otherwise requires:

- (a) the term India means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law, including the U.N. Convention on the Law of the Sea;
- (b) the term Luxembourg means the Grand Duchy of Luxembourg and, when used in a geographical sense, means the territory of the Grand Duchy of Luxembourg;
- (c) the terms a Contracting State and the other Contracting State mean the Republic of India or the Grand Duchy of Luxembourg as the context requires;
- (d) the term person includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States;
- (e) the term company means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (f) the term enterprise applies to the carrying on of any business;

- (g) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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;
- (h) 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;
- (i) the term competent authority means:
 - (i) in India: the Finance Minister, Government of India, or his authorized representative;
 - (ii) in Luxembourg: the Minister of Finance or his authorized representative;
- (j) the term national means:
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
- (k) the term tax means Indian or Luxembourg tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Agreement applies or which represents a penalty or fine imposed relating to those taxes;
- (l) The term fiscal year means:
 - (i) in the case of India: the financial year beginning on the 1st day of April;
 - (ii) in the case of Luxembourg: the financial year beginning on the 1st day of January.

2. As regards the application of the Agreement at any time by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4 : RESIDENT – 1. For the purposes of this Agreement, the term resident of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature and also includes that State and any political sub-division or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

- (a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall endeavour to settle the question by mutual agreement.

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 only of the State in which its place of effective management is situated. If the State in which its place of effective management is situated cannot be determined, then the competent authorities of the Contracting States shall endeavour to settle the question by mutual agreement.

Article 5 : PERMANENT ESTABLISHMENT – 1. For the purposes of this Agreement, the term permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a sales outlet;
- (g) a warehouse in relation to a person providing storage facilities for others;
- (h) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on; and
- (i) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3.(a) A building site or construction, installation or assembly project or supervisory activities in connection therewith constitutes a permanent establishment only if such site, project or activities last more than 9 months.

(b) The furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose constitutes a permanent establishment, but only where activities of that nature continue (for the same or connected project) within the country for a period or periods aggregating more than 183 days within any 12 months period.

4. Notwithstanding the preceding provisions of this Article the term permanent establishment shall be deemed not to include:

- (a) the use of facilities solely for the purpose 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 of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 7 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 Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:

- (a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph, or
- (b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise;
- (c) habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise itself.

6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be

deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

8. 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 otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6 : INCOME FROM IMMOVABLE PROPERTY – 1. Income derived by a resident of a Contracting State from immovable property situated in the other Contracting State may be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded 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, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, 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.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes 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, in accordance with the provisions of and subject to the limitations of the tax laws of that State. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges for specific services performed or for management, or, except in the case of banking enterprises, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of

actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. Insofar 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 contained 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 purposes 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 Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8 : SHIPPING AND AIR-TRANSPORT – 1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

3. Profits derived by a transportation enterprise which is a resident of a Contracting State from the use, maintenance or rental of containers (including trailers and other equipment for the transport of containers) used for the transport of goods or merchandise in international traffic shall be taxable only in that Contracting State unless the containers are used solely within the other Contracting State.

4. For the purposes of this Article interest on investments directly connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft if they are integral to the carrying on of such business, and the provisions of Article 11 shall not apply in relation to such interest.

5. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9 : ASSOCIATED ENTERPRISES – 1. 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.

2. Where a Contracting State includes in the profits of an enterprise of the State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first–

mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10 : 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 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 laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends. 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 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 14, 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 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 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 State, nor subject the companys undistributed profits to a tax on the companys undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11 : INTEREST – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State, provided that it is derived and beneficially owned by:

- (a) the Government, a political sub-division or a local authority of the other Contracting State; or
- (b) (i) in the case of India, the Reserve Bank of India, the Export-Import Bank of India, the National Housing Bank; and
(ii) in the case of Luxembourg, the National Credit and Investment Corporation (*La Societe Nationale de Credit et d'Investissement*); the Central Bank of Luxembourg (*La Banque Centrale du Luxembourg*); or
- (c) any other institution as may be agreed upon from time to time between the competent authorities of the Contracting States through exchange of letters.

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 debtors 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 and 2 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 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 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, 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 indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the 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 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 the other provisions of this Agreement.

Article 12 : ROYALTIES AND FEES FOR TECHNICAL SERVICES – 1. Royalties or fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties or fees for technical services may also be taxed in the Contracting State in which they arise, and according to the laws of that

State, but if the beneficial owner of the royalties or fees for technical services is a resident of the other Contracting State the tax so charged shall not exceed 10 per cent of the gross amount of the royalties or fees for technical services.

3. (a) 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 including cinematograph films or films or tapes used for television or radio 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.

(b) The term fees for technical services as used in this Article means payments of any kind, other than those mentioned in Articles 14 and 15 of this Agreement as consideration for managerial or technical or consultancy services, including the provision of services of technical or other personnel.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services 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 or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5.(a) Royalties and fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority, or a resident of that State. Where, however, the person paying the royalties or fees for technical services, 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 or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the

Contracting State in which the permanent establishment or fixed base is situated.

(b) Where under sub-paragraph (a) royalties or fees for technical services do not arise in one of the Contracting States, and the royalties relate to the use of, or the right to use, the right or property, or the fees for technical services relate to services performed, in one of the Contracting States, the royalties or fees for technical services shall be deemed to arise in that Contracting State.

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 or fees for technical services, 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 the other provisions of this Agreement

Article 13 : CAPITAL GAINS – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from the alienation of shares other than those mentioned in paragraph 4 in a company which is a resident of a Contracting State may be taxed in that State.

6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5, shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14 : INDEPENDENT PERSONAL SERVICES – 1. Income derived by an individual who is a resident of a Contracting State from the performance of professional services or other independent activities of a similar character shall be taxable only in that State except in the following circumstances when such income may also be taxed in the other Contracting State :

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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 State; or
- (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any period of 12 months; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

Article 15 : DEPENDENT PERSONAL SERVICES – 1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, 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 State unless the employment is exercised in the other

Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if :

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve months period commencing or ending in the fiscal year concerned, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, by an enterprise of a Contracting State may be taxed in that State.

Article 16 : DIRECTORS FEES – Directors fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors in a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17 : ARTISTES AND SPORTSPERSONS – 1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. The provisions of paragraphs 1 and 2, shall not apply to income from activities performed in a Contracting State by entertainers or sportspersons if the activities are substantially supported by public funds of one or both of the Contracting States or of political sub-divisions or local authorities thereof. In such a case, the income shall be taxable only in the Contracting State of which the entertainer or sportsperson is a resident.

Article 18 : PENSIONS – 1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1, pensions and other payments made under the social security legislation of a Contracting State shall be taxable only in that State.

3. Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration (including lump sum payments) arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in the first-mentioned State, provided that such payments derive from the contributions paid to or from provisions made under a pension scheme by the recipient or on his behalf and that these contributions, provisions or the pensions or other similar remuneration have been subjected to tax in the first-mentioned State under the ordinary rules of its tax laws.

Article 19 : GOVERNMENT SERVICE – 1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who :

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages and other similar remuneration and to pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

Article 20 : PROFESSORS, TEACHERS AND RESEARCH SCHOLARS – 1. A professor, teacher or research scholar who is or was a resident of the Contracting State immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college or other similar approved institution in that other Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding 2 years from the date of his first arrival in that other State.

2. This Article shall apply to income from research only if such research is undertaken by the individual in the public interest and not primarily for the benefit of some private person or persons.

3. For the purposes of this Article, an individual shall be deemed to be a resident of a Contracting State if he is resident in that State in the fiscal year in which he visits the other Contracting State or in the immediately preceding fiscal year.

Article 21 : STUDENTS – 1. A student who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State and

who is present in that other Contracting State solely for the purpose of his education or training, shall besides grants, loans and scholarships be exempt from tax in that other State on :

- (a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training; and
- (b) remuneration which he derives from an employment which he exercises in the other Contracting State if the employment is directly related to his studies.

2. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article, for more than six consecutive years from the date of his first arrival in that other State.

Article 22 : OTHER INCOME – 1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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 income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing articles of this Agreement and arising in the other Contracting State may be taxed in that other State.

Article 23 : CAPITAL – 1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.

3. Capital represented by ships and aircraft operated in international traffic by an enterprise of a Contracting State, and by movable property pertaining to the operation of such ships and aircraft, shall be taxable only in that State.

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

Article 24 : METHODS FOR ELIMINATION OF DOUBLE TAXATION – 1. In India double taxation shall be eliminated as follows :

- (a) Where a resident of India derives income or owns capital which, in accordance with the provisions of this Agreement, may be taxed in Luxembourg, India shall allow as a deduction from the tax on the income or capital of that resident, an amount equal to the tax paid in Luxembourg.

Such deduction shall not, however, exceed that portion of the tax as computed before the deduction is given, which is attributable, as the case may be, to the income or capital which may be taxed in Luxembourg.

- (b) Where in accordance with any provision of the Agreement income derived or capital owned by a resident of India is exempt from tax in India, India may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

2. Subject to the provisions of the law of Luxembourg regarding the elimination of double taxation which shall not affect the general principle hereof, double taxation shall be eliminated as follows :

- (a) Where a resident of Luxembourg derives income or owns capital which, in accordance with the provisions of this Agreement, may be taxed in India, Luxembourg shall, subject to the provisions of subparagraphs (b) and (c), exempt such income or capital from tax, but may, in order to calculate the amount of tax on the remaining income or capital of the resident, apply the same rates of tax as if the income or capital had not been exempted.
- (b) Where a resident of Luxembourg derives income which, in accordance with the provisions of Articles 10, 11, 12 and 17 may be taxed in India, Luxembourg shall allow as a deduction from the Income-tax on individuals or from the corporation tax of that resident an amount equal to the tax paid in India. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income derived from India.
- (c) The provisions of sub-paragraph (a) shall not apply to income derived or capital owned by a resident of Luxembourg where India applies the provisions of this Agreement to exempt such income or capital from tax or applies the provisions of paragraph 2 of Article 10, 11 or 12 to such income.

Article 25 : NON-DISCRIMINATION – 1. 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, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

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. This provision shall not be construed as

obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents. This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which a company of the other Contracting State has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first-mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

4. 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 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 the first-mentioned State are or may be subjected.

Article 26 : MUTUAL AGREEMENT PROCEDURE – 1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 25, to that of the Contracting State of which he is a national. The case must be presented within

three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

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 a satisfactory 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 which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law 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 the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 27 : EXCHANGE OF INFORMATION – 1. The competent authorities of the Contracting States shall exchange such information (including documents or certified copies of the documents) as is necessary for carrying out the provisions of this Agreement or of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political sub-divisions or local authorities insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in the first sentence. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. 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 and administrative practice of that or of the other Contracting State;
- (b) to supply information (including documents or certified copies of the documents) which is 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 (order public).

3. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 2 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

Article 28 : ASSISTANCE IN THE COLLECTION OF TAXES – 1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Article 1. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. The term revenue claim as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political sub-divisions or local authorities, insofar as the taxation thereunder is not contrary to this Agreement or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first- mentioned State or is owed by a person who has a right to prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall only be brought before the courts or administrative bodies of that State. Nothing in this Article shall be construed as creating or providing any right to such proceedings before any court or administrative body of the other Contracting State.

7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected

and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be

- (a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or
- (b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

8. In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation :

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to carry out measures which would be contrary to public policy (order public);
- (c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
- (d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

Article 29 : LIMITATION OF BENEFITS – 1. Nothing in this Agreement shall affect the application of the domestic provision to prevent tax evasion.

2. An enterprise of a Contracting State shall not be entitled to the benefits of this Agreement if the main purpose or one of the main purposes of the creation of such enterprise was to obtain the benefits under this Agreement that would not otherwise be available.

3. The case of legal entities not having *bona fide* business activities shall be covered by the provisions of this Article.

Article 30 : EXCLUSION OF CERTAIN COMPANIES – This Agreement shall not apply to holding companies as defined in the special Luxembourg laws, (currently the Act (loi)) of 31 July, 1929 and the Decree (*a rete grand-ducal*) of December 17, 1938) or any other similar provision enacted in Luxembourg after the signature of the Agreement or other companies that enjoy a similar special fiscal treatment by virtue of the laws of Luxembourg. It shall not apply either to income derived by a resident of India from such companies or to shares or other rights in the capital of such companies owned by such person.

Article 31 : MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS – Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

Article 32 : ENTRY INTO FORCE – 1. The Contracting States shall notify each other in writing, through diplomatic channels, of the completion of the procedures required by the respective laws for the entry into force of this Agreement.

2. This Agreement shall enter into force on the date of the later of the notifications referred to in paragraph 1 of this Article.

3. The provisions of this Agreement shall have effect :

(a) In India :

- (i) in respect of taxes withheld at source, to income derived on or after 1 April of the calendar year next following the year in which the Agreement enters into force;
- (ii) in respect of other taxes on income, and taxes on capital, to taxes chargeable for any taxable year beginning on or after 1 April of the calendar year next following the year in which the Agreement enters into force; and

(b) In Luxembourg :

- (i) in respect of taxes withheld at source, to income derived on or after 1 January of the calendar year next following the year in which the Agreement enters into force;
- (ii) in respect of other taxes on income, and taxes on capital, to taxes chargeable for any taxable year beginning on or after 1 January of the calendar year next following the year in which the Agreement enters into force.

Article 33 : TERMINATION – This Agreement shall remain in force indefinitely until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year beginning after the expiration of five years from the date of entry into force of the Agreement. In such event, the Agreement shall cease to have effect :

(a) In India :

- (i) in respect of taxes withheld at source, to income derived on or after 1 April of the calendar year next following the year in which the notice is given;
- (ii) in respect of other taxes on income, and taxes on capital, to taxes chargeable for any taxable year beginning on or after 1 April of the calendar year next following the year in which the notice is given; and

(b) In Luxembourg :

- (i) in respect of taxes withheld at source, to income derived on or after 1 January of the calendar year next following the year in which the notice is given;
- (ii) in respect of other taxes on income, and taxes on capital, to taxes chargeable for any taxable year beginning on or after 1 January of the calendar year next following the year in which the notice is given.

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

Done in duplicate at New Delhi on this Second day of June 2008, each in the Hindi, French and English languages, all the texts being equally authentic.

PROTOCOL – At the signing of the Agreement between the Government of the Republic of India and the Government of the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income and on capital, both sides have agreed upon the following provisions which shall be an integral part of the Agreement

Ad. Article 27 – In respect of Article 27, it is understood that if after the signature of this Agreement under any Agreement or Convention or Protocol between Luxembourg and any other member of European Union, Luxembourg offers an arrangement for more favourable or effective arrangement of exchange of information, the same arrangement shall also apply for the purpose of Article 27.

In Witness where of the undersigned, duly authorized thereto, have signed this Protocol.

Done in duplicate at New Delhi on this Second day of June 2008, each in the Hindi, French and English languages, all the texts being equally authentic.

Malaysia

Agreement for Avoidance of Double Taxation and Prevention of Fiscal Evasion with Malaysia

Whereas the annexed Agreement between the Government of the Republic of India and the Government of Malaysia for the avoidance of double taxation and the prevention of fiscal evasion with respect to Taxes on income has come into force on the 14th August, 2003, on the notification by both the Contracting States to each other, under Article 28 of the said Agreement, of the completion of the procedures required by their respective laws for bringing into force of the said Agreement.

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Agreement shall be given effect to in the Union of India.

Notification: No. GSR 667(E), dated 12-10-2004.

ANNEXURE

AGREEMENT BETWEEN THE GOVERNMENT OF MALAYSIA 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 Malaysia and the Government of the Republic of India Desiring to conclude an Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income and with a view to promoting economic co-operation between the two countries, have agreed as follows :

ARTICLE 1 : PERSONAL SCOPE – This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2 : TAXES COVERED – 1. This Agreement shall apply to taxes on income imposed by a Contracting State or its political sub-divisions or local authorities, irrespective of the manner in which they are levied.

2. The taxes which are the subject of this Agreement are :

(a) in Malaysia

(i) the income-tax; and

(ii) the petroleum income-tax;

(hereinafter referred to as Malaysian Tax);

(b) in India

the income-tax including any surcharge thereon;

(hereinafter referred to as Indian tax).

3. This Agreement shall also apply to any identical or substantially similar taxes on income which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of important changes which have been made in their respective taxation laws.

ARTICLE 3 : GENERAL DEFINITIONS – 1. In this Agreement, unless the context otherwise requires :

(a) the term Malaysia means the territories of the Federation of Malaysia, the territorial waters of Malaysia and the sea-bed and subsoil of the territorial waters, and includes any area extending beyond the limits of the territorial waters of Malaysia, and the sea-bed and subsoil of any such area, which has been or may hereafter be designated under the laws of Malaysia and in accordance with international law as an area over which Malaysia has sovereign rights for the purposes of exploring and exploiting the natural resources, whether living or non-living;

(b) the term India means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdictions, according to the Indian law and in accordance with international law and the U.N. Convention on the Law of the Sea;

(c) the terms a Contracting State and the other Contracting State mean Malaysia or India as the context requires;

- (d) the term company means any body corporate or any entity which is treated as a company or body corporate under the taxation laws in force in the respective Contracting States;
- (e) the term competent authority means
 - (i) in the case of Malaysia, the Minister of Finance or his authorised representative; and
 - (ii) in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) of their authorized representative;
- (f) 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;
- (g) 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;
- (h) the term national means
 - (i) any individual possessing the nationality or citizenship of a Contracting State; and
 - (ii) any legal person, partnership, association and any other entity deriving its status as such from the laws in force in a Contracting State;
- (i) the term person includes an individual, a company, and any other body of persons;
- (j) the term tax means Malaysian tax or Indian tax, as the context requires, but shall not include any amount which is payable in respect of a default or omission in relation to the taxes to which this Agreement applies or which represents a penalty or fine imposed relating to those taxes.

2. In the application of this Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which this Agreement applies.

ARTICLE 4 : RESIDENT – 1. For the purposes of this Agreement, the term resident of a Contracting State means any person who, under the tax laws of that State, is liable to tax 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 status shall be determined in accordance with the following rules :

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him. If he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 State in which its place of effective management is situated. If the State in which its place of effective management is situated cannot be determined, then the competent authorities of the Contracting States shall settle the question by mutual agreement.

ARTICLE 5 : PERMANENT ESTABLISHMENT – 1. For the purposes of this Agreement, the term permanent establishment means a fixed place of business through which the business of an 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 mine, an oil or gas well, a quarry or any other place of extraction of natural resources including timber or other forest produce;
- (g) a farm or plantation;
- (h) a sales outlet;
- (i) a warehouse;
- (j) a building site or construction, installation or assembly project which exists for more than nine months;

3. Notwithstanding the preceding provisions of this Article, the term permanent establishment shall be deemed not to include :

- (a) the use of facilities solely for the purpose of storage, display or delivery 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, display or delivery;
- (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 of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

4. An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it carries on supervisory activities in that other State for more than nine months in connection with a construction, installation or assembly project which is being undertaken in that other State.

5. Notwithstanding the provisions of paragraphs 1 and 2, a person other than a broker, general commission agent or any other agent of an independent status to whom paragraph 7 applies – acting in a Contracting State on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment in the first-mentioned State, if such a person :

- (a) has, and habitually exercises in the first-mentioned 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; or
- (b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf of the enterprise; or
- (c) manufactures or processes in the first-mentioned State for the enterprise goods or merchandise belonging to the enterprise.

6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. 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.

However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, such a person shall not be considered an

agent of an independent status if the transactions between the agent and the enterprise were not made under arms length conditions.

8. 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 otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6 : INCOME FROM IMMOVABLE PROPERTY – 1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term immovable property shall be defined in accordance with the laws 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, oil or gas wells, quarries and other places of extracting natural resources including timber or other forest produce. Ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall also 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, the profits of

the enterprise may be taxed in the other State but only on so much thereof as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, 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.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes 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 in accordance with the provisions of and subject to the limitations of the tax laws of that State.

4. 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.

5. For the purposes 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.

6. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8 : SHIPPING AND AIR TRANSPORT – 7. Profits derived by an enterprise of a Contracting State from the operation by that enterprise of ships or aircraft in international traffic shall be taxable only in that State.

2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall mean profits derived by an enterprise described in paragraph 1 from the transportation by sea or air respectively of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of ships or aircraft including :

- (a) the sale of tickets for such transportation on behalf of other enterprises; and
- (b) the rental of ships or aircraft incidental to any activity directly connected with such transportation.

3. Profits of an enterprise of a Contracting State described in paragraph 1 from the use, maintenance, or rental of containers (including trailers, barges and related equipment for the transport of containers) used in connection with the operation of ships or aircraft in international traffic shall be taxable only in that State.

4. The provisions of paragraphs 1 and 3 shall also apply to profits from participation in a pool, a joint business, or an international operating agency.

5. For the purposes of this Article, interest on funds connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of ships or aircraft, and the provisions of Article 11 shall not apply in relation to such interest.

6. Gains derived by an enterprise of a Contracting State described in paragraph 1 from the alienation of ships, aircraft or containers owned and operated by the enterprise, the income from which is taxable only in that State, shall be taxed only in that State.

ARTICLE 9 : 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 10 : 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 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 laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

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 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 a case, the provisions of Article 7 or Article 14, 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 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 State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment in that other State, or fixed base situated in that other 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 State.

ARTICLE 11 : INTEREST – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 beneficial owner of the interest, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by :

(a) in the case of Malaysia :

- (i) the Government of Malaysia;
- (ii) the Government of the State;
- (iii) the Bank Negara Malaysia;
- (iv) the local authorities;
- (v) the statutory bodies; and
- (vi) the Export–Import Bank of Malaysia Berhad (EXIM Bank);

(b) in the case of India :

- (i) the Government;

- (ii) the political sub-divisions;
 - (iii) the statutory bodies;
 - (iv) the local authorities;
 - (v) the Export-Import Bank of India (EXIM Bank);
 - (vi) the Reserve Bank of India;
 - (vii) the Industrial Finance Corporation of India;
 - (viii) the Industrial Development Bank of India;
 - (ix) the National Housing Bank;
 - (x) the Small Industries Development Bank of India; and
 - (xi) the Industrial Credit and Investment Corporation of India (ICICI);
- (c) any other institutions as may be agreed from time to time between the competent authorities of the Contracting States.

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 debtors 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 purposes of this Article.

5. The provisions of paragraphs 1 and 2 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 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 a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a statutory body thereof, or a resident of that State. Where, however, the person paying the

interest, 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 indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the 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 paid, 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 last-mentioned amount. In such a 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 Agreement.

ARTICLE 12 : ROYALTIES – 1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that 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 a literary, artistic or scientific work including cinematograph films or recordings on any means of reproduction for use in connection with television or radio broadcasting, any patent, trade mark, design or model, plan, know-how, computer software programme, secret formula or process, or any industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.

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 a case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a statutory body thereof, or a resident of that State. Where, however, the person paying such 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 obligation 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 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 paid, 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 a 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 Agreement.

ARTICLE 13 : FEES FOR TECHNICAL SERVICES – 1. Fees for technical services arising in a Contracting State which are derived by a resident of the other Contracting State may be taxed in that other State.

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

3. The term fees for technical services means payment of any kind in consideration for the rendering of any managerial, technical or consultancy services including the provision of services by technical or other personnel but does not include payments for services mentioned in Article 14 and Article 15 of this Agreement.

4. The provisions of paragraph 1 of this Article shall not apply if the beneficial owner of the fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the fees for technical services arise through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the fees for technical services are effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a statutory body thereof, or a resident of that State. Where, however, the person paying the fees for technical services, 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 obligation to pay the fees for technical services was incurred, and such fees for technical services are borne by such permanent establishment or fixed base, then such fees for technical services 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 fees for technical services paid exceeds, for whatever reason, 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 only apply to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 14 : INDEPENDENT PERSONAL SERVICES – 1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State. However, in the following circumstances such income may also be taxed in the other Contracting State :

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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) if his stay in the other State is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State; or
- (c) if the remuneration for his services in the other Contracting State is either derived from a resident of that State or borne by a permanent establishment or fixed base which a person not resident in that State has in that State and which, in either case exceeds in value an amount equivalent to two thousand U.S. dollars in the fiscal year concerned.

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 15 : DEPENDENT PERSONAL SERVICES – 1. Subject to the provisions of Articles 16, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if :

- (a) the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting State; and
- (c) the remuneration is not borne by a resident or permanent establishment or fixed base which the employer has in the other State or by a person carrying on independent personal services in the other Contracting State.

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

ARTICLE 16 : DIRECTORS FEES – Directors 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, may be taxed in that other State.

ARTICLE 17 : ARTISTES AND SPORTSMEN – 1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the contracting State in which the activities of the entertainer or sportsman are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply to remuneration or profits derived from activities exercised in a Contracting State if the visit to that State is directly or indirectly supported wholly or substantially from the public

funds of the other Contracting State, a political sub-division, a local authority or a statutory body thereof.

ARTICLE 18 : NON-GOVERNMENT PENSIONS AND ANNUITIES – 1. Subject to the provisions of paragraph 2 of Article 19, any pension and other similar remuneration for past employment or any annuity arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State.

2. The term annuity includes 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 moneys worth.

ARTICLE 19 : GOVERNMENT SERVICE – 1. (a) Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority or a statutory body thereof to an individual in respect of services rendered to that State or political sub-division or a local authority or statutory body thereof shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the recipient is a resident of that other State who :

(i) is a national of that other State; or

(ii) did not become a resident of that other State solely for the purpose of performing the services.

2. Any pension paid by, or out of funds created by, a Contracting State, a political sub-division or a local authority or a statutory body thereof to an individual in respect of services rendered to that State, political sub-division, local authority or statutory body thereof shall be taxable only in that State.

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pension in respect of services rendered in connection with any trade or business carried on by a Contracting State, a political sub-division or a local authority or a statutory body thereof.

ARTICLE 20 : STUDENTS AND TRAINEES – 1. An individual who is or was a resident of a Contracting State immediately before making a visit to the other Contracting State and is temporarily present in the other State solely :

- (a) as a student at a recognised university, college, school or other similar recognised educational institution in that other State;
- (b) as a business or technical apprentice; or
- (c) as a recipient of a grant, allowance or award for the primary purpose of study, research or training from the Government of either State or from a scientific, educational, religious or charitable organisation or under a technical assistance programme entered into by the Government of either State,

shall be exempt from tax in that other State on

- (i) all remittances from abroad for the purposes of his maintenance, education, study, research or training;
- (ii) the amount of such grant, allowance or award; and
- (iii) any remuneration not exceeding an amount equivalent to two thousand U.S. Dollars per annum in respect of services in that other State provided the services are performed in connection with his study, research or training or are necessary for the purposes of his maintenance.

2. The benefits in respect of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken. However, in no event shall any individual have the benefits or paragraph (iii) of this Article for more than seven consecutive years from the date he first arrived for such purpose in that other Contracting State.

ARTICLE 21 : TEACHERS AND RESEARCH SCHOLARS – 1. An individual who is or was a resident of a Contracting State immediately before making a visit to the other Contracting State, and who, at the invitation of any university, college or other similar educational institution, visits that other State for a period not exceeding two years solely for the purpose of teaching or research or both at such educational institution shall be exempt from tax in that other State on any

remuneration for such teaching or research which is subject to tax in the first-mentioned 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 20, an individual shall be deemed to be a resident of a Contracting State if he is resident in that Contracting State in the immediately preceding fiscal year before he visits the other Contracting State.

ARTICLE 22 : OTHER INCOME – Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles of this Agreement shall be taxable only in that Contracting State except that if such income is derived from sources in the other Contracting State, it may also be taxed in that other State.

ARTICLE 23 : ELIMINATION OF DOUBLE TAXATION – 1. The laws in force in either of the Contracting States will continue to govern the taxation of income in the respective Contracting States except where provisions to the contrary are made in this Agreement.

2. In the case of Malaysia, double taxation shall be eliminated as follows:

Subject to the laws of Malaysia regarding the allowance as a credit against Malaysian tax of tax payable in any country other than Malaysia, tax paid in India under the taxation laws of India by a resident of Malaysia in respect of income derived from India shall be allowed as a credit against tax payable in Malaysia in respect of that income. Where such income is a dividend paid by a company which is a resident of India to a company which is a resident of Malaysia and which owns not less than 10 per cent of the voting shares of the company paying the dividend, the credit shall take into account tax paid in India by that company in respect of its income out of which the dividend is paid. The credit shall not, however, exceed that part of the Malaysian tax, as computed before the credit is given, which is attributable to such item of income.

3. For the purposes of paragraph 2, the term tax paid in India shall be deemed to include the tax which would, under the laws of India and in accordance with this Agreement, have been payable on any income derived from sources in India had the income not been taxed at a reduced rate or exempted from Indian tax in accordance with the provisions of this Agreement and the special incentives under the Indian laws for the promotion of economic development of India which were in force at the date of signature of this Agreement or any other provisions which may subsequently be introduced in India in modification of, or in addition to, those laws so far as they are agreed by the competent authorities of the Contracting States to be of a substantially similar character.

4. In the case of India, double taxation shall be eliminated as follows:

Where a resident of India derives income which, in accordance with the provisions of this Agreement, may be taxed in Malaysia, India shall allow as a deduction from the tax on the income of that resident an amount equal to the amount of tax paid in Malaysia whether directly or by deduction at source. Such amount shall not, however, exceed that part of the tax (as computed before the deduction is given) which is attributable to the income which may be taxed in Malaysia.

5. For the purposes of paragraph 4, the term tax paid in Malaysia shall be deemed to include the tax which would, under the laws of Malaysia and in accordance with this Agreement, have been payable on any income derived from sources in Malaysia had the income not been taxed at a reduced rate or exempted from Malaysian tax in accordance with the provisions of this Agreement and the special incentives under the Malaysian laws for the promotion of economic development of Malaysia which were in force at the date of signature of this Agreement or any other provisions which may subsequently be introduced in Malaysia in modification of, or in addition to, those laws so far as they are agreed by the competent authorities of the Contracting States to be of a substantially similar character.

ARTICLE 24 : 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 in the same circumstances. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents. Further, this provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which an enterprise of the other Contracting State has in the first-mentioned State at a rate higher than that imposed on the profits of a similar enterprise of the first-mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7 of this Agreement.

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 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 the first-mentioned State are or may be subjected.

4. Nothing in this Article shall be construed so as to prevent either Contracting State from limiting to its nationals the enjoyment of tax incentives designed to promote economic development in that State.

5. In this Article, the term taxation means taxes to which this Agreement applies.

ARTICLE 25 : 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 Agreement, he may, notwithstanding the remedies provided by the taxation laws of those States, present his case to the competent authority of the State of

which he is a resident or, if his case comes under paragraph 1 of article 24, to that of the State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.

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 which is not in accordance with the Agreement notwithstanding any time limits in the domestic 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 Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.

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

ARTICLE 26 : EXCHANGE OF INFORMATION – 1. The competent authorities of the Contracting States shall exchange such information including documents as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by this Agreement, or for the prevention or detection of evasion or avoidance of taxes covered by this Agreement. Any information so exchanged shall be treated as secret and shall be disclosed only to persons or authorities (including a court, an administrative body or reviewing authority) involved in the assessment, collection, enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of this Agreement. Such persons or authorities shall use the information only for such purposes, but may disclose the information in public court proceedings or in judicial decisions.

2. 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 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.

ARTICLE 27 : DIPLOMATIC AND CONSULAR OFFICERS – Nothing in this Agreement shall affect the fiscal privileges of diplomatic or consular officers under the general rules of international law or under the provisions of special agreements.

ARTICLE 28 : ENTRY INTO FORCE – 1. The Contracting States shall notify each other in writing, through diplomatic channels, of the completion of the procedures required by the respective laws for the entry into force of this Agreement.

2. This Agreement shall enter into force thirty days after the receipt of the latter of the notifications referred to in paragraph 1 of this Article.

3. The provisions of this Agreement shall have effect :

- (a) in Malaysia :
 - (i) in respect of Malaysian tax, other than petroleum income-tax, to tax chargeable for any year of assessment beginning on or after the first day of January in the calendar year following the year in which this Agreement enters into force;
 - (ii) in respect of petroleum income-tax, to tax chargeable for any year of assessment beginning on or after the first day of January of the second calendar year following the year in which this Agreement enters into force; and

(b) in India;

in respect of income in any fiscal year beginning on or after the first day of April next following the calendar year in which the Agreement enters into force.

4. The Agreement between the Government of Malaysia and the Government of India for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with respect to Taxes on Income signed at New Delhi, India on the 25th day of October, 1976 shall cease to have effect when the provisions of this Agreement become effective in accordance with the provisions of paragraph 3.

ARTICLE 29 : TERMINATION – This Agreement shall remain in force indefinitely but either Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give the other Contracting State through diplomatic channels, written notice of termination and, in such event, this Agreement shall cease to have effect :

(a) in Malaysia :

- (i) in respect of Malaysian tax, other than petroleum income-tax, to tax chargeable for any year of assessment beginning on or after the first day of January in the calendar year following the year in which the notice is given;
- (ii) in respect of petroleum income-tax, to tax chargeable for any year of assessment beginning on or after the first day of January of the second calendar year following the year in which the notice is given; and

(b) in India :

in respect of income arising in any fiscal year on or after the 1st day of April next following the date on which the notice is given.

In witness whereof the undersigned, duly authorised thereto, by their respective Governments, have signed this Agreement.

Done in duplicate at Putrajaya this 14th day of May, 2001, each in the Malay, Hindi and English language, all texts being equally authentic. In the event of

there being a dispute in the interpretation and the application of this Agreement, the English text shall prevail.

PROTOCOL

At the time of signing the Agreement between the Government of Malaysia 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 undersigned have agreed that the following provisions shall form an integral part of the Agreement :

It is understood that :

1. For the purposes of the Agreement, the term fiscal year wherever it appears means :

- (i) in the case of Malaysia, the meaning as assigned by section 20 of the Income-tax Act, 1967;
- (ii) in the case of India, the previous year as defined under section 3 of the Income-tax Act, 1961.

2. With reference to paragraph 1(j) of article 3, the tax shall not include any amount which is payable by way of a penalty or fine for any default or omission in relation to taxes to which this Agreement applies or which represents any other penalty or fine imposed relating to those taxes.

3. With reference to paragraph 7 of article 5, the term arms length conditions means the conditions which would have been made or imposed between two enterprises in their commercial or financial relations which would not have differed from those which would have been made or imposed between independent enterprises.

4. With reference to paragraph 1 of article 6, this paragraph should not be construed as preventing the country of residence to also tax the income under this article.

5. With reference to sub-paragraphs 3(a)(i) and (ii) of article 28 and sub-paragraphs (a)(i) and (ii) of article 29, the term year of assessment has the meaning assigned to under section 2 of the Income-tax Act, 1967.

Done in duplicate at Putrajaya this 14th day of May, 2001, each in the Malay, Hindi and English language, all texts being equally authentic. In the event of there being a dispute in the interpretation and the application of this Agreement, the English text shall prevail.

For the Government of Malaysia

For the Government of the Republic of
India.

Malta

Agreement for Avoidance of Double Taxation and Prevention of Fiscal Evasion with Malta

Whereas the annexed Agreement between the Government of the Republic of India and the Republic of Malta for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income has entered into force on 8th February, 1995, after the notification by both the Contracting States to each other of the completion of the procedures required under their laws for bringing into force of the said Agreement in accordance with paragraph 1 of Article 29 of the said Agreement;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Agreement shall be given effect to in the Union of India.

Notification : No. SO 761(E), dated 22-11-1995.

ANNEXURE

AGREEMENT BETWEEN THE REPUBLIC OF INDIA AND MALTA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF MALTA

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows :

CHAPTER I – SCOPE OF THE AGREEMENT

ARTICLE 1 – *Personal scope* – This Agreement 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 Agreement shall apply are :

(a) in India :

the income-tax including any surcharge thereon ;
(hereinafter referred to as Indian tax) ;

(b) in Malta :

the income-tax ;
(hereinafter referred to as Malta tax).

2. This Agreement shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of the present Agreement 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 significant changes which are made in their respective taxation laws.

3. Notwithstanding the other provisions of this Article, this Agreement shall not apply to tax paid or payable in Malta in accordance with the provisions of sub-section (11) of section 31 of the Income-tax Act (Cap. 123), concerning the chargeable income of any person engaged in the production of petroleum produced in Malta, or any substantially similar provision which is imposed after the date of signature of this Agreement.

CHAPTER II – DEFINITIONS

ARTICLE 3 – *General definitions* – 1. For the purposes of this Agreement, unless the context otherwise requires :

- (a) the term India means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdictions, according to the Indian law and in accordance with international law/the U.N. Convention on the Law of the Sea ;
- (b) the term Malta when used in a geographical sense, means the Island of Malta, the Island of Gozo and the other Islands of the Maltese archipelago including the territorial waters thereof, and any area outside the territorial sea of Malta which, in accordance with international law, has been or may hereafter be designated, under the law of Malta concerning the Continental

Shelf, as an area within which the rights of Malta with respect to the seabed and subsoil and their natural resources may be exercised ;

- (c) the term company means any body corporate or any entity which is treated as a body corporate for tax purposes ;
- (d) the term competent authority means in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative; and in the case of Malta, the Minister responsible for finance or his authorised representative ;
- (e) the terms a Contracting State and the other Contracting State mean India or Malta as the context requires ;
- (f) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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 ;
- (g) the term fiscal year in relation to Indian tax means previous year as defined in the Income-tax Act, 1961 (43 of 1961) and in relation to Malta tax means the year immediately preceding the year of assessment as defined in the Income-tax Act (Cap. 123) ;
- (h) 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 ;
- (i) the term national means any individual possessing the nationality of a Contracting State and any legal person, partnership or association deriving its status from the laws in force in the Contracting State ;
- (j) the term person includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States ;
- (k) the term tax means Indian tax or Malta tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Agreement applies or which represents a penalty imposed relating to those taxes.

2. As regards the application of the Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which this Agreement applies.

ARTICLE 4 – *Resident* – 1. For the purposes of this Agreement, the term resident of a Contracting State means any person who, under the laws of that State, is liable to tax 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 status shall be determined as follows :

- (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 States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests) ;
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has no permanent home available to him in either 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 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 States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph (1) of 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 Agreement, the term permanent establishment means a fixed place of business through which the business of the enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (a) a place of management ;
- (b) a branch ;
- (c) an office ;
- (d) a factory ;
- (e) a workshop ;
- (f) a mine, an oil or gas well, quarry or any other place of extraction of natural resources including an offshore drilling site ;
- (g) a building site or construction or assembly project or supervisory activities in connection therewith, where such site, project or activities (together with other such sites, projects or activities, if any) continues for a period of more than six months.

3. Notwithstanding the preceding provisions of this Article, the term permanent establishment shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage, display or delivery 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, display or delivery ;
- (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 ;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise any other activity of a preparatory or auxiliary character.

4. A person engaged in a Contracting State in exploration of the seabed and its subsoil or in exploitation of natural resources situated there as well as in activities which are complementary or auxiliary to such activities, is deemed to exercise such activities through a permanent establishment in that State.

5. An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if :

- (a) substantial equipment is in that other State being used or installed by, for or under contract with the enterprise ;
- (b) it carries on supervisory activities in that State in connection with the use of equipment referred to in sub-paragraph (a).

6. Notwithstanding the provisions of paragraphs (1) and (2) where a person – other than an agent of an independent status to whom paragraph (7) applies – is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to the purchase of goods or merchandise for the enterprise.

7. 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.

However, when the activities of such an agent are devoted wholly or almost wholly on behalf of the enterprise, he shall not be considered as agent of an independent status if the transactions between the agent and the enterprise were not made under arms length conditions.

8. 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 otherwise), shall not of itself constitute either company a permanent establishment of the other.

CHAPTER III – TAXATION OF INCOME

ARTICLE 6 – *Income from immovable property* – 1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work or to explore for, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph (1) shall also 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, the profits of the enterprise may be taxed in the other State but only so much of them as is directly or indirectly attributable to that permanent establishment. The words directly or indirectly mean, for the purposes of this Article, that where a permanent establishment takes an active part in negotiating, concluding or fulfilling contracts entered into by the enterprise, then, notwithstanding that other part of the enterprise have also participated in those transactions, there

shall be attributed to the permanent establishment that proportion of profits of the enterprise arising out of those contracts as the contribution of the permanent establishment to those transactions bears to that of the enterprise as a whole.

2. Subject to the provisions of paragraph (3), 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 or with other associated enterprises with which it deals.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses of the enterprise, being expenses which are incurred for the purposes of the permanent establishment (including executive and general administrative expenses so incurred) and which would be deductible if the permanent establishment were an independent entity which paid those expenses, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere in accordance with the provisions of and subject to the limitation of the taxation laws of that State.

4. Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person, including the determination of such liability by the exercise of discretion or the making of an estimate by the competent authority of that State in cases in which, from the information available to the competent authority of that State, it is not possible or not practicable to ascertain the profits to be attributed to a permanent establishment, provided that law shall be applied, so far as the information available to the competent authority permits, consistently with the principles of 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 purposes 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. The provisions of this Article shall not affect the provisions of the law of a Contracting State regarding the taxation of profits from the business of insurance.

8. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8 – *Shipping and air transport* – 1. Profits derived by an enterprise of a Contracting State from the operation by that enterprise of ships or aircraft in international traffic shall be taxable only in that State.

2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall mean profits derived by an enterprise described in paragraph 1 from the transportation by sea or air respectively of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of ships or aircraft including :

- (a) the sale of tickets for such transportation on behalf of other enterprises ;
- (b) other activity directly connected with such transportation ; and
- (c) the rental of ships or aircraft incidental to any activity directly connected with such transportation.

3. Profits of an enterprise of a Contracting State described in paragraph (1) from the use, maintenance, or rental of containers (including trailers, barges and related equipment for the transport of containers) used in connection with the operation of ships or aircraft in international traffic shall be taxable only in that State.

4. The provisions of paragraphs (1) and (3) shall also apply to profits from participation in a pool, a joint business, or an international operating agency.

5. For the purposes of this Article, interest on funds connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft, and the provisions of Article 11 (Interest) shall not apply in relation to such interest.

ARTICLE 9 – *Associated enterprises* – 1. 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.

2. Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of such liability by the exercise of a discretion or the making of an estimate by the competent authority of that State in cases which, from the information available to the competent authority of that State, it is not possible or not practicable to determine the income to be attributed to an enterprise, provided that law shall be applied, so far as the information available to the competent authority permits, consistently with the principles of this Article.

3. Where a Contracting State includes in the profits of an enterprise of that State, and taxes accordingly, profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to that enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax

charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10 – *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 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 laws of that State, but :

- (a) where the dividends are paid by a company resident of India to a resident of Malta who is the beneficial owner thereof, the Indian tax so charged shall not exceed :
 - (i) 10 per cent of the gross amount of the dividends if the beneficial owner is a company which owns at least 25 per cent of the shares of the company paying the dividends ; and
 - (ii) 15 per cent of the gross amount of the dividends in all other cases,
- (b) where the dividends are paid by a company which is a resident of Malta to a resident of India who is the beneficial owner thereof Malta tax on the gross amount of the dividends shall not exceed that chargeable on the profits out of which the dividends are paid.

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, jouissance shares or jouissance rights, mining shares, founders 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 a 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 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 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 State, nor subject the companys undistributed profits to a tax on the companys undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly or profits or income arising in such other State.

ARTICLE 11 – *Interest* – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

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

3. Notwithstanding the provisions of paragraph (2), interest arising in a Contracting State shall be exempt from tax in that State if it is derived by the Government of the other Contracting State or a local authority thereof or any agency or instrumentality wholly owned and controlled by that Government or local authority.

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 debtors 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.

5. The provisions of paragraphs (1) and (2) 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 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 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 resident of a Contracting State or not, has in a Contracting State a permanent establishment or fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest shall be deemed to arise in the 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 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 the other provisions of this Agreement.

ARTICLE 12 – *Royalties and fees for included services* – 1. Royalties and fees for included services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties and fees for included services may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties or fees for included services the tax so charged shall not exceed 15 per cent of the gross amount of the royalties or fees for included services.

3. The term royalties in this Article means payments or credits, whether periodical or not, and however described or computed to the extent to which they are made as consideration for :

- (a) the use of, or the right to use any copyright, patent, design or model, plan, secret formula or process, trademark or other like property or right ;
- (b) the use of, or the right to use, any industrial, commercial or scientific equipment ;
- (c) the supply of scientific, technical, industrial or commercial knowledge or information ;
- (d) the use of, or the right to use :
 - (i) motion picture films ;
 - (ii) films or video tapes for use in connection with television ; or
 - (iii) tapes for use in connection with radio broadcasting ; or
- (e) total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph.

4. The term fees for included services in this Article means payments or credits, whether periodical or not, and however described or computed, to the extent to which they are made as consideration for :

- (a) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right as is mentioned in sub-paragraph (a) of paragraph (3), or any such equipment as is mentioned in sub-paragraph (b) of paragraph (3); or any such knowledge or information as is mentioned in sub-paragraph (c) of paragraph (3) ;
- (b) rendering of any technical or consultancy services (including the provision of technical or other personnel) if such services make available technical knowledge, (experience, skill, know-how or process or consist of the development and transfer of a technical plan or technical design).

5. The provisions of paragraphs (1) and (2) shall not apply if the beneficial owner of the royalties or fees for included services, being a resident of a Contracting State, carries on business in the other Contracting State in which

the royalties or fees for included services arise, through a permanent establishment situated therein, or performs in that other State independent personal services from fixed base situated therein, and the right or property in respect of which the royalties or fees for included services 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.

6. Royalties and fees for included services shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties or fees for included services, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or fixed base in connection with which the liability to pay the royalties or fees for included services was incurred, and such royalties or fees for included services are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise, in the 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 royalties or fees for included services 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 the other provisions of this Agreement.

ARTICLE 13 – *Technical fees* – 1. Technical fees arising in a Contracting State which are derived by a resident of the other Contracting State may be taxed in that other State.

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

3. The term technical fees as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a technical, managerial or consultancy nature.

4. The provisions of paragraphs (1) and (2) shall not apply if the beneficial owner of the technical fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the technical fees arise through a permanent establishment situated therein, or performs in that other State independent personal services, and the technical fees are effectively connected with such permanent establishment or such services. In such case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. Technical fees shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a statutory body thereof, or a resident of that State. Where, however, the person paying the technical fees, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the technical fees was incurred, and such technical fees are borne by that permanent establishment, then such technical fees shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where, by reason of a special relationship between the payer and the recipient or between both of them and some other person, the amount of the technical fees paid exceeds, for whatever reason, 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 law of each Contracting State due regard being had to the other provisions of this Agreement.

ARTICLE 14 – *Alienation of property* – 1. Income from gains from the alienation of immovable property, as defined in paragraph (2) of Article 6, may be taxed in the Contracting State in which such property is situated.

2. Income from gains from the alienation of shares or comparable interests in a company, the assets of which consist wholly or principally of immovable property, may be taxed in the Contracting State in which the assets or the principal assets of the company are situated.

3. Income from gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such income or gains arising from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such fixed base, may be taxed in the other State.

4. Income from gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.

5. Income from gains from the alienation of shares other than those mentioned in paragraph (2) in a company which is a resident of a Contracting State may be taxed in that State.

6. Income from gains from the alienation of any property other than that referred to in paragraphs (1), (2), (3), (4) and (5) shall be taxable only in the Contracting State of which the alienator is a resident.

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 State. However, such income may be taxed in the other Contracting State in the following circumstances :

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

(b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 90 days during any fiscal year.

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, 20 and 21, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed only in that State.

ARTICLE 17 – *Directors' fees* – Directors fees and similar payments derived by a resident of one of the Contracting States in his capacity as a member of the Board of Directors, or other comparable body however described, of a company which is a resident of the other Contracting State, may be taxed in that other State.

ARTICLE 18 – *Income earned by artistes 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 a 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.

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. Notwithstanding the provisions of paragraph 1, income derived by an entertainer or an athlete who is a resident of a Contracting State from his personal activities as such exercised in the other Contracting State, shall be taxable only in the first-mentioned Contracting State, if the activities in the other Contracting State are supported wholly or substantially from the public funds of the first-mentioned Contracting State, including any of its political sub-divisions or local authorities.

4. Notwithstanding the provisions of paragraph 2 and Articles 7, 15 and 16, where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such in a Contracting State accrues not to the entertainer or athlete himself but to another person, that income shall be taxable only in the other Contracting State, if that other person is supported wholly or substantially from the public funds of that other State, including any of its political sub-divisions or local authorities.

ARTICLE 19 – *Pensions* – 1. Subject to the provisions of paragraph (2) of Article 20, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph (1), pensions and other payments made under the social security legislation of a Contracting State shall be taxable only in that State.

ARTICLE 20 – *Government service* – 1. (a) Remuneration other than a pension paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who :

(i) is a national of that State ; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 16, 17 and 19 shall apply to remuneration and pensions in respect of services rendered in connection with any business carried on by a Contracting State or a political sub-division or a local authority thereof.

ARTICLE 21 – *Remuneration received by teachers* – 1. Remuneration which a professor or teacher who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State for a period not exceeding two years for the purpose of carrying out advanced study or research or for teaching at a university, college, school or other educational institution receives for such work shall not be taxed in that State, provided that such remuneration is derived by him from outside that 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.

ARTICLE 22 – *Payments received by students and trainees* – An individual who is a resident of a Contracting State immediately before making a visit to the other Contracting State and is temporarily present in the other State solely

- (a) As a student at a recognised university, college, school or other similar recognised educational institution in that other State ; or
- (b) as a business or technical apprentice ; or
- (c) as a recipient of a grant, allowance or award for the primary purpose of study, research or training from the Government of either State or from a scientific, educational, religious, or charitable organisation or under a technical assistance programme entered into by the Government of either State,

shall be exempt from tax in that other State on :

- (a) all remittances from abroad for the purposes of his maintenance, education, study, research or training ;
- (b) the amount of such grant, allowance or award ; and
- (c) any remuneration not exceeding an amount equivalent to US \$3,000 during any fiscal year in respect of services in that other State provided the services are performed in connection with his study, research or training or are necessary for the purpose of his maintenance.

ARTICLE 23 – *Other income* – 1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.

2. The provisions of paragraph (1) shall not apply to income, other than income from immovable property as defined in paragraph (2) of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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 income 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.

3. Notwithstanding the provisions of paragraphs (1) and (2) items of income of a resident of a Contracting State not dealt with in the foregoing articles of this Convention and arising in the other Contracting State may also be taxed in that other State.

CHAPTER IV – ELIMINATION OF DOUBLE TAXATION

ARTICLE 24 – *Elimination of double taxation* – 1. The laws in force in either of the Contracting States shall continue to govern the taxation of income in the respective Contracting States except where express provision to the contrary is made in this Agreement.

2. In the case of India, double taxation shall be eliminated as follows :

Where a resident of India derives income which, in accordance with the provisions of this Agreement, may be taxed in Malta, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in Malta whether directly or by deduction. Such deduction in either case shall not, however, exceed that part of the income-tax (as computed before the deduction is given) which is attributable, as the case may be, to the income which may be taxed in Malta.

3. For the purposes of paragraph (2), the term income-tax paid in Malta shall be deemed to include the amount of Malta tax which would, under the laws of Malta and in accordance with this Agreement, have been payable on any income derived from sources in Malta had the income not been taxed at a reduced rate or exempted from Malta tax in accordance with :

- (a) the Aids to Industries Ordinance, 1959 and the Industrial Development Act, 1988 insofar as they were in force on, and have not been modified since, the date of signature of this Agreement or have been modified only in minor respects so as not to affect their general character ; or
- (b) any other provisions in the Income-tax Act (Cap. 123) or in any other legislation which may subsequently be introduced in Malta in modification of, or in addition to, the existing special incentive laws so far as they are agreed by the competent authorities of the Contracting States to be of a substantially similar character.

4. In the case of Malta, double taxation shall be eliminated as follows :

Subject to the provisions of the law of Malta regarding the allowance of a credit against Malta tax in respect of foreign tax, where in accordance with the provisions of this Agreement, there is included in a Malta assessment income from sources within India the Indian tax on such income shall be allowed as a credit against the relative Malta tax payable thereon.

5. For the purposes of the deduction referred to in paragraph (4), the term Indian tax on such income shall be deemed to include any amount which would have been payable as Indian tax under the laws of India and in accordance with this Agreement for any year but for an exemption from, or reduction of, tax granted for that year under :

- (a) sections 10(4), 10(4B), 10(6)(vii), 10(15)(iv), 10A, 10B, 80(1A), 80HHC, 80HHD, 80HHE of the Income-tax Act, 1961 (43 of 1961), so far as they were in force on, and have not been modified since, the date of the signature of this Agreement, or have been modified only in minor respects so as not to affect their general character ; or
- (b) any other provisions which may be enacted hereafter granting a deduction in computing the taxable income or an exemption or reduction from tax which the competent authorities of the Contracting States agree to be for the purposes of the economic development of India, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character.

6. Where the Agreement provides that income arising in a Contracting State shall be relieved from tax in that State, either in full or in part, and, under the law in force in the other Contracting State, such income is subject to tax by reference to the amount thereof which is remitted to or received in that other State and not by reference to the full amount thereof, then the relief to be allowed in the first-mentioned State shall apply only to so much of the income as is remitted to or received in the other State.

7. Income which, in accordance with the provisions of this Agreement, is not to be subjected to tax in a Contracting State, may be taken into account for calculating the rate of tax to be imposed in that Contracting State.

CHAPTER V – SPECIAL PROVISIONS

ARTICLE 25 – *Non-discrimination* – 1. 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. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

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 in the same circumstances or under the same conditions. This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which an enterprise of the other Contracting State has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar enterprise of the first-mentioned Contracting State, nor as being in conflict with the provisions of paragraph (3) of Article 7 of this Agreement.

3. Except where the provisions of paragraph (1) of Article 9, paragraph (7) of Article 11, or paragraph (6) of Article 12 apply, interest, royalties and fees for included services and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

4. 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 requirements 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 in the same circumstances.

5. Nothing in this Article shall be construed as obliging a Contracting State to grant to individuals who are resident of the other Contracting State any personal allowances, reliefs and reductions for tax purposes on account of civil status, family responsibilities or any other personal circumstances which it grants to its own residents.

6. In this Article, the term taxation means taxes which are the subject of this Agreement.

ARTICLE 26 – *Mutual agreement procedure* – 1. Where a person considers that the actions of one or both of the Contracting State result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph (1) of Article 25, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

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

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. 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.

ARTICLE 27 – *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 Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement in particular for the prevention of fraud or evasion of such taxes. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State. However, if the information is originally regarded as secret in the transmitting State, it shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Agreement. Such persons or authorities shall use the information only for such purposes but may disclose the information in public court proceedings or in judicial decisions. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchange of information shall be made, including where appropriate, exchange of information regarding tax avoidance.

2. In no case shall 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 and administrative practice of that or of the other Contracting State ;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State ; and

- (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 28 – *Diplomatic and consular officials* – Nothing in this Agreement shall affect the fiscal privileges of diplomatic agents or consular officials under the general rules of international law or under the provisions of special agreements.

CHAPTER VI – FINAL PROVISIONS

ARTICLE 29 – *Entry into force* – 1. The Governments of the Contracting States shall notify each other that the legal requirements for the entry into force of this Agreement have been complied with.

2. The Agreement shall enter into force thirty days after the date of the later of the notifications referred to in paragraph (1) and its provisions shall have effect :

(a) in India :

as regards income for any fiscal year beginning on or after the first day of April of the calendar year next following that in which this Agreement enters into force ;

(b) in Malta :

as regards income for any fiscal year beginning on or after the first day of January of the calendar year next following that in which this Agreement enters into force.

ARTICLE 30 – *Termination* – This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year beginning after the expiration of a period of five years from the date of its entry into force. In such event, the Agreement shall cease to have effect :

(a) in India :

as regards income for any fiscal year beginning on or after the first day of April of the calendar year next following that in which the notice of termination is given ;

(b) in Malta :

as regards income for any fiscal year beginning on or after the first day of January of the calendar year next following that in which the notice of termination is given.

In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

Done at Valetta, Malta this twenty-eighth day of September, 1994, in duplicate in the English and Hindi languages, both texts being equally authentic. In case of divergence between the two texts the English text shall be the operative one.

Mauritius

Agreement for avoidance of double taxation and prevention of fiscal evasion with Mauritius

Whereas the annexed Convention between the Government of the Republic of India and the Government of Mauritius for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains and for the encouragement of mutual trade and investment has come into force on the notification by both the Contracting States to each other on completion of the procedures required by their respective laws, as required by Article 28 of the said Convention ;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961) and section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964), the Central Government hereby directs that all the provisions of the said Convention, shall be given effect to in the Union of India.

Notification : *GSR No. 920(E), dated 6-12-1983.*

TEXT OF ANNEXED CONVENTION, DATED 24-8-1982

The Government of the Republic of India and the Government of Mauritius, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains and for the encouragement of mutual trade and investment: have agreed as follows :

CHAPTER I – 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 India,
 - (i) the income-tax including any surcharge thereon imposed under the Income-tax Act, 1961 (43 of 1961) ;

- (ii) the surtax imposed under the Companies (Profits) Surtax Act, 1964 (7 of 1964) ;
(hereinafter referred to as Indian tax) ;
- (b) in the case of Mauritius, the income-tax (hereinafter referred to as Mauritius 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 signature of the present Convention in addition to, or in place of, the existing taxes referred to in paragraph (1) of this article.

3. The competent authorities of the Contracting States shall notify to each other any significant changes which are made in their respective taxation laws.

CHAPTER II – DEFINITIONS

ARTICLE 3 – *General definitions* – 1. For the purposes of this Convention, unless the context otherwise requires:

- (a) the term India means the territory of India and includes the territorial sea and air space above it as well as any other maritime zone referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (Act No. 80 of 1976), in which India has certain rights and to the extent that these rights can be exercised therein as if such maritime zone is a part of the territory of India ;
- (b) the term Mauritius means all the territories, including all the islands, which in accordance with the laws of Mauritius, constitute the State of Mauritius and includes,
 - (i) the territorial sea of Mauritius ; and
 - (ii) any area outside the territorial sea of Mauritius which in accordance with international law has been or may hereafter be designated, under the laws of Mauritius concerning the Continental Shelf, as an area within which the rights of Mauritius with respect to the sea bed and sub-soil and their natural resources may be exercised ;
- (c) the terms a Contracting State and the other Contracting State mean India or Mauritius as the context requires ;

- (d) the term tax means Indian tax or Mauritius tax as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty imposed relating to those taxes ;
- (e) the term person includes an individual, a company and any other entity, corporate or non-corporate, which is treated as a taxable unit under the taxation laws in force in the respective Contracting States ;
- (f) the term company means any body corporate or any entity which is treated as a company or a body corporate under the taxation laws in force in the respective Contracting States ;
- (g) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean respectively an industrial, mining, commercial, plantation or agricultural enterprise or similar undertaking carried on by a resident of a Contracting State and an industrial, mining, commercial, plantation or agricultural enterprise or similar undertaking carried on by a resident of the other Contracting State ;
- (h) the term competent authority means in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative; and in the case of Mauritius, the Commissioner of Income-tax or his authorised representative ;
- (i) the term national means any individual possessing the nationality of a Contracting State and any local person, partnership or association deriving its status from the laws in force in the Contracting State ;
- (j) the term international traffic means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated by the enterprise solely between places in the other Contracting State.

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

ARTICLE 4 – *Residents* – 1. For the purposes of this Convention, the term resident of a Contracting State means any person who, under the laws of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of similar nature. The terms resident of India and resident of Mauritius shall be construed accordingly.

2. Where by reason of the provisions of paragraph (1), an individual is a resident of both Contracting States, then his residential status for the purposes of the Convention 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 (hereinafter referred to as his centre of vital interests) ;
- (b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he does not have 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 national ;
- (d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph (1), a person other than an individual is a resident of both the 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 means a fixed place of business through which the business of the enterprise is wholly or partly carried on.

2. The term permanent establishment shall include

- (a) a place of management ;
- (b) a branch ;
- (c) an office ;
- (d) a factory ;
- (e) a workshop ;
- (f) a warehouse, in relation to a person providing storage facilities for others ;
- (g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources ;
- (h) a firm, plantation or other place where agricultural, forestry, plantation or related activities are carried on ;
- (i) a building site or construction or assembly project or supervisory activities in connection therewith, where such site, project or supervisory activity continues for a period of more than nine months.

3. Notwithstanding the preceding provisions of this article, the term permanent establishment shall be deemed not to include :

- (a) the use of facilities solely for the purpose of storage or display of 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 ;
- (e) the maintenance of a fixed place of business solely
 - (i) for the purpose of advertising,
 - (ii) for the supply of information,
 - (iii) for scientific research, or
 - (iv) for similar activities,

which have a preparatory or auxiliary character for the enterprise.

4. Notwithstanding the provisions of paragraphs (1) and (2) of this article, a person acting in a Contracting State for or on behalf of an enterprise of the other Contracting State [other than an agent of an independent status to whom the provisions of paragraph (5) apply] shall be deemed to be a permanent establishment of that enterprise in the first-mentioned State if :

- (i) he has and habitually exercises in that first-mentioned 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 ; or
- (ii) he habitually maintains in that first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly fulfils orders on behalf of 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 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. However, when the activities of such an agent are devoted exclusively or almost exclusively on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

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.

CHAPTER III – TAXATION OF INCOME

ARTICLE 6 – *Income from immovable property* – 1. Income from immovable property may be taxed 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 of the Contracting State in which the property is situated. The term shall in any case include property accessory to immovable property, livestock

and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, oil-wells, quarries and other places of extraction of natural resources, ships, boats and aircraft shall not be regarded 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, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph (3) of this article, 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. Where the correct amount of profits attributable to a permanent establishment cannot be readily determined or the determination thereof presents exceptional difficulties, the profits attributable to the permanent establishment may be estimated on a reasonable basis.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business 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.

4. 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.

5. For the purposes 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.

6. 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 – *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. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated or, if there is no such home harbour, in the Contracting State of which the operator of the ship is resident.

3. The provisions of paragraph (1) of this article shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

4. For the purposes of paragraph (1), interest on funds connected with the operation of ships or aircraft in international traffic shall be regarded as profits from the operation of such ships or aircraft, and the provisions of Article 11 shall not apply in relation to such interest.

5. The term operation of ships or aircraft shall mean business of transportation of persons, mail, livestock or goods, carried on by the owners or lessees or charterers of the ships or aircraft, including the sale of tickets for such

transportation on behalf of other enterprises, the incidental lease of ships or aircraft and any other activity directly connected with such transportation.

ARTICLE 9 – *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 10 – *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 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 laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed

- (a) five 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) fifteen per cent of the 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. Notwithstanding the provisions of paragraph (2), dividends paid by a company which is a resident of Mauritius to a resident of India may be taxed in Mauritius and according to the laws of Mauritius, as long as dividends paid by companies which are residents of Mauritius are allowed as deductible expenses for determining their taxable profits. However, the tax charged shall not exceed the rate of the Mauritius tax on profit of the company paying the dividends.

4. The term dividends as used in this Article means income from 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 Contracting State of which the company making the distribution is a resident.

5. The provisions of paragraphs (1), (2) and (3) shall not apply if the beneficial owner of the dividends, being a resident of the 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 a case, the provisions of article 7 or article 14, as the case may be, shall apply.

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

ARTICLE 11 – *Interest* – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, subject to the provisions of paragraphs (3) and (4) of this article, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State.

3. Interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by :

- (a) the Government or a local authority of the other Contracting State ;
- (b) any agency or entity created or organised by the Government of the other Contracting State ; or
- (c) any bank carrying on a *bona fide* banking business which is a resident of the other Contracting State.

4. Interest arising in a Contracting State shall be exempt from tax in that Contracting State to the extent approved by the Government of that State if it is derived and beneficially owned by any person [other than a person referred to in paragraph (3)] who is a resident of the other Contracting State provided that the transaction giving rise to the debt-claim has been approved in this regard by the Government of the first-mentioned Contracting State.

5. 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 debtors 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.

6. The provisions of paragraphs (1), (2), (3) and (4) shall not apply if the recipient 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 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 14, as the case may be, shall apply.

7. 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 resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by that permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

8. Where, by reason of a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, 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 recipient in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 12 – *Royalties* – 1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the law of that State, but the tax so charged shall not exceed 15 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 (including cinematograph films, and films or tapes 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.

4. The provisions of paragraphs (1) and (2) shall not apply if the recipient 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 a case, the provisions of article 7 or article 14, 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 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 in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where, by reason of a special relationship between the payer and the recipient or between both of them and some other person, the amount of royalties paid, 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 recipient in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In that 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.

ARTICLE 13 – *Capital gains* – 1. Gains from the alienation of immovable property, as defined in paragraph (2) of article 6, may be taxed in the Contracting State in which such property is situated.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or

together with the whole enterprise) or of such a fixed base, may be taxed in that other State.

3. Notwithstanding the provisions of paragraph (2) of this article, gains from the alienation of ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains derived by a resident of a Contracting State from the alienation of any property other than those mentioned in paragraphs (1), (2) and (3) of this article shall be taxable only in that State.

5. For the purposes of this article, the term alienation means the sale, exchange, transfer, or relinquishment of the property or the extinguishment of any rights therein or the compulsory acquisition thereof under any law in force in the respective Contracting States.

ARTICLE 14 – *Independent personal services* – 1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other Contracting State but only so much of it as is attributable to that fixed base.

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

ARTICLE 15 – *Dependent personal services* – 1. Subject to the provisions of articles 16, 17, 18, 19, 20 and 21, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised,

such remuneration as is derived therefrom may be taxed in that other Contracting State.

2. Notwithstanding the provisions of paragraph (1) of this article, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first mentioned State, if

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the relevant previous year or year of income, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this article, remuneration in respect of an employment exercised aboard a ship or aircraft in international traffic, may be taxed only in the Contracting State in which the place of effective management of the enterprise is situated.

ARTICLE 16 – *Directors fees* – Directors fees and other 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 may be taxed in that other Contracting State.

ARTICLE 17 – *Artistes and athletes* – 1. Notwithstanding the provisions of articles 14 and 15, income derived by public entertainers such as theatre, motion picture, radio or television artistes and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

2. Where income is derived from personal activities exercised by an entertainer or an athlete in his capacity as such, and accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the

provisions of articles 7, 14 and 15, be taxed in the State in which the activities of the entertainer or athlete are exercised.

3. Notwithstanding the provisions of paragraph (1) of this article, income derived by an entertainer or an athlete who is a resident of a Contracting State from his personal activities as such exercised in the other Contracting State, shall be taxable only in the first-mentioned Contracting State, if those activities in the other Contracting State, are supported wholly or substantially from the public funds of the first-mentioned Contracting State, including any of its political sub-divisions or local authorities.

4. Notwithstanding the provisions of paragraph (2) of this article and articles 7, 14 and 15, where income is derived from personal activities exercised by an entertainer or an athlete in his capacity as such in a Contracting State and accrues not to the entertainer or athlete himself but to another person, that income shall be taxable only in the Contracting State, if that other person is supported wholly or substantially from the public funds of that other Contracting State, including any of its political sub-divisions or local authorities.

ARTICLE 18 – *Governmental functions* – 1. Remuneration, other than pension, paid by the Government of a Contracting State, to an individual who is a national of that State in respect of services rendered to that State shall be taxable only in that State.

2. Any pension paid by the Government of a Contracting State to an individual who is a national of that State, shall be taxable only in that Contracting State.

3. The provisions of paragraphs (1) and (2) of this article 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 for the purpose of profit.

4. The provisions of paragraph (1) of this article shall likewise apply in respect of remuneration paid under a development assistance programme of a Contracting State, out of funds supplied by that State, to a specialist or

volunteer seconded to the other Contracting State with the consent of that other State.

5. For the purposes of this article, the term Government shall include any State Government or local or statutory authority of either Contracting State and, in particular, the Reserve Bank of India and the Bank of Mauritius.

ARTICLE 19 – *Non-Government pensions and annuities* – 1. Any pension, other than a pension referred to in article 18, or any annuity derived by a resident of a Contracting State from sources within the other Contracting State shall be taxed only in the first-mentioned Contracting State.

2. The term pension means a periodic payment made in consideration of past services or by way of compensation for injuries received in the course of performance of services.

3. 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 moneys worth.

ARTICLE 20 – *Students and apprentices* – 1. A student or business apprentice who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State and who is present in that other Contracting State solely for the purpose of his education or training, shall be exempt from tax in that other Contracting State on

- (a) payments made to him from sources outside that other Contracting State for the purposes of his maintenance, education or training, and
- (b) remuneration from employment in that other Contracting State, in an amount not exceeding Rs. 15,000 in Indian currency or its equivalent in Mauritius rupees at the parity rate of exchange during any previous year or year of income, as the case may be, provided that such employment is directly related to his studies or is undertaken for the purpose of his maintenance.

2. The benefits of this article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this article for more than five consecutive years from the date of his first arrival in that other Contracting State.

ARTICLE 21 – *Professors, teachers and research scholars* – 1. A professor, teacher and research scholar who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State at the invitation of that other Contracting State or of a university, college, school or other approved institution in that other Contracting State for the purpose of teaching or engaging in research, or both, at the university, college, school or other approved institution, shall be exempt from tax in that other 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 other Contracting State.

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

3. For the purposes of this article and article 20 an individual shall be deemed to be resident of a Contracting State if he is a resident in that Contracting State in the previous year or the year of income, as the case may be, in which he visits the other Contracting State or in the immediately preceding previous year or the year of income.

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

ARTICLE 22 – *Other income* – 1. Subject to the provisions of paragraph (2) of this article, items of income of a resident of a Contracting State, wherever arising, which are not expressly dealt with in the foregoing articles of this Convention, shall be taxable only in that Contracting State.

2. The provisions of paragraph (1) shall not apply to income, other than income from immovable property as defined in paragraph (2) of article 6, if the

recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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 income is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of article 7 or article 14, as the case may be, shall apply.

CHAPTER IV – METHODS FOR ELIMINATION OF DOUBLE TAXATION

ARTICLE 23 – *Elimination of double taxation* – 1. The laws in force in either of the Contracting States shall continue to govern the taxation of income in the respective Contracting States except where provisions to the contrary are made in this Convention.

2. (a) The amount of Mauritius tax payable, under the laws of Mauritius and in accordance with the provisions of this Convention, whether directly or by deduction, by a resident of India, in respect of profits or income arising in Mauritius, which has been subjected to tax both in India and in Mauritius, shall be allowed as a credit against the Indian tax payable in respect of such profits or income provided that such credit shall not exceed the Indian tax (as computed before allowing any such credit) which is appropriate to the profits or income arising in Mauritius. Further, 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.

(b) In the case of a dividend paid by a company which is a resident of Mauritius to a company which is a resident of India and which owns at least 10 per cent of the shares of the company paying the dividend, the credit shall take into account [in addition to any Mauritius tax for which credit may be allowed under the provisions of sub-paragraph (a) of this paragraph] the Mauritius tax payable by the company in respect of the profits out of which such dividend is paid.

3. For the purposes of the credit referred to in paragraph (2) the term Mauritius tax payable shall be deemed to include any amount which would have been

payable as Mauritius tax for any year but for an exemption or reduction of tax granted for that year or any part thereof under :

- (i) sections 33, 34, 34A and 34B of the Mauritius Income-tax Act, 1974 (41 of 1974) ;
- (ii) any other provision which may subsequently be made granting an exemption or reduction of tax which the competent authorities of the Contracting States agree to be for the purposes of economic development.

4. (a) The amount of Indian tax payable under the laws of India and in accordance with the provisions of this Convention, whether directly or by deduction, by a resident of Mauritius, in respect of profits or income arising in India, which has been subjected to tax both in India and Mauritius shall be allowed as a credit against Mauritius tax payable in respect of such profits or income provided that such credit shall not exceed the Mauritius tax (as computed before allowing any such credit) is appropriate to the profits or income arising in India.

(b) In the case of a dividend paid by a company which is a resident of India to a company which is a resident of Mauritius and which owns at least 10 per cent of the shares of the company paying the dividend, the credit shall take into account [in addition to any Indian tax for which credit may be allowed under the provisions of sub-paragraph (a) of this paragraph] the Indian tax payable by the company in respect of the profits out of which such dividend is paid.

5. For the purposes of the credit referred to in paragraph (4), the term Indian tax payable shall be deemed to include any amount by which tax has been reduced by the special incentive measures under

- (i) section 10(4), 10(4A), 10(6)(vii), 10(15)(iv), 10(28), 10A, 32A, 33A, 35B, 54E, 80HH, 80HHA, 80-I or 80L of the Income-tax Act, 1961 (43 of 1961);
- (ii) any other provision which may subsequently be enacted granting a reduction of tax which the competent authorities of the Contracting States agree to be for the purposes of economic development.

6. Where under this Convention a resident of a Contracting State is exempt from tax in that Contracting State in respect of income derived from the other

Contracting State, then the first-mentioned Contracting State may, in calculating tax on the remaining income of that person, apply the rate of tax which would have been applicable if the income exempted from tax in accordance with this Convention had not been so exempted.

CHAPTER V – SPECIAL PROVISIONS

ARTICLE 24 – *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 in the same circumstances.

3. Nothing contained in this Article shall be construed as obliging a Contracting State to grant persons not resident in that State any personal allowances, reliefs, reductions and deductions for taxation purposes which are by law available only to persons who are so resident.

4. 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 in the same circumstances.

5. In this article, the term taxation means taxes which are the subject of this Convention.

ARTICLE 25 – *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. This case must be presented within three years of the date of receipt of notice of the action which gives rise to taxation not in accordance with the Convention.

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. Any agreement reached shall be implemented notwithstanding any time limits in the 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 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. 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.

ARTICLE 26 – *Exchange of information or document* – 1. The competent authorities of the Contracting States shall exchange such information or document as is necessary for carrying out the provisions of this Convention or for prevention of evasion of taxes which are the subject of this Convention. Any information or document so exchanged shall be treated as secret but may be disclosed to persons (including courts or other authorities) concerned with the assessment, collection, enforcement, investigation or prosecution in respect of the taxes which are the subject of this Convention, or to persons with respect to whom the information or document relates.

2. The exchange of information or documents 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 the information or documents which shall be furnished on a routine basis.

3. The provisions of paragraph (1) shall not 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 or documents 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 or documents 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 27 – *Diplomatic and consular activities* – 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.

CHAPTER VI – FINAL PROVISIONS

ARTICLE 28 – *Entry into force* – Each of the Contracting State shall notify to the other completion of the procedures required by its law for the bringing into force of this Convention. The Convention shall enter into force on the date of the later of these notifications and shall thereupon have effect

- (a) in India, in respect of income and capital gains assessable for any assessment year commencing on or after 1st April, 1983 ;
- (b) in Mauritius, in respect of income and capital gains assessable for any assessment year commencing on or after 1st July, 1983.

ARTICLE 29 – *Termination* – This Convention shall remain in force indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give the other Contracting State through

diplomatic channels, written notice of termination and, in such event, this Convention shall cease to have effect

- (a) in India, in respect of income and capital gains assessable for the assessment year commencing on 1st day of April in the second calendar year next following the calendar year in which the notice is given, and subsequent years ;
- (b) in Mauritius, in respect of income and capital gains assessable for the assessment year commencing on 1st day of July in the second calendar year next following the calendar year in which the notice is given, and subsequent years.

In witness whereof the undersigned, being duly authorised thereto, have signed the present Convention.

Done on this 24th day of August, 1982 at Port Louis on two original copies each in Hindi and English languages, both the texts being equally authentic. In case of divergence between the two texts, the English text shall be the operative one.

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Clarification regarding agreement for avoidance of double taxation with Mauritius

1. A Convention for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes of income and capital gains was entered into between the Government of India and the Government of Mauritius and was notified on 6-12-1983. In respect of India, the Convention applies from the assessment year 1983-84 and onwards.

2. Article 13 of the Convention deals with taxation of capital gains and it has five paragraphs. The first paragraph gives the right of taxation of capital gains on the alienation of immovable property to the country in which the property is situated. The second and third paragraphs deal with right of taxation of capital gains on the alienation of movable property linked with business or professional enterprises and ships and aircrafts.

3. Paragraph 4 deals with taxation of capital gains arising from the alienation of any property other than those mentioned in the preceding paragraphs and gives the right of taxation of capital gains only to that State of which the person deriving the capital gains is a resident. In terms of paragraph 4, capital gains derived by a resident of Mauritius by alienation of shares of companies shall be taxable only in Mauritius according to Mauritius tax law. Therefore, any resident of Mauritius deriving income from alienation of shares of Indian companies will be liable to capital gains tax only in Mauritius as per Mauritius tax law and will not have any capital gains tax liability in India.

4. Paragraph 5 defines alienation to mean the sale, exchange, transfer or relinquishment of the property or the extinguishment of any rights in it or its compulsory acquisition under any law in force in India or in Mauritius.

Circular : No. 682, dated 30-3-1994.

JUDICIAL ANALYSIS

See Companies Incorporated in Mauritius, In re [1996] 89 Taxman 125 (AAR – New Delhi)/ *DLJMB Mauritius Investment Company v. CIT* [1997] 94 Taxman 218 (AAR – New Delhi)/ *Dr. Rajni Kant R. Bhatt v. CIT* [1996] 89 Taxman 82 (AAR – New Delhi).

Mongolia

Agreement for avoidance of double taxation and prevention of fiscal evasion with Mongolia

Whereas the annexed Agreement between the Government of the Republic of India and the Government of Mongolia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital has entered into force on the 29th March, 1996, on the notification by both the Contracting States to each other of the completion of the procedures required under their laws for the bringing into force of the said Agreement in accordance with Article 29 of the said Agreement.

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), and section 44A of the Wealth-tax Act, 1957 (27 of 1957), the Central Government hereby directs that all the provisions of the said Agreement shall be given effect to in the Union of India.

Notification : No. SO 635(E), dated 16-9-1996.

ANNEXURE

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF MONGOLIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Government of the Republic of India and the Government of Mongolia, desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital : Have Agreed as follows :

ARTICLE 1 : *Personal scope* – This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2 : *Taxes covered* – 1. The taxes to which this Agreement shall apply are :

(a) in Mongolia :

(i) the individual income-tax ;

(ii) the corporate income-tax ;

(hereinafter referred to as Mongolian tax)

(b) in India :

(i) the income-tax including any surcharge thereon ;

(ii) the wealth-tax ;

(hereinafter referred to as Indian tax)

2. The present Agreement shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of the present Agreement 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 within a reasonable period of time after such change.

ARTICLE 3 : *General definitions* – 1. In this Agreement, unless the context otherwise requires :

(a) the term India means the territory of India and includes the territorial sea and airspace above it, and other maritime zones in which India has sovereign rights, other rights and jurisdictions according to the Indian law and in accordance with international Law;

(b) the term Mongolia means when used in a geographical sense, all the territory of Mongolia, the area which the tax law of the Contracting State in force, insofar as the State concerned exercises there in conformity with international law, sovereign rights to exploit its natural resources ;

(c) the terms Contracting State and the other Contracting State mean Mongolia or India as the context requires ;

(d) the term company means any body corporate or any entity which is treated as a company or body corporate under the taxation laws in force in the respective Contracting States ;

(e) the term competent authority means in the case of Mongolia, the Ministry of Finance or his authorised representative and in the case of India, the

Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative ;

- (f) 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 enterprise carried on by a resident of the other Contracting State ;
- (g) the term fiscal year means :
 - (i) in the case of Mongolia, the calendar year from 1st of January to 31st of December of the year under review ;
 - (ii) in the case of India, previous year as defined under section 3 of the Income-tax Act, 1961.
- (h) the term international traffic means any transport by a ship, aircraft or land vehicle operated by an enterprise of a Contracting State except when the ship, aircraft or land vehicle is operated solely between places in the other Contracting State ;
- (i) the term national means any individual possessing the nationality of a Contracting State and any legal person, partnership or association deriving its status from the laws in force in the Contracting State ;
- (j) the term person includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States ;
- (k) the term tax means Indian tax or Mongolian tax as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Agreement applies or which represents a penalty imposed relating to those taxes.

2. As regards the application of the Agreement by Contracting State, any term not defined therein shall unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Agreement applies.

ARTICLE 4 : *Resident* – 1. For the purposes of this Agreement the term resident of a Contracting State means any person who under the laws of that State, is

liable to tax 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 status shall be determined as follows :

- (a) he shall be deemed to be a resident of that State in which he has a permanent home available to him; if he has a permanent home available to him in both States; he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests) ;
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode ;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national ;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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

ARTICLE 5 : *Permanent establishment* – 1. For the purposes of this Agreement, the term permanent establishment means a fixed place of business, through which the business of the enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (a) a place of management ;
- (b) a branch ;
- (c) an office ;
- (d) a factory ;
- (e) a workshop ;

- (f) a mine, an oil or gas well, quarry or any other place of extraction of natural resources ;
- (g) a building site or a construction or an assembly project or supervisory activities in connection therewith; but only where such site, project or activity continues for a period of more than nine months.

3. Notwithstanding the preceding provisions of this Article, the term permanent establishment shall be deemed not to include :

- (a) the use of facilities solely for the purpose of storage, display or delivery 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, display or delivery ;
- (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 of collecting information, for the enterprise ;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on for the enterprise, any other activity of a preparatory or auxiliary character.

4. Notwithstanding the provisions of paragraphs 1 and 2, where a person other than an agent of independent status to whom paragraph 5 applies is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts on behalf of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 3 of this Article, which if exercised through a fixed place of business would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

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, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

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 : *Income from immovable property* – 1. Income derived by a resident of a Contracting State from immovable property (including income from agricultural or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, land vehicles and aircraft shall not be regarded 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, the profits of enterprise may be taxed in the other State but only so much of them as is attributable to :

- (a) that permanent establishment ; or
- (b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment ; or
- (c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.

2. Subject to the provisions of paragraph 3, 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.

3. In determining the profits of a permanent establishment, there shall be allowed as deduction expenses which are incurred for the purposes of the business 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 in accordance with the provisions of and subject to the limitations of the tax laws of that State.

4. Insofar 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 contained 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 purposes 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 Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8 : *Shipping, air and land transport* – 1. Profits derived by an enterprise registered and having its headquarters (*i.e.*, effective management) in a Contracting State from operation of ships, aircraft or land vehicles in international traffic shall be taxable only in that State.

2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

3. For the purposes of this Article, interest on funds connected with the operation of ships, aircraft or land vehicles in international traffic shall be regarded as profits derived from the operation of such ship, aircraft or land vehicles, and the provisions of Article 11 shall not apply in relation to such interest.

4. The term operation of aircraft shall mean business of transportation by air passengers, mail, livestock or goods carried on by the owners or lessees or charterers of aircraft, including the sale of tickets for such transportation on behalf of other enterprise, the incidental lease of aircraft and any other activity directly connected with such transportation.

5. The term operation of ships shall include :

- (a) the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) in connection with the transport of goods or merchandise in international traffic;

- (b) rental on a full or bareboat basis of ships is operated in international traffic.

ARTICLE 9 : *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 the enterprise and taxed accordingly.

ARTICLE 10 : *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 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 laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 15 per cent of gross amount of the dividends.

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 or from other rights, not being debt-claims participating in profits as well as the income from other corporate rights, which is subjected to the same taxation treatment as income from shares by the laws of 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 14, 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 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 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 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 State.

ARTICLE 11 : *Interest* – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 beneficial owner of the interest the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2,

(a) interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by :

- (i) the Government, a political sub-division or local authority of the other Contracting State ; or
- (ii) the Central Bank of the other Contracting State ; or
- (iii) the Trade and Development Bank of Mongolia in case of Mongolia, and the Industrial Development Bank of India in case of India;

(b) interest arising in a Contracting State shall be exempt from tax in that Contracting State to the extent approved by the Government of that State if it is derived and beneficially owned by any person other than a person referred to in sub-paragraph (a) who is a resident of the other Contracting State provided that the transaction giving rise to the debt-claim has been approved in this regard by the Government of the first-mentioned Contracting State.

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 debtors 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 and 2 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 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 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that 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 resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness in which the interest is paid was incurred and such interest is borne by such permanent establishment or fixed base, then such 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 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 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 the other provisions of this Agreement.

ARTICLE 12 : *Royalties and fees for technical services* – 1. Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of royalties, or fees for technical services, the tax so charged shall not exceed 15 per cent of the gross amount of the royalties or fees for technical services.

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, including 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.

4. The term fees for technical services as used in this article means payments of any amount to any person other than payments to an employee of a person making payments, in consideration for the services of a managerial, technical or consultancy nature, including the provision of services of technical or other personnel.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties

or fees for technical services 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, property or contract in respect of which the royalties or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7, or Article 14, as the case may be, shall apply.

6. Royalties and fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties or fees for technical services, 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 or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of royalties or fees for technical services paid exceeds the amount which would have been paid 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 the other provisions of this Agreement.

ARTICLE 13 : *Capital gains* – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property, referred to in Article 6 and situated in the other Contracting State may be taxed in that other Contracting State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment, which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purposes of performing independent personal services, including

such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships, aircraft or land vehicles operated in international traffic or movable property pertaining to the operation of such ships, aircraft or land vehicles shall be taxable only in the Contracting State in which the enterprise is registered and having the headquarters (*i.e.*, effective management).

4. Gains from the alienation of shares of the capital stock of a company, the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from the alienation of shares, other than those mentioned in paragraph 4, in a company which is a resident of a Contracting State may be taxed in that State.

6. Gains from the alienation of any property, other than mentioned in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14 : *Independent personal services* – 1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State except in the following circumstances when such income may also be taxed in the other Contracting State :

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in the relevant fiscal year; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other 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, accountants and other such professions.

ARTICLE 15 : *Dependent personal services* – 1. Subject to the provisions of Articles 16, 17, 18, 19, 20 and 21, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- (a) the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in the relevant fiscal year ; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting State ; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other Contracting State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft or land vehicle operated in international traffic by an enterprise of a Contracting State shall be taxable only in that State.

ARTICLE 16 : *Directors fees* – Directors fees and similar payments, derived by a resident of a Contracting State in his capacity as a member of the Board of Directors or similar organ of a company, which is a resident of the other Contracting State, may be taxed in that other State.

ARTICLE 17 : *Income earned by entertainers and sportspersons* – 1. Notwithstanding the provisions of Articles 14 and 15, income derived by a

resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artists, or a musician, or as a sportsperson, from the personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. Notwithstanding the provisions of paragraph 1, income derived by an entertainer or a sportsperson who is a resident of a Contracting State from his personal activities as such exercised in the other Contracting State shall be taxable only in the first-mentioned Contracting State, if the activities in the other Contracting State are supported wholly or substantially from the public funds of the first-mentioned Contracting State, including any of its political sub-divisions or local authorities.

4. Notwithstanding the provisions of paragraph 2 and Articles 7, 14 and 15, where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such in a Contracting State accrues not to the entertainer or sportsperson himself but to another person, that income shall be taxable only in the other Contracting State, if that other person is supported wholly or substantially from the public funds of that other State, including any of its political sub-divisions or local authorities.

ARTICLE 18 : *Remuneration and pensions in respect of Government service – 1.*

(a) Remuneration, other than a pension, paid by a Contracting State or a political sub-division, or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who :

- (i) is a national of that State ; or
- (ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or 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 shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of and a national of that other State.

3. The provisions of Articles 15, 16 and 17 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof, income shall be taxable only in the other Contracting State, if that other person is supported wholly or substantially from the public funds of that other State, including any of its political sub-divisions or local authorities.

ARTICLE 19 : *Non-Government pensions and annuities* – 1. Any pension, other than a pension referred to in Article 18, or any annuity derived by a resident of a Contracting State from sources within the other Contracting State may be taxed only in the first-mentioned Contracting State.

2. The term pension means a periodic payment made in consideration of past services or by way of compensation for injuries received in the course of performance of services.

3. 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 moneys worth.

ARTICLE 20 : *Payments received by students and apprentices* – 1. A student or business apprentice who is or was a resident of a Contracting State immediately before visiting the other Contracting State and who is present in that other

Contracting State solely for the purpose of his education or training shall be exempt from tax in that other State on:

- (a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training ;
- (b) grants, scholarships or awards supplied for the Government, or a scientific, educational, cultural or other tax-exempt organisation ; and
- (c) income derived from personal services performed in that Contracting State for the purpose of his maintenance.

2. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article for more than five consecutive years from the date of his first arrival in that other Contracting State.

ARTICLE 21 : *Payments received by professors, teachers and research scholars* –

1. A professor or teacher who is, or was a resident of the Contracting State immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at university, college, school or other approved institution in that other Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival in that other 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 20, an individual shall be deemed to be a resident of a Contracting State if he is resident in that State or in the immediately preceding fiscal year.

4. For the 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.

ARTICLE 22 : *Other income* – 1. Subject to the provisions of paragraph 2, items of income of a resident of a Contracting State, wherever arising, which are not

expressly dealt with in the foregoing articles of this Agreement, shall be taxable only in that Contracting State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income being a resident of a Contracting State carries on business in the other Contracting State 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 income is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing articles of this Agreement and arising in the other Contracting State may also be taxed in that other Contracting State.

ARTICLE 23 : *Capital* – 1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Capital represented by movable property, forming part of the business property of a permanent establishment, which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services may be taxed in that other State.

3. Capital represented by ships, aircraft or land vehicles operated in international traffic and by movable property pertaining to the operation of such ships, aircraft or land vehicles, shall be taxable only in the Contracting State of which the enterprise owning such property is a resident.

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

ARTICLE 24 : *Avoidance of double taxation* – 1. The laws in force in either of the Contracting States will continue to govern the taxation of income in the respective Contracting States except where provisions to the contrary are made in this Agreement.

2. Where a resident of India derives income or owns capital which, in accordance with the provisions of this Agreement, may be taxed in Mongolia, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in Mongolia, whether directly or by deduction; and as a deduction from the tax on the capital of that resident an amount equal to the capital tax paid in Mongolia. Such deduction in either case shall not, however, exceed that part of income-tax or tax on capital (as paid before the deduction is given), which is attributable to the income or the capital which may be taxed in Mongolia.

3. In the case of Mongolia, the double taxation shall be avoided by a method which is identical to that mentioned in paragraph 2.

4. The tax payable in the Contracting State mentioned in paragraphs 2 and 3 of this Article shall be deemed to include the tax which would have been payable but for the tax incentives granted under the laws of the Contracting State and which are designed to promote economic development.

5. Income which in accordance with the provisions of this Agreement, is not to be subjected to tax in a Contracting State may be taken into account for calculating the rate of tax to be imposed in that Contracting State.

ARTICLE 25 : *Non-discrimination* – 1. 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 enterprise of that other

State carrying on the same activities in the same circumstances. This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which an enterprise of other Contracting State has in the first-mentioned Contracting State at a rate higher than that imposed on the profits of a similar enterprise of the first-mentioned State, nor as being in conflict with the provisions of paragraph 3 of Article 7 of this Agreement.

3. Nothing contained in this Article shall be construed as obliging a Contracting State to grant to persons not resident in that State any personal allowances, reliefs, reductions and deductions for taxation purposes which are by law available only to persons who are so resident.

4. 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 in the same circumstances.

5. In this Article, the term taxation means taxes which are the subject of this Agreement.

ARTICLE 26 : *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 Agreement, he may notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the State of which he is a resident. The case must be presented within three years from the date of receipt of the first notice of the action resulting in taxation not in accordance with the provisions of the Agreement.

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 a satisfactory 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 Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the national laws of the Contracting State.

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

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. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through representatives of the competent authorities of the Contracting States.

ARTICLE 27 : *Exchange of information* – 1. The competent authorities of the Contracting States shall exchange such information (including documents) as is necessary for carrying out the provisions of the Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement, in particular for the prevention of fraud or evasion of such taxes. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State. However if the information is originally regarded as secret in the transmitting State, it shall be disclosed only to persons or authorities (including Courts and Administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public courts proceedings in judicial decisions. The competent authorities shall through consultation, develop appropriate conditions, methods and techniques concerning the matter in respect of which such exchange of information shall be made, including, where appropriate, exchange of information regarding tax avoidance.

2. The exchange of information or documents 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 the information or documents 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 and the administrative practice of that or of the other Contracting State ;
- (b) to supply information or documents 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 28 : *Diplomatic and consular activities* – Nothing in this Agreement 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 29 : *Entry into force* – Each of the Contracting States shall notify to the other the completion of the procedures required by its law, for the bringing into force of this agreement. This Agreement shall enter into force on the date of the later of these notifications and shall thereupon have effect :

- (a) In India : in respect of income arising in any previous year beginning on or after the 1st April, 1994 and in respect of capital which is held at the expiry of any previous year beginning on or after 1st April, 1994.
- (b) In Mongolia : in respect of income arising in any year of income beginning on or after the 1st January, 1994, and in respect of capital which is held at the expiry of any year of income beginning on or after 1st January, 1994.

ARTICLE 30 : *Termination* – This Agreement shall remain in force indefinitely but either of the Contracting States may, on or before 30th June, in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give the other Contracting State through Diplomatic

Channels, written notice of termination and, in such event, this Agreement shall cease to have affect :

- (a) In India : in respect of income arising in any previous year beginning on or after the 1st April next following the calendar year in which the notice is given and in respect of capital which is held at the expiry of any previous year beginning on or after 1st April next following the calendar year in which the notice of termination is given ;
- (b) In Mongolia : in respect of income arising in any year of income beginning on or after the 1st January, next following the calendar year in which the notice is given and in respect of capital which is held at the expiry of any year of income next following the calendar year in which the notice of termination is given.

In witness whereof the undersigned, being duly authorised thereto, have signed the present Agreement.

Done in duplicate this 22nd day of February, one thousand nine hundred and ninety-four in the Hindi, Mongolian and English languages, all the texts being equally authentic. In case of divergence between any of the texts, the English text shall be the operative one.

Montenegro

Section 90 of the Income-tax Act, 1961 – Double taxation agreement – Agreement for Avoidance of Double Taxation and Prevention of Fiscal Evasion with Foreign Countries – With the Government of Republic of Montenegro

Notification No. 4/2009 [F.No. 503/1/1997-FTD-I]/S.O. 96(E), Dated 7-1-2009

WHEREAS the annexed Convention between the Government of Republic of India and the Council of Ministers of Serbia and Montenegro for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital was signed at New Delhi on 8th day of February, 2006;

AND WHEREAS the State Union of Serbia and Montenegro was disintegrated into two independent States after Montenegros formal declaration of independence on 3-6-2006 and Serbias formal declaration of independence on 5th June, 2006;

AND WHEREAS the Government of Republic of Montenegro has adopted the said Convention in accordance with the Decision on Proclamation of Independence of the Republic of Montenegro from 3rd June, 2006 and accordingly reference in the said Convention to Serbia and Montenegro shall be read as reference to Montenegro;

AND WHEREAS the date of entry into force of the said Convention is the 23rd day of September, 2008, being the date of later of the notifications of completion of the procedures as required by the respective laws for entry into force of this Convention, in accordance with paragraph 2 of Article 30 of the said Convention;

AND WHEREAS sub-paragraph (2) of paragraph 2 of Article 30 of the Convention provides that the provisions of the Convention shall have effect in India in respect of the taxes on income derived and taxes on capital owned in each fiscal year beginning on or after the first day of April in the calendar year next following the year in which the Convention enters into force;

NOW, THEREFORE, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961) and section 44A of the Wealth-tax Act, 1957 (27 of 1957), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in the Union of India.

ANNEXURE

CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE COUNCIL OF MINISTERS OF SERBIA AND MONTENEGRO FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Government of the Republic of India and the Council of Ministers of serbia and montenegro desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income and on capital and with a view to promoting economic co-operation between the two countries, 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. This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its political sub-divisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which the Convention shall apply are in particular :

in Serbia and Montenegro :

- (1) the tax on profit;
- (2) the tax on income;

- (3) the tax on capital;
- (4) the tax on revenue from international transport
(hereinafter referred to as Serbian and Montenegrin tax);

in India :

- (1) the Income-tax, including any surcharge thereon; and
- (2) the wealth tax.

(hereinafter referred to as Indian tax).

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

Article 3 : GENERAL DEFINITIONS – 1. For the purposes of this Convention :

- (1) the terms a Contracting State and the other Contracting State mean Serbia and Montenegro or India, as the context requires;
- (2) the term Serbia and Montenegro means the State community Serbia and Montenegro and when used in a geographical sense it means the land territory of Serbia and Montenegro, its internal sea waters and the belt of the territorial sea, the air space thereover, as well as the seabed and subsoil of the part of the continental shelf outside the outer limit of the territorial sea over which Serbia and Montenegro exercises its sovereign rights for the purpose of exploration and exploitation of their natural resources in accordance with its internal legislation and international law;
- (3) the term India means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law, including the U.N. Convention on the Law of the Sea;
- (4) the term political sub-divisions, in the State community Serbia and Montenegro, means Member States;

(5) the term national means :

- any individual possessing the nationality of a Contracting State;
- any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;

(6) the term person includes an individual, a company, a body of persons and, in the case of India, any other entity which is treated as a taxable unit under the taxation laws in force in that country;

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

(8) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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;

(9) 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;

(10) the term fiscal year means :

- in the case of Serbia and Montenegro, the year beginning on the first day of January;
- in the case of India, the year beginning on the first day of April.

(11) the term competent authority means :

- in the case of Serbia and Montenegro, the Ministry for International Economic Relations or its authorized representative;
- in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorized representatives.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4 : RESIDENT – 1. For the purposes of this Convention, the term resident of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political sub-division or local authority thereof. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State, or capital situated therein.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows :

- (1) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);
- (2) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
- (3) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
- (4) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 only of the State in which its place of effective management is situated. If the State in which its place of effective management is situated cannot be determined, then the competent authorities of the Contracting States shall settle the question by mutual agreement.

Article 5 : PERMANENT ESTABLISHMENT – 1. For the purposes of this Convention, the term permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (1) a place of management;
- (2) a branch;
- (3) an office;
- (4) a factory;
- (5) a workshop;
- (6) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (7) a sales outlet;
- (8) a warehouse in relation to a person providing storage facilities for others; and
- (9) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on.

3. The term permanent establishment likewise encompasses a building site, or a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than twelve months.

4. Notwithstanding the preceding provisions of this Article, the term permanent establishment shall be deemed not to include :

- (1) the use of facilities solely for the purpose of storage, display or occasional delivery of goods or merchandise belonging to the enterprise;
- (2) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or occasional delivery;
- (3) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

- (4) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- (5) the maintenance of a fixed place of business solely for the purpose of advertising, supply of information, scientific research or similar activities which have a preparatory or auxiliary character, for the enterprise;
- (6) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (1) to (5) provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 7 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 Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person :

- (1) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
- (2) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.

6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

8. 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 otherwise) shall not of itself constitute either company a permanent establishment of the other.

Article 6 : INCOME FROM IMMOVABLE PROPERTY – 1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term immovable property shall have the meaning, which it has under the 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded 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, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, 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.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business 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, in accordance with and subject to the limitations of domestic tax laws of that State. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise,

by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. Insofar 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 contained 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 purposes 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 : INTERNATIONAL TRAFFIC – 1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall mean the profits derived by an enterprise referred to in paragraph 1, from transportation by sea or air of passengers, goods, mail or livestock.

3. Profits derived by an enterprise referred to in paragraph 1, which is a resident of a Contracting State from the use or rental of containers (including trailers and other equipment for the transport of containers) used for the transport of goods or merchandise by that enterprise in international traffic

shall be taxable only in that Contracting State unless the containers are used solely within the other Contracting State.

4. For the purposes of this Article, interest on funds directly connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft, if they are incidental to the carrying on of such business, and the provisions of Article 11 shall not apply in relation to such interest.

5. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9 : ASSOCIATED ENTERPRISES – 1. Where

- (1) 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
- (2) 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.

2. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard

shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10 : 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 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 laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed :

- (1) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends;
- (2) 15 per cent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

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, 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 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 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 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 State.

Article 11 : INTEREST – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by :

- (1) the Government, a political sub-division or a local authority of the other Contracting State; or
- (2) the Reserve Bank, Central Bank or National Bank of the other Contracting State.

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 debtors 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 and 2 shall not supply 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 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 a resident of that State. Where, however, the person paying the interest, 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 indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or a fixed base, then such interest shall be deemed to arise in the 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 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 the other provisions of this Convention.

Article 12 : ROYALTIES – 1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

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 including 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.

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 a resident of that 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 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 the other provisions of this Convention.

Article 13 : FEES FOR TECHNICAL SERVICES – 1. Fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such fees for technical services may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the fees for technical services is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the fees for technical services. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. The term fees for technical services as used in this article means payments of any kind received as a consideration for the rendering of any managerial, technical or consultancy services (including the provision of services by technical or other personnel) but does not include payments for services mentioned in articles 15 and 16.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the fees for technical services arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the fees for technical services are 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. Fees for technical services shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the fees for technical services, 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 fees for technical services was incurred, and such fees for technical services are borne by such permanent establishment or fixed base, then such fees for technical services shall be deemed to arise in the 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 fees for technical services, having regard to the services 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 the other provisions of this Convention.

Article 14 : CAPITAL GAINS – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in that State.

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from the alienation of shares other than those mentioned in paragraph 4 of a company which is a resident of a Contracting State may be taxed in that State.

6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.

Article 15 : INDEPENDENT PERSONAL SERVICES – 1. Income derived by an individual who is a resident of a Contracting State from the performance of professional services or other independent activities of any similar character shall be taxable only in that State, except in the following circumstances, when such income may also be taxed in the other Contracting State :

- (1) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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
- (2) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned; in that case, only so much of the income, as is derived from his activities performed in that other Contracting State may be taxed in that other State.

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

Article 16 : DEPENDENT PERSONAL SERVICES – 1. Subject to the provisions of articles 17, 19, 20, 21 and 22, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if :

- (1) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned; and
- (2) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (3) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

2. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

Article 17 : DIRECTORS FEES – Directors fees and other 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 may be taxed in that other State.

Article 18 : ENTERTAINERS AND SPORTSPERSONS – 1. Notwithstanding the provisions of articles 15 and 16, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson 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 sportsperson are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived by a resident of a Contracting State from his personal activities as an entertainer or as a sportsperson shall be taxable only in that State if the activities are exercised in the other Contracting State within the framework of a cultural or sports exchange programme approved by both Contracting States.

Article 19 : PENSIONS – Subject to the provisions of paragraph 2 of Article 20, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

Article 20 : GOVERNMENT SERVICE – 1. (1) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(2) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who :

- is a national of that State; or
- did not become a resident of that State solely for the purpose of rendering the services.

2. (1) Any pension paid by, or out of funds created by, a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(2) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 16, 17, 18 and 19 shall apply to salaries, wages and other similar remuneration and to pensions, in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

Article 21 : STUDENTS – 1. Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

2. In respect of grants, scholarships and remuneration from employment not covered by paragraph 1, a student or business apprentice referred to in paragraph 1 shall, in addition, be entitled during such education or training to the same exemptions, reliefs or reductions in respect of taxes available to residents of the Contracting State which he is visiting.

3. The benefit of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article for more than five years from the date of his first arrival in that other Contracting State.

Article 22 : PROFESSORS, TEACHERS AND RESEARCHERS – 1. A professor or teacher who visits a Contracting State for the purpose of teaching or carrying out research at a university, college, school or other approved educational institution in that State and who is or was immediately before that visit a resident of the other Contracting State, shall be exempt from taxation in the first-mentioned Contracting State on remuneration for such teaching or research for a period not exceeding two years from the date of his first visit for that purpose, provided that such remuneration arise from sources outside that State.

2. The provisions of paragraph 1 of this Article shall not apply to remuneration from research, if such research is undertaken primarily for the private benefit of a specific person or persons.

Article 23 : OTHER INCOME – 1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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

income 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.

3. Notwithstanding the provisions of paragraph 1, if a resident of a Contracting State derives income from sources within the other Contracting State in the form of lotteries, crossword puzzles, races including horse races, card games and other games of any sort or gambling or betting of any form or nature whatsoever, such income may be taxed in that other Contracting State.

Article 24 : CAPITAL – 1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.

3. Capital represented by ships and aircraft operated in international traffic, and by movable property pertaining to the operation of such ships and aircraft shall be taxable only in the Contracting State of which the enterprise owning such property is a resident.

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

Article 25 : ELIMINATION OF DOUBLE TAXATION – 1. Where a resident of a Contracting State derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in the other Contracting State, the first-mentioned State shall allow :

- as a deduction from the tax on the income of that resident, an amount equal to the income-tax paid in that other State;

- as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in that other State.

Such deduction in either case shall not, however, exceed that part of the income-tax or capital tax, as computed before the deduction is given, which is attributable, as the case may be, to the income or the capital which may be taxed in that other State.

2. Where in accordance with any provision of the Convention income derived or capital owned by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

3. For the purpose of allowance as a credit in a Contracting State the tax paid in the other Contracting State shall be deemed to include the tax which is otherwise payable in that other State but has been reduced or waived by that State under its legal provisions for tax incentives.

4. For the purposes of this Article, the term tax paid shall not include any amount which is payable in respect of any default or omission in relation to taxes to which this Convention applies.

Article 26 : NON-DISCRIMINATION – 1. 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, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

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. This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent

establishment which a company of the other Contracting State has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first-mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7 of this Convention. Further, this provision shall also not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

4. 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 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 the first-mentioned State are or may be subjected.

5. The provisions of this Article shall apply to the taxes referred to in Article 2.

Article 27 : MUTUAL AGREEMENT PROCEDURE – 1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 26, to that of the Contracting State of which he is a national. The case must be presented within

three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

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 a satisfactory 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 which is not in accordance with this Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law 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 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. When it seems advisable in order to reach an agreement to have oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

Article 28 : EXCHANGE OF INFORMATION – 1. The competent authorities of the Contracting States shall exchange such information (including documents or certified copies of the documents) as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities

shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on the competent authority of a Contracting State the obligation :

- (1) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (2) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (3) 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 29 : MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS – Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

Article 30 : ENTRY INTO FORCE – 1. The Contracting States shall notify each other in writing, through diplomatic channels, the completion of the procedure required by the respective laws for the entry into force of this Convention.

2. The Convention shall enter into force on the date of the later of the notifications referred to in paragraph 1 of this Article and its provisions shall have effect :

- (1) In Serbia and Montenegro : In respect of the taxes on income derived and the taxes on capital owned in each fiscal year beginning on or after the first day of January in the calendar year next following the year in which this Convention enters into force;
- (2) In India : In respect of the taxes on income derived and the taxes on capital owned in each fiscal year beginning on or after the first day of April in the calendar year, next following the year in which this Convention enters into force.

Article 31 : TERMINATION – This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the fifth year from the date of entry into force of the Convention. In such event, the Convention shall cease to have effect :

- (1) In Serbia and Montenegro : In respect of the taxes on income derived and the taxes on capital owned in each fiscal year beginning on or after the first day of January in the calendar year next following the year in which the notice of termination is given;
- (2) In India: In respect of the taxes on income derived and the taxes on capital owned each fiscal year beginning on or after the first day of April in the calendar year next following the year in which the notice of termination is given.

IN WITNESS whereof the undersigned, being duly authorised thereto, have signed this Convention.

DONE in duplicate at New Delhi this 8th day of February, 2006 in the English, Hindi and Serbian languages, all three texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

PROTOCOL

At the moment of signing the Convention between the Council of Ministers of Serbia and Montenegro and the Government of the Republic of India for the Avoidance of Double Taxation with respect to taxes on Income and on Capital, the undersigned have agreed that the following provision shall form an integral part of the Convention.

Ad. Articles 6 and 14

With reference to paragraphs 1 of Article 6 and Article 14, it is understood that income from immovable property and capital gains on alienation of immovable property respectively may be taxed in both Contracting States.

IN WITNESS whereof the undersigned, being duly authorized thereto, have signed this Protocol.

DONE in duplicate at New Delhi this 8th day of February, 2006 in the, English, Hindi and Serbian languages, all three texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

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Morocco

Agreement for avoidance of double taxation and prevention of fiscal evasion with Morocco

Whereas the annexed Convention between the Government of the Republic of India and the Government of the Kingdom of Morocco for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income has come into force on the 20th day of February, 2000, on the notification by both the Contracting States to each other, under Article 29 of the said Convention, of the completion of the procedures required by their respective laws for bringing into force of the said Convention;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in the Union of India.

Notification : No. GSR 245(E), dated 15-3-2000.

ANNEXURE

CONVENTION BETWEEN THE REPUBLIC OF INDIA AND THE KINGDOM OF MOROCCO FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of India and the Government of the Kingdom of Morocco desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income have agreed as follows :

ARTICLE 1 : *Scope of the Convention* – This Convention shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2 : *Taxes covered* – 1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State or of its political sub-divisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property.

3. The existing taxes to which this Convention shall apply are in particular :

(a) In the Republic of India :

the income-tax, including any surcharge thereon;
(hereinafter referred to as Indian tax)

(b) In the Kingdom of Morocco :

- (i) General income-tax ;
 - (ii) corporation tax ;
 - (iii) the tax on income from the shares or social parts and assimilated income ;
 - (iv) the tax on immovable property profits ;
 - (v) the participation on the national solidarity ;
 - (vi) the tax on income from fixed yield investments ;
- (hereinafter referred to as Moroccan tax).

4. The Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of the present Convention in addition to, or in place of, the taxes referred to in paragraph 3. The competent authorities of the Contracting States shall notify each other of any substantial changes which are made in their respective taxation laws.

ARTICLE 3 : *General definitions* – 1. In this Convention, unless the context otherwise requires :

- (a) the term India means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdictions, according to the Indian law and in accordance with international law and, in particular, the U.N. Convention on the Law of the Sea;
- (b) the term Morocco means the Kingdom of Morocco; and when used in geographical sense the term Morocco includes :

- (i) the territory of the Kingdom of Morocco, the territorial sea thereof; and
 - (ii) the maritime areas beyond the territorial sea, including the seabed and subsoil thereof (continental shelf) and the exclusive economic zone over which Morocco exercises sovereign rights, in accordance with its domestic laws and international law, for the purpose of exploration and exploitation of the natural resources of such areas;
- (c) the terms a Contracting State and the other Contracting State mean India or Morocco, as the context requires;
- (d) the term company means any body corporate or any entity which is treated as a company or body corporate under the taxation laws in force in the respective Contracting States;
- (e) the term competent authority means:
 - (i) in the case of India, the Central Government in the Ministry of Finance, Department of Revenue, or their authorised representative;
 - (ii) in the case of Morocco, the Minister of Finance or his authorised representative;
- (f) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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;
- (g) the term fiscal year means:
 - (i) in the case of India, previous year as defined under section 3 of the Income-tax Act, 1961;
 - (ii) in the case of Morocco, a fiscal exercise as defined under the Laws relating to the General Income-tax and the Corporation Tax;
- (h) the term international traffic means any transport by a ship or aircraft operated by an enterprise which is a resident of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (i) the term national means any individual, possessing the nationality of a Contracting State and any legal person, partnership or association deriving its status from the laws in force in the Contracting State;

- (j) the term person includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States;
- (k) the term tax means Indian tax or Moroccan tax, as the context requires, but shall not include any amount other than tax which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty or fine imposed relating to those taxes.

2. As regards the application of this Convention by a Contracting State, any term not defined therein shall, unless the context otherwise requires have the meaning which it has under the law of that State concerning the taxes to which this Convention applies.

ARTICLE 4 : *Resident* – 1. For the purposes of this Convention, the term resident of a Contracting State means any person who, under the laws of that State or any political sub-division or local authority thereof is liable to tax therein by reason of his domicile, resident, place of management or any other criterion of a similar nature. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where, by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his status shall be determined as follows:

- (a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;

(d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 only of the 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 means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) a sales outlet;
- (h) a warehouse in relation to a person providing storage facilities for others;
- (i) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on; and
- (j) a building site or construction or assembly project or supervisory activities in connection therewith, but only where such site, project or activity continues for a period of more than eight months.

3. An enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it provides services or facilities in connection with, or supplies plant and machinery on hire used for or to be used in the prospecting for, or extraction or exploitation of mineral oils in that State.

4. Notwithstanding the preceding provisions of this Article, the term permanent establishment shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage, display or delivery 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, display or delivery;
- (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 of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2 where a person – other than an agent of an independent status to whom paragraph 7 applies – is acting on behalf of an enterprise and has habitually exercises, in a Contracting State an authority to conclude contracts on behalf of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 of this Article, which if exercised through a fixed place of business would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated

therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. 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, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

8. 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 : *Income from immovable property* – 1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the laws 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded 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, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that of permanent establishment.

For the purposes of this Article, where a permanent establishment takes an active part in negotiating, concluding or fulfilling contracts entered into by the enterprise, then notwithstanding that other parts of the enterprise have also participated in those transactions, there shall be attributed to the permanent establishment that proportion of profits of the enterprise arising out of those contracts as the contribution of the permanent establishment to those transactions bears to that of the enterprise as a whole.

2. Subject to the provisions of paragraph 3, 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.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions, expenses which are incurred for the purposes of business 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, in accordance with the provisions of the tax laws, and subject to the limitations laid down therein.

4. Insofar 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 contained 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 purposes 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 : *Shipping and air transport* – 1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. Profits derived by a transportation enterprise which is a resident of a Contracting State from the use, maintenance, or rental of containers (including trailers and other equipment for the transport of containers) used for the transport of goods or merchandise in international traffic shall be taxable only in that Contracting State unless the containers are used solely within the other Contracting State.

3. For the purposes of this Article, interest on funds directly connected with the operation of ships or aircraft in international traffic shall be regarded as profits described in this Article, and the provisions of Article 11 (interest) shall not apply in relation to such interest.

4. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9 : *Associated enterprises* – 1. 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.

2. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, than that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall, if necessary, consult each other.

ARTICLE 10 : *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 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 laws of

that State, but if the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends. 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, 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 Contracting 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 Contracting 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 14, 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 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 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 State, nor subject the companys undistributed profits to a tax on the companys undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly or profits or income arising in such other State.

ARTICLE 11 : *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 Contracting State, but if the recipient is

the beneficial owner of the interest, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by:

- (i) the Government, a political sub-division, or a local authority of the other Contracting State; or
- (ii) in the case of India, the Reserve Bank of India, the Industrial Finance Corporation of India, the Industrial Development Bank of India, the Export-Import Bank of India, the National Housing Bank, the Small Industries Development Bank of India and the Industrial Credit and Investment Corporation of India (ICICI); and
- (iii) in the case of Morocco, the Bank Al-Maghrib (the Central Bank of Morocco), the Northern Provinces Development Agency, the Central Popular Bank and its regional agencies, the National Bank of Economic Development, the Moroccan Bank of Foreign Trade, the Communal Equipment Fund, the Immovable and Hotel Credit and the Industrial Development Office ?
- (iv) any other institution as may be agreed from time to time between the competent authorities of the Contracting States.

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 debtors 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 purposes of this Article.

5. The provisions of paragraphs 1 and 2 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 14, 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 Contracting State. Where, however, the person paying the interest, 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 indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such 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 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 the other provisions of this Convention.

ARTICLE 12 : *Royalties and fees for technical services* – 1. Royalties and fees for technical services 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 or fees for technical services may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties or the fees for technical services, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties or fees for technical services.

3. The term royalties as used in this Article means:

- (a) payments of any kind received as a consideration for the use of, or the right to use, any copyright of a literary, artistic or scientific work, including cinematograph films or recordings on any means of reproduction for use

for radio or television broadcasting, any patent, trade mark, design or model, plan, computer software programme, secret formula or process, or for information concerning industrial, commercial or scientific experience; and

- (b) payments of any kind received as consideration for the use of, or the right to use, any industrial, commercial or scientific equipment.

4. The term fees for technical services means payments of any kind in consideration for the rendering of managerial, technical or consultancy services including the provision of services by technical or other personnel does not include payments for services mentioned in Articles 14 and 15 of this Convention.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties and fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services arise, through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Royalties or fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that Contracting State. Where, however, the person paying the royalties or fees for technical services, 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 or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services 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 royalties or fees for technical services, 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 or between both of them and some other person, 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 the other provisions of this Convention.

ARTICLE 13 : *Capital gains* – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may also be taxed in that other Contracting State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such a fixed base, may be taxed in that other Contracting State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property, pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may also be taxed in that Contracting State.

5. Gains from the alienation of shares other than those mentioned in paragraph 4 in a company which is a resident of a Contracting State may be taxed in that Contracting State.

6. Gains from the alienation of any property other than that mentioned in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14 : *Independent Personal Services* – 1. Notwithstanding the provisions of the Article 12 relating to fees for technical services, income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that Contracting State except in the following circumstances:

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; or
- (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in the relevant fiscal year;

in such case, only so much of the income as is attributable to that fixed base or as is derived from his activities performed in that other Contracting State, as the case may be, may also be taxed in that other Contracting State.

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

ARTICLE 15 : *Dependent Personal Services* – 1. Subject to the provisions of Articles 16, 17, 18, 19, 20 and 21, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State, if:

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the relevant fiscal year; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, by an enterprise of a Contracting State shall be taxable only in that State.

ARTICLE 16 : *Directors fees* – Directors fees and other 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 may be taxed in that other Contracting State.

ARTICLE 17 : *Income earned by artistes and sportspersons* – 1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an artiste, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an artiste or a sportsperson in his capacity as such accrues not to the artiste or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the artistes or sportsperson are exercised.

3. The provisions of paragraphs 1 and 2, shall not apply to income from activities performed in a Contracting State by entertainers or sportspersons if

the visit to that State is wholly or substantially supported by public funds of one or both of the Contracting States or of political sub-divisions or local authorities thereof. In such a case, the income is taxable only in the Contracting State of which the entertainer or sports person is a resident.

ARTICLE 18 : *Remuneration and pensions in respect of Government service*

1.(a) Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2.(a) Any pension paid by, or out of funds created by, a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of that other State.

3. The provisions of Articles 15, 16 and 19 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

ARTICLE 19 : *Non-Government pensions and annuities* – 1. Any pension, other than a pension referred to in Article 18, or any annuity derived by a resident of a Contracting State from sources within the other Contracting State may be taxed only in the first-mentioned Contracting State.

2. The term pension means a periodic payment made in consideration of past services.

3. 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 moneys worth.

ARTICLE 20 : *Payments received by students and apprentices* – 1. A student or business apprentice who is or was a resident of the Contracting State immediately before visiting the other Contracting State and who is present in the other State solely for the purpose of his education or training, shall be exempt from tax in that other State on:

- (a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training; and
- (b) remuneration from employment in that other State in an amount not exceeding the equivalent of US dollars 2000, during any fiscal year :

provided that such employment is directly related to his studies or is undertaken for the purpose of his maintenance.

2. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article for more than seven consecutive years from the date of his first arrival in that other Contracting State.

ARTICLE 21 : *Payments received by professors, teachers and research scholars* – 1. A professor or teacher or research scholar who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college, school or other institution, approved in that other Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival in that other 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 20, an individual shall be deemed to be a resident of a Contracting State if he is resident in the Contracting State in the fiscal year in which he visits the other Contracting State or in the immediately preceding fiscal year.

4. For the purposes of paragraph 1, approved means a university, college, school or other institution which has been approved in this regard by the competent authority of the concerned Contracting State.

ARTICLE 22 : *Other income* – 1. Subject to the provisions of paragraph 2, items of income of a resident of a Contracting State, wherever arising, which are not expressly dealt with in the foregoing articles of this Convention, shall be taxable only in that Contracting State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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 income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraph 1, if a resident of a Contracting State derives income from sources within the other Contracting State in the form of lotteries, crossword puzzles, races including horse races, card games and other games of any sort or gambling or betting of any form or nature whatsoever, such income may be taxed in the other Contracting State.

ARTICLE 23 : *Avoidance of double taxation* – 1. The laws in force in either of the Contracting State will continue to govern the taxation of income in the respective Contracting States except where provisions to the contrary are made in this Convention.

2. In the case of India, double taxation shall be eliminated as follows :

Where a resident of India derives income which, in accordance with the provisions of this Convention, may be taxed in Morocco, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in Morocco whether directly or by deduction at source. Such amount shall not however exceed that part of the income-tax, as computed before the deduction is given, which is attributable to the income which may be taxed in Morocco.

3. In the case of Morocco, double taxation shall be eliminated as follows :

Where a resident of Morocco derives income which, in accordance with the provisions of this Convention, may be taxed in India, Morocco shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in India, whether directly or by deduction at source. Such deduction shall not, however, exceed that part of the income-tax as computed before the deduction is given, which is attributable to the income which may be taxed in India.

4. The tax payable in a Contracting State mentioned in paragraphs 2 and 3 of this Article shall be deemed to include the tax which would have been payable but for the tax incentives granted under the laws of the Contracting State and which are designed to promote economic development.

5. Income which in accordance with the provisions of this Convention, is not to be subjected to tax in a Contracting State, may be taken into account for calculating the rate of tax to be imposed in that Contracting State.

ARTICLE 24 : *Non-Discrimination* – 1. 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 in the same circumstances. This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which an enterprise of the other Contracting State has in the first-mentioned State at a rate higher than that imposed on the profits of a similar enterprise of the first-mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7 of this Convention.

3. Nothing contained in this Article shall be construed as obliging a Contracting State to grant to persons not residents in that State any personal allowances, reliefs, reductions and deductions for taxation purposes which are by law available only to persons who are so resident.

4. 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 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 the first-mentioned State are or may be subjected in the same circumstances.

5. In this Article, the term taxation means taxes which are the subject of this convention.

ARTICLE 25 : *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. This case must be presented within three years of the date of receipt of notice of the action which gives rise to taxation not in accordance with this Convention.

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. 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.

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. 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 State.

ARTICLE 26 : *Exchange of Information* – 1. The competent authorities of the Contracting States shall exchange such information (including documents) as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to this Convention in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchange of information shall be made, including, where appropriate, exchange of information regarding tax avoidance.

2. The exchange of information or documents shall be either on 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 the information or documents 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 and administrative practice of that or of the other Contracting State;
- (b) to supply information or documents 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 or documents 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 27 : *Collection Assistance* – 1. The Contracting States undertake to lend assistance to each other in the collection of taxes to which this Convention relates, together with interest, costs, and civil penalties relating to such taxes referred to in this Article as a revenue claim.

2. Request for assistance by the competent authority of Contracting State in the collection of a revenue claim shall include a certification by such authority that under the laws of that State the revenue claim has been finally determined. For the purposes of this Article, a revenue claim is finally determined when a Contracting State has the right under its internal law to collect the revenue claim and the taxpayer has no further rights to restrain collection.

3. Amounts collected by the competent authority of a Contracting State pursuant to this Article shall be forwarded to the competent authority of the other Contracting State. However, the first-mentioned Contracting State shall be entitled to reimbursement of costs, if any, incurred in the course of rendering such assistance to the extent mutually agreed between the competent authorities of the two States.

4. Nothing in this Article shall be construed as imposing on either Contracting State the obligation to carry out administrative measures of a different nature from those used in the collection of its own taxes or those which would be contrary to its public policy.

ARTICLE 28 : *Diplomatic and consular activities* – Nothing in this Convention shall affect the fiscal privileges of diplomatic and consular officials under the general rules of international law or under the provisions of special agreements.

ARTICLE 29 : *Entry into force* – 1. The Contracting States shall notify each other in writing, through diplomatic channels, the completion of the procedures required by the respective laws for the entry into force of this Convention.

2. This Convention shall enter into force 30 days after the receipt of the later of the notifications referred to in paragraph 1 of this Article.

3. The provisions of this Convention shall have effect :

- (a) in India, in respect of income arising in any fiscal year beginning on or after the first day of April next following the calendar year in which the Convention enters into force;
- (b) in Morocco, in respect of income arising on or after the first day of January of the calendar year next following the year in which this Convention enters into force.

ARTICLE 30 : *Termination* – This Convention shall remain in force indefinitely, until terminated by a Contracting State. Either Contracting State may terminate this Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year beginning after the expiration of five years from the date of entry into force of the Convention. In such event, the Convention shall cease to have effect :

- (a) in India, in respect of income arising in any fiscal year on or after the first day of April next following the calendar year in which the notice of termination is given;

(b) in Morocco, in respect of income arising on or after the first day of January of the calendar year next following the year in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed the present Convention.

Done in duplicate at Rabat, this 30th day of October, 1998, in the Hindi, Arabic, English and French languages, the four texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

Myanmar

SECTION 90 OF THE INCOME-TAX ACT, 1961 – DOUBLE TAXATION AGREEMENT
– AGREEMENT FOR AVOIDANCE OF DOUBLE TAXATION AND PREVENTION OF
FISCAL EVASION WITH FOREIGN COUNTRIES – WITH THE UNION OF MYANMAR

**NOTIFICATION NO. 49/2009-FT & TR-II [F. NO. 504/10/2004-FT & TR-II],
DATED 18-6-2009**

Whereas the annexed Agreement between the Government of the Republic of India and the Government of the Union of Myanmar for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income has been signed in India on the 2nd day of April, 2008 and notifications of the procedures completed, as required by Article 29 of the said Agreement on 30th day of January, 2009;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Agreement shall be given effect to in the Union of India with effect from the 1st day of April, 2010.

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE
GOVERNMENT OF THE UNION OF MYANMAR FOR THE AVOIDANCE OF DOUBLE
TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES
ON INCOME THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE
GOVERNMENT OF THE UNION OF MYANMAR

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, and with a view to promoting economic cooperation between the two countries, have agreed as follows :

Article 1 : PERSONS COVERED – This Agreement shall apply to persons who are residents of one or both of the Contracting States.

Article 2 : TAXES COVERED – 1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its political sub-divisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property and taxes on the total amount of wages or salaries paid by enterprises.

3. The existing taxes to which the Agreement shall apply are in particular :

(a) in Myanmar :

(i) the Income-tax imposed under the Income-tax Law, 1974 (Law No. 7 of 1974); and

(ii) the profit tax imposed under the Profit Tax Law, 1976 (Law No. 4 of 1976)

(hereinafter referred to as Myanmar tax);

(b) in India, the Income-tax, including any surcharge thereon;

(hereinafter referred to as Indian tax).

4. The Agreement shall apply also to any identical or substantially similar taxes that are imposed by either Contracting State after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their respective taxation laws.

Article 3 : GENERAL DEFINITIONS – 1. For the purposes of this Agreement, unless the context otherwise requires :

- (a) the term Myanmar means the Union of Myanmar;
- (b) the term India means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law, including the U.N. Convention on the Law of the Sea;
- (c) the terms Contracting State and the other Contracting State means Union of Myanmar or the Republic of India as the context requires;
- (d) the term national means :
 - (i) any individual possessing the nationality or citizenship of a Contracting State;
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
- (e) the term enterprise applies to the carrying on of any business;
- (f) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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;

- (g) the term person includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States;
- (h) the term company means any body corporate or any other entity that is treated as a body corporate for tax purposes;
- (i) the term tax means Myanmar or Indian tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Agreement applies or which represents a penalty or fine imposed relating to those taxes;
- (j) the term competent authority means :
 - (i) in the case of Myanmar, the Minister for Finance and Revenue Government of Union of Myanmar or his authorized representative;
 - (ii) in India, the Finance Minister, Government of India, or its authorized 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;
- (l) the term fiscal year means :
 - (i) in the case of Myanmar, the financial year beginning on the 1st day of April;
 - (ii) in the case of India, the financial year beginning on the 1st day of April.

2. As regards the application of the Agreement at any time by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Agreement applies and any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4 : RESIDENT – 1. For the purposes of this Agreement, the term resident of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature and also includes that State and any political sub-division or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows :

- (a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him;
- (b) if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);
- (c) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
- (d) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
- (e) if he is a national of both States or neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 only of the State in which its place of effective management is situated. If the State in which its place of effective management is situated cannot be determined, then the competent authorities of the Contracting States shall settle the question by mutual agreement.

Article 5 : PERMANENT ESTABLISHMENT – 1. For the purposes of this Agreement, the term permanent establishment means a fixed place of business through which the business of an 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 mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) a sales outlet;
- (h) a warehouse in relation to a person providing storage facilities for others;
- (i) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on.

3. A building site or construction, installation or assembly project or supervisory activities in connection therewith constitutes a permanent establishment only if such site, project or activities last more than 270 days.

4. Notwithstanding the preceding provisions of this Article the term permanent establishment shall be deemed not to include :

- (a) the use of facilities solely for the purpose 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;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 7 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 Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person :

- (a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph, or
- (b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise;
- (c) habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise itself.

6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

8. 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 otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6 : INCOME FROM IMMOVABLE PROPERTY – 1. Income derived by a resident of a Contracting State from immovable property situated in the other Contracting State may be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded 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, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, 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 and independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes 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, in accordance with the provisions of and subject to the limitations of the tax laws of that State. However, no such deduction shall be allowed in respect of amount, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges for specific services performed or for management, or, except in the case of banking enterprises by way of interest on moneys lent to the permanent establishment. Likewise, no

account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than toward reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. Insofar 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 a 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 contained 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 Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8 : SHIPPING AND AIR TRANSPORT – 1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which

the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

3. Profits derived by a transportation enterprise which is a resident of a Contracting State from the use, maintenance or rental of containers (including trailers and other equipment for the transport of containers) used for the transport of goods or merchandise in international traffic which is incidental to its international operation of ships or aircraft shall be taxable only in that Contracting State unless the containers are used solely within the other Contracting State.

4. For the purposes of this Article interest on investments directly connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft if they are integral to the carrying on of such business, and the provisions of Article 11 shall not apply in relation to such interest.

5. The provisions of paragraphs 1 and 2 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9: ASSOCIATED ENTERPRISES – 1. 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.

2. Where a Contracting State includes in the profit of an enterprise of the State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10 : 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 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 laws of that State, but if the beneficial owner of the dividends, is a resident of the other Contracting State, the tax so charged shall not exceed 5 per cent of the gross amount of the dividends. 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 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 14, 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 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 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 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 State.

Article 11 : INTEREST – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State, provided that it is derived and beneficially owned by :

- (a) the Government, a political sub-division or a local authority of the other Contracting State: or
- (b) (i) in the case of Myanmar, the Central Bank of Myanmar, Myanmar Foreign Trade Bank, Myanmar investment and Commercial Bank, Myanmar Economic Bank; and
 - (ii) in the case of India, the Reserve Bank of India, the Export-Import Bank of India, the National Housing Bank, the Small Industries Development Bank of India; and
- (c) any other institution as may be agreed upon from time to time between the competent authorities of the Contracting States through exchange of letters.

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 debtors 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 and 2 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 State independent personal services from a fixed base situated therein, and the debt claim in respect of which interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, 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 indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the 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 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 the other provisions of this Agreement.

Article 12: ROYALTIES – 1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, 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 including cinematograph films or films or tapes used for television or radio 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.

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 14, as the case may be, shall apply.

5. (a) Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that 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.

(b) Where, under sub-paragraph (a) royalties do not arise in one of the Contracting States, and the royalties relate to the use of, or the right to use, the

right or property, in one of the Contracting States, the royalties shall be deemed to arise in that Contracting State.

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 the other provisions of this Agreement.

Article 13 : CAPITAL GAINS – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from the alienation of shares other than those mentioned in paragraph 4 in a company which is a resident of a Contracting State may be taxed in that State.

6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5, shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14 : INDEPENDENT PERSONAL SERVICES – 1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State :

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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 State; or
- (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any period of 12 months; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State; or
- (c) if the remuneration for his activities in the other Contracting State is paid by a resident of that Contracting State or is borne by a permanent establishment situated in that Contracting State and exceeds in the fiscal year US \$ 16,000.

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

Article 15 : DEPENDENT PERSONAL SERVICES – 1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if :

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, by an enterprise of a Contracting State may be taxed in that State.

Article 16 : DIRECTORS FEES – Directors fees and other 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 may be taxed in that other State.

Article 17 : ARTISTES AND SPORTSPERSONS – 1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson from personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his/her capacity as such accrues not to the entertainer or sportsperson himself/herself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15 be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. The provisions of paragraphs 1 and 2, shall not apply to income from activities performed in a Contracting State by entertainers or sportspersons if the activities are substantially supported by public funds of one or both of the Contracting States or of political sub-divisions or local authorities thereof. In such a case, the income shall be taxable only in the Contracting State of which the entertainer or sportsperson is a resident.

Article 18 : PENSIONS – 1. Subject to the provisions of paragraph 2 of Article 19, any pensions and other similar remuneration for past employment or any annuity for past employment arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State.

2. The term annuity means a stated sum payable periodically at stated times during the life of the annuitant or during a specified or ascertainable period of time under an obligation to make the payments in respect of past employment.

Article 19 : GOVERNMENT SERVICE – 1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority or a statutory body thereof to an individual in respect of services rendered to that State or political sub-division or local authority shall be taxable only in that State.

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who :

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or political sub-division or local authority thereof shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of that State.

3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages and other similar remuneration and to pension in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

Article 20 : STUDENTS – 1. A student who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State and who is present in that other Contracting State solely for the purpose of his education or training shall besides grants, loans and scholarships be exempt from tax in that other State on :

(a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training; and

(b) remuneration which he derives from an employment which he exercises in the other Contracting State if the employment is directly related to his studies.

2. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article, for more than six consecutive years from the date of his first arrival in that other State.

Article 21 : PROFESSORS, TEACHERS AND RESEARCHERS – 1. A professor, teacher or research scholar who is or was a resident of the Contracting State immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college or other similar approved institution in that other Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival in that other State.

2. This Article shall apply to income from research only if such research is undertaken by the individual in the public interest and not primarily for the benefit of some private person or persons.

3. For the purposes of this Article, an individual shall be deemed to be a resident of a Contracting State if he is resident in that State in the fiscal year in which he visits the other Contracting State or in the immediately preceding fiscal year.

Article 22 : OTHER INCOME – 1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident, of a Contracting State, carries on business in the other Contracting State 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 income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraph 1, if a resident of a Contracting State derives income from sources within the other Contracting State in form of lotteries, winnings from games and gains from activities of similar nature, such income may be taxed in the other Contracting State.

Article 23 : METHODS FOR ELIMINATION OF DOUBLE TAXATION – 1. The laws in force in either of the Contracting State shall continue to govern the taxation of income in the respective Contracting States except where express provision to the contrary is made in this Agreement. Where income is subject to tax in both Contracting States, relief from double taxation shall be given in accordance with the following paragraphs of this Article.

2. In Myanmar :

- (a) Where a resident of Myanmar derives income which, in accordance with the provisions of this agreement, may be taxed in India, Myanmar shall allow as a deduction from the tax on the income of that resident, an amount equal to the tax paid in India.

Such deduction shall not, however, exceed that portion of the tax as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in India.

- (b) Where in accordance with any provision of the agreement, income derived by a resident of Myanmar is exempt from tax in Myanmar, Myanmar may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

3. In India:

- (a) Where a resident of India derives income which, in accordance with the provisions of this Agreement, may be taxed in Myanmar, India shall allow as a deduction from the tax on the income of that resident, an amount equal to the tax paid in Myanmar.

Such deduction shall not, however, exceed that portion of the tax as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in Myanmar.

- (b) Where in accordance with any provision of the Agreement, income derived by a resident of India is exempt from tax in India, India may nevertheless,

in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

Article 24 : NON-DISCRIMINATION – 1. 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, in particular with respect to residence are or may be subjected. This provision shall notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

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. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents. This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which a company of the other Contracting State has in the first mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

4. 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 State to any taxation or any requirements connected therewith which is other or more

burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. The provisions of this Article shall apply to the taxes covered by this Agreement.

Article 25 : MUTUAL AGREEMENT PROCEDURE – 1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic laws of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

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 a satisfactory 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 which is not in accordance with this Agreement. Any agreement reached shall be implemented notwithstanding any time limit of the domestic law 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 the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

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. 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.

Article 26 : EXCHANGE OF INFORMATION – 1. The competent authorities of the Contracting States shall exchange such information (including documents or authenticated copies of the documents) as is necessary for carrying out the provisions of this Agreement or of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political sub-divisions or local authorities insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in the first sentence. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to supply information (including documents or authenticated copies of the documents) which is 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*).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the

preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 27: LIMITATION OF BENEFITS – 1. A resident of a Contracting State shall not be entitled to the benefits of this Agreement if its affairs were arranged in such a manner as if it was the main purpose or one of the main purposes to take the benefits of this Agreement.

2. The case of legal entities not having *bona fide* business activities shall be covered by the provisions of this Article.

Article 28 : MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS – Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

Article 29 : ENTRY INTO FORCE – 1. The Contracting States shall notify each other in writing, through the diplomatic channels, of the completion of the procedures required by the respective laws for the entry into force of this Agreement.

2. This Agreement shall enter into force on the date of the later of the notifications referred to in paragraph 1 of this Article.

3. The provisions of this Agreement shall have effect:

(a) in Myanmar:

- (i) in respect of taxes withheld at source, to the income derived on, or after the first day of April in the fiscal year following the fiscal year in which the Agreement enters into force;
 - (ii) in respect of other taxes on income, to taxes chargeable for any fiscal year beginning on or after the first day of April of the next fiscal year following the year in which this Agreement enters into force; and
- (b) In India, in respect of income derived in any fiscal year beginning on or after the first day of April next following the calendar year in which the Agreement enters into force.

Article 30 : TERMINATION – This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year beginning after the expiration of five years from the date of entry into force of the Agreement. In such event, the Agreement shall cease to have effect:

(a) in Myanmar:

- (i) in respect of taxes withheld at source, to income derived on or after the first day of April in the fiscal year following the year in which the notice is given;
 - (ii) in respect of other taxes on income, to taxes chargeable for any fiscal year beginning on or after the first day of April of the next fiscal year following the year in which the notice is given;
- (b) in India: in respect of income derived in any fiscal year on or after the first day of April next following the calendar year in which the notice is given.

IN WITNESS whereof the undersigned, duly authorized thereto, have signed this Agreement.

DONE in duplicate at New Delhi on the 2nd day of April in the year 2008 each, in the Hindi, Myanmar and English Languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

Protocol

At the moment of signing the Agreement this day concluded between the Government of the Republic of India and the Government of the Union of Myanmar for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, the undersigned have agreed upon the following provisions which shall be an integral part of the Agreement.

1. For the purpose of computing the time limit in paragraph 3(a) of Article 5, the 270 days period begins as of the date on which the construction activity itself begins; it does not take into account the time spent solely on preparatory activities.

2. With respect to Article 7: – Where an enterprise of a Contracting State sells goods or merchandise or carries on business in the other Contracting State through a permanent establishment situated therein, the profits of that permanent establishment shall not be determined on the basis of the total amount received by the enterprise, but shall be determined only on the basis of the income which is attributable to the actual activity of the permanent establishment for such sales or business. In particular, in the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, when the enterprise has a permanent establishment, the profits of such permanent establishment shall not be determined on the total amount of the contract, but shall be determined only on the basis of that part of the contract which is effectively carried out by the permanent establishment in the State where the permanent establishment is situated. The profits related to that part of the contract which is carried out by the head office of the enterprise shall be taxable only in the State of which the enterprise is a resident.

3. It is understood that the two Contracting States will review the provisions of this Agreement after a period of 4 years from the date on which this Agreement

enters into force in order to consider the inclusion of an Article on Fees for Technical Services within the scope of this Agreement.

4. It is understood that the two Contracting States will review the provisions of Article 8 of this Agreement after a period of 4 years from the date on which this Agreement enters into force in order to consider the taxation of income of shipping enterprises from operations in international traffic, in the source State.

5. It is understood that if the domestic law of a Contracting State is more beneficial to a resident of the other Contracting State than the provisions of this Agreement, then the provisions of the domestic law of the first-mentioned State shall apply to the extent they are more beneficial to such a resident.

6. When Myanmar introduces a provision in its domestic law regarding assistance in collection of taxes to other treaty partners or agrees to extend such assistance to any other treaty partner, then the competent authorities of the two Contracting States shall extend assistance in the collection of taxes to each other.

In witness whereof, the undersigned, being duly authorized by their respective Governments, have signed this Protocol.

DONE in duplicate at New Delhi on the 2nd day of April in the year 2008 each, in the Hindi, Myanmar and English Languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

Namibia

Agreement for avoidance of double taxation and prevention of fiscal evasion with Namibia

Whereas the Convention stated in the Schedule below, between the Government of the Republic of India and the Government of the Republic of Namibia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains has entered into force on 22nd January, 1999 on the notification by both the Contracting States to each other of the completion of the procedures as required by article 29 of the said Convention;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the Convention stated in the Schedule shall be given effect to in the Union of India.

Notification : No. GSR 196(E), dated 8-3-1999.

ANNEXURE

CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE REPUBLIC OF NAMIBIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS

The Government of the Republic of India and the Government of the Republic of Namibia desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains, 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 to which this Convention shall apply are :

(a) in Namibia :

- (i) the income-tax;
- (ii) the non-resident shareholders tax; and
- (iii) the petroleum income-tax;
(hereinafter referred to as Namibian tax);
- (b) in India :
the income-tax (including any surcharge thereon)
(hereinafter referred to as Indian tax).

2. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes referred to in paragraph 1. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws, and if it seems desirable to amend any Article of this Convention without affecting the general principles thereof, the necessary amendments may be made by mutual consent.

ARTICLE 3 : *General definitions* – 1. For the purposes of this Convention, unless the context otherwise requires :

- (a) the term Namibia means the Republic of Namibia and when used in a geographical sense, includes the territorial sea as well as the exclusive economic zone and the continental shelf, over which Namibia exercises sovereign rights in accordance with its internal law and subject to international law, concerning the exploration and exploitation of the natural resources of the sea-bed and its sub-soil and the superjacent waters;
- (b) the term India means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law, including the UN Convention on the Law of the Sea, 1982;
- (c) the terms a Contracting State and the other Contracting State mean Namibia or India, as the context requires;

- (d) the term person includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States;
- (e) the term company means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (f) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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;
- (g) the term international traffic means any transport by ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (h) the term national means :
 - (i) any individual possessing the citizenship of a Contracting State;
 - (ii) any legal person, partnership and association deriving its status as such from the law in force in a Contracting State;
- (i) the term competent authority means :
 - (i) in the case of Namibia, the Permanent Secretary in the Ministry of Finance who is the Chief Executive Officer and Administrator of Namibian tax laws or his or her authorised representative;
 - (ii) in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or its authorised representative;
- (j) the term tax means Indian tax or Namibian tax, as the context requires, but shall not include any interest or any amount which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty imposed relating to those taxes.

2. As regards the application of the Convention by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which this Convention applies.

ARTICLE 4 : *Resident* – 1. For the purposes of this Convention, the term resident of a Contracting State means any individual who is ordinarily resident, or has his or her domicile in that State and any company or other body of persons which has its place of effective management or incorporation in that State.

2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his or her status shall be determined as follows :

- (a) he or she shall be deemed to be a resident of the State in which he or she has a permanent home available to him or her, if he or she has a permanent home available to him or her in both States, he or she shall be deemed to be a resident of the State with which his or her personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he or she has his or her centre of vital interests cannot be determined, or if he or she has not a permanent home available to him or her in either State, he or she shall be deemed to be a resident of the State in which he or she has a habitual abode;
- (c) if he or she has a habitual abode in both States or in neither of them, he or she shall be deemed to be a resident of the State of which he or she is a national;
- (d) if he or she is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 State in which its place of effective management is situated. In case of doubt the competent authorities of the Contracting States shall settle the question by mutual agreement.

ARTICLE 5 : *Permanent establishment* – 1. For the purposes of this Convention, the term permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) an installation or structure used for the exploration of natural resources, provided that the installation or structure continues for a period of not less than six months;
- (h) a warehouse, in relation to a person providing storage facilities for others; and
- (i) in the case of Namibia, a guest farm or other operation of a similar nature.

3. The term permanent establishment likewise encompasses :

- (a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activity continues for a period of more than six months; or
- (b) the furnishing of services, excluding those referred to in article 14, by an enterprise of a Contracting State through employees or other personnel engaged in the other Contracting State, provided that such activities continue for the same project or a connected project for a period or periods aggregating more than six months within any twelve month period.

4. Notwithstanding the preceding provisions of this article, the term permanent establishment shall be deemed not to include :

- (a) the use of facilities solely for the purpose of storage or display or the occasional delivery 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, display or occasional delivery;

- (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 of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1, 2 and 3, where a person – other than an agent of an independent status to whom paragraph 6 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 Contracting State in respect of any activities which that person undertakes for the enterprise, if such person

- (a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
- (b) has no such authority but nevertheless maintains habitually in the first-mentioned Contracting State a stock of goods or merchandise from which he or she regularly delivers goods or merchandise on behalf of the enterprise.

6. 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, provided that such persons are acting in the ordinary course of their business. However, when the activities

of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he or she will not be considered an agent of an independent status within the meaning of this paragraph.

7. 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 otherwise) shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6 : *Income from immovable property* – 1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may also be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded 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.

5. Where the ownership of shares or other rights in a company or legal person entitles the owner to the enjoyment of immovable property situated in a Contracting State and held by that company or legal person, income derived by the owner from the direct use, letting or use in any other form of his or her

right of enjoyment may be taxed in that State. The provisions of this paragraph shall apply notwithstanding the provisions of article 7 or 15.

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, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, 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.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business 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, in accordance with the provisions of and subject to the limitations of the laws of that State. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of

its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. Insofar 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 contained 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 purposes 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 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 : *Shipping and air transport* – 1. Profits from the operation or charter of ships or aircraft in international traffic and the rental of containers and related equipment which is incidental to 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. If the place of effective management of a shipping enterprise is aboard a ship or boat, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship or boat is situated, or, if there is no such home

harbour, in the Contracting State of which the operator of the ship or boat is a resident.

3. For the purposes of this Article, interest on funds connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft and the provisions of article 11 shall not apply in relation to such interest.

4. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9 : *Associated enterprises* – 1. 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.

2. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard

shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10 : *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 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 laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

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 of all kinds 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 15, as the case may be, shall apply.

ARTICLE 11 : *Interest* – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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

beneficial owner of the interest, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by :

- (a) the Government, a political sub-division or a local authority of the other Contracting State; or
- (b) such agency or instrumentality of the Government of the other Contracting State as may be agreed in writing between the competent authorities of both Contracting States.

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 debtors 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 and 2 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 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 15, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the interest, whether he or she 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 indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to

arise in the 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 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 the other provisions of this Convention.

ARTICLE 12 : *Royalties* – 1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that 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 including cinematograph films and films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, computer programme, plan, secret formula or process, or for the use of, or the right to use industrial, commercial or scientific equipment involving a transfer of know-how or for information concerning industrial, commercial or scientific experience.

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 15, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he or she 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 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 the other provisions of this Convention.

ARTICLE 13 : *Capital gains* – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in article 6 and situated in the other Contracting State, or from the alienation of shares in a company the assets of which consist principally of such property, may also be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may also be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains from the alienation of shares or similar rights being shares in a company, the assets of which consist principally of immovable property situated in a Contracting State, may also be taxed in that State. Gains from the alienation of an interest in a partnership, trust or estate, the property of which consists principally of immovable property situated in a Contracting State, may also be taxed in that State.

5. Gains derived by a resident of a Contracting State from the sale, exchange or other disposition, directly or indirectly, of shares other than those mentioned in paragraph 4, or similar rights in a company which is a resident of the other Contracting State may also be taxed in that other State.

6. Gains from the alienation of any property other than that referred to hereinabove, shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14 : *Fees for technical services* – 1. Fees for technical services arising in a Contracting State which are derived by a resident of the other Contracting State may be taxed in that other State.

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

3. The term fees for technical services as used in this article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a technical, managerial or consultancy nature.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the fees for technical services, being a resident of a Contracting State carries on business in the other Contracting State in which the fees for technical services arise through a permanent establishment situated therein, or performs in that other State independent personal services, and the fees for the technical services are effectively connected with such permanent establishment or such services. In such case, the provisions of article 7 or 15, as the case may be, shall apply.

5. Fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a statutory body thereof, or a resident of that State. Where, however, the person paying the fees for technical services, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the fees for technical services was incurred, and such fees for technical services are borne by that permanent establishment, then such fees for technical services shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where, by reason of a special relationship between the payer and the recipient or between both of them and some other person, the amount of the fees paid for technical services, exceeds for whatever reason, 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 law of each Contracting State due regard being had to the other provisions of this Convention.

ARTICLE 15 : *Independent personal services* – 1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State. Such income may also be taxed in the other Contracting State if :

- (a) the individual has a fixed base regularly available to him or her in that other State for the purpose of performing his or her activities, but only so much thereof as is attributable to that fixed base, or

(b) the individual is present in that other State for a period or periods exceeding in the aggregate 183 days within any period of twelve months, but only so much thereof as is attributable to services performed in that State.

2. The term professional services includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of medical practitioners, lawyers, engineers, architects, dentists and accountants.

ARTICLE 16 : *Dependent personal services* – 1. Subject to the provisions of Articles 17, 19, 20 and 21, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if :

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days within any period of twelve months;
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this article, remuneration derived by a resident of a Contracting State in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

ARTICLE 17 : *Directors fees* – Directors fees and other similar payments derived by a resident of a Contracting State in his or her capacity as a member of the

board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 18 : *Artistes and sportspersons* – 1. Notwithstanding the provisions of articles 15 and 16, income derived by a resident of a Contracting State as an artiste, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his or her personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an artiste or a sportsperson in his or her capacity as such accrues not to the artiste or sportsperson 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 artiste or sportsperson are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived by an artiste or sportsperson from his or her personal activities as such shall be exempt from tax in the Contracting State in which these activities are exercised if the activities are exercised within the framework of a visit which is substantially supported by the other Contracting State, a political sub-division, a local authority or a public institution thereof.

ARTICLE 19 : *Pensions and annuities* – 1. Subject to the provisions of paragraph 2 of article 20, pensions and other similar remuneration for past employment or any annuity arising in a Contracting State and paid to a resident of the other Contracting State, shall be taxable only in the first-mentioned 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 moneys worth.

ARTICLE 20 : *Government services* – 1. (a) Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who :

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. Any pension paid by, or out of funds created by, a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

3. The provisions of articles 16, 17 and 19 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

ARTICLE 21 : *Professors, teachers and students* – 1. Remuneration received for education or scientific research by an individual who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State for the purpose of scientific research or for teaching at an educational institution shall be exempt from tax in the first-mentioned State. This exemption shall be granted for a period that shall not exceed two years from the date on which the teacher or researcher first entered the first-mentioned State for the purposes of engaging in scientific research or for teaching. This article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

2.(a) Payments which a student or a business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

(b) Payments which a student or business apprentice receives as remuneration from employment in the first-mentioned State shall be exempted from tax in the first-mentioned State. This benefit shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefit of this provision for more than three consecutive years from the date of his or her first arrival in the first-mentioned Contracting State.

ARTICLE 22 : *Other income* – Items of income not dealt within the foregoing articles of this Convention and derived from sources within a Contracting State shall be taxable only in that State.

ARTICLE 23 : *Elimination of double taxation* – 1. In Namibia, double taxation shall be eliminated as follows :

Where a resident of Namibia derives income or capital gains from India, the amount of tax on that income or gains payable, whether directly or by deduction, in India in accordance with the provisions of this Convention, may be credited against the Namibian tax imposed on that resident. The amount of credit, however, shall not exceed the amount of the Namibian tax on that income or gains computed in accordance with the taxation laws and regulations of Namibia.

2. In India, double taxation shall be eliminated as follows :

Where a resident of India derives income or capital gains from Namibia, which, in accordance with the provisions of this Convention may be taxed in Namibia, then India shall allow as a deduction from the tax on the income of that resident an amount equal to the tax on income or capital gains paid in Namibia, whether directly or by deduction.

ARTICLE 24 : *Limitation of benefits* – 1. If, in accordance with the provisions of this Convention, the right of India to tax income is limited and according to the Namibian tax laws, the income is regarded as income from foreign sources and, therefore, exempted from Namibian tax, India may tax such income as if this Convention did not exist.

2. If, in accordance with the provisions of this Convention, the right of Namibia to tax income from Namibian sources or deemed to be from Namibian sources is limited and if such income is in accordance with the Indian tax laws not taxed in India, Namibia may tax such income as if this Convention did not exist.

ARTICLE 25 : *Non-discrimination* – 1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. This provision shall, notwithstanding the provisions of article 1, also apply to persons who are not residents of one or both of the Contracting States.

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. This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which a company of the other Contracting State has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first-mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of article 7 of this Convention.

3. Except where the provisions of paragraph 1 of article 9, paragraph 7 of article 11, paragraph 6 of article 12, or paragraph 6 of article 14 apply, interest, royalties, fees for technical services and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

4. 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 State to any taxation or any requirement connected therewith which is more

burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. Nothing in this article shall be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

ARTICLE 26 : *Mutual agreement procedure* – 1. Where a person considers that the actions of one or both of the Contracting States result or will result for him or her in taxation not in accordance with the provisions of this Convention, he or she may, irrespective of the remedies provided by the domestic laws of those States, present his or her case to the competent authority of the Contracting State of which he or she is a resident or, if his or her case comes under paragraph 1 of article 25, to that of the Contracting State of which he or she is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

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 a satisfactory 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 which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time-limits in the domestic 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 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 27 : *Exchange of information* – 1. The competent authorities of the Contracting States shall exchange such information, including documents, as are necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention, insofar as the taxation thereunder is not contrary to the Convention, in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including Courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public Court proceedings or in judicial decisions.

2. 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 and administrative practice of that or of the other Contracting State;
- (b) to supply information which is 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 28 : *Diplomatic agents and consular officers* – Nothing in this Convention shall affect any fiscal privileges accorded to members of diplomatic or permanent missions or consular posts under the general rules for international law or under the provisions of special agreements.

ARTICLE 29 : *Entry into force* – Each of the Contracting States shall notify to the other through diplomatic channels the completion of the procedures required by its law for the bringing into force of this Convention. This Convention shall

enter into force on the date of the later of these notifications and shall thereupon have effect :

(a) in Namibia :

- (i) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of March in the calendar year next following that in which the Convention enters into force; and
- (ii) in respect of other taxes, for any year of assessment beginning on or after the first day of March in the calendar year next following that in which the Convention enters into force;

(b) in India :

- (i) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of April in the calendar year next following that in which the Convention enters into force; and
- (ii) in respect of other taxes, for any fiscal year beginning on or after the first day of April in the calendar year next following that in which the Convention enters into force.

ARTICLE 30 : *Termination* – 1. This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year beginning after the expiry of five years from the date of entry into force of the Convention. In such event, the Convention shall cease to have effect :

(a) in Namibia :

- (i) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of March in the calendar year next following that in which the notice is given; and
- (ii) in respect of other taxes, for any year of assessment beginning on or after the first day of March in the calendar year next following that in which the notice is given;

(b) in India :

- (i) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of April in the calendar year next following that in which the notice is given; and
- (ii) in respect of other taxes, for any fiscal year beginning on or after the first day of April in the calendar year next following that in which the notice is given.

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

Done in duplicate at New Delhi, this 15th day of February, 1997, in the English and Hindi languages, both the texts being equally authentic. In case of any divergence in interpretation, the English text shall prevail.

Nepal

Agreement for avoidance of double taxation and prevention of fiscal evasion with Nepal

Whereas the annexed Agreement between the Government of the Republic of India and His Majestys Government of Nepal for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income has come into force on 1st November, 1988, on the notification by both the Contracting States to each other, under Article 27 of the said Agreement, of the completion of procedures required under their respective laws for bringing the Agreement into force ;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), and section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964), the Central Government hereby directs that all the provisions of the said Agreement shall be given effect to in the Union of India.

Notification : No. GSR 1146(E), dated 5-12-1988.

ANNEXURE

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND HIS MAJESTYS GOVERNMENT OF NEPAL FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of India and His Majestys Government of Nepal desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income :

Have agreed as follows :

CHAPTER I – SCOPE OF THE AGREEMENT

ARTICLE 1 – *Personal scope* – This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2 – *Taxes covered* – 1. The taxes to which this Agreement shall apply are :

(a) in the case of India:

(i) the income-tax including any surcharge thereon imposed under the Income-tax Act, 1961 (43 of 1961) ;

(ii) the surtax imposed under the Companies (Profits) Surtax Act, 1964 (7 of 1964) (hereinafter referred to as Indian tax) ;

(b) in the case of Nepal :

(i) income-tax imposed under the Income-tax Act, 2031 (hereinafter referred to as Nepal tax).

2. The Agreement shall also apply to any identical or substantial similar taxes which are imposed by either Contracting State after the date of signature of the present Agreement 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 Agreement, unless the context otherwise requires:

- (a) the terms a Contracting State and the other Contracting State mean India or Nepal, as the context requires ;
- (b) the term tax means Indian tax or Nepal tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Agreement applies or which represents a penalty imposed relating to those taxes ;
- (c) the term person includes an individual, a company and any other entity which is treated as a taxable unit, under the taxation laws in force in the respective Contracting States ;
- (d) the term company means any body corporate or any entity which is treated as a company or body corporate under the taxation laws in force in the respective Contracting States ;
- (e) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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 ;

- (f) the term competent authority means in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative; and in the case of Nepal, His Majesty's Government, Ministry of Finance or their authorised representative ;
- (g) the term national means any individual, possessing the nationality of a Contracting State and any legal person, partnership or association deriving its status from the laws in force in the Contracting State ;
- (h) the term international traffic means any transport by an aircraft operated by an enterprise of a Contracting State, except when the aircraft is operated solely between places in the other Contracting State.

2. As regards the application of the Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Agreement applies.

ARTICLE 4 – *Resident* – 1. For the purposes of this Agreement, the term resident of a Contracting State means any person who, under the laws of that State, is liable to tax 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 status shall be determined as follows :

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State in which his economic activities are concentrated ;
- (b) if he has not a permanent home available to him in either State, he shall be deemed to be resident of the State in which he has an habitual abode ;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State in which his economic activities are concentrated ;

(d) in case of dispute, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 State in which its place of effective management is situated.

ARTICLE 5 – *Permanent establishment* – 1. For the purposes of this Agreement, the term permanent establishment means a fixed place of business through which the business of the enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (a) a place of management ;
- (b) a branch ;
- (c) an office ;
- (d) a factory ;
- (e) a workshop ;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources ;
- (g) a building site or construction or assembly project, but only where such site, project or activity continues for a period or periods aggregating to more than 183 days in any twelve-month period ;
- (h) the furnishing of services by an enterprise through employees or other personnel, where activities continue within the country for a period or periods aggregating to more than 183 days in any twelve-month period.

3. Notwithstanding the preceding provisions of the article, the term permanent establishment shall be deemed not to include :

- (a) the use of facilities solely for the purpose 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 of collecting information, for the enterprise ;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character.

4. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of independent status – to whom paragraph 5 applies is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts on behalf of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of activities which that person undertakes for the enterprise, unless the activities of such person 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 State through a broker, a general commission agent or any other agent of an independent status provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

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.

CHAPTER III – TAXATION OF INCOME

ARTICLE 6 – *Income from immovable property* – 1. Income derived by a resident of a Contracting State from immovable property (including income from

agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall also 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, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, 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.

3. (a) In the determination of the profits of a permanent establishment, there shall be allowed as deductions, expenses of the enterprise which are incurred for the purpose of the permanent establishment, including only those executive and general administrative expenses incurred, whether in the State in which the permanent establishment is situated or elsewhere which are allowed under the provisions of the domestic law of the Contracting State in which the permanent establishment is situated.

(b) However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments, in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on monies lent to the permanent establishment. Likewise, no account shall be taken in the determination of the profits of a permanent establishment of amounts charged (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise by way of interest on monies lent to the head office of the enterprise or any of its other offices.

4. Insofar 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 contained 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 purposes 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 Agreement, 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 State.

2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

3. For the purposes of this Article, interest on funds connected with the operation of aircraft in international traffic shall be regarded as income/profits derived from the operation of such aircraft, and the provisions of Article 11 shall not apply in relation to such interest.

4. The term operation of aircraft shall mean business of transportation by air of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of aircraft, including the sale of tickets for such transportation on behalf of other enterprises, the incidental lease of aircraft and any other activity directly connected with such transportation.

ARTICLE 9 – *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 10 – *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 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 laws of that 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 owns at least ten per cent of the shares of the company paying the dividends ;
- (b) 15 per cent of the 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 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 13, 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 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 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 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 State.

ARTICLE 11 – *Interest* – 1. Interest arising in a Contracting State and paid to a resident of the Contracting State may be taxed in that other 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 beneficial owner of the interest the tax so charged shall not exceed 15 per cent of the gross amount of the interest :

Provided however, that where the interest is paid to a bank carrying on *bona fide* banking business, which is a resident of the other Contracting State and is the beneficial owner of the interest, the tax charged in the Contracting State in which the interest arises shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by :

- (i) the Government, a political sub-division or a local authority of the other Contracting State ; or
- (ii) the Central Bank of the other Contracting State.

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 debtors 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 and 2 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 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 13, 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 resident 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 such 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 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 the other provisions of this Agreement.

ARTICLE 12 – *Royalties* – 1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the

beneficial owner of the royalties, the tax so charged shall not exceed 15 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, including 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.

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 13, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that 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 State in which the permanent establishment or fixed base is situated.

6. Where, by reason of special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of 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 the other provisions of this Agreement.

ARTICLE 13 – *Independent personal services* – 1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State except in the following circumstances when such income may also be taxed in the other Contracting State :

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in the relevant previous year or year of income, as the case may be; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

ARTICLE 14 – *Dependent personal services* – 1. Subject to the provisions of Articles 15, 16, 17, 18, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if :

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the relevant previous year or year of income, as the case may be ; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not resident of the other State ; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard an aircraft operated in international traffic by an enterprise of a Contracting State shall be taxable only in that State.

ARTICLE 15 – *Directors fees* – Directors 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 may be taxed in that other State.

ARTICLE 16 – *Income earned by entertainers and athletes* – 1. Notwithstanding the provisions of Articles 13 and 14, income derived by a resident of a Contracting State as an entertainer such as a 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 State.

2. While 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, 13 and 14, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. Notwithstanding the provisions of paragraph 1, income derived by an entertainer or an athlete who is a resident of a Contracting State from his personal activities as such exercised in the other Contracting State, shall be taxable only in the first-mentioned Contracting State, if the activities in the other Contracting State are supported wholly or substantially from the public

funds of the first-mentioned Contracting State, including any of its political sub-divisions or local authorities.

4. Notwithstanding the provisions of paragraph 2 and Articles 7, 13 and 14, where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such in a Contracting State accrues not to the entertainer or athlete himself but to another person, that income shall be taxable only in the other Contracting State, if that other person is supported wholly or substantially from the public funds of that other State, including any of its political sub-divisions or local authorities.

ARTICLE 17 – Remuneration and pensions in respect of Government service – 1.

(a) Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who:

(i) is a national of that State, or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in other Contracting State if the individual is a resident of, and a national of that other State.

3. The provisions of Articles 14, 15 and 16 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or political sub-division or a local authority thereof.

ARTICLE 18 – *Non-Government pensions and annuities* – 1. Any pension, other than a pension referred to in Article 17, or any annuity derived by a resident of a Contracting State from sources within the other Contracting State may be taxed only in the first-mentioned Contracting State.

2. The term pension means a periodic payment made in consideration of past services or by way of compensation for injuries received in the course of performance of services.

3. 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 moneys worth.

ARTICLE 19 – *Payments received by students and apprentices* – 1. A student or business apprentice who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State and who is present in that other State solely for the purpose of his education or training, shall be exempt from tax in that other State on :

- (a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training ; and
- (b) remuneration from employment in that other State, in an amount not exceeding Rs. 18,000 (Indian currency) or its equivalent in Nepalese currency during any previous year or the year of income, as the case may be, provided that such employment is directly related to his studies or is undertaken for the purpose of his maintenance.

2. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article for more than three consecutive years from the date of his first arrival in that other Contracting State.

ARTICLE 20 – *Payment received by professors, teachers and research scholars* – 1. A professor or teacher who is or was resident of one of the Contracting States immediately before visiting the other Contracting State for the purpose

of teaching or engaging in research, or both, at a university, college, school or other approved institution in that other Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival in that other 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 19, 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 the year of income, as the case may be, in which he visits the other Contracting State or in the immediately preceding previous year or year of income.

4. For the 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.

ARTICLE 21 – *Other income* – 1. Subject to the provisions of paragraph 2, items of income of a resident of a Contracting State, wherever arising which are not expressly dealt with in the foregoing articles of this Agreement, shall be taxable only in that Contracting State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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 income is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 13, as the case may be, shall apply.

CHAPTER IV – METHODS OF ELIMINATION OF DOUBLE TAXATION

ARTICLE 22 – *Elimination of double taxation* – 1. The laws in force in either of the Contracting States shall continue to govern the taxation of income in the

respective Contracting States except where provisions to the contrary are made in this Agreement. Where income is subject to tax in both Contracting States, relief from double taxation shall be given in accordance with this article.

2. Subject to the provisions of the law of Nepal regarding the allowance as a credit against Nepals tax or tax payable in territory outside Nepal (which shall not affect the general principle hereof) Indian tax payable under the law of India and in accordance with the provisions of this Agreement, whether directly or by deduction, on income from sources within India shall be allowed as a credit against any Nepal tax computed by reference to the same items of income by reference to which the Indian tax is computed.

3. For the purpose of the credit referred to in paragraph 2, the term Indian tax payable shall be deemed to include any amount by which tax has been reduced by the special incentive measures under :

- (i) sections 10(4), 10(4A), 10(6)(viii), 10(15)(iv), 10(28), 10A, 32A, 33A, 80HH, 80HHA, 80-I and 80L of the Income-tax Act, 1961 (43 of 1961) ; and
- (ii) any other provisions, which may subsequently be enacted granting a reduction of tax which the competent authorities of the Contracting States agree to be for the purposes of economic development.

4. Subject to the provisions of the law of India regarding the allowance as a credit against Indian tax of tax payable in a territory outside India (which shall not affect the general principle hereof) Nepal tax payable under the law of Nepal and in accordance with the provisions of this Agreement whether directly or by deduction, on income from sources within Nepal shall be allowed as a credit against any Indian tax computed by reference to the same items of income by reference to which Nepal tax is computed :

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 Nepal, 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 payable by it in India.

5. For the purpose of paragraph 4 of this article the term Nepal tax payable shall be deemed to include any amount which would have been payable as Nepal tax for any year but for an exemption or reduction of tax granted for that year or any part thereof under :

- (a) sub-section (2) of section 42 of the Nepal Income-tax Act, 2031 (1974), so far as they were in force on, and have been modified since, the date of the signature of this Agreement, or have been modified only in minor respects so as not to affect their general character ; or
- (b) any other provisions which may subsequently be made granting an exemption or reduction of tax which is agreed by the competent authorities 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.

6. Where under this Agreement a resident of a Contracting State is exempt from tax in that Contracting State in respect of income derived from the other Contracting State, then the first-mentioned Contracting State may, in calculating tax on the remaining income of that person, apply the rate of tax which would have been applicable if the income exempted from tax in accordance with the Agreement had not been so exempted.

CHAPTER V – SPECIAL PROVISIONS

ARTICLE 23 – *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 in the same circumstances.

3. Nothing contained in this article shall be construed as obliging Contracting State to grant to persons not resident in that State any personal allowances,

reliefs, reductions and deductions for taxation purpose which are by law available only to persons who are so resident.

4. 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 in the same circumstances.

5. In this article, the term taxation means taxes which are the subject of this Agreement.

ARTICLE 24 – *Mutual agreement procedure* – 1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States results or will result for him in taxation not in accordance with this Agreement, 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. This case must be presented within three years of the date of receipt of notice of the action which gives rise to taxation not in accordance with the Agreement.

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

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

ARTICLE 25 – *Exchange of information* – 1. The competent authorities of the Contracting States shall exchange such information (including documents) as is necessary for carrying out the provisions of the agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement, insofar as the taxation thereunder is not contrary to the Agreement, in particular for the prevention of fraud or evasion of such taxes. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State. However, if the information is originally regarded as secret in the transmitting State, it shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Agreement. Such persons or authorities shall use the information only for such purposes but may disclose the information in public court proceedings or in judicial decisions. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning matters in respect of which such exchange of information shall be made, including, where appropriate, exchange of information regarding tax avoidance.

2. The exchange of information or documents 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 the information or documents 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 practices of that or of the other Contracting State ;
- (b) to supply information or documents 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 or documents 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 26 – *Diplomatic and consular activities* – Nothing in this Agreement shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreement.

CHAPTER VI – FINAL PROVISIONS

ARTICLE 27 – *Entry into force* – Each of the Contracting State shall notify to the other completion of the procedure required by its law for the bringing into force of this Agreement. This Agreement shall enter into force on the date of the later of these notifications and shall thereupon have effect :

- (a) in India, in respect of income arising in any previous year beginning on or after the first day of April next following the calendar year in which the later of the notifications is given ;
- (b) in Nepal, in respect of income arising in any year of income beginning on or after the 1st day of Nepalese fiscal year next following the calendar year in which the later of the notifications is given.

ARTICLE 28 – *Termination* – This Agreement shall remain in force indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give the other Contracting State through diplomatic channel, written notice of termination and, in such event, this Agreement shall cease to have effect :

- (a) in India, in respect of income arising in any previous year beginning on or after the 1st day of April next following the calendar year in which the notice of termination is given ;

(b) in Nepal, in respect of income arising in any year of income beginning on or after the 1st day of Nepalese fiscal year next following the calendar year in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed the present Agreement.

DONE in duplicate at Kathmandu on this eighteenth day of January, one thousand nine hundred and eighty seven in Hindi, Nepalese and English languages, all the texts being equally authentic. In case of divergence in interpretation, the English text shall prevail.

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Netherlands

Agreement for avoidance of double taxation and prevention of fiscal evasion with Netherlands

Whereas the annexed convention between the Government of the Republic of India and the Kingdom of the Netherlands for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital has come into force on the 21st day of January, 1989, after the notification by both the Contracting States to each other of the completion of the procedures required under their laws for bringing into force of the said Convention; in accordance with paragraph 1 of the Article 29 of the said Convention;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964) and section 44A of the Wealth-tax Act, 1957 (27 of 1957), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in Union of India.

Notification : No. GSR 382(E), dated 27-3-1989 as amended by Notification No. SO 693(E), dated 30-8-1999.

ANNEXURE

CONVENTION BETWEEN THE REPUBLIC OF INDIA AND THE KINGDOM OF NETHERLANDS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Government of the Republic of India and the Government of the Kingdom of Netherlands.

Desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital :

Have agreed as follows :

CHAPTER I – SCOPE OF THE CONVENTION

ARTICLE 1 – *Personal scope* – This Convention shall apply to persons who are residents of one or both the States.

ARTICLE 2 – *Taxes covered* – 1. This Convention shall apply to taxes on income and on capital imposed on behalf of one of the States or of its political sub-divisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which the Convention shall apply are in particular :

(a) in the Netherlands :

- de inkomstenbelasting (income-tax),
- de loonbelasting (wages tax),
- de vennootschapsbelasting (company tax) including the Government share in the net profits of the exploitation of natural resources levied pursuant to the Mining Act of 1810 (Mijnwet 1810) with respect to concessions issued from 1967, or pursuant to the Netherlands Continental Shelf Mining Act of 1965 (Mijnwet Continental Plat, 1965),
- de dividendenbelasting (dividend tax),
- de vermogensbelasting (capital tax),

(hereinafter referred to as Netherlands tax).

(b) in India :

- the income-tax including any surcharge thereon,
- the surtax,
- the wealth-tax,

(hereinafter referred to as Indian tax).

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the States shall notify to each other any substantial changes which have been made in their respective taxation laws.

CHAPTER II – DEFINITIONS

ARTICLE 3 – *General definitions* – 1. For the purposes of this Convention, unless the context otherwise requires :

- (a) the term State means the Netherlands or India, as the context requires, the term States means the Netherlands and India ;
- (b) the term the Netherlands means the part of the Kingdom of the Netherlands that is situated in Europe and the part of the sea-bed and the sub-soil under the North Sea, to the extent that that area, in accordance with international law has been or may hereafter be designated under Netherlands laws as an area within which the Netherlands may exercise certain rights with respect to the exploration and exploitation of the natural resources of the sea-bed or its sub-soil ;
- (c) the term India means the territory of India and includes the territorial sea and the air space above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law ;
- (d) the term tax means Indian tax or Netherlands tax as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty imposed relating to those taxes ;
- (e) the term person includes an individual, a company, any other body of persons and any other entity which is treated as a taxable unit, under the taxation laws in force in the respective States ;
- (f) the term company means any body corporate or any entity which is treated as a company or body corporate under the taxation laws in force in the respective States ;

- (g) the terms enterprise of one of the States and enterprise of the other State mean respectively an enterprise carried on by a resident of one of the States an enterprise carried on by a resident of the other States ;
- (h) the term international traffic means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in one of the States, except when the ship or aircraft is operated solely between places in the other States ;
- (i) the term nationals means :
 - 1. all individuals possessing the nationality of one of the States ;
 - 2. all legal persons, partnerships and associations deriving their status as such from the laws in force in one of the States ;
- (j) the term competent authority means :
 - 1. in the Netherlands, the Minister of Finance or his authorised representative ;
 - 2. in India the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representatives.

2. As regards the application of the Convention by one of the States any term not defined herein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

ARTICLE 4 – *Resident* – 1. For the purposes of this Convention, the term resident of one of the States means any person who, under the laws of that State, is liable to tax 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 States, then his status shall be determined as follows :

- (a) he shall be deemed to be resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be resident of the State with which his personal and economic relations are closer (centre of vital interests) ;

- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode ;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national ;
- (d) if he is a national of both States or of neither of them, the competent authorities of the States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both States, then it shall be deemed to be a resident of the 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 means a fixed place of business through which the business of the enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (a) a place of management ;
- (b) a branch ;
- (c) an office ;
- (d) a factory ;
- (e) a workshop ;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources ;
- (g) a warehouse in relation to a person providing storage facilities for others ;
- (h) a premises used as a sales outlet ;
- (i) an installation or structure used for the exploration of natural resources provided that the activities continue for more than 183 days.

3. A building site or construction, installation or assembly project constitutes a permanent establishment only where such site or project continues for a period of more than six months.

4. Notwithstanding the preceding provisions of this Article, the term permanent establishment shall be deemed not to include :

- (a) the use of facilities solely for the purpose 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 fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise ;
- (e) the maintenance of fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research, or for other activities which had preparatory or auxiliary character, for the enterprise ;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 6 applies – is acting in one of the States, on behalf of an enterprise of the other State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned State, if

- (a) he has and habitually exercises in that State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise ; or
- (b) he has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise ;

6. An enterprise of one of the States shall not be deemed to have a permanent establishment in the other State merely because it carries on business in that other State through a broker, a general commission agent or any other agent of an

independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph if it is shown that the transaction between the agent and the enterprise were not made under arms length conditions.

7. The fact that a company which is a resident of one of the States controls or is controlled by a company which is a resident of the other State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment or the other.

CHAPTER III – TAXATION OF INCOME

ARTICLE 6 – *Income from immovable property* – 1. Income derived by a resident of one of the States from immovable property (including income from agriculture or forestry) situated in the other State may be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the law of the 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded 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 one of the States shall be taxable only in that State unless the enterprise carries on business in the other State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of one of the States carries on business in the other State through a permanent establishment situated therein, there shall in each 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 permanent establishment. In any case where the correct amount of profits attributable to a permanent establishment is incapable of determination or the determination thereof presents exceptional difficulties, the profits attributable to the permanent establishment may be estimated on the basis of an apportionment of the total profits of the enterprise to its various parts, provided, however, that the result shall be in accordance with the principles contained in this Article.

3. (a) In determining the profits of a permanent establishment, there shall be allowed as deductions, expenses which are incurred for the purposes 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, in accordance with the provisions of and subject to the limitations of the taxation laws of that State. Provided that where the law of the State in which the permanent establishment is situated imposes a restriction on the amount of the executive and general administrative expenses which may be allowed, and that restriction is relaxed or overridden by any Convention between that State and a third State which enters into force after the date of entry into force of this Convention, the competent authority of that State shall notify the competent authority of the other State of the terms of the corresponding paragraph in the Convention with that third State immediately after the entry into force of that Convention and, if the competent authority of the other State or requests, the provisions of this sub-paragraph shall be amended by protocol to reflect such terms.

(b) However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise, or any of its other offices.

4. 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.

5. For the purposes 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.

6. 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 from the operation of aircraft in international traffic shall be taxable only in the State in which the place of effective management of the enterprise is situated.

2. For the purposes of this Article:

- (a) profits from the operation in international traffic of aircraft include profits derived from the rental on a bareboat basis of aircraft if operated in international traffic if such rental profits are incidental to the profits described in paragraph 1;

(b) interest on funds connected with the operation of aircraft in international traffic shall be regarded as profits derived from the operation of such aircraft and the provisions of Article 11 shall not apply in relation to such interest.

3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 8A – *Shipping* – 1. Profits from the operation of ships in international traffic shall be taxable only in the State in which the place of effective management of the enterprise is situated.

2. However, if the operation of a ship in the other State is more than casual, such profits may also be taxed in that other State and according to the laws of that State, but only so much of them as is derived from that other State and provided that the profits are in respect of any one or more of the first ten fiscal years for which the Convention has effect.

For the purposes of this paragraph :

- (a) profits derived from the other State means profits from the carriage of passengers or freight embarked in that other State ;
- (b) the amount of such profits shall not exceed 5 per cent of the sums receivable in respect of such carriage ;
- (c) the rate of tax chargeable on such profits shall be 50 per cent of the rate of tax on those profits which would have been chargeable in the absence of this Convention.

3. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the State of which the operator of the ships is a resident.

4. For the purposes of this Article :

- (a) interest on funds connected with the operation of ships in international traffic shall be regarded as profits from the operation of such ships and the provisions of Article 11 shall not apply in relation to such interest; and

(b) profits from the operation of ships include:

- (i) profits derived from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) in connection with the transport of goods or merchandise in international traffic ;
- (ii) profits from the rental on a full or bareboat basis of ships if operated in international traffic :

Provided that such profits are incidental to the profits described in paragraph 1.

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

ARTICLE 9 – *Associated enterprises* – 1. Where

- (a) an enterprise of one of the States participates directly or indirectly in the management, control or capital of an enterprise of the other State, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the States and an enterprise of the other 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.

2. Where one of the State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the States shall if necessary consult each other.

ARTICLE 10 – *Dividends* – 1. Dividends paid by a company which is a resident of one of the States to a resident of the other State may be taxed in that other State.

¹[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 laws of that State, but if the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.]

3. The competent authorities of the States shall by mutual agreement settle the mode of application of paragraph 2.

4. The provisions of paragraph 2 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

5. The term dividend as used in this Article means income from shares, jouissance shares or jouissance rights, mining shares, founders shares or other rights participating in profits, as well as income from debt-claims participating in profits and 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.

6. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of one of the States, carries on business in the other 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 14, as the case may be, shall apply.

7. Where a company which is a resident of one of the States derives profits or income from the other State, that other 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 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 State,

nor subject the companys undistributed profits to a tax on the companys undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11 – *Interest* – 1. Interest arising in one of the States and paid to a resident of the other State may be taxed in that other State.

¹[2. However, such interest may also be taxed in the Contracting State in which it arises and according to laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of gross amount of the interest.]

3. Notwithstanding the provisions of paragraph 2 :

- (a) the Government of one of the States shall be exempt from tax in the other State in respect of interest derived directly or indirectly by that Government from that other State ;
- (b) interest arising in one of the States and paid in respect of a loan guaranteed or insured by the Government of the other State shall be exempted from tax in the first-mentioned State.

4. For the purposes of paragraph 3, the term Government means :

- (a) in the case of the Netherlands, the Government of the Kingdom of the Netherlands and shall include :
 - the local authorities ;
 - the Netherlands Bank (Central Bank) ;
 - such institutions, the capital of which is wholly owned by the Government of the Kingdom of the Netherlands or the local authorities ;
 - the Netherlands Financierings Maatschappij voor Ontwikkelings landen N.V. (Netherlands finance company for developing countries) and the Netherlands Investerings bank voor Ontwikkelingslanden N.V. (Netherlands investment Bank for developing countries) ;
 - all other institutions as may be agreed from time to time between the competent authorities of the States ;

(b) in the case of India, the Government of India and shall include :

- a political sub-division ;
- a local authority ;
- the Reserve Bank of India (Central Bank) ;
- the Export-Import Bank of India ;
- such institutions, the capital of which is wholly owned by the Government of India or a political sub-division or a local authority;
- all other institutions as may be agreed from time to time between the competent authorities of the States.

5. The competent authorities of the States shall by mutual agreement settle the mode of application of paragraph 2.

6. The term interest as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, but not carrying a right to participate in the debtors profits, and in particular, income from the 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.

7. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of one of the States, carries on business in the other State in which the interest arises, through a permanent establishment situated therein, or performs in that other 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 a case the provisions of Article 7 or Article 14, as the case may be, shall apply.

8. Interest shall be deemed to arise in one of the States when the payer is that 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 resident of one of the States or not, has in one of the States 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 such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

9. 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 last-mentioned amount. In such a case, the excess part of the payments shall remain taxable according to the laws of each State, due regard being had to the other provisions of this Convention.

¹[ARTICLE 12 – *Royalties and Fees for Technical Services* – 1. Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.]

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

3. The competent authorities of the States shall by mutual agreement settle the mode of application of paragraph 2.

¹[4. 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 including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.]

5. For purposes of this Article, fees for technical services means payments of any kind to any person in consideration for the rendering of any technical or consultancy

services (including through the provision of services of technical or other personnel) if such services :

- (a) are ancillary and subsidiary to the application or enjoyment of the right, property or information for which a payment described in paragraph 4 of this Article is received; or
- (b) make available technical knowledge, experience, skill, know-how or processes, or consist of the development and transfer of a technical plan or technical design.

²[6. Notwithstanding paragraph 5, fees for technical services does not include amounts paid :

- (a) for services that are ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of property;
- (b) for services that are ancillary and subsidiary to the rental of ships, aircraft, containers or other equipment used in connection with the operation of ships or aircraft in international traffic;
- (c) for teaching in or by educational institutions;
- (d) for services for the personal use of the individual or individuals, making the payment; or
- (e) to an employee of the person making the payments or to any individual or partnership for professional services as defined in Article 14 (Independent Personal Services) of this Convention.]

7. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of one of the States, carries on business in the other State, in which the royalties or fees for technical services arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the royalties or fees for technical services are effectively connected with such permanent establishment or fixed base. In such case, the provisions of article 7 or article 14, as the case may be, shall apply.

8. Royalties or fees for technical services shall be deemed to arise in one of the States when the payer is that State itself, a political sub-division, a local authority or a

resident of that State. Where, however, the person paying the royalties or fees for technical services, whether he is a resident of one of the States or not, has in one of the States a permanent establishment or a fixed base in connection with which the contract under which the royalties or fees for technical services are paid was concluded, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

9. 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 royalties or fees for technical services, having regard to the royalties fees for technical services 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 payment shall remain taxable, according to the laws of each State, due regard being had to the other provisions of this Convention.]

ARTICLE 13 – *Capital gains* – 1. Gains derived by a resident of one of the States from the alienation of immovable property referred to in Article 6 and situated in the other State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of one of the States has in the other State or of movable property pertaining to a fixed base available to a resident of one of the States in the other State for the purpose of performing independent personal services, including such gains from the alienation of such permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the State in which the place of effective management of the enterprise is

situated. For the purposes of this paragraph, the provisions of paragraph 3 of Article 8A shall apply.

4. Gains derived by a resident of one of the States from the alienation of shares (other than shares quoted on an approved stock exchange) forming part of a substantial interest in the capital stock of a company which is a resident of the other State, the value of which shares is derived principally from immovable property situated in that other State other than property in which the business of the company was carried on, may be taxed in that other State. A substantial interest exists when the resident owns 25 per cent or more of the shares of the capital stock of a company.

5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4 shall be taxable only in the State of which the alienator is a resident.

However, gains from the alienation of shares issued by a company resident in the other State which shares form part of at least a 10 per cent interest in the capital stock of that company, may be taxed in that other State if the alienation takes place to a resident of that other State. However, such gains shall remain taxable only in the State of which the alienator is a resident if such gains are realised in the course of a corporate organisation, reorganization, amalgamation, division or similar transaction, and the buyer or the seller owns at least 10 per cent of the capital of the other.

6. The provisions of paragraph 3 shall not affect the right of each of the States to levy according to its own law at tax on gains from the alienation of shares or jouissance rights in a company, the capital of which is wholly or partly divided into shares and which under the laws of that State is a resident of that State, derived by an individual who is a resident of the other State and has been a resident of the first-mentioned State in the course of the last five years preceding the alienation of the shares or jouissance rights.

ARTICLE 14 – *Independent personal services* – 1. Income derived by a resident of one of the States in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other State:

- (a) if he has a fixed base regularly available to him in the other State for the purpose 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 State ; or
- (b) if his stay in the other State is for a period or periods amounting to or exceeding in the aggregate 183 days in the fiscal year concerned ; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

ARTICLE 15 – *Dependent personal services* – 1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of one of the States in respect of an employment shall be taxable only in that State unless the employment is exercised in the other State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of one of the States in respect of an employment exercised in the other State shall be taxable only in the first-mentioned State if :

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of one of the States in respect of an employment exercised aboard a ship or aircraft operated in international traffic, shall be taxable only in that State.

ARTICLE 16 – *Directors fees* – Directors fees or other remuneration derived by a resident of one of the States in his capacity as a member of the board of directors, a

bestuurder or a commissaris of a company which is a resident of the other State may be taxed in that other State.

ARTICLE 17 – *Artistes and athletes* – 1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of one of the States as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other State, may be taxed in that other State.

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, 14 and 15, be taxed in the State in which the activities of the entertainer or athlete are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived by an entertainer or an athlete who is a resident of one of the States from his personal activities as such exercised in the other State, shall be taxable only in the first-mentioned State, if the activities in the other State are supported wholly or substantially from the public funds of the first-mentioned State including any of its political sub-divisions or local authorities, and such activities are exercised under the terms of a bilateral cultural agreement between the two States.

ARTICLE 18 – *Pensions and annuities* – 1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of one of the States in consideration of past employment as well as any annuity paid to such a resident, shall be taxable only in that State.

2. However, where such remuneration is not of a periodical nature and it is paid in consideration of past employment in the other State, it may be taxed in that other State.

3. Any pension paid out under the provisions of a social security system of one of the States to a resident of the other State may be taxed in the first-mentioned State.

4. 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 19 – *Government service* – 1. (a) Remuneration, other than a pension, paid by one of the States or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority may be taxed in that State.

(b) However, such remuneration shall be taxable only in the other State if the services are rendered in that State and the individual is a resident of that State who :

1. is a national of that State; or
2. did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, one of the States or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority may be taxed in that State.

(b) However, such pension shall be taxable only in the other State if the individual is a resident of, and a national of that State.

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by one of the States or a political sub-division or a local authority thereof.

ARTICLE 20 – *Professors, teachers and research scholars* – 1. A professor or teacher who is or was a resident of one of the States immediately before visiting the other State for the purpose of teaching or engaging in research, or both, at a university, college, school or other approved institution in that other State shall be taxable only in the first-mentioned State on any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival in that other 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 paragraph 1, approved institution means an institution which has been approved in this regard by the competent authority of the State concerned.

ARTICLE 21 – *Students and apprentices* – 1. Student or business apprentice who is or was a resident of one of the State immediately before visiting the other State and who is present in that other State solely for the purpose of his education or training, shall be exempt from tax in that other State on :

- (a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training ; and
- (b) remuneration from employment in that other State, in an amount not exceeding 5000 guilders or its equivalent in Indian currency during any fiscal year, provided that such employment is directly related to his studies or is undertaken for the purpose of his maintenance.

2. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaking, but in no event shall any individual have the benefits of this Article, for more than five consecutive years from the date of his first arrival in that other State.

CHAPTER IV – TAXATION ON CAPITAL

ARTICLE 22 – *Capital* – 1. Capital represented by immovable property referred to in Article 6, owned by a resident of one of the States and situated in the other State, may be taxed in that other State.

2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of one of the States has in the other State or by movable property pertaining to a fixed base available to a resident of one of the States in the other State for the purpose of performing independent personal services, may be taxed in that other State.

3. Capital represented by ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft shall be taxable only in State in which the place of effective management of the enterprise is

situated. For the purposes of this paragraph, the provisions of paragraph 3 of Article 8A shall apply.

4. All other elements of capital of a resident of one of the States shall be taxable only in that State.

CHAPTER V – ELIMINATION OF DOUBLE TAXATION

ARTICLE 23 – *Elimination of double taxation* – 1. The Netherlands, when imposing tax on its residents, may include in the basis upon which such taxes are imposed the items of income or capital which, according to the provisions of this Convention, may be taxed in India.

2. However, where a resident of the Netherlands derives items of income or owns items of capital which, according to Article 6, Article 7, paragraph 6 of Article 10, paragraph 7 of Article 11, paragraph 7 of Article 12, paragraphs 1, 2, 4 and 5 of Article 13, Article 14, paragraph 1 of Article 15, Article 16, paragraph 3 of Article 18, Article 19 and paragraphs 1 and 2 of Article 22 of this Convention may be taxed in India and are included in the basis referred to in paragraph 1, the Netherlands shall exempt such items of income or capital by allowing a reduction in its tax. These reductions shall be computed in conformity with the provisions of Netherlands law for the avoidance of double taxation. For that purpose the said items of income or capital shall be deemed to be included in the total amount of items of income or capital which are exempted from Netherlands tax under those provisions.

3. Further, the Netherlands shall allow a deduction from the Netherlands tax so computed for items of income which, according to paragraph 2 of Article 8A, paragraph 2 of Article 10, paragraph 2 of Article 11, paragraph 2 of Article 12, Article 17 and paragraph 2 of Article 18 of this Convention may be taxed in India to the extent that these items are included in the basis referred to in paragraph 1. The amount of this deduction shall be equal to the tax paid in India on these items of income, but shall not exceed the amount of the reduction which would be allowed if the items of income so included were the sole items of income which are exempted from Netherlands tax under the provisions of Netherlands tax for the avoidance of double taxation.

Where, by reason of special relief given under the provisions of Indian law for the purpose of encouraging investment in India, the Indian tax actually levied on interest arising in India is lower than the tax India may levy according to sub-paragraphs (a) and (b) of paragraph 2 of Article 11, then the amount of the tax paid in India on such interest shall be deemed to have been paid at the rates of tax mentioned in the said provisions. However, if the general tax rates under the Indian law applicable to the aforementioned interest are reduced below those mentioned in the foregoing sentence, these lower rates shall apply for the purposes of that sentence. The provisions of the two foregoing sentences shall apply only for a period of ten years after the date on which the Convention became effective. This period may be extended by mutual agreement between the competent authorities.

4. In India, double taxation shall be eliminated as follows:

Where a resident of India derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in the Netherlands, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in the Netherlands, whether directly or by deduction; and as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in the Netherlands. Such deduction in either case shall not, however, exceed that part of the income-tax or capital tax (as computed before the deduction is given) which is attributable, as the case may be, to the income or the capital which may be taxed in the Netherlands. Further, where such resident is a company by which sur tax is payable in India, the deduction in respect of income-tax paid in the Netherlands shall be allowed in the first instance from income-tax payable by the company in India and as to the balance, if any, from sur tax payable by it in India:

Provided that income which in accordance with the provisions of this Convention is not to be subjected to tax may be taken into account in calculating the rate of tax to be imposed.

For the purposes of this paragraph in determining the taxes on income paid to the Netherlands, the investment premiums and bonuses and disinvestment payments as meant in the Netherlands Investment Account Law (Wet investeringsrekening) shall not

be taken into account. For the purposes of this paragraph, the taxes referred to in paragraphs 3(a) and 4 of Article 2, other than the capital tax, shall be considered as taxes on income.

5. Where a resident of one of the States derives gains which may be taxed in the other State in accordance with paragraph 6 of Article 13, that other State shall allow a deduction from its tax on such gains to an amount equal to the tax levied in the first-mentioned State on the said gains.

CHAPTER VI – SPECIAL PROVISIONS

ARTICLE 24 – *Non-discrimination* – 1. Nationals of one of the States shall not be subjected in the other 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. These provisions shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the States.

2. Except where the provisions of paragraph 3 of Article 7 apply, the taxation on a permanent establishment which an enterprise of one of the States has in the other 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. The provisions of paragraph 2 shall not be construed as obliging one of the States to grant to residents of the other State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

4. Except where the provisions of paragraph 1 of Article 9, paragraph 9 of Article 11, or paragraph 9 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of one of the States to a resident of the other State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of one of the States to a resident of the other State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under

the same conditions as if they had been contracted to a resident of the first-mentioned State.

5. Enterprises of one of the States, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other State, shall not be subjected in the first-mentioned 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 the first-mentioned State are or may be subjected.

ARTICLE 25 – *Mutual agreement procedure* – 1. Where a person considers that the actions of one or both of the States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

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 a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the States.

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

ARTICLE 26 – *Exchange of information* – 1. The competent authorities of the States shall exchange such information as is necessary for carrying out the provisions of the Convention or of the domestic laws of the States concerning taxes covered by the Convention, insofar as the taxation thereunder is not contrary to the Convention, in particular for the prevention of fraud or evasion of such taxes. Any information received by one of the States shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative courts or bodies) involved in the assessment or collection of, the enforcement in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Convention. Such persons or authorities shall use the information only for such purposes but may disclose the information in public court proceedings or in judicial decisions.

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

- (a) to carry out administrative measures at variance with the laws and administrative practices of that or of the other State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other 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 27 – *Diplomatic agents and consular officers* – 1. Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

2. For the purposes of the Convention an individual who is a member of a diplomatic or consular mission of one of the States in the other State or in a third State and who is a national of the sending State, shall be deemed to be a resident of the sending State if

he is subjected therein to the same obligations in respect of taxes on income or on capital as are residents of that State.

3. International organisations, organs and officials thereof and members of a diplomatic or consular mission of a third State, being present in one of the States, are not entitled, in the other State, to the reductions or exemptions from tax provided for in Articles 10, 11 and 12 in respect of the items of income dealt with in these Articles and arising in that other State, if such items of income are not subject to a tax on income in the first-mentioned State.

ARTICLE 28 – *Territorial extension* – 1. This Convention may be extended either in its entirety or with any necessary modifications, to either or both of the countries of Aruba or the Netherlands Antilles, if the country concerned imposes taxes substantially similar in character to those to which the Convention applies. 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 in notes to be exchanged through diplomatic channels.

2. Unless otherwise agreed, the termination of the Convention shall not also terminate any extension of the Convention to any country to which it has been extended under this Article.

CHAPTER VII – FINAL PROVISIONS

ARTICLE 29 – *Entry into force* – 1. Each of the States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Convention. This Convention shall enter into force on the thirtieth day after the latter of the dates on which the respective Governments have notified each other in writing that the formalities constitutionally required in their respective States have been complied with, and its provisions shall have effect:

- (a) in the Netherlands for taxable years and periods beginning on or after the first day of January next following the calendar year in which the latter of the notifications is given ;

(b) in India in respect of income arising in any fiscal year beginning on or after the first day of April next following the calendar year in which the latter of the notifications is given.

2. Notwithstanding the provisions of paragraph 1, the provisions of Article 8 shall have effect:

- (a) in the Netherlands for taxable years and periods beginning on or after the first day of January, 1987 ;
- (b) in India in respect of income arising in any fiscal year beginning on or after the first day of April, 1987.

ARTICLE 30 – *Termination* – This Convention shall remain in force until terminated by one of the Contracting Parties. Either party may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the expiration of a period of five years from the date of its entry into force. In such event, the Convention shall cease to have effect:

- (a) in the Netherlands for taxable years and periods beginning on or after the first day of January next following the calendar year in which the notice of termination has been given ;
- (b) in India in respect of income arising in any fiscal year beginning on or after the 1st day of April next following the calendar year in which the notice of termination has been given.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Convention.

DONE at New Delhi this thirtieth day of July, 1988, in duplicate, in the Hindi, Netherlands and English languages, the three texts being equally authentic. In case of divergence between the Hindi and Netherlands texts, the English text shall be the operative one.

PROTOCOL

At the moment of signing the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, this day

concluded between the Kingdom of the Netherlands and the Republic of India, the undersigned have agreed that the following provisions shall form an integral part of the Convention.

I. Ad Article 7

1. In respect of paragraphs 1 and 2 of Article 7, where an enterprise of one of the States sells goods or merchandise or carries on business in the other State through a permanent establishment situated therein, the profits of that permanent establishment shall not be determined on the basis of the total amount received by the enterprise, but shall be determined only on the basis of the remuneration which is attributable to the actual activity of the permanent establishment for such sales or business. Especially, in the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, when the enterprise has a permanent establishment, the profits of such permanent establishment shall not be determined on the basis of the total amount of the contract, but shall be determined only on the basis of that part of the contract which is effectively carried out by the permanent establishment in the State where the permanent establishment is situated. The profits related to that part of the contract which is carried out by the head office of the enterprise shall be taxable only in the State of which the enterprise is a resident.

2. It is understood that with respect to paragraph 2 of Article 7, no profits shall be attributed to a permanent establishment by reason of the facilitation of the conclusion of foreign trade or loan agreements or mere signing thereof.

3. Where the law of the State in which a permanent establishment is situated imposes in accordance with the provisions of sub-paragraph (a) of paragraph 3 of Article 7 a restriction on the amount of the executive and general administrative expenses which may be allowed as a deduction in determining the profits of such permanent establishment, it is understood that in determining the profits of such permanent establishment the deduction in respect of such executive and general administrative expenses in no case shall be less than what is allowable under the Indian Income-tax Act as on the date of signature of this Convention.

II. Ad Article 8A

It is understood that in case the percentage as is specified in section 44B of the Indian Income-tax Act as on the date of signature of this Convention for the purpose of determining the amount of shipping profits is reduced by any change in the Indian law, the percentage as is mentioned in sub-paragraph (b) of paragraph 2 of Article 8A will be reduced in the same proportion.

III. Ad Article 9

It is understood that the fact that associated enterprises have concluded arrangements, such as cost-sharing arrangements or general services agreements, for or based on the allocation of executive, general administrative, technical and commercial expenses, research and development expenses and other similar expenses, is not in itself a condition as meant in paragraph 1 of Article 9.

IV. Ad Articles 10, 11 and 12

1. Where tax has been levied at source in excess of the amount of tax chargeable under the provisions of Article 10, 11 or 12, applications for the refund of the excess amount of tax have to be lodged with the competent authority of the State having levied the tax, within a period of three years after the expiration of the calendar year in which the tax has been levied.

2. If after the signature of this convention under any Convention or Agreement between India and a third State which is a member of the OECD India should limit its taxation at source on dividends, interests, royalties, fees for technical services or payments for the use of equipment to a rate lower or a scope more restricted than the rate or scope provided for in this Convention on the said items of income, then as from the date on which the relevant Indian Convention or Agreement enters into force the same rate or scope as provided for in that Convention or Agreement on the said items of income shall also apply under this Convention.

V. Ad Article 12

It is understood that in case India applies a levy, not being a levy covered by Article 2, such as the Research and Development Cess, on payments meant in Article 12, and if after the signature of this Convention under any Convention or Agreement between India and a third State which is a member of the OECD India should give relief from such levy, directly, by reducing the rate or the scope of the levy, either in full or in part, or, indirectly, by reducing the rate or the scope of the Indian tax allowed under the Convention or Agreement in question on payments as meant in article 12 of this Convention with the levy, either in full or in part, then, as from the date on which the relevant Indian Convention or Agreement enters into force, such relief as provided for in that Convention or agreement shall also apply under this Convention.

VI. Ad Article 16

It is understood that bestuurder or commissaris of a Netherlands company means persons, who are nominated as such by the general meeting of shareholders or by any other competent body of such company and are charged with the general management of the company and the supervision thereof, respectively.

VII. Ad Article 23

It is understood that for the computation of the reduction mentioned in paragraph 2 of Article 23, the items of capital referred to in paragraph 1 of Article 22 shall be taken into account for the value thereof reduced by the value of the debts secured by mortgage on the capital and the items of capital referred to in paragraph 2 of Article 22 shall be taken into account for the value thereof reduced by the value of the debts pertaining to the permanent establishment or fixed base.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Protocol.

DONE at New Delhi this thirtieth day of July, 1988, in duplicate, in the Hindi, Netherlands and English languages, the three texts being equally authentic. In case of divergence between the Netherlands and Hindi texts, the English text shall be the operative one.

New Zealand

Agreement for avoidance of double taxation of income and the prevention of fiscal evasion with New Zealand

NOTIFICATION 1

Whereas the annexed Convention between the Government of the Republic of India and the Government of New Zealand for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income has come into force on the 3rd December, 1986, on the notification by both the Contracting States to each other of the compliance of the constitutional requirements, as required by paragraph (1) of Article 28 of the said Convention ;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961) and section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in the Union of India.

Notification : *No. GSR 314(E), dated 27-3-1987, as amended by GSR 477(E), dated 21-4-1988 and GSR 37(E), dated 12-1-2000.*

TEXT OF ANNEXED CONVENTION, DATED 17-10-1986

The Government of the Republic of India and the Government of New Zealand, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, 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 existing taxes to which the Convention shall apply are :

- (a) in the case of New Zealand, the income-tax and the excess retention tax (hereinafter referred to as New Zealand tax) ;

(b) in the case of India, the income-tax including any surcharge thereon and the surtax (hereinafter referred to as Indian tax).

2. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws.

ARTICLE 3 – *General definitions* – 1. For the purposes of this Convention, unless the context otherwise requires

- (a) (i) the term New Zealand means the territory of New Zealand but does not include Tokelau or the Associated Self Governing States of the Cook Islands and Niue; it also includes any area beyond the territorial sea which by New Zealand legislation, and in accordance with international law has been, or may hereafter be, designated as an area in which the rights of New Zealand with respect to natural resources may be exercised;
- 1[(ii) the term India means the territory of India and includes the territorial sea and the airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law, including the U.N. Convention of the Law of the Sea;]
- (b) the terms a Contracting State and the other Contracting State mean New Zealand or India as the context requires;
- (c) the term tax means New Zealand tax or Indian tax as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which the Convention applies or which represents a penalty imposed relating to those taxes;
- (d) the term person includes an individual, a company, any other body of persons or entity which are defined as or deemed to be a person under the taxation laws in force in the respective Contracting States;

- (e) the term company means anybody corporate or any entity which is treated as a body corporate for tax purposes;
- (f) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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;
- (g) the term national means
 - (i) in respect of New Zealand, any individual possessing citizenship of New Zealand and any legal person, partnership or association deriving its status as such from the law in force in New Zealand;
 - (ii) in respect of India, any individual possessing the nationality of India and any legal person, partnership or association deriving its status as such from the law in force in India;
- (h) 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 other Contracting State;
- (i) the term competent authority means
 - (i) in the case of New Zealand the Commissioner of Inland Revenue or his authorised representative;
 - (ii) in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative.

2. As regards the application of the Convention by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that State concerning the taxes to which the Convention applies.

ARTICLE 4 – *Resident* – 1. For the purposes of this Convention, the term resident of a Contracting State, means any person who, under the laws of that Contracting State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph (1) an individual is a resident of both Contracting States, then his status shall be determined as follows :

- (a) He shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests).
- (b) If the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode.
- (c) If he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national.
- (d) If he is a national of both states or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

¹[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 State in which its place of effective management is situated. If the State in which its place of effective management is situated cannot be determined, then the competent authorities of the Contracting States shall settle the question by mutual agreement.]

ARTICLE 5 – *Permanent establishment* – 1. For the purposes of this Convention, the term permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;

- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) a warehouse in relation to a person providing storage facilities for others;
- (h) a farm, plantation or other place where agricultural, forestry or plantation activities are carried on;
- (i) premises used as a sales outlet;
- (j) a building site or a construction or installation or assembly project or supervisory activities in connection therewith, where such site or project or supervisory activities (together with other such sites or projects or activities, if any) or any combination thereof continue for a period of more than six months; and
- (k) an installation or structure for the exploration or exploitation of natural resources :

Provided that for the purposes of this paragraph an enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it carries on activities in that State in connection with the exploration or exploitation of natural resources in that State.

3. Notwithstanding the preceding provisions of this article, the term permanent establishment shall be deemed not to include

- (a) the use of facilities solely for the purpose 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 of collecting information, for the enterprise;

- (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 any other activities which have a preparatory or auxiliary character, for the enterprise.

4. Notwithstanding the provisions of paragraphs (1) and (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 that State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise;
- (b) he has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of 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 State through a broker, general commission agent or any other agent of an independent status, provided that 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 State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6 – *Income from immovable property* – 1[1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may also be taxed in that other State.]

2. The term immovable property shall have the meaning which it has under the 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph (1) shall also 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, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to (a) that permanent establishment or, (b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment.

2. Subject to the provisions of paragraph (3), 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 or 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 or the determination thereof presents exceptional difficulties, the profits attributable to the permanent establishment may be estimated on a reasonable basis.

3. In determining the profits of a permanent establishment, there shall be allowed as deduction expenses which are incurred for the purposes of the business 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, in accordance with the provisions of and subject to the limitations of the taxation laws of that State.

4. Insofar 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 contained 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 purposes 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. Nothing in this article shall affect any provisions of the law of either Contracting State at any time in force regarding the taxation of any income or profits from the business of any form of insurance.

8. 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 of an enterprise of a Contracting State from the operation of aircraft in international traffic shall be taxable only in that State.

2. The provisions of paragraph (1) shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

3. The term operation of aircraft shall mean the business carried on by the owners or lessees or charterers of aircraft in respect of transportation by air of passengers, mail, livestock or goods including the sale of tickets for such transportation on behalf of other enterprises, the incidental lease of aircraft and any other activity directly connected with such transportation.

ARTICLE 8A – *Shipping* – 1. Profits of an enterprise of a Contracting State derived from the operation of ships in international traffic shall be taxed only in that Contracting State.

2. Notwithstanding the provisions of paragraph (1), such profits to the extent that they are derived from the other Contracting State may also be taxed in that Contracting State but the tax so imposed shall not exceed 50 per cent of the tax which would have been chargeable on those profits in the absence of this Convention.

3. The provisions of paragraphs (1) and (2) shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

4. Profits of an enterprise of a Contracting State referred to in paragraphs (1), (2) and (3) includes profits of that enterprise from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers), to the extent that those containers are used in international traffic.

ARTICLE 9 – *Associated enterprises* – 1. 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.

2. Where a Contracting State includes in the profits of an enterprise of that State and taxes accordingly profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises then that other State shall make an appropriate adjustment to the amount of tax charged therein on those profits.

3. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting State shall if necessary consult each other.

ARTICLE 10 – *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 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 laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 15 per cent of the gross amount of the dividends. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

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 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 14, as the case may be, shall apply.

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

ARTICLE 11 – *Interest* – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the Contracting State shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph (2), interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by

- (i) the Government, a political sub-division or a local authority of the other Contracting State; or
- (ii) the Central Bank of the other Contracting State;
- (iii) in the case of India, the Export Import Bank of India; in the case of New Zealand, any financial institution agreed to be of a similar nature to the Export Import Bank of India by the competent authorities of both Contracting States.

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 debtors 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. However, this term does not include income dealt with in article 10. Penalty charges for late payment shall not be regarded as interest for the purpose of this article.

5. The provisions of paragraphs (1) and (2) 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 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 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that 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 resident 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 such interest shall be deemed to arise in the 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 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 the other provisions of this Convention.

ARTICLE 12 – *Royalties and fees for technical services* – 1. Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties or fees for technical services the tax so charged shall not exceed 10 per cent of the gross amount of the royalties or fees for technical services. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

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 including cinematograph films, films or video tapes for use in connection with television or tapes for use in connection with radio 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.

4. The term fees for technical services as used in this article means payments of any kind to any person, other than payments to an employee of the persons making the payments and to any individual for independent personal services mentioned in Article 14, in consideration for services of a managerial, technical or consultancy nature, including the provision of services of technical or other personnel.

5. The provisions of paragraphs (1) and (2) shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services, 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 of property or contract in respect of which the royalties or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of article 7 or article 14, as the case may be, shall apply.

6. Royalties and fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties or fees for technical services, 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 or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the 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 royalties or fees for technical services, 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 the other provisions of this Convention.

ARTICLE 13 – *Alienation of property* – 1[1. Income or gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may also be taxed in that other State.]

2. Income or gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such income or gains from the alienation of such a permanent establishment (alone or with the whole enterprise), or of such a fixed base, may be taxed in that other State.

3. Income or gains of an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.

4. Income or gains from the alienation of shares of the capital stock of a company where the property of the company consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

5. Income or gains from the alienation of shares other than those mentioned in paragraph (4) in a company which is a resident of a Contracting State may be taxed in that State.

6. Income or gains from the alienation of any property other than that referred to in paragraphs (1), (2), (3), (4) and (5) shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14 – *Independent personal services* – 1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances when such income may also be taxed in the other Contracting State :

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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 State; or
- (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any consecutive twelve-month period; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

ARTICLE 15 – *Dependent personal services* – 1. Subject to the provisions of articles 16, 17, 18, 19, 20 and 21, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any consecutive twelve-month period; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operating in international traffic by an enterprise of a Contracting State may be taxed in that Contracting State.

ARTICLE 16 – *Directors fees* – Directors fees and other 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 may be taxed in that other State.

ARTICLE 17 – *Artistes and athletes* – 1. Notwithstanding the provisions of articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a 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 State.

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, 14 and 15, 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 if the visit to a Contracting State of the entertainer or the athlete is directly or indirectly supported, wholly or

substantially, from the public funds of the other Contracting State, including a political sub-division, a statutory body or a local authority of that other State.

ARTICLE 18 – *Pensions and annuities* – 1. Subject to the provisions of paragraph (2) of Article 19, pensions and other similar remuneration paid in consideration of past employment to a resident of a Contracting State and any annuity paid to such a resident shall be taxable only in that State.

2. The term annuity as used in this article means a stated sum payable periodically as 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 moneys worth.

ARTICLE 19 – *Government service* – 1.(a) Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or political sub-division or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

ARTICLE 20 – *Students and apprentices* – 1. Payment which a student of business or technical apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

2. An individual who was a resident of a Contracting State immediately before visiting the other Contracting State and is temporarily present in that Contracting State solely for the purpose of study or training as a recipient of a grant, allowance or award from an arrangement for assistance programme entered into by the Government of that Contracting State shall be exempt from tax in that Contracting State on the amount of such grant, allowance or award.

ARTICLE 21 – *Professors and teachers* – 1. A professor or teacher who visits a Contracting State for a period not exceeding two years for the purpose of teaching or carrying out advanced study or research at a university, college, school or other approved educational institution in that Contracting State and who immediately before that visit was a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State on any remuneration for such teaching, advanced study or research in respect of which he is subject to tax in the other Contracting State.

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

ARTICLE 22 – *Other income* – Items of income of a resident of a Contracting State not dealt within the foregoing Articles of this Convention shall be taxable only in that State except that, if such income arises in the other Contracting State, it may also be taxed in that other State.

ARTICLE 23 – *Elimination of double taxation* – 1. (a) Subject to the provisions of the law of New Zealand relating to the allowance as a credit against New Zealand tax of tax

paid in any country other than New Zealand (which shall not affect the general principle hereof), Indian tax paid under the law of India and consistently with Convention, whether directly or by deduction, in respect of income derived by a resident of New Zealand from sources in India (excluding, in the case of a dividend, tax paid in respect of the profits out of which the dividend is paid), shall be allowed as a credit against New Zealand tax payable in respect of that income.

(b) For the purposes of this Article, income of a resident of New Zealand which in accordance with the provisions of this Convention may be taxed in India shall be deemed to arise from sources in India.

2. (a) Subject to the provisions of the law of India relating to the allowance as a credit against Indian tax of tax paid in any country other than India (which shall not affect the general principle hereof), New Zealand tax paid under the law of New Zealand and consistently with this Convention, whether directly or by deduction, in respect of income derived by a resident of India from sources in New Zealand (excluding, in the case of a dividend, tax paid in respect of the profits out of which the dividend is paid), shall be allowed as a credit against Indian tax payable in respect of that income.

(b) For the purposes of this article, income of a resident of India which in accordance with the provisions of this Convention may be taxed in New Zealand shall be deemed to arise from sources in New Zealand.

3. For the purposes of paragraph (1) the term Indian tax paid shall be deemed to include any amount which would have been payable as Indian tax but for a deduction allowed in computing the taxable income or an exemption or reduction of tax granted for that year under section 10(4), 10(4A), 10(15)(iv) of the Income-tax Act, 1961 and any other provision to be agreed between the competent authorities of both Contracting States:

Provided that the credit for the Indian tax to be so allowed shall not exceed the smaller of:

- (a) the New Zealand tax which would have been payable under New Zealand law but for the provisions of this paragraph; and

(b) where applicable, the limitation of tax agreed to in the relevant Articles of this Convention.

ARTICLE 24 – *Non-discrimination* – 1. 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.

¹[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. This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which a company of the other Contracting State has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first-mentioned Contracting State.]

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 State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which enterprises of the first-mentioned State carrying on the same activities, the capital of which is owned or controlled by residents of the first-mentioned State, are or may be subjected.

4. Nothing in the Article shall be construed as preventing a Contracting State from distinguishing in its taxation laws between residents and non-residents solely on the basis of their residence and to levy taxes or grant exemption, relief, reduction or allowance for tax purposes accordingly.

²[5. This Article shall not apply to any provisions of the taxation laws of a Contracting State which are reasonably designed to prevent or defeat the avoidance or evasion of taxes.]

³[6]. In this article the term taxation means the taxes to which this Convention applies.

ARTICLE 25 – *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 the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident. This case must be presented within three years from the date of receipt of notice of the action giving rise to taxation not in accordance with the Convention.

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 a satisfactory 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 which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic 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 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 State may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. 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.

ARTICLE 26 – *Exchange of information* – 1. The competent authorities of the Contracting States shall exchange such information (including documents) as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention, in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by

article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic law of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. 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 and administrative practice of that or of the other Contracting State;
- (b) to supply information which is 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 27 – *Diplomatic and consular officers* – Nothing in this Convention shall affect the fiscal privileges of diplomatic or consular officers under the general rules of international law or under the provisions of special international agreements.

ARTICLE 28 – *Entry into force* – 1. The Contracting States shall notify each other that the constitutional requirements for the entry into force of this Convention have been complied with.

2. This Convention shall enter into force on the date of the notification referred to in paragraph (1) and its provisions shall have effect :

- (a) in New Zealand : for any income year beginning on or after 1 April in the calendar year next following the date on which the Convention enters into force;

(b) in India : for any previous year (as defined in the Income-tax Act, 1961) beginning on or after 1 April in the calendar year next following the date on which the Convention enters into force.

ARTICLE 29 – *Termination* – This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Convention by giving notice of termination, through diplomatic channels, at least six months before the end of any calendar year beginning after the expiration of five years from the date of entry into force of the Convention. In such event, the Convention shall cease to have effect

- (a) in New Zealand : for any income year beginning on or after 1 April in the calendar year next following that on which the notice of termination is given;
- (b) in India : for any previous year (as defined in the Income-tax Act, 1961) beginning on or after 1 April in the calendar year next following the date on which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed the present Convention.

DONE in duplicate at Auckland this 17th day of October, 1986 in the Hindi and English languages, both the texts being equally authentic. In case of divergence between the two texts, the English text shall be the operative one.

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NOTIFICATION 2

WHEREAS the annexed Protocol to the Convention between the Government of the Republic of India and the Government of New Zealand for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income has come into force on 9th January, 1997, on the notification by both the Contracting States to each other of the compliance with the domestic requirements as required by Article 2 of the said Protocol :

NOW, THEREFORE, in exercise of the powers conferred under section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Protocol shall be given effect to in the Union of India.

ANNEXURE

PROTOCOL TO THE CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF NEW ZEALAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of India and the Government of New Zealand,

Having regard to the Convention between the Government of the Republic of India and the Government of New Zealand for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income done at Auckland on 17th October, 1986 (hereinafter referred to as the Convention).

Have agreed that the following provisions shall form an integral part of the Convention :

ARTICLE 1 – Notwithstanding paragraph 3 of Article 23 of the Convention, a New Zealand resident deriving income from India, being income referred to in that paragraph, shall not be deemed to have paid Indian tax in respect of such income where the competent authority of New Zealand considers, after consultation with the competent authority of India, that it is inappropriate to do so having regard to :

- (a) whether any arrangements have been entered into by any person for the purpose of taking advantage of paragraph 3 of Article 23 for the benefit of that person or any other person;
- (b) whether any benefit accrues or may accrue to a person who is neither a New Zealand resident nor an Indian resident;
- (c) the prevention of fraud or the avoidance of the taxes to which the Convention applies;

(d) any other matter which either competent authority considers relevant in the particular circumstances of the case, including any submissions from the New Zealand resident concerned.

ARTICLE 2 – 1. The Contracting States shall notify each other that the domestic requirements for the entry into force of this Protocol have been complied with.

2. This Protocol shall enter into force on the date of the later of the notifications referred to in paragraph (1) of this article.

ARTICLE 3 – Article 1 of this Protocol shall apply to income derived on or after the 1st day of the month following the date on which this Protocol enters into force.

DONE at New Delhi in duplicate this the Twenty-ninth day of August, One Thousand Nine Hundred Ninety-six in the Hindi and the English languages, both texts being equally authentic. In case of divergence between the two texts, the English text shall be the operative one.

Notification : *No. SO 166(E), dated 5-3-1997.*

Norway

Agreement for avoidance of double taxation and prevention of fiscal evasion with Norway

Whereas the annexed Convention between the Republic of India and the Kingdom of Norway for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital has entered into force in the year one thousand nine hundred and eighty-six, being the year in which it was signed, on the notification by both the Contracting States to each other of the completion of the procedures required under their laws, as required by paragraph (1) of article 31 of the said Convention ;

Now, therefore, in exercise of the powers conferred by section 44A of the Wealth-tax Act, 1957 (27 of 1957), section 90 of the Income-tax Act, 1961 (43 of 1961) and section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in the Union of India.

Notification : *No. GSR 756(E), dated 9-9-1987, as amended by Notification No. 368/2006 [F. No. 505/3A/81-FTD], dated 15-12-2006.*

TEXT OF ANNEXED CONVENTION, DATED 31-12-1986

The Government of the Republic of India and the Government of the Kingdom of Norway desiring to conclude a Convention for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income and on 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 existing taxes to which the Convention shall apply are, in particular:

(a) in India,

- (i) the income-tax including any surcharge thereon imposed under the Income-tax Act, 1961 (43 of 1961) ;
 - (ii) the surtax imposed under the Companies (Profits) Surtax Act, 1964 (7 of 1964) ;
 - (iii) the wealth-tax imposed under the Wealth-tax Act, 1957 (27 of 1957);
- (hereinafter referred to as Indian tax).

(b) In Norway :

- (i) the national tax on income (inntektsskatt til staten);
 - (ii) the county municipal tax on income (inntektsskatt til fylkeskommunen) ;
 - (iii) the municipal tax on income (inntektsskatt til kommunen);
 - (iv) the national contributions to the Tax Equalisation Fund (fellesskatt til skattefordel-ingsfondet) ;
 - (v) the national tax on capital (formauesskatt til staten) ;
 - (vi) the municipal tax on capital (formuesskatt til kommunen) ;
 - (vii) the national tax relating to income and capital from the exploration for and the exploitation of submarine petroleum resources and activities and work relating thereto, including pipeline transport of petroleum produced (skatt til staten vedrørende inntekt og formue i forbindelse med undersøkelse etter og utnyttelse av undersjøske petroleumforekomster og dertil knyttet virksomhet og arbeid, herunder rørsledningstransport av utvunnet petroleum) ;
 - (viii) the national dues on remuneration to non-resident artistes (av gift til staten av honorarer som tilfaller kunstnere bosatt i utlandet);
 - (ix) the seamen's tax (sjømannsskatt);
- (hereinafter referred to as Norwegian tax).

2. The Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of the present Convention in addition to, or in place of, the existing taxes referred to in paragraph

(7). The competent authorities of the Contracting States shall notify each other of any substantial changes which are made in their respective taxation laws.

ARTICLE 3 – *General definitions* – 1. In this Convention, unless the context otherwise requires

- (a) the term India means the territory of India and includes, territorial sea and the air space above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law.
- (b) the term Norway means the Kingdom of Norway, including any area outside the territorial waters of the Kingdom of Norway where the Kingdom of Norway, according to Norwegian legislation and in accordance with international law, may exercise her rights with respect to the sea-bed and subsoil and their natural resources; the term does not comprise Svalbard Jan mayen and the Norwegian dependencies outside Europe ;
- (c) the terms a Contracting State and the other Contracting State mean India or Norway as the context requires ;
- (d) the term tax means Indian tax or Norwegian tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty imposed relating to those taxes ;
- (e) the term person includes an individual, a company and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States ;
- (f) the term company means any body corporate or any entity which is treated as a company or body corporate under the taxation laws in force in the respective Contracting States ;
- (g) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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 ;
- (h) the term competent authority means in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorised

representative; and in the case of Norway, the Minister of Finance and Customs or his authorised representative ;

- (i) the term nationals means any individual possessing the nationality of a Contracting State and any legal person, partnership and association deriving its status as such from the laws in force in a Contracting State ;
- (j) 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 the Convention by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

ARTICLE 4 – *Resident* – 1. For the purposes of this Convention, the term resident of a Contracting State means any person who, under the laws of that State, is liable to tax 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 State, then his status shall be determined as follows:

- (a) He shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests).
- (b) If the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode.
- (c) If he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national.
- (d) If he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

(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 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 means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

(2) The term permanent establishment includes especially

- (a) a place of management ;
- (b) a branch ;
- (c) an office ;
- (d) a factory ;
- (e) a workshop ;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources ;
- (g) a warehouse in relation to a person providing storage facilities for others ;
- (h) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on ;
- (i) a premises used as a sales outlet or for receiving or soliciting orders ;
- (j) an installation or structure used for the exploration of natural resources ;
- (k) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than three months together with other such sites, projects or activities, if any ;
- (l) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the country for a period or periods aggregating to more than six months within any 12 months period.

3. Notwithstanding the preceding provisions of this article, the term permanent establishment shall be deemed not to include

- (a) the use of facilities solely for the purpose 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 of collecting information, for the enterprise ;
- (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 other activities which have a preparatory or auxiliary character, for enterprise.

However, the provisions of sub-paragraphs (a) to (e) shall not be applicable where the enterprise maintains any other fixed place of business in the other Contracting State for any purposes other than the purposes specified in the said sub-paragraphs.

4. Notwithstanding the provisions of paragraphs (1) and (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 that State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise ;
- (b) he has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise 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 and other enterprises controlling, controlled by, or subject to the same common control as, that 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 State through a broker, general commission agent or any other agent of an independent status provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise itself or on behalf of that enterprise and other enterprise controlling, controlled by, or subject to the same common control as, that enterprise, he shall not be considered as an agent of an independent status within the meaning of this paragraph if it is shown that the transactions between the agent and the enterprise were not made under arms length conditions. In that case, the provisions of paragraph (4) shall apply.

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 otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6 – *Income from immovable property* – 1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded 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, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to

- (a) that permanent establishment ;
- (b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment ; or
- (c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.

2. Subject to the provisions of paragraph (3), 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.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes 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, in accordance with the provisions of and subject to the limitations of the taxation laws of that State. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of the other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges, for specific services performed

or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise then towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges for specific services performed or for management, or except in the case of banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. Insofar 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 contained 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 purposes 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 State.

2. The provisions of paragraph (1) shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

3. The provisions of paragraphs (1) and (2) shall apply to profits derived by the joint Norwegian, Danish and Swedish air transport consortium, Scandinavian Airlines System (SAS), but only insofar as profits derived by Det Norske Luftfartsselskap A/S (DNL), the Norwegian partner of the Scandinavian Airlines System (SAS), are in proportion to its share in that organisation.

4. For the purposes of this article, interest on funds connected with the operation of aircraft in international traffic, shall be regarded as profits derived from the operation of such aircraft, and the provisions of article 12 shall not apply in relation to such interest.

5. The term operation of aircraft shall mean business of transportation by air of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of aircraft, including the sale of tickets for such transportation on behalf of other enterprises, the incidental lease of aircraft and any other activity directly connected with such transportation.

ARTICLE 9 – *Shipping* – 1. Profits derived by an enterprise of a Contracting State from the operation of ships in international traffic shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph (1) profits derived from the operation of ships in international traffic may be taxed in the Contracting State in which such operation is carried on; but the tax so charged shall not exceed 50 per cent of the tax otherwise imposed by the internal law of that State. For purposes of this paragraph, the amount of such profits subject to tax in India shall not exceed 7.5 per cent of the sums receivable in respect of the carriage of passengers or freight embarked in India.

3. The provisions of paragraphs (1) and (2) shall also apply to profits derived from the participation in a pool, in a joint business or in an international operating agency.

4. An enterprise shall be deemed to be an enterprise of both Contracting State if

- (a) the enterprise is carried on by a company or any other body of persons where all the partners are jointly and severally liable and at least one of the partners has unlimited liability ; and

- (b) at least one of the partners is a resident of one of the Contracting States and one or more of them is a resident of the other Contracting State ; and
- (c) the effective management of the enterprise is not carried on solely in one of the Contracting States.

In that case, the profits of the enterprise, subject to paragraph (2) of this article, shall be taxable in the State where partners mentioned in sub-paragraph (b) are residents in proportion to their part of the profits. The provisions of this paragraph shall not be construed as to grant any benefits to partners resident of a State other than the Contracting States.

5. For the purposes of this article, income from the operation of ships includes income derived from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) in connection with the transport of goods or merchandise in international traffic.

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 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 laws of that State, but if the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed:

- (a) 15 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends and the dividends are attributable to a new contribution; and
- (b) 25 per cent of the 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 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 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 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 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 State.

6. As used in paragraph (2) of this article, the term new contribution means share capital, other than bonus shares, issued after the date of entry into force of this Convention by a company which is a resident of a Contracting State, and beneficially owned by a resident of the 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 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 beneficial owner of the interest and it is paid in respect of a loan or debt first created after the date of entry into force of this Convention, the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph (2),

(a) interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by :

(i) the Government, a political sub-division or a local authority of the other Contracting State ; or

(ii) the Central Bank of the other Contracting State ;

(b) interest arising in a Contracting State shall be exempt from tax in that Contracting State to the extent approved by the Government of that State if it is derived and beneficially owned by any person other than a person referred to in subparagraph (a) who is a resident of the other Contracting State provided that the transaction giving rise to the debt-claim has been approved in this regard by the Government of the first-mentioned Contracting State to be in the interest of the industrial development of that State.

4. The term interest as used in this article means income from debt-claims of every kind, whether or not secured by mortgage, 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) and (2) 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 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 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 resident 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 such interest shall be deemed to arise in the 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 for whatever reason, 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 a 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.

ARTICLE 13 – *Royalties and fees for technical services* – 1. Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and according to the laws of that State. But insofar as fees for technical services are considered, to the extent such fees are paid in respect of a contract which is signed after the date of entry into force of this Convention, the tax so charged shall not exceed 10 per cent of such fees. For the purposes of this paragraph, if a lower rate of Indian tax is agreed upon with any other State than Norway after the entry into force of this Convention, such rate shall be applied.

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, including 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.

4. The term fees for technical services as used in this article means payments of any amount to any person other than payments to an employee of a person making payments, in consideration for the services of a managerial, technical or consultancy nature, including the provision of services of technical or other personnel.

5. The provisions of paragraphs (1) and (2) shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services arise, through a permanent establishment situated therein, or perform in that other State independent personal services from a fixed base situated therein, and the right, property or contract in respect of which the royalties or fees for technical services are paid is effectively connected with such permanent establishment or fixed base in such a case, the provisions of article 7 or article 15, as the case may be, shall apply.

6. Royalties and fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a

resident of that State. Where, however, the person paying the royalties or fees for technical services, 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 or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base then such royalties or fees for technical services shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of special relationship between the payer and the beneficial owner or between both of them and some other persons, the amount of royalties or fees for technical services paid exceeds the amount which would have been paid in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In such a 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.

ARTICLE 14 – *Capital gains* – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (along or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic, or movable property (including containers and related equipment) pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.

4. Gains from the alienation of shares of the capital stock of a company, the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from the alienation of shares other than those mentioned in paragraph (4) in a company which is a resident of a Contracting State may be taxed in that State.

6. Gains from the alienation of any property other than that mentioned in the preceding paragraphs shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 15 – *Independent personal services* – 1. Income derived by an individual who is a resident of a Contracting State from the performance of professional services or other activities of a similar character shall be taxable only in that State except in the following circumstances when such income may also be taxed in the other Contracting State :

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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 State ; or
- (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any two consecutive years of income; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

However, to the extent the above-mentioned remuneration is not taxed in the State where the recipient is a resident, the remuneration may be taxed in the other 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, 18, 19, 20, 21 and 22, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

- (a) the recipient is present in that other State for a period or periods not exceeding in the aggregate 183 days in any two consecutive years of income; and
- (b) the remuneration is paid by, or on behalf of, an employer who is a resident of the State of which the recipient is a resident; and
- (c) the remuneration is not reasonably connected with the activities of a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State. Where a resident of Norway derives remuneration in respect of an employment exercised aboard in aircraft operated in international traffic by the Scandinavian Airlines System (SAS) consortium, such remuneration shall be taxable only in Norway.

ARTICLE 17 – Directors fees and remuneration of top level managerial officials – 1. Directors fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or of a similar organ of a company which is a resident of the other Contracting State may be taxed in that other State.

2. Salaries, wages and other similar remuneration derived by a resident of a Contracting State in his capacity as an official in a top-level managerial position of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 18 – Income earned by entertainers 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 a 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 State.

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. Notwithstanding the provisions of paragraphs (1) and (2), income derived from such activities as defined in paragraph (1) shall be exempt from tax in the Contracting State in which these activities are performed if the visit of the entertainer or athlete is within the framework of cultural exchange between the two Contracting States, or is directly or indirectly supported, wholly or substantially, from the public funds of the other Contracting State, including a political sub-division or local authority of that other State.

ARTICLE 19 – *Remuneration and pensions in respect of Government service* – 1. (a) Remuneration, other than a pension paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority thereof in the discharge of functions of a governmental nature shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who :

(i) is a national of that State ; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if :

- (i) the individual is a resident of, and a national of that other State; or
- (ii) such pension is exempt from tax in the first-mentioned State.

3. The provisions of articles 16, 17 and 20 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

ARTICLE 20 – *Non-Government pensions, annuities and alimony* – 1. Any pension, other than a pension referred to in article 19, or any annuity derived by a resident of a Contracting State from sources within the other Contracting State may be taxed in the first-mentioned Contracting State.

2. The term pension means a periodic payment made in consideration of past services or by way of compensation for injuries received in the course of performance of services.

3. 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 moneys worth.

4. Alimony received by a resident of Norway and paid by a resident of India shall be exempt from tax in Norway to the extent such payments are not deductible for the purposes of Indian tax.

ARTICLE 21 – *Payments received by students and apprentices* – 1. Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

2. In respect of grants, scholarships and remuneration from employment not covered by paragraph (1), a student or business apprentice described in paragraph (1) shall, in

addition, be entitled during such education or training to the same exemptions, reliefs or reductions in respect of taxes available to residents of the State which he is visiting.

ARTICLE 22 – *Other income* – 1. Subject to the provisions of paragraph (2), items of income of a resident of a Contracting State, wherever arising, which are not expressly dealt with in the foregoing articles of this Convention, shall be taxable only in that Contracting State.

2. The provisions of paragraph (1) shall not apply to income, other than income from immovable property as defined in paragraph (2) of article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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 income is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of article 7 or article 15, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs (1) and (2), items of income of a resident of a Contracting State not dealt with in the foregoing articles of this Convention and arising in the other Contracting State may also be taxed in that other State.

ARTICLE 23 – *Offshore activities* – 1. The provisions of this article have effect notwithstanding any other provision of this Convention.

2. A person who is a resident of a Contracting State and carries on activities offshore in the other Contracting State in connection with the exploration or exploitation of the sea-bed and sub-soil and their natural resources situated in that other State shall, subject to paragraphs (3) and (4) of this article, be deemed in relation to those activities to be carrying on business in that other State through a permanent establishment or fixed base situated therein.

3. The provisions of paragraph (2) shall not apply where the activities are carried on for a period not exceeding 30 days in the aggregate in any 12 months period. However, for the purposes of this paragraph :

- (a) activities carried on by an enterprise associated with another enterprise shall be regarded as carried on by the enterprise with which it is associated if the activities in question are substantially the same as those carried on by the last-mentioned enterprise; and
- (b) two enterprises shall be deemed to be associated if one is controlled directly or indirectly by the other, or both are controlled directly or indirectly by a third person or persons.

4. Profits derived by a resident of a Contracting State from the transportation of supplies or personnel to a location, or between location, where activities in connection with the exploration or exploitation of the sea-bed and subsoil and their natural resources are being carried on in a Contracting State, or from the operation of tugboats and other vessels auxiliary to such activities, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

Notwithstanding the provisions of this paragraph, profits derived from such operation may also be taxed in the Contracting State in which the operation is carried on; but the tax so charged shall not exceed 50 per cent of the tax otherwise imposed by the internal law of that State. For purposes of this paragraph, the amount of such profits subject to tax in India shall not exceed 7.5 per cent of the sums receivable. However, if a lower rate of Indian tax is agreed upon with any other State than Norway after the entry into force of this Convention, such rate shall be applied for the purposes of this paragraph.

5. (a) Subject to sub-paragraph (b) of this paragraph, salaries, wages and similar remuneration derived by a resident of a Contracting State in respect of an employment connected with the exploration or exploitation of the sea-bed and subsoil and their natural resources situated in the other Contracting State shall, to the extent that the duties are performed offshore in that other State, be taxable only in that other State provided that the employment offshore is carried on for a period exceeding 30 days in the aggregate in any 12 months period.

(b) Salaries, wages and similar remuneration derived by a resident of the Contracting State in respect of an employment exercised aboard a ship or aircraft engaged in the transportation of supplies or personnel to a location, or between locations, where activities connected with the exploration or exploitation of the sea-bed and subsoil and their natural resources are being carried on in a Contracting State, or in respect of an employment exercised aboard tugboats or other vessels operated of auxiliary to such activities, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

ARTICLE 24 – *Capital* – 1. Capital represented by immovable property referred to in article 6, owned by a resident of a Contracting State and situated in the other Contracting State may be taxed in that other State.

2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personnel services, may be taxed in that other State.

3. Capital represented by ships and aircraft operated in international traffic and by movable property (including containers and related equipment) pertaining to the operation of such ships and aircraft, shall be taxable only in the Contracting State of which the owner of such ships, aircraft or property is a resident.

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

ARTICLE 25 – *Elimination of double taxation* – 1. The laws in force in either of the Contracting States shall continue to govern the taxation of income and capital in the respective Contracting States except where express provision to the contrary is made in this Convention.

2. Where a resident of India derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Norway, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income–

tax paid in Norway, whether directly or by deduction; and as a deduction from the tax on the capital of that resident an amount equal to the capital tax paid in Norway. Such deduction in either case shall not, however, exceed that part of the income-tax or capital tax (as computed before the deduction is given) which is attributable, as the case may be, to the income or the capital which may be taxed in Norway. Further, where such resident is a company by which surtax is payable in India, the deduction in respect of income-tax paid in Norway shall be allowed in the first instance from income-tax payable by the company in India and as to the balance, if any, from surtax payable by it in India.

3. Where a resident of Norway derives income or owns capital which, in accordance with the provisions of the Convention, may be taxed in India, Norway shall, subject to the provisions of paragraphs (4), (5), (6) and (7), exempt such income or capital from tax.

4. Where a resident of Norway derives items of income which, in accordance with the provisions of articles 9, 11, 12, 13, 14, paragraphs (5), (17), (22) and (23) may be taxed in India, Norway shall allow as a deduction from the tax on the income of that person an amount equal to the tax paid in India. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income derived from India.

5. For the purposes of the deduction referred to in paragraph (4), the term income-tax paid in India shall be deemed to include any amount which would have been payable as Indian tax under the law of India and in accordance with this Convention for any year but for an exemption from, or reduction of, tax granted for that year under :

- (a) sections 10(4), 10(4A), 10(4B), 10(6)(vii), 10(15)(iv) and 80L of the Income-tax Act, 1961 (43 of 1961), so, far as they were in force on, and have not been modified since, the date of the signature of this Convention, or have been modified only in minor respects so as not to affect their general character ; or
- (b) any other provisions which may be enacted after 11th November, 1983, granting a deduction in computing the taxable income or an exemption or reduction from tax which the competent authorities of the Contracting States agree to be for the

purposes of the economic development of India, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character.

This paragraph does not apply to article 17.

6. For the deduction indicated in paragraph (4), Indian tax on interest shall be considered as having been paid at a rate of not less than 15 per cent.

7. The provisions of paragraphs (5) and (6) of this article shall apply for the first 10 years for which this Convention is effective, but the competent authorities of the Contracting States may consult each other to determine whether this period shall be extended.

8. Where, under this Convention, a resident of a Contracting State is exempt from tax in that Contracting State in respect of income derived or capital owned in the other Contracting State, then the first-mentioned Contracting State may, in calculating tax on the remaining income or capital of that person, apply the rate of tax which would have been applicable if the income or capital exempted from tax in accordance with this Convention had not been so exempted.

ARTICLE 26 – *Non-discrimination* – 1. Nationals of a Contracting State shall not be subjected in 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. This provision shall, notwithstanding the provisions of article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. Stateless persons who are residents 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.

3. 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 in the same circumstances and under the same conditions.

4. Nothing contained in this article shall be construed as obliging a Contracting State to grant to persons not resident in that State any personal allowances, reliefs, reductions and deductions for taxation purposes which are by law available only to persons who are so resident.

5. Except where the provisions of article 9, paragraph (7) of article 12 or paragraph (7) of article 13 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

6. 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 the first-mentioned State are or may be subjected in the same circumstances and under the same conditions.

7. The provisions of this article shall not be construed as obliging a Contracting State to grant to nationals of the other Contracting State not being nationals of the first Contracting State any exceptional tax relief accorded to repatriating nationals of this Contracting State.

ARTICLE 27 – *Mutual agreement procedure* – 1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the

remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident, or if his case comes under paragraph (1) of article 26, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

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 a satisfactory 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 which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting State.

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. When it seems advisable in order to reach an agreement to have an oral exchange of options, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

ARTICLE 28 – *Exchange of information* – 1. The competent authorities of the Contracting States shall exchange such information (including documents) as is necessary for carrying out the provisions of the Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention, insofar as the taxation thereunder is not contrary to the Convention, in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State. However, if the information is originally regarded as secret in the transmitting State, it

shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Convention. Such persons or authorities shall use the information only for such purposes but may disclose the information in public court proceedings or in judicial decisions. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchange of information shall be made, including, where appropriate, exchange of information regarding tax avoidance.

2. 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 is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State ; and
- (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 Contracting States undertake to lend assistance and support to each other in the collection for taxes covered by this Convention which may no longer be contested in the State making the request.

2. A request for assistance in the recovery of tax claims of either of the Contracting States which may no longer be contested in that State will be accepted for enforcement by the other Contracting State and such tax claims shall be recovered in accordance with the laws and administrative practice applicable to the enforcement and collection of its own taxes.

3. The request for assistance in the recovery of a tax claim shall be accompanied :

- (a) by a declaration that the tax claim concerns a tax covered by the Convention and that it may no longer be contested ;

- (b) by an official copy of the instrument permitting enforcement in the State making the request ;
- (c) by any other document required for recovery ; and
- (d) where appropriate, by a certified copy of any relevant decisions of the administrative body or a court of law.

4. In the case of Indian tax, the request will be sent by the Central Board of Direct Taxes, Department of Revenue to the Ministry of Finance, Government of the Kingdom of Norway, and, in the case of Norwegian tax, the request will be sent by the Ministry of Finance to the Central Board of Direct Taxes, Department of Revenue, in India.

5. Where the tax claim has not become final by reason of 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 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 other Contracting State.

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 agreements.

ARTICLE 31 – *Entry into force* – 1. Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Convention. This Convention shall enter into force in the year in which it is signed and shall thereupon have effect :

- (a) in India, in respect of income arising in any previous year beginning on or after the first day of April next following the calendar year in which the Convention is signed ;
- (b) in Norway, in respect of taxes on income or on capital relating to the calendar year (including accounting periods beginning in any such year) next following that in which the Convention is signed.

2. The agreement between the Government of Norway and the Government of India for the avoidance of double taxation of income, signed on the 20th July, 1959, shall terminate and cease to have effect in respect of taxes on income to which the present agreement applies in accordance with the provisions of paragraph (7) of this article.

ARTICLE 32 – *Termination* – This Convention shall remain in force indefinitely but either of the Contracting States may, on or before the thirtieth day of June 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, this Convention shall cease to have effect:

- (a) in India, in respect of income arising in any previous year beginning on or after the first day of April next following the calendar year in which the notice of termination is given and in respect of capital which is held at the expiry of any fiscal year beginning on or after the first day of April next following the calendar year in which the notice of termination is given ;
- (b) in Norway, in respect of taxes on income or on capital relating to the calendar year (including accounting periods beginning in such year) next following that in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed the present Convention.

DONE IN DUPLICATE at New Delhi this 31st day of December, 1986 in the Hindi, Norwegian and English languages, all texts being equally authentic. In case of divergence between any of the texts, the English text shall be the operative one.

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Oman

Comprehensive Agreement

Agreement for avoidance of double taxation and prevention of fiscal evasion with Oman

Whereas the annexed agreement between the Government of the Sultanate of Oman 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 has entered into force on the 3rd June, 1997 after the notification by both the Contracting States to each other of the completion of the proceedings required by their laws for bringing into force of the said agreement in accordance with paragraph 1 of Article 29 of the said agreement ;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said agreement shall be given effect to throughout the territory of India.

Notification : No. SO 563(E), dated 23-9-1997.

ANNEXURE

AGREEMENT BETWEEN THE REPUBLIC OF INDIA AND THE SULTANATE OF OMAN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of India and the Government of the Sultanate of Oman,

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;

Have agreed as follows :

ARTICLE 1 : *Personal scope* – This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2 : *Taxes covered* – 1. The taxes to which this Agreement shall apply are :

- (a) in India, the income-tax including any surcharge thereon;
(hereinafter referred to as Indian tax)
- (b) in the Sultanate of Oman :
 - (i) the Company Income-tax ;
 - (ii) the Profit Tax on Commercial and Industrial Establishments;
(hereinafter referred to as Omani tax)

2. This Agreement shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Agreement 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 within one year from the date of such changes.

ARTICLE 3 : *General Definitions* – 1. In this Agreement, unless the context otherwise requires :

- (a) the term India means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdictions, according to the Indian Law and in accordance with international law and the U.N. Convention on the Law of the Sea ;
- (b) the term the Sultanate of Oman means the territory of the Sultanate of Oman and the islands belonging thereto, including the territorial waters and any area outside the territorial waters over which the Sultanate of Oman may, in accordance with international law, exercise sovereign rights with respect to the exploration and exploitation of the natural resources of the sea-bed and the sub-soil and the above-lying waters ;
- (c) the terms a Contracting State and the other Contracting State mean India or the Sultanate of Oman as the context requires ;
- (d) the term company means any body corporate or any entity which is treated as a company or body corporate under the taxation laws in force in the respective Contracting States ;

- (e) the term competent authority means in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative; and in the case of Sultanate of Oman, the Ministry of National Economy and Supervisor of Ministry of Finance or his authorised representative.
- (f) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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 ;
- (g) the term fiscal year means :
 - (i) in the case of India, previous year as defined under section 3 of the Income-tax Act, 1961 ;
 - (ii) in the case of the Sultanate of Oman, the taxable year as defined in the Company Income-tax Law, 1981 ;
- (h) 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 ;
- (i) the term national means any individual possessing the nationality of a Contracting State, and any legal person, partnership or association deriving its status from the laws in force in the Contracting State;
- (j) the term person includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States;
- (k) the term tax means Indian tax or Omani tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Agreement applies or which represents a penalty imposed relating to those taxes.

2. As regards the application of this Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that Contracting State concerning the taxes to which this Agreement applies.

ARTICLE 4 : *Resident* – 1. For the purposes of this Agreement, the term resident of a Contracting State means any person who, under the laws of that Contracting State, is liable to tax 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 status shall be determined as follows :

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests) ;
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode ;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national ;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 State in which its place of effective management is situated.

ARTICLE 5 : *Permanent establishment* – 1. For the purposes of this Agreement, the term permanent establishment means a fixed place of business through which the business of the enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;

- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) a building site or construction or assembly project or supervisory activities in connection therewith; but only where such site, project or activity continues for a period of more than 6 months.

3. Notwithstanding the preceding provisions of this Article, the term permanent establishment shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage, display or delivery 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, display or delivery;
- (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 of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any activity of a preparatory or auxiliary character.

4. Notwithstanding the provisions of paragraphs 1 and 2, where a person (other than an agent of independent status to whom paragraph 5 applies) is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 3 of this Article which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

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, provided that 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 the 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 : *Income from immovable property* – 1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other Contracting State.

2. The term immovable property shall have the meaning which it has under the 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall also 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, the profits of the enterprise may be taxed in the other

Contracting State but only so much of them as is attributable directly or indirectly to that permanent establishment.

The words directly or indirectly mean, for the purposes of this Article, that where a permanent establishment takes an active part in negotiating, concluding or fulfilling contracts entered into by the enterprise, then notwithstanding that other parts of the enterprise have also participated in those transactions, there shall be attributed to the permanent establishment that proportion of profits of the enterprise arising out of those contracts as the contribution of the permanent establishment to those transactions bears to that of the enterprise as a whole.

2. Subject to the provisions of paragraph 3, 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.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business 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 in accordance with the provisions of and subject to the limitations of the tax laws of that State.

4. Insofar 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 contained in this Article.

5. No profits shall be attributed to a permanent establishment by reasons of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6. For the purposes 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 Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8 : *Air Transport* –¹ 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 also apply to profits from the participation in a pool, a joint business or an international operating agency.

3. For the purposes of this Article, interest on funds directly connected with the operation of aircraft in international traffic shall be regarded as income or profits derived from the operation of such aircraft, and the provisions of Article 12 shall not apply in relation to such interest.

4. The term operation of aircraft means business of transportation by air of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of aircraft, including the sale of tickets for such transportation on behalf of other enterprises, the incidental lease of aircraft and any other activity directly connected with such transportation.

5. For the purposes of this Article and notwithstanding the provisions of paragraph 1 (f) of Article 3, the term enterprise of a Contracting State means:

- (i) in case of the Sultanate of Oman, Gulf Air, Oman Aviation Services Company (SAOG) and any other enterprise carried on by a resident of the Sultanate of Oman
- ;

- (ii) in case of India, Air India, Indian Airlines and any other enterprise carried on by a resident of India.

ARTICLE 9 : *Shipping* – 1. Profits derived by an enterprise of a Contracting State from the operation of ships in international traffic shall be taxable only in that Contracting State.

2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

3. For the purposes of this Article, interest on funds directly connected with the operation of ships in international traffic shall be regarded as income or profits from the operation of such ships and the provisions of Article 12 shall not apply in relation to such interest.

4. The term operation of ships means business of transportation by sea of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of ships, including the sale of tickets for such transportation. On behalf of other enterprises, the incidental lease of ships and any other activity directly connected with such transportation.

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 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 laws of the 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 owns at least 10 per cent of the shares of the company paying the dividends ;
- (b) 12 per cent of the 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 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 Contracting 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 Contracting 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 16, 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 companys undistributed profits to a tax on the companys 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 beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2,

(a) interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by :

(i) the Government, a political sub-division or a local authority of the other Contracting State; or

(ii) the Central Bank of the other Contracting State;

(b) interest arising in a Contracting State shall be exempt from tax in that Contracting State to the extent approved by the Government of that Contracting State if it is derived and beneficially owned by any person other than a person referred to in sub-paragraph (a) who is resident of the other Contracting State provided that the transaction giving rise to the debt-claim has been approved in this regard by the Government of the first-mentioned Contracting State.

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 debtors 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 and 2 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 16, 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 Contracting State. However, where the person paying the interest, whether he is a resident of a Contracting State or not, has in that 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 such 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 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 the other provisions of this Agreement.

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 that 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 15 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, including 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.

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 Contracting 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 16, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State where the payer is that Contracting State itself, a political sub-division, a local authority or a resident of that Contracting State. However, where the person paying the royalties, whether he is a resident of a Contracting State or not, has in that 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 the 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 special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of 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 the other provisions of this Agreement.

ARTICLE 14 : *Technical fees* – 1. Technical fees arising in a Contracting State which are derived by a resident of the other Contracting State may be taxed in that other Contracting State.

2. However, such technical fees 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 technical fees, the tax so charged shall not exceed 15 per cent of the gross amount of the technical fees.

3. The term technical fees as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a technical, managerial or consultancy nature.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the technical fees, being a resident of a Contracting State carries on business in the other Contracting State in which the technical fees arise through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein and the technical fees are effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 16, as the case may be, shall apply.

5. Technical fees 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 the Contracting State. However, where the person paying the technical fees, whether he is a resident of that Contracting State or not, has in that Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the technical fees was incurred, and such technical fees are borne by such permanent establishment or fixed base then the technical fees 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 technical fees paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the

provisions of the 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 the other provisions of this Agreement.

ARTICLE 15 : *Capital gains* – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6, and situated in the other Contracting State may be taxed in that other Contracting State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such fixed base, may be taxed in that other Contracting State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft or both shall be taxable only in the Contracting State of which the alienator is a resident.

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that Contracting State.

5. Gains from the alienation of shares other than those mentioned in paragraph 4 in a company which is a resident of a Contracting State may be taxed in that Contracting State.

6. Gains from the alienation of any property other than that mentioned in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 16 : *Independent personal services* – 1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that Contracting State except in the

following circumstances when such income may also be taxed in the other Contracting State :

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in the relevant fiscal year ; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

ARTICLE 17 : *Dependent personal services* – 1. Subject to the provisions of Articles 18, 19, 20, 21, 22 and 23, 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 the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed 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 exercised in the other Contracting State shall be taxable only in the first-mentioned Contracting State if:

- (a) the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in the relevant fiscal year, and
- (b) the remuneration is paid by, or on behalf of an employer who is not a resident of the other Contracting State, and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other Contracting State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State shall be taxable only in that Contracting State. In case of aircraft, the term enterprise of a Contracting State shall have the same meaning as defined in paragraph 5 of Article 8 of this Agreement.

ARTICLE 18 : *Directors fees* – Directors fees and other 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 may be taxed in that other Contracting State.

ARTICLE 19 : *Income earned by entertainers and sportspersons* – 1. Notwithstanding the provisions of Articles 16 and 17, income derived by a resident of a Contracting State as an entertainer such as a theatre, motion picture, radio or television artiste, or a musician or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other Contracting State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7, 16 and 17, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. Notwithstanding the provisions of paragraph 1, income derived by an entertainer or a sportsperson who is a resident of a Contracting State from his personal activities as such exercised in the other Contracting State, shall be taxable only in the first-mentioned Contracting State, if the activities in the other Contracting State are supported wholly or substantially from the public funds of the first-mentioned Contracting State, including any of its political sub-divisions or local authorities.

4. Notwithstanding the provisions of paragraph 2 and Articles 7, 16 and 17, where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such in a Contracting State accrues not to the entertainer or sportsperson himself but to another person, that income shall be taxable only in the

other Contracting State, if that other person is supported wholly or substantially from the public funds of that other Contracting State, including any of its political sub-divisions or local authorities.

ARTICLE 20 : *Remuneration and pensions in respect of Government service* – 1. (a) Remuneration other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that Contracting State or sub-division or authority shall be taxable only in that Contracting State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other Contracting State and the individual is a resident of that Contracting State who :

- (i) is a national of that other Contracting State; or
- (ii) did not become a resident of that other Contracting State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that Contracting State or sub-division or authority shall be taxable only in that Contracting State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of that other Contracting State.

3. The provisions of Articles 17, 18 and 21 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

ARTICLE 21 : *Non-Government pensions and annuities* – 1. Any pension, other than a pension referred to in Article 20, or any annuity derived by a resident of a Contracting State from sources within the other Contracting State may be taxed only in the first-mentioned Contracting State.

2. The term pension means a periodic payment made in consideration of past services or by way of compensation for injuries received in the course of performance of services.

3. 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 moneys worth.

ARTICLE 22 : *Payments received by students and apprentices* – 1. A student or business apprentice who is or was a resident of a Contracting State immediately before visiting the other Contracting State and who is present in that other Contracting State solely for the purpose of his education or training, shall be exempt from tax in other Contracting State on :

- (a) payments made to him by persons residing outside that other Contracting State for the purposes of his maintenance, education or training; or
- (b) remuneration from employment in that other Contracting State, in an amount not exceeding US dollars 2,000 or its equivalent amount during any fiscal year, provided that such employment is directly related to his studies or is undertaken for the purpose of his maintenance.

2. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article for more than three consecutive years from the date of his first arrival in that other Contracting State.

ARTICLE 23 : *Payments received by professors, teachers and research scholars* – 1. A professor or teacher who is or was resident of a Contracting State immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college, school or other approved institution in that other Contracting State shall be exempt from tax in that other Contracting State on any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival that other 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 22, an individual shall be deemed to be a resident of a Contracting State if he is a resident in that Contracting State in the fiscal year in which he visits the other Contracting State or in the immediately preceding fiscal year.

4. For the 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.

ARTICLE 24 : *Other income* – 1. Subject to the provisions of paragraph 2 of this Article, items of income of a resident of a Contracting State, wherever arising, which are not expressly dealt with in the foregoing Articles of this Agreement, shall be taxable only in the Contracting State.

2. The provisions of paragraph 1 of this Article shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the right of property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or 16, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Agreement and arising in the other Contracting State may also be taxed in that other State.

ARTICLE 25 : *Avoidance of double taxation* – 1. The law in force in either of the Contracting States will continue to govern the taxation of income in the respective Contracting States except where provisions to the contrary are made in this Agreement.

2. Where a resident of India derives income which, in accordance with the provisions of this Agreement, may be taxed in the Sultanate of Oman, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in the Sultanate of Oman, whether directly or by deduction. Such deduction shall not, however, exceed that part of the income-tax (as computed before the deduction is given) which is attributable to the income which may be taxed in the Sultanate of Oman.

3. Where a resident of the Sultanate of Oman derives income which, in accordance with the provisions of this Agreement, may be taxed in India, the Sultanate of Oman shall allow as a deduction from the tax on the income of the resident an amount equal to the income-tax paid in India, whether directly or by deduction. Such deduction shall not, however, exceed that part of the income-tax (as computed before the deduction is given) which is attributable to the income which may be taxed in India.

4. The tax payable in a Contracting State mentioned in paragraph 2 and paragraph 3 of this Article shall be deemed to include the tax which would have been payable but for the tax incentives granted under the laws of the Contracting State and which are designed to promote economic development.

5. Income which, in accordance with the provisions of this Agreement, is not to be subjected to tax in a Contracting State, may be taken into account for calculating the rate of tax to be imposed in that Contracting State.

ARTICLE 26 : *Mutual agreement procedure* – 1. Where a person 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 Agreement, 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. This case must be presented within three years of the date of receipt of notice of the action which gives rise to taxation not in accordance with the Agreement.

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 Agreement. Any agreement reached shall be implemented notwithstanding any time-limits in the domestic laws of the Contracting State.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement, any difficulties or doubts arising as to the interpretation of application of this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.

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. 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 Contracting States.

ARTICLE 27 : *Exchange of information* – 1. The competent authorities of the Contracting States shall exchange such information (including documents) as it is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by this Agreement, insofar as the taxation thereunder is not contrary to this Agreement, in particular for the prevention of fraud or evasion of such taxes. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that Contracting State. However, if the information is originally regarded as secret in the transmitting State, it shall be disclosed only to persons or authorities (including Courts and administrative bodies) involved in the assessment or collection of the enforcement or prosecution in respect of, or the determination of objections and appeals in relation to the taxes which are the subject of this Agreement. Such persons or authorities shall use the information only for such purposes but may disclose the information in public court proceedings or in judicial decisions. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchange of information shall be made, including, where appropriate, exchange of information regarding tax avoidance.

2. The exchange of information or documents 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 the information or documents 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 or documents 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 or documents 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 28 : *Diplomatic and consular activities* – Nothing in this Agreement 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 29 : *Entry into force* – 1. Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Agreement. This Agreement shall enter into force on the date of the latter of these notifications and shall thereupon have effect :

- (a) in India, in respect of income arising in any fiscal year beginning on or after the first day of April next following the calendar year in which the latter of the notifications is given;
- (b) in the Sultanate of Oman, in respect of income arising on or after the first day of January in the calendar year immediately following that in which the latter of the notifications is given.

2. The Agreement between the Government of India and the Government of Sultanate of Oman for the Avoidance of Double Taxation of income derived from International Transport signed at New Delhi on 23rd October, 1984 and the exemptions granted

under that Agreement will cease to have effect on the date on which this Agreement comes into force.

ARTICLE 30 : *Termination* – This Agreement shall remain in force indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give the other Contracting State through diplomatic channels, written notice of termination and, in such event, this Agreement shall cease to have effect :

- (a) in India, in respect of income arising in any fiscal year beginning on or after the 1st day of April next following the calendar year in which the notice is given;
- (b) in the Sultanate of Oman, in respect of income arising on or after the 1st day of January next in the calendar year immediately following that in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed the present Agreement.

DONE in duplicate at New Delhi, this 2nd day of April, one thousand nine hundred and ninety-seven in the Arabic, Hindi and English languages, all the texts being equally authentic. In case of divergent interpretation of the texts, the English text shall prevail.

PROTOCOL

At the signing the Agreement between the Republic of India and the Sultanate of Oman for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, both sides have agreed upon the following provision which shall be an integral part of the Agreement :

If an air transport enterprise of India with respect to profits referred to in Article 8 is charged to any tax of the kind referred to in Article 2 in one of the shareholding States of Gulf Air, the Contracting States shall reopen negotiations without delay with a view to arriving at an appropriate solution in respect of the application of Article 8 of the Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Protocol.

DONE in duplicate at New Delhi, this 2nd day of April, one thousand nine hundred and ninety-seven in the Arabic, Hindi and English languages, all the texts being equally authentic. In case of divergent interpretation of the texts, the English text shall prevail.

Limited Agreements with respect to Income of Airlines/Merchant Shipping

Agreement for avoidance of double taxation of income derived from international air transport with Oman¹

Whereas the annexed Agreement between the Government of India and the Government of the Sultanate of Oman for the avoidance of double taxation of income derived from international air transport has come into force on the notification by both the Contracting States to each other of completion of the procedures required by their respective laws, as required by article 5 of the said Agreement;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), and section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964), the Central Government hereby directs that all the provisions of the said agreement shall be given effect to in the Union of India.

Notification : No. GSR, 313(E), dated 27-3-1985.

TEXT OF ANNEXED AGREEMENT, DATED 23-10-1984

The Government of India and the Government of the Sultanate of Oman, desiring to conclude an Agreement for the avoidance of double taxation of income derived from international air transport. Have agreed as follows :

ARTICLE 1 – Taxes covered – 1. The existing taxes to which this Agreement shall apply are :

- (a) in the case of the Sultanate of Oman, the income-tax imposed under the Income-tax Decree, 1971, and the company income-tax imposed under the Company Income-tax Law, 1981 (hereinafter referred to as Omani tax);
- (b) in the case of India,

- (i) the income-tax including any surcharge thereon imposed under the Income-tax Act, 1961 (43 of 1961);
- (ii) the surtax imposed under the Companies (Profits) Surtax Act, 1964 (7 of 1964) (hereinafter referred to as Indian tax).

2. This Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the taxes referred to in paragraph (1) of this article. The competent authorities of the Contracting States shall notify each other of any substantial changes which are made in their respective taxation laws.

ARTICLE 2 – *Definitions* – 1. For the purposes of this agreement, unless the context otherwise requires

- (a) the term Sultanate of Oman means the territory of Oman including the territorial sea and air space above it as well as any other maritime zone referred to in decree 15/1981, concerning the territorial waters, the continental shelf and the exclusive economic zone in which Oman has sovereign rights and to the extent that those rights can be exercised therein as if such maritime zone is part of the territory of Oman;
- (b) the term India means the territory of India and includes the territorial sea and air space above it as well as any other maritime zone referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (Act No. 80 of 1976), in which India has sovereign rights and to the extent that these rights can be exercised therein as if such maritime zone is a part of the territory of India;
- (c) the terms a Contracting State and the other Contracting State mean Sultanate of Oman or India as the context requires;
- (d) the term tax means Omani tax or Indian tax as the context requires;
- (e) the term enterprises of India includes enterprises designated by the Government of India;
- (f) the term enterprises of Oman includes enterprises designated by the Government of the Sultanate of Oman;

- (g) the term international traffic means any transport by an aircraft operated by an enterprise of a Contracting State, except when the aircraft is operated solely between places in the other Contracting State;
- (h) the expression operation of aircraft means business of carriage by air of passengers, livestock, goods or mail carried on by the owners or lessees or charterers of aircraft, including the sale of tickets for such transportation on behalf of other enterprises, the incidental lease of aircraft and any other activity directly connected with such transportation.

2. The list of enterprises designated by each Government in terms of sub-paragraphs (e) and (f) of paragraph (1), as given in the annex to this Agreement, may be modified by mutual agreement through exchange of letters between both States.

3. In the application of the provisions of this Agreement, by one of the Contracting States, any term used but not defined herein shall, unless the context otherwise requires, have the meaning which it has under the laws in force in that State relating to the taxes which are the subject of this Agreement.

ARTICLE 3 – *Avoidance of double taxation* – 1. Income which an enterprise of Oman derives from the operation of aircraft in international traffic shall be exempted in India from Indian tax.

2. Income which an enterprise of India derives from the operation of aircraft in international traffic shall be exempted in Oman from Omani tax.

3. The provisions of paragraphs (1) and (2) shall also apply to income from the participation in a pool, a joint business or an international operating agency.

4. For the purposes of paragraphs (1) and (2), interest on funds directly connected with the operation of aircraft in international traffic shall be regarded as income from the operation of aircraft.

ARTICLE 4 – *Residual provisions* – The laws in force in either of the Contracting States will continue to govern the assessment and taxation of income in the Contracting States except where express provision to the contrary is made in this Agreement.

ARTICLE 5 – *Entry into force* – 1. Each State shall notify to the other the completion of the procedure required by its law for the bringing into force of this Agreement. The agreement shall enter into force on the first day of the second month following the month in which the latter of these notifications has been given.

2. The provisions of this Agreement shall have effect in respect of income derived on or after the 1st day of January, 1971.

3. No action would be taken to reopen assessments in respect of the period prior to the 1st day of January, 1971.

ARTICLE 6 – *Termination* – This Agreement shall continue in effect indefinitely but either Contracting State may, on or before the thirtieth day of June in any calendar year, give notice of termination to the other Contracting State and in such event this agreement shall cease to be effective

(a) in the Sultanate of Oman, in respect of any tax year commencing on or after the 1st day of January of the second calendar year following the year in which the notice is given;

(b) in India, in respect of any assessment year commencing on or after the 1st day of April of the second calendar year following the year in which the notice is given.

IN WITNESS WHEREOF the undersigned, duly authorised thereto have signed this Agreement.

DONE at New Delhi this 23rd day of October, 1984 in two originals in the Hindi, Arabic and English languages, all texts being equally authentic. In case of dispute as to interpretation and application of this Agreement, the English text shall prevail.

ANNEX – LIST OF DESIGNATED ENTERPRISES, VIDE ARTICLE 2, PARAGRAPH (2)

Enterprises designated by the Government of India : Air India Enterprises designated by the Government of the Sultanate of Oman: Gulf Air Company (known as Gulf Air)

Philippines

Agreement for avoidance of double taxation and prevention of fiscal evasion with Philippines

Whereas the annexed Convention between the Government of the Republic of India and the Government of the Republic of Philippines for the avoidance of double taxation and the prevention of fiscal evasion with respect of taxes on income has entered into force on the 21st March, 1994, after the notification by both the Contracting States to each other of the completion of the procedures required under their laws for bringing into force of the said Convention in accordance with Article 29 of the said Convention.

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in the Union of India.

Notification : *No. GSR 173(E), dated 2-4-1996 and as amended by Notification No. SO 125(E), dated 2-2-2005.*

ANNEXURE

CONVENTION BETWEEN THE GOVERNMENT OF INDIA AND THE REPUBLIC OF THE PHILIPPINES FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of India and the Government of the Republic of the Philippines.

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

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. This Convention shall apply are to taxes of income imposed on behalf of each Contracting State, irrespective of manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property, and taxes on the total amounts of wages or salaries paid by enterprises.

3. The taxes to which this Convention shall apply are :

(a) in India :

(i) the income-tax including any surcharge thereon imposed under the Income-tax Act, 1961 (43 of 1961) ;

(ii) the surtax imposed under the Companies (Profits) Surtax Act, 1964 (7 of 1964) ;

(hereafter referred to as Indian tax) ;

(b) in the Philippines :

the income-taxes imposed by the Government of the Republic of the Philippines ;

(hereafter to as Philippine tax).

4. The Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of 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 State shall notify each other of any substantial changes which are made in their respective taxation laws.

ARTICLE 3 : GENERAL DEFINITIONS – 1. In this Convention, unless the context otherwise requires :

(a) the term India means the territory of India and includes the territorial sea and air space above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdictions, according to the Indian law and in accordance with international law/the U.N. Convention on the Law of the Sea ;

- (b) the term Philippines means the Republic of the Philippines and when used in a geographical sense means the national territory comprising the Republic of the Philippines ;
- (c) the terms a Contracting State and the other Contracting State mean India or the Philippines as the context requires ;
- (d) the term tax means Indian tax or Philippine tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty imposed relating to those taxes ;
- (e) the term person includes an individual, a company and any other taxable unit under the taxation laws in force in the respective Contracting States ;
- (f) the term company means any body corporate or any entity which is treated as a company or body corporate under the taxation laws in force in the respective Contracting States ;
- (g) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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 ;
- (h) the term competent authority means in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative; and in the case of the Philippines, the Secretary of Finance or his authorized representative ;
- (i) the term national means any individual, possessing the citizenship of a Contracting State and any legal person, partnership or association deriving its status from the laws in force in the other Contracting State ;
- (j) 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 the Convention by a Contracting State, any term not defined herein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

ARTICLE 4 : RESIDENT – 1. For the purposes of this Convention, the term resident of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his status shall be determined as follows :

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests) ;
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode ;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national ;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 State in which its place of effective management is situated.

If the place of effective management cannot be determined, then the competent authorities shall settle the question by mutual agreement.

ARTICLE 5 : PERMANENT ESTABLISHMENT – 1. For the purposes of this Convention, the term permanent establishment means a fixed place of business through which the business of the enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (a) a place of management ;

- (b) a branch ;
- (c) an office ;
- (d) a factory ;
- (e) a workshop ;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources ;
- (g) a place of exploration of natural resources ;
- (h) a building site or construction project or supervisory activities in connection therewith, where such site, project or activity continues for a period of more than six months ;
- (i) a warehouse, in relation to a person providing storage facilities for others.

3. Notwithstanding the preceding provisions of this Article, the term permanent establishment shall be deemed not to include :

- (a) the use of facilities solely for the purpose of storage, display or delivery 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, display or delivery ;
- (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 of collecting information, for the enterprise ;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character ;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

4. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State (other than an agent of an independent status to whom paragraph 6

applies) shall be deemed to be a permanent establishment in the first-mentioned State if :

- (a) he has, and habitually exercises in the State, an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to those mentioned in paragraph 3 of this Article ; or
- (b) he has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise ; or
- (c) in so acting, he manufactures or processes in that State for the enterprise goods or merchandise belonging to the enterprise.

5. An insurance enterprise of a Contracting State shall, except in regard to reinsurance, be deemed to have a permanent establishment in the other State if it collects premiums in the territory of that State or insures risks situated therein through an employee or through a representative who is not agent of an independent status.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of the enterprise, he shall not be considered an agent of an independent status within the meaning of this paragraph if it is shown that the transactions between the agent and the enterprise were not made under arms-length conditions. In such a case, the provisions of paragraph 4 shall apply.

7. 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 otherwise) shall not of itself constitute for either company a permanent establishment of the other.

ARTICLE 6 : INCOME FROM IMMOVABLE PROPERTY – 1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall also 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, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, 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.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business 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.

4. Insofar 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 contained in this article.

5. No profits shall be attributed to a permanent establishment by reason of more purchase by that permanent establishment of goods or merchandise for the enterprise.

6. For the purposes 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 in that State.

2. Notwithstanding the provisions of paragraph 1, profits from sources within a Contracting State derived by an enterprise of the other Contracting State from the operation of aircraft in international traffic may be taxed in the first-mentioned State in accordance with its domestic law, but the tax so charged shall be reduced by forty per cent. In no case, however, shall the tax so charged exceed the lowest rate of Philippine tax that may be imposed on profits of the same kind derived under similar circumstances by a resident of a third State.

3. The provisions of paragraphs 1 and 2 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9 : SHIPPING – 1. Profits derived by an enterprise of a Contracting State from the operation of ships in international traffic shall be taxable in that State.

2. Notwithstanding the provisions of paragraph 1, profits from sources within a Contracting State derived by an enterprise of the other Contracting State from the operation of ships in international traffic may be taxed in the first-mentioned State in accordance with its domestic law, but the tax so charged shall be reduced by forty per cent. In no case, however, shall the tax so charged exceed the lowest rate of Philippine tax that may be impose on profits of the same kind derived under similar circumstances by a resident of a third State.

3. The provisions of paragraphs 1 and 2 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 10 : ASSOCIATED ENTERPRISES – 1. 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.

2. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent

enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall, if necessary, consult each other.

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 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 laws of that State, but if the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed :

- (a) 15 per cent of the gross amount of the dividends if the beneficial owner is a company which owns at least ten per cent of the shares of the company paying the dividends;
- (b) 20 per cent of the 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 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 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 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 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 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 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 beneficial owner of the interest the tax so charged shall not exceed :

- (a) 10% of the gross amount of interest if the interest is received by a financial institution (including insurance companies) ;
- (b) the Philippine tax on interest paid by a company which is a resident of the Philippines to a resident of India in respect of public issues of bonds, debentures or similar obligations shall not exceed 10 per cent of the gross amount of interest ; and
- (c) 15% of the gross amount of interest in all other cases.

3. Notwithstanding the provisions of paragraph 2

- (a) interest arising in a Contracting State shall be exempt from tax in that State, provided it is derived and beneficially owned by :
 - (i) the Government, a political sub-division or a local authority of the other Contracting State ;
 - (ii) the Central Bank of the other Contracting State ; or

- (iii) other lending institutions as may be specified and agreed in letters exchanged between the competent authorities of the Contracting State ;
- (b) interest arising in a Contracting State shall be exempt from tax in that Contracting State to the extent approved by the Government of that State if it is derived and beneficially owned by any person [other than a person referred to in subparagraph (a)] who is a resident of the other Contracting State, provided that the transaction giving rise to the debt-claim has been approved in this regard by the Government of the first-mentioned Contracting State.
4. The term interest as used in this Article means income from debt-claims of every kind, including sales on credit of any industrial, commercial or scientific equipment, whether or not secured by mortgage and whether or not carrying a right to participate in the debtors 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 the Article.
5. The provisions of paragraphs 1 and 2 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 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 resident 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 such 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 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 the other provisions of this Convention.

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 State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 15 per cent of the gross amount of the royalties provided that such royalties are payable :

- (i) in the case of Philippines, by an enterprise which is registered with the Board of Investment, and
- (ii) in the case of India, by an enterprise in pursuance of any collaboration agreement approved by the Government of India.

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, including 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.

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 State itself, a political sub-division, a local authority or a resident of that 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 State in which the permanent establishment or fixed base is situated.

6. Where, by reason of special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of 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 the other provisions of this Convention.

ARTICLE 14 : CAPITAL GAINS – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property, referred to in Article 6, and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.

4. Gains from the alienation of shares of a company, the property of which consists principally of immovable property situated in a Contracting State, may be taxed in that State. Gains from the alienation of interest in a partnership or a trust, the property of which consists principally of immovable property situated in a Contracting State, may be taxed in that State.

5. Gains from the alienation of any property other than that mentioned in paragraphs 1, 2, 3 and 4 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 15 : INDEPENDENT PERSONAL SERVICES – 1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State except in the following circumstances when such income may also be taxed in the other Contracting State :

(a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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) *1[if the recipient is present in the other State for a period or periods exceeding in the aggregate 183 days in the relevant previous year in the case of Republic of India or calendar year in the case of Republic of the Philippines.]*

2. The term professional services includes 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 (Directors Fees), 18 (Entertainers and Athletes), 19 (Government Service), 20 (Non-Government Pensions and Annuities), 21 (Students and Trainees) and 22 (Professors and Teachers), 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if :

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the relevant previous year in the case of Republic of India or calendar year in the case of the Republic of the Philippines ;
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State ; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State shall be taxable only in that State.

ARTICLE 17 : DIRECTORS FEES – Directors 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 may be taxed in that other State.

ARTICLE 18 : ENTERTAINERS AND ATHLETES – 1. Notwithstanding the provisions of Articles 15 (Independent Personal Services) and 16 (Dependent Personal Services), 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 State.

2. While 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 (Business Profits), 15 (Independent Personal Services) and 16 (Dependent Personal Services), be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. Notwithstanding the provisions of paragraph 1, income derived by an entertainer or an athlete who is a resident of a Contracting State from his personal activities as such exercised in the other Contracting State, shall be taxable only in the first-mentioned Contracting State, if the activities in the other Contracting State are exercised pursuant to a special programme between the Governments of the two Contracting States for cultural exchange and are supported substantially from the public funds of the first-mentioned Contracting State or a political sub-division, or a local authority thereof or from the funds of a statutory body, or a non-profit organisation which is certified as qualifying under this provision by the competent authority of that State.

4. Notwithstanding the provisions of paragraph 2 and Articles 7 (Business Profits), 15 (Independent Personal Services), and 16 (Dependent Personal Services), where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such in a Contracting State accrues not to the entertainer or athlete himself but to another person, that income shall be taxable only in the other Contracting State if such activities are exercised by an entertainer or athlete of that other Contracting State pursuant to a special programme between the Governments of the two Contracting States for cultural exchange and are supported substantially from the public funds of that other State, a political sub-division or a local authority thereof or from the funds of a statutory body, or a non-profit organisation which is certified as qualifying by the competent authority of that other State of which he is a resident.

ARTICLE 19 : GOVERNMENT SERVICE – 1. (a) Remuneration, other than a pension paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who :

(i) is a national of that State ; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of that other State.

3. The Provisions of Articles 16 (Dependent Personal Services), 17 (Directors Fees) and 20 (Non-Government Pensions and Annuities) shall apply to remuneration and pensions in respect of services rendered in connection with business carried on by a Contracting State or a political sub-division or a local authority thereof.

ARTICLE 20 : NON-GOVERNMENT PENSIONS AND ANNUITIES – 1. Any pension, other than a pension referred to in Article 19, or any annuity derived by a resident of a Contracting State from sources within the other Contracting State may be taxed only in the first-mentioned Contracting State.

2. The term pension means a periodic payment made in consideration of past services or by way of compensation for injuries received in the course of performance of services.

3. 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 moneys worth.

ARTICLE 21 : STUDENTS AND TRAINEES – 1. A student or business apprentice who is or was a resident of one of the Contracting States immediately before visiting the other

Contracting State and who is present in that other State solely for the purpose of his education or training, shall be exempt from tax in that State on :

- (a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training; and
- (b) remuneration from employment in that other State, in an amount not exceeding Rs. 15,000 or its equivalent in Philippine currency during any previous year in the case of Republic of India or calendar year in the case of the Republic of the Philippines, provided that such employment is directly related to his studies or is undertaken for the purpose of his maintenance.

2. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article for more than three consecutive years from the date of his first arrival in that other Contracting State.

3. The amounts referred to in paragraphs 1 and 2 of this Article may be reviewed and agreed upon by the competent authorities of both Contracting States from time to time.

ARTICLE 22 : PROFESSORS AND TEACHERS – 1. A professor or teacher who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college, school or other approved institution in that other Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival in that other 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 in the case of Republic of India or calendar year in the case of the Republic of the

Philippines, in which he visits the other Contracting State or in the immediately preceding previous year or the year of income.

4. For the 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.

ARTICLE 23 : OTHER INCOME – Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

ARTICLE 24 : ELIMINATION OF DOUBLE TAXATION – 1. The laws in force in either of the Contracting States shall continue to govern the taxation of income in the respective Contracting States except where provisions to the contrary are made in this Convention.

2. The amount of Philippine tax payable, under the laws of the Philippines and in accordance with the provisions of this Convention, whether directly or by deduction, by a resident of India, in respect of profits or income arising in the Philippines, which have been subjected to tax both in India and in the Philippines, shall be allowed as a credit against the Indian tax payable in respect of such profits or income provided that such credit shall not exceed the Indian tax (as computed before allowing any such credit) which is appropriate to the profits or income arising in the Philippines. Further, 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.

3. The term Philippine tax payable shall be deemed to include the amount of Philippine tax which would have been paid if the Philippine tax had not been exempted or reduced in accordance with this Convention and the special incentive laws designed to promote economic development in the Philippines, effective on the date of signature of this Convention, or which may be introduced in the future in the Philippine taxation laws in modification of, or in addition to, the existing laws.

4. The amount of Indian tax payable under the laws of India and in accordance with the provisions of this Convention, whether directly or by deduction, by a resident of the Philippines, in respect of profits or income arising in India, which has been subjected to tax both in India and the Philippines, shall be allowed as a credit against Philippine tax payable in respect of such profits or income provided that such credit shall not exceed the Philippine tax (as computed before allowing any such credit) which is appropriate to the profits or income arising in India.

5. For the purposes of the credit referred to in paragraph 4, the term Indian tax payable shall be deemed to include any amount which would have been payable as Indian tax for any assessment year but for an exemption or reduction of tax granted for that year or any part thereof by the special incentive measures under the provisions of the Income-tax Act, 1961 (43 of 1961), which are designed to promote economic development, or which may be introduced hereafter in modification of, or in addition to, the existing provisions for promoting economic development in India.

ARTICLE 25 : 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 in the same circumstances.

3. Nothing contained in this Article shall be construed as obliging a Contracting State to grant to persons not resident in that State any personal allowances, reliefs, reductions and deductions for taxation purposes which are by law available only to persons who are so resident.

4. 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 in the same circumstances.

5. Notwithstanding the preceding provisions of this Article, either Contracting State may, in the promotion of necessary industry or business, limit to its nationals the enjoyment of tax incentives granted by it.

6. In this Article, the term taxation means taxes which are the subject of this Convention.

ARTICLE 26 : MUTUAL AGREEMENT PROCEDURE – 1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic laws of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 25, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Convention.

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 a satisfactory solution, to resolve the case by mutual agreement with the competent authority of other Contracting State, with a view to the avoidance of taxation which is not in accordance with the provisions of this 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 this Convention. They may also consult together for the elimination of double taxation in cases not provided for in this Convention relating to the taxes which are the subject of this 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. 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.

ARTICLE 27 : EXCHANGE OF INFORMATION – 1. The competent authorities of the Contracting States shall exchange such information (including documents) as is necessary for carrying out the provisions of the Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention, insofar as the taxation thereunder is not contrary to the Convention, in particular for the prevention of fraud or evasion of such taxes. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State. However, if the information is originally regarded as secret in the transmitting State, it shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes which are the subject of the Convention. Such persons or authorities shall use the information only for such purposes but may disclose the information in public court proceedings or in judicial decisions. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchange of information shall be made, including, where appropriate, exchange of information regarding tax avoidance.

2. The exchange of information or documents 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 the information or documents which shall be furnished on a routine basis.

3. In no case shall the provisions of paragraphs 1 and 2 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 or documents 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 or documents 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 28 : DIPLOMATIC AGENTS AND CONSULAR OFFICERS – 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 29 : ENTRY INTO FORCE – Each of the Contracting States shall notify to the other completion of the procedures required by its law for the bringing into force of this Convention. This Convention shall enter into force on the date of the later of these notifications and shall thereupon have effect :

- (a) in India, in respect of income arising in any previous year beginning on or after the first day of April next following the calendar year in which the later of the notifications is given ;
- (b) in Philippines, in respect of income arising in any year of income beginning on or after the first day of January next following the calendar year in which the later of the notification is given.

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

- (a) in India, in respect of income arising in any previous year beginning on or after the 1st day of April, next following the calendar year in which the notice is given ;
- (b) in Philippines, in respect of income arising in any year of income beginning on or after the 1st day of January, next following the calendar year in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed the present Convention.

DONE in duplicate at Manila this twelfth day of February, one thousand nine hundred and ninety-six in Hindi and English languages, both the texts being equally authentic. In case of divergence in interpretation, the English text shall prevail.

PROTOCOL

1. For purposes of Article 1, nothing in this Convention shall be construed as preventing either Contracting State from taxing its citizens, in accordance with its domestic legislation, who may be residing in the other Contracting State. However, no credit shall be given under this Convention for taxes paid/payable in pursuance of such domestic legislation.

2. For purposes of paragraph 3 of Article 7, the deductions in respect of expenses incurred outside the Contracting State shall be restricted as per the limitation on allowance of such expenses provided in the domestic law of the concerned Contracting State.

3. For purposes of paragraph 2 of Articles 8 and 9, the rate of tax prescribed therein is understood to include the Branch Profit Remittance Tax as may be leviable by either Contracting State.

4. With reference to Articles 8 and 9 if at any time after the date of signature of the Convention the Philippines agrees to a lower or *nil* rate of tax with a third State the Government of the Republic of the Philippines shall without undue delay inform the Government of India through diplomatic channels and the two Governments will undertake to review these Articles with a view to providing such lower or *nil* rate to profits of the same kind derived under similar circumstances by enterprises of both Contracting States.

Poland

Agreement for avoidance of double taxation and prevention of fiscal evasion with Poland

Whereas the annexed Agreement between the Government of the Republic of India and the Government of the Polish Peoples Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income has come into force on the 26th October, 1989, after the notification by both the Contracting States and communication to each other of the completion of procedures required under their laws for bringing into force of the said Agreement in accordance with article 30 of the said Agreement ;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961) and section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964), the Central Government hereby directs that all the provisions of the said Agreement shall be given effect to in the Union of India.

Notification : No. GSR 72(E), dated 12-2-1990.

ANNEXURE

AGREEMENT BETWEEN THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE POLISH PEOPLES REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of India and the Government of the Polish Peoples Republic desiring to further develop and facilitate the economic relationship between the two countries, and having decided to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

Have agreed as follows :

ARTICLE 1 – *Personal scope* – This agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2 – *Taxes covered* – 1. The taxes to which this Agreement shall apply are :

(a) in India :

(i) the income-tax including any surcharge thereon imposed under the Income-tax Act, 1961 ;

(ii) the surtax imposed under the Companies (Profits) Surtax Act, 1964 ;
(hereinafter referred to as Indian tax)

(b) in Poland :

(i) the income-tax (podatek dechodowy) ;

(ii) the tax on wages and salaries (podatek od wynagrodzen) ;

(iii) the equalisation tax (podatek wyrównawczy) ; and

(iv) the agriculture tax (podatek rolny).

(hereinafter referred to as Polish tax).

2. The Agreement shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of the present Agreement 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, which are the subject of this Agreement.

ARTICLE 3 – *General definitions* – 1. In this Agreement, unless the context otherwise requires :

(a) the term India means the Republic of India and, when used in a geographical sense means the territory of the Republic of India and any maritime area adjacent to the territorial waters of the Republic of India within which, under the laws of India and in accordance with international law, the Republic of India has sovereignty or sovereign and exclusive rights ;

(b) the term Poland means the Polish Peoples Republic and when used in a geographical sense means the territory of the Polish Peoples Republic and any maritime area adjacent to the territorial waters of the Polish Peoples Republic within which, under the laws of the Polish Peoples Republic and in

accordance with international law, the Polish Peoples Republic has sovereignty or sovereign and exclusive rights ;

- (c) the terms a Contracting State and the other Contracting State mean India or Poland, as the context requires ;
- (d) the term tax means Indian tax or Polish tax as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Agreement applies or which represents a penalty imposed relating to those taxes ;
- (e) the term person includes an individual, a company and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States ;
- (f) the term company means any body corporate or any entity which is treated as a company or body corporate under the taxation laws in force in the respective Contracting States;
- (g) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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 ;
- (h) the term competent authority means in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative; and in the case of Poland, the Minister of Finance or his authorised representative ;
- (i) the term national means any individual possessing the nationality of a Contracting State and any legal person, partnership or association deriving the status from the laws in force in the Contracting State ;
- (j) 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 the Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Agreement applies.

ARTICLE 4 – *Fiscal residence* – 1. For the purposes of this Agreement, the term resident of a Contracting State means any person who, under the laws of that State, is liable to tax 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 status shall be determined as follows :

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests) ;
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode ;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national ;
- (d) if the question of residence cannot be determined according to the provisions of sub-paragraphs (a) to (c), the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 State in which its place of effective management is situated.

ARTICLE 5 – *Permanent establishment* – 1. For the purposes of this Agreement, the term permanent establishment means a fixed place of business through which the business of the enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (a) a place of management ;
- (b) a branch ;
- (c) an office ;

- (d) a factory ;
- (e) a workshop ;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources ;
- (g) a warehouse in relation to a person providing storage facilities for others ;
- (h) a farm, plantation or other place where agriculture, forestry plantation or related activities are carried on ;
- (i) premises used as sales outlet or for receiving or soliciting orders ;
- (j) an installation or structure used for the exploration of natural resources ;
- (k) a building site or construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or activities continue for a period of more than six months.

3. Notwithstanding the preceding provisions of this Article, the term permanent establishment shall be deemed not to include :

- (a) the use of facilities solely for the purpose 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 of collecting information, for the enterprise ;
- (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.

However, the provisions of sub-paragraphs (a) to (e) shall not be applicable where the enterprise maintains any other fixed place of business in the other Contracting State for any purposes other than the purposes specified in the said sub-paragraphs.

4. Notwithstanding the provisions of paragraphs 1 and 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 that State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise ; or
- (b) he has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of 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 State through a broker, general commission agent or any other agent of an independent status provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise itself or on behalf of that enterprise and other enterprises controlling, controlled by, or subject to the same common control, as that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

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 – *Income from immovable property* – 1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct for immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall also 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, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to (a) that permanent establishment; (b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or (c) other business activities carried on in that other State of the same or similar kind as those affected through that permanent establishment.

2. Subject to the provisions of paragraph 3, 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 or the determination thereof presents exceptional difficulties, the profits attributable to the permanent establishment may be estimated on a reasonable basis.

3. In the determination of the profits of a permanent establishment, there shall be allowed a deduction expenses which are incurred for the purpose of the business 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, in accordance with the provisions of and subject to the limitations of the taxation laws of that State. However, no such deduction shall be allowed in respect of amounts, if any, paid (other than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges, for specific services performed or for management, or except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges for specific services performed or for management, or except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. No profits shall be attributable to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. For the purposes 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.

6. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of these 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 State.

2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

3. For the purposes of this article, interest on funds connected with the operation of aircraft in international traffic shall be regarded as profits derived from the operation of such aircraft, and the provisions of article 12 shall not apply in relation to such interest.

4. The term operation of aircraft shall mean business of transportation by air of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of aircraft, including the sale of tickets for such transportation on behalf of other enterprises, the incidental lease of aircraft and any other activity directly connected with such transportation.

ARTICLE 9 – *Shipping* – 1. Profits from the operation of ships in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. If the place of effective management of an enterprise carrying on shipping in international traffic is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State in which the operator of the ship is a resident.

3. The provisions of paragraph 1 shall also apply to profits derived from the participation in a pool, a joint business or in an international operating agency.

4. Notwithstanding anything contained in paragraph 1 and article VIII of the Agreement dated 27 June, 1960 between the Government of India and the

Government of the Polish Peoples Republic regarding shipping cooperation, income derived by an enterprise of a Contracting State from the operation of ships from the ports of the other Contracting State to the ports of third countries and from the ports of third countries to the ports of the other Contracting State may be taxed in the other Contracting State, but the tax imposed in that other Contracting State shall be reduced by an amount equal to 50 per cent thereof.

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 resident of a Contracting State to a resident of the other Contracting State may be taxed in that other 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 laws of that State, but if the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed 15 per cent of the gross amount of the dividends where such dividends relate to contributions made after the entry into force of this Agreement.

The 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 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 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 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 State or so far 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 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 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 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 beneficial owner of the interest the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2,

(a) interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by :

(i) the Government, a political sub-division or a local authority of the other Contracting State ; or

(ii) the Central Bank of the other Contracting State ;

(b) interest arising in a Contracting State shall be exempt from tax in that State if it is beneficially owned by a resident of the other Contracting State and is derived in connection with a loan or credit extended or endorsed by :

(i) in the case of Poland, Bank Handlowy w Warszawie SA to the extent such interest is attributable to financing of exports and imports only ;

(ii) in the case of India, the Export-Import Bank of India (Exim Bank) to the extent such interest is attributable to financing of exports and imports only ;

(iii) any institution of a Contracting State in charge of public financing of external trade ;

(iv) any other person provided that the loan or credit is approved by the Government of the first-mentioned Contracting State.

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 debtors 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 and 2 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 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 resident 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 such 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 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 the other provisions of this Agreement.

ARTICLE 13 – *Royalties and fees for technical services* – 1. Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, or fees for technical services, the tax so charged shall not exceed 22.5 per cent of the gross amount of the royalties or fees for technical services.

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, including cinematograph films or tapes used for radio or television broadcasting, any patent, trade mark, design or model,

plant, 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.

4. The term fees for technical services as used in this article means payments of any amount to any person other than payments to an employee of a person making payments, in consideration for the services of a managerial, technical or consultancy nature, including the provision of services of technical or other personnel.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services 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, property or contract in respect of which the royalties or fees for technical services 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.

6. Royalties and fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties or fees for technical services, 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 or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of royalties or fees for technical services paid exceeds the amount which would have been paid in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount, and 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 Agreement.

ARTICLE 14 – *Capital gains* – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property, referred to in article 6, and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from the alienation of shares other than those mentioned in paragraph 4 in a company which is a resident of a Contracting State may be taxed in that State.

6. Gains from the alienation of any property other than that mentioned in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 15 – *Independent personal services* – 1. Income derived by an individual who is a resident of a Contracting State from the performance of professional services or other independent activities of a similar character shall

be taxable only in that State except in the following circumstances when such income may also be taxed in the other Contracting State :

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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 State ; or
- (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in the relevant previous year or year of income, as the case may be; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

2. The term professional services includes 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, 18, 19, 20, 21 and 22, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if :

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the relevant previous year or year of income, as the case may be ; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State ; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

ARTICLE 17 – Directors fees remuneration of top-level managerial officials – 1. Directors 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 may be taxed in that other State.

2. Salaries, wages and other similar remuneration derived by a resident of a Contracting State in his capacity as an official in a top-level managerial position of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 18 – Income earned by entertainers 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 a 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 State.

2. Where income in respect of personal activities exercised by an entertainer or 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. Notwithstanding the provisions of paragraph 1, income derived by an entertainer or an athlete who is a resident of a Contracting State from his personal activities as such exercised in the other Contracting State, shall be taxable only in the first-mentioned Contracting State, if the activities in the other Contracting State are within the framework of cultural or sports exchange programme agreed to by both Contracting States and are supported wholly or substantially from the public funds of the first-mentioned Contracting State, including any of its political sub-divisions or local authorities.

4. Notwithstanding the provisions of paragraph 2 and Articles 7, 15 and 16, where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such in a Contracting State accrues not to the entertainer or athlete himself but to another person, that income shall be taxable only in the other Contracting State, if the activities of that other person are within the framework of cultural or sports exchange programme agreed to by both Contracting States and are supported wholly or substantially from the public funds of that other State, including any of its political sub-divisions or local authorities.

ARTICLE 19 – Remuneration and pensions in respect of Government service – 1.

(a) Remuneration other than pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that Contracting State or a political sub-division or local authority thereof in discharge of functions of a governmental nature, shall be taxable only in that Contracting State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who :

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that other State.

3. The provisions of Articles 16, 17 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or local authority thereof.

ARTICLE 20 – *Non-governmental pensions and annuities* – 1. Any pension, other than a pension referred to in Article 19, or any annuity derived by a resident of a Contracting State from sources within the other Contracting State may be taxed only in the first-mentioned Contracting State.

2. The term pension means a periodic payment made in consideration of past services or by way of compensation for injuries received in the course of performance of services.

3. 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 moneys worth.

ARTICLE 21 – *Payments received by students and apprentices* – 1. Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

2. Income derived by a student or business apprentice in respect of activities exercised in a Contracting State in which he is present solely for the purpose of his education or training, shall not be taxable in that State, unless it exceeds the amount necessary for his maintenance, education or training.

3. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article, for more than five consecutive years from the date of his first arrival in that other Contracting State.

(4) For the purposes of this Article and Article 22, 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 the year of income, as the case may be, in which he

visits the other Contracting State or in the immediately preceding previous year or year of income.

ARTICLE 22 – Payments received by professors, teachers and research scholars

– 1. A professor or teacher who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college, school or other approved institution in that other Contracting State shall be exempt from tax in that other State or any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival in that other State.

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

3. For the 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.

ARTICLE 23 – Other income – 1. Subject to the provisions of paragraph 2, items of income of a resident of Contracting State, wherever arising which are not expressly dealt with in the foregoing Articles of this Agreement, shall be taxable only in that Contracting State.

2. The provisions of paragraph 1 shall not apply in income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right of property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such cases, the provisions of Article 7 or Article 15, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this

Agreement, and arising in the other Contracting State may be taxed in that other State.

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. The competent authorities shall through consultations develop appropriate bilateral procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article.

ARTICLE 24 – *Elimination of double taxation* – 1. The laws in force in either of the Contracting States will continue to govern the taxation of income in the respective Contracting States except where provisions to the contrary are made in this Agreement.

2. In both the Contracting States, double taxation will be avoided in the following manner :

- (a) Where a resident of a Contracting State derives income which, in accordance with the provisions of this agreement, may be taxed in the other Contracting State, the first-mentioned State shall, subject to the provisions of sub-paragraph (b) of this paragraph, exempt such income from tax but may, in calculating tax on the remaining income of that person, apply the rate of tax which would have been applicable if the exempted income has not been so exempted.
- (b) Either of the Contracting States when imposing taxes on its residents may include in the tax base upon which such taxes are imposed the items of income which according to the provisions of articles 11, 12 and 13 of this Agreement may also be taxed in the other State but shall allow as a deduction from the amount of tax computed on such a base an amount equal to the tax paid in other Contracting State. Such deduction shall not, however, exceed that part of tax leviable by the first-mentioned State, as computed before the deduction is given, which is appropriate to the income which, in accordance with the provisions of Articles 11, 12 and 13 of this Agreement, may be taxed in the other State.

3. For the purpose of sub-paragraph (b) of paragraph 2 the term tax paid in the other Contracting State shall be deemed to include any amount which would have been payable as tax but for any relief by way of a deduction allowed in computing the taxable income or an exemption or a reduction of tax or otherwise under the laws relating to taxation of income in force in that other Contracting State.

ARTICLE 25 – *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 State than the taxation levied on enterprises of that other State carrying on the same activities in the same circumstances or under the same conditions.

3. Nothing contained in this Article shall be construed as obliging a Contracting State to grant to persons not resident in that State any personal allowances, reliefs, reductions and deductions for taxation purposes which are by law available only to persons who are so resident.

4. 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 in the same circumstances and under the same conditions.

5. In this Article, the term taxation means taxes which are the subject of this Agreement.

6. Except where the provisions of Article 11, paragraph 7 of Article 12, or paragraph 7 of Article 13 of this Agreement apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

7. The exemptions, reliefs, reductions, deductions and allowances for taxation purposes available under the domestic laws of the two Contracting States shall not be adversely affected by any provision of this Agreement.

ARTICLE 26 – *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 Agreement, 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. This case must be presented within three years of the date of receipt of notice of the action which gives rise to taxation not in accordance with the Agreement.

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 avoidance of taxation not in accordance with the Agreement. 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 the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

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. 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.

ARTICLE 27 – *Exchange of information* – 1. The competent authorities of the Contracting States shall exchange such information (including documents) as is necessary for carrying out the provisions of the Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement, insofar as the taxation, thereunder is not contrary to the Agreement, in particular for the prevention of fraud or evasion of such taxes. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State. However, if the information is originally regarded as secret in the transmitting State, it shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Agreement. Such persons or authorities shall use the information only for such purposes but may disclose the information in public court proceedings or in judicial decisions. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchange of information shall be made, including, where appropriate, exchange of information regarding tax avoidance.

2. The exchange of information or documents 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 the information or documents 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 or documents 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 or documents 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 28 – *Assistance in collection* – 1. The Contracting States undertake to lend assistance and support to each other, in the collection of the taxes to which this agreement relates, in the cases where the taxes are definitely due according to the laws of the States 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 State in accordance with the laws applicable to the enforcement and collection of its taxes.

3. In the case of Indian tax, the request will be sent by the Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, India to Minister of Finance, Poland or his authorised representative 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 Poland tax, the request will be sent by the Minister of Finance, Poland or his authorised representative to the Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, India and will be accompanied by such certificate as is required by the laws of Poland 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.

ARTICLE 29 – *Diplomatic and Consular Activities* – Nothing in this Agreement 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 30 – *Entry into force* – Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Agreement. This Agreement shall enter into force on the date of the later of these notifications and shall thereupon have effect:

- (a) in India, in respect of income arising in any previous year beginning on or after the first day of April next following the calendar year in which the later of the notifications is given ;
- (b) in Poland, in respect of income arising in any year of income beginning on or after the first day of January next following the calendar year in which the later of the notifications is given.

ARTICLE 31 – *Termination* – This Agreement shall remain in force indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give the other Contracting State through diplomatic channels, written notice of termination and, in such event, this Agreement shall cease to have effect :

- (a) in India, in respect of income arising in any previous year beginning on or after the 1st day of April next following the calendar year in which the notice is given ;

(b) in Poland, in respect of income arising in any year of income beginning on or after the 1st day of January next following the calendar year in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed the present Agreement.

DONE in duplicate at WARSAW this twenty-first day of June, one thousand nine hundred and eighty-nine in the Hindi, Polish and English languages, all the texts being equally authentic. In case of divergence between the Hindi and Polish texts the English text shall prevail.

Portuguese Republic

Agreement for avoidance of double taxation and prevention of fiscal evasion with Portuguese Republic

Whereas the annexed Convention between the Government of the Republic of India and the Government of the Portuguese Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income has come into force, on the 30th April, 2000, thirty days after the date of exchange of diplomatic notes indicating the completion of internal legal procedures necessary in each Contracting State for the entry into force of this Convention in accordance with Article 29 of the said Convention;

Now, therefore, in exercise of the powers conferred under section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in the Union of India.

Notification : No. GSR 542(E), dated 16-6-2000, as corrected by Notification No. SO 673(E), dated 25-8-2000 and GSR 597(E), dated 20-9-2005.

ANNEXURE

CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE PORTUGUESE REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of India and the Government of the Portuguese Republic, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

have agreed as follows :

CHAPTER I

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. This Convention shall apply to taxes on income imposed on behalf of a Contracting State or of its political or administrative subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property and taxes on the amounts of wages or salaries paid by enterprises.

3. The existing taxes to which this Convention shall apply are in particular :

(a) In the case of the Portuguese Republic :

- (i) Personal income-tax (Imposto sobre o Rendimento das Pessoas Singulares – IRS);
- (ii) Corporate Income-tax (Imposto sobre o Rendimento das Pessoas Colectivas – IRC);
- (iii) Local surtax on corporate income-tax (Derrama); (hereinafter referred to as Portuguese tax);

(b) In the case of the Republic of India :

The income-tax including any surcharge thereon; (hereinafter referred to as Indian tax).

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

CHAPTER II

DEFINITIONS

ARTICLE 3 : *General Definitions* – 1. For the purposes of this Convention, unless the context otherwise requires :

- (a) the term Portugal means the territory of the Portuguese Republic situated in the European Continent, the archipelagoes of Azores and Madeira, the respective territorial sea and any other zone in which, in accordance with the laws of Portugal and international law, the Portuguese Republic has its jurisdiction or sovereign rights with respect to the exploration and exploitation of the natural resources of the sea bed and sub-soil, and of the superjacent waters;
- (b) the term India means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdictions, according to the Indian law and in accordance with International law, including the U.N. Convention on the Law of the Sea, 1982;
- (c) the terms a Contracting State and the other Contracting State mean Portugal or India as the context requires;
- (d) the term tax means Portuguese tax or Indian tax, as the context requires;
- (e) the term person includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in a Contracting State;
- (f) the term company means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (g) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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;
- (h) 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;
- (i) the term competent authority means :

- (i) in Portugal : the Minister of Finance or the Director General of Taxation (Director-General dos Impostos) or their authorised representative;
- (ii) in India : the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative;
- (j) the term national means :
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State.
- (k) The term fiscal year means :
 - (i) in the case of Portugal, the civil year as laid down in the IRS Code or the taxation period as defined in the IRC Code;
 - (ii) in the case of India, previous year as defined under section 3 of the Income-tax Act, 1961.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall unless the context otherwise requires, have the meaning which it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

ARTICLE 4 : *Resident* – 1. For the purposes of this Convention, the term resident of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his status shall be determined as follows :

- (a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);

- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 only of the State in which its place of effective management is situated. If the State in which its place of effective management is situated cannot be determined, then the competent authorities of the Contracting States shall settle the question by mutual agreement.

ARTICLE 5 : *Permanent Establishment* – 1. For the purposes of this Convention, the term permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a sales outlet; and
- (g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources, including an installation or structure used for the exploration or exploitation of natural resources only if so used for a period of more than 120 days in a fiscal year.

3. A building site, construction, installation or assembly project or supervisory activities in connection therewith constitutes a permanent establishment only if it lasts more than nine months.

4. Notwithstanding the preceding provisions of this Article, the term permanent establishment shall be deemed not to include :

- (a) the use of facilities solely for the purpose of storage, display or delivery 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, display or delivery;
- (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 of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

15. Notwithstanding the provisions of paragraphs 1 and 2, where a person other than an agent of an independent status to whom paragraph 6 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 that State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited wholly to the activities described in paragraph 4;
- (b) he has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise and some additional activities conducted

in that State on behalf of the enterprise have contributed to the sale of the goods or merchandise.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

7. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 6 applies.

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

CHAPTER III

TAXATION OF INCOME

ARTICLE 6 : *Income from immovable property* – 1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work,

mineral deposits, sources and other natural resources; ships, boats, motor vehicles and aircraft shall not be regarded 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.

5. The foregoing provisions shall also apply to income from movable property, or income derived from services connected with the use or the right to use the immovable property, either of which, under the taxation law of the Contracting State in which the property is situated, is assimilated to income from immovable property.

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 other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to (a) that permanent establishment; (b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or (c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.

2. Subject to the provisions of paragraph 3, 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.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes 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, subject to the provisions of the domestic laws of the Contracting State in which the permanent establishment is situated.

4. 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.

5. For the purposes 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 reasons to the contrary.

6. 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 : *Shipping and air transport* – 1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State of which the enterprise is a resident.

2. The provisions of paragraph 1 shall also supply to profits from the participation in a pool, a joint business or an international operating agency.

3. Whenever companies from different countries have agreed to carry on an air transportation business together in the form of a consortium; the provisions of paragraph 1 shall apply to such part of the profits of the consortium as corresponds to the participation held in that consortium by a company that is a resident of a Contracting State.

4. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall mean profits derived from the transportation by sea or air of passengers, mail, livestock or goods carried on by the owner or lessees or charterers of the ships or aircraft, including profits from :

- (i) the sale of tickets for such transportation on behalf of other enterprises;
- (ii) the incidental lease of ships or aircraft used in such transportation; and

(iii) the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) by the enterprise engaged in international traffic in connection with such transportation.

5. Interest on funds generated by the operation of ships or aircraft and arising directly to a permanent establishment of an enterprise of one Contracting State in the other Contracting State, shall be regarded as profits derived from the operation of ships or aircraft in international traffic. It is clarified that such interest shall not refer to interest on fund representing investments.

ARTICLE 9 : *Associated enterprises* – 1. 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.

2. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10 : *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 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 laws of that State, but :

(a) Where the dividends are paid by a company which is a resident of Portugal to a resident of India who is the beneficial owner thereof, the Portuguese tax so charged shall not exceed :

(i) 15 per cent of the gross amount of the dividends; or

(ii) 10 per cent of the gross amount of the dividends if the beneficial owner is a company that, for an uninterrupted period of two years prior to the payment of the dividend, owns directly at least 25 per cent of the capital stock (capital social) of the company paying the dividends.

(b) Where the dividends are paid by a company which is a resident of India to a resident of Portugal who is the beneficial owner thereof, the Indian tax so charged shall not exceed :

(i) 15 per cent of the gross amount of the dividends; or

(ii) 10 per cent of the gross amount of the dividends if the beneficial owner is a company that, for an uninterrupted period of two fiscal years prior to the payment of the dividend, owns directly at least 25 per cent of the capital stock of the company paying the dividends.

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, jouissance shares or jouissance rights, mining shares, founders shares or other rights, not being debt-claims, participating in profits, as well as income 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. The term also includes profits

attributed under an arrangement for participation in profits (associacao em participacao).

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 14, 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 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 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 State, nor subject the companys undistributed profits to a tax on the companys undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly or profits or income arising in such other State.

ARTICLE 11 : *Interest* – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempted from tax in that State :

- (a) if the debtor of such interest is that State, a political or administrative sub-division or a local authority thereof; or

(b) if interest is paid to the other Contracting State, a political or administrative sub-division or a local authority thereof or an institution (including a financial institution) in connection with any finance granted by them under an agreement between the Governments of the Contracting States.

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 debtors 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 and 2 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 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 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political or administrative sub-division thereof, a local authority or a resident of that State. Where, however, the person paying the interest, 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 indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the 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 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 the other provisions of this Convention.

ARTICLE 12 : *Royalties and fees for included services* – 1. Royalties and fees for included services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties and fees for included services may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties and fees for included services is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

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 including cinematograph films or tapes or any other means of reproduction for use in connection with 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.

4. For the purposes of this Article, fees for included services means payments of any kind, other than those mentioned in Articles 14 and 15 of this Convention, to any person in consideration of the rendering of any technical or consultancy services (including through the provisions of services of technical or other personnel) if such services :

- (a) are ancillary and subsidiary to the application or enjoyment of the right, property or information for which a payment described in paragraph 3 is received, or
- (b) make available technical knowledge, experience, skill, know-how or processes or consist of the development and transfer of a technical plan or technical design which enables the person acquiring the services to apply the technology contained therein.

5. Notwithstanding paragraph 4, fees for included services does not include payments :

- (a) for services that are ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of property;
- (b) for services that are ancillary and subsidiary to the rental of ships, aircraft, containers or other equipment used in connection with the operation of ships or aircraft in international craft;
- (c) for teaching in or by educational institutions;
- (d) for services for the personal use of the individual or individuals making the payment;
- (e) to an employee of the person making the payments or to any individual or firm of individuals (other than a company) for professional services as defined in Article 14;
- (f) for services rendered in connection with an installation or structure used for the exploration or exploitation of natural resources referred to in paragraph 2(g) of Article 5;
- (g) for services referred to in paragraph 3 of Article 5.

6. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties and fees for included services, being a resident of a Contracting State, carries on business in the other Contracting State, in which the royalties and fees for included services 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 and fees for included services are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

7. Royalties and fees for included services shall be deemed to arise in a Contracting State where the payer is that State itself, a political or administrative sub-division thereof, a local authority or a resident of that State. Where, however, the person paying the royalties and fees for included services, whether he is a resident of a Contracting State or not, has in Contracting State a permanent establishment or fixed base in connection with which the obligation to pay the royalties and fees for included services

was incurred, and such royalties and fees for included services are borne by that permanent establishment or fixed base, then such royalties and fees for included services shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

8. 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 and fees for included services, 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 the other provisions of this Convention.

ARTICLE 13 : *Capital gains* – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State of which the enterprise is a resident.

4. Gains from the alienation of shares in the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may also be taxed in that State. Gains from the alienation of shares

other than those mentioned above in a company which is a resident of a Contracting State may be taxed in that State.

5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14 : *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 State except in the following circumstances, when such income may also be taxed in the other Contracting State :

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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 State; or
- (b) if his stay in the other State is for a period or periods exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in the other State may be taxed in that other State.

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

ARTICLE 15 : *Dependent personal services* – 1. Subject to the provisions of Articles 16, 18 and 19, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if :

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve-months period commencing or ending in the fiscal year concerned, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State of which the enterprise is a resident.

ARTICLE 16 : *Directors fees* – Directors fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or supervisory board (in Portugal, conselho fiscal) or of another similar organ of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 17 : *Artistes and sportsmen* – 1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15 be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

3. However, such income shall not be taxed in the State mentioned in paragraph 1 if the said activities are exercised during a visit to that State by a resident of the other Contracting State and when such visit is wholly or substantially financed by that other State, a political or administrative sub-division or a local authority thereof.

ARTICLE 18 : *Pensions* – Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

ARTICLE 19 : *Government Service* – 1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political or administrative sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State;

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who :

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political or administrative sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State;

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages and other similar remuneration, and to pensions, in respect of services rendered in connection with a business carried on by a Contracting State or a political or administrative sub-division or a local authority thereof.

ARTICLE 20 : *Professors, Teachers and Research Scholars* – 1. A professor, teacher or research scholar who is or was a resident of the Contracting State immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college, school or other approved institution in that

other Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival in that other 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 State in the fiscal year in which he visits the other Contracting State or in the immediately preceding fiscal year.

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

ARTICLE 21 : *Students and trainees* – Payments which a student, a business apprentice or trainee who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives, for the purpose of his maintenance, education or training, shall not be taxed in that State, provided that such payments :

(a) arise from sources outside that State;

(b) are remuneration from employment in that other State in an amount not exceeding US \$ 3,000 per annum during a period not exceeding two years from the day of his first arrival in that other Contracting State, provided that such employment is directly related to his studies.

ARTICLE 22 : *Other Income* – 1. Items of income of a resident of a Contracting State, wherever arising, not dealt within the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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 income is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraph 1, if a resident of a Contracting State derives income from sources within the other Contracting State in the form of lotteries, crossword puzzles, races including horse races, card games and other games of any sort or gambling or betting of any form or nature whatsoever, such income may be taxed in the other Contracting State.

CHAPTER IV

METHODS FOR ELIMINATION OF DOUBLE TAXATION

ARTICLE 23 : *Elimination of double taxation* – 1. The laws in force in either of the Contracting State will continue to govern the taxation of income in the respective Contracting States except where provisions to the contrary are made in this Convention.

2. In the case of Portugal double taxation shall be eliminated as follows :

Where a resident of Portugal derives income which, in accordance with the provisions of this Convention, may be taxed in India, Portugal shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in India. Such deduction shall not, however, exceed that part of the income-tax as computed before the deduction is given, which is attributable to the income which may be taxed in India.

3. In the case of India double taxation shall be eliminated as follows :

Where a resident of India derives income which, in accordance with the provisions of this Convention, may be taxed in Portugal, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in Portugal whether directly or by deduction at source. Such amount shall not, however, exceed

that part of the income-tax, as computed before the deduction is given, which is attributable to the income which may be taxed in Portugal.

4. Where in accordance with any provisions of this Convention, income derived by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

5. The tax paid in a Contracting State mentioned in paragraphs ¹[2 and 3] and of this Article shall be deemed to include the tax on dividends, interest, royalties and fees for included services and business profits which would have been payable as laid down in this Convention but for the legal provisions concerning tax reduction or exemption of the Contracting States for the encouragement of genuine investment or economic development. The provisions of this paragraph shall apply for the first seven years during which this Convention is applicable. This period may be extended by mutual agreement between the competent authorities.

CHAPTER V

SPECIAL PROVISIONS

ARTICLE 24 : *Non-discrimination* – 1. 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, in particular with respect to residence, are or may be subjected. The provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

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. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and

reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 6 of Article 11, or paragraph 4 of Article 12, apply, interest, royalties, technical fees and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

4. 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 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 the first-mentioned State are or may be subjected.

5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

ARTICLE 25 : *Mutual agreement procedure* – 1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

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 a satisfactory 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 which is not in accordance with the Convention.

Any agreement reached shall be implemented notwithstanding any time-limits in the domestic law 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 the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

ARTICLE 26 : *Exchange of information* – 1. The competent authorities of the Contracting States shall exchange such information, including authenticated copies of the documents, as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. 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 and administrative practice of that or of the other Contracting State;
- (b) to supply information which is 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 27 : *Collection assistance* – 1. The Contracting States agree to provide mutual assistance and support for recovering, in accordance to the respective provisions and rules of their legislations or regulations, the taxes covered by this Convention, when these amounts are definitely due under the laws and regulations of the Contracting State seeking the assistance for such recovery.

2. The competent authorities of the Contracting States shall consult each other to decide the mode of application of this Article in case they consider the rendering of assistance for collection of taxes feasible.

ARTICLE 28 : *Members of diplomatic missions and consular posts* – Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions and consular posts under the general rules of international law or under the provisions of special agreements.

ARTICLE 29 : *Entry into force* – 1. This Convention shall enter into force on the thirtieth day after the date on which diplomatic notes indicating the completion of internal legal procedures necessary in each Contracting State for the entry into force of this Convention have been exchanged.

2. This Convention shall apply :

(a) in Portugal :

- (i) in respect of taxes withheld at source, the fact giving rise to them appearing on or after the first day of January in the year next following the year in which this Convention enters into force;
- (ii) in respect of other taxes as to income arising in the fiscal year beginning on or after the first day of January in the year next following the year in which this Convention enters into force;

(b) in India :

in respect of income arising in any fiscal year beginning on or after the first day of April next following the calendar year in which the Convention enters into force.

ARTICLE 30 : *Termination* – This Convention shall remain in force indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year from the fifth year following that in which the notifications have been given, terminate the Convention through diplomatic channels. In such event, the Convention shall cease to have effect :

(a) in Portugal :

- (i) in respect of taxes withheld at source, the fact giving rise to them appearing on or after the first day of January of the year next following the date on which the period specified in the said notice of termination expires;
- (ii) in respect of other taxes, as to income arising in the fiscal year beginning on or after the first day of January next following the date on which the period specified in the said notice of termination expires;

(b) in India :

in respect of income arising in any fiscal beginning on or after the first day of April next following the date on which the period specified in the said notice of termination expires.

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

Done in duplicate, at Lisbon this September 11th day of 1998 in Hindi, Portuguese and English languages, each text being equally authentic, the English text prevailing in case of doubt.

PROTOCOL

At the moment of signing the Convention between the Republic of India and the Portuguese Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, the undersigned have agreed upon the following which shall be an integral part of the Convention.

Ad Article 3

For the purposes of paragraph 3, the reference to the time of application of the Convention shall mean the time when the income which is the subject-matter of this Convention arises.

Ad Articles 3 and 23

For the purposes of paragraph 1(d) of Article 3 and Article 23, the expression tax shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which the Convention applies or which represents a penalty imposed relating to those taxes.

Ad Article 5

For the purposes of paragraph 2, a warehouse in relation to a person providing storage facilities for others will be considered as constituting a permanent establishment.

Ad Article 6

For the purposes of paragraph 1, it is agreed that the Contracting State of which the person deriving income from property is a resident is also entitled to tax such income.

Ad Article 7

For the purposes of paragraph 3, it is agreed that the provisions of the domestic tax laws referred to therein relate, in the case of India, to section 44C of the Income-tax Act, 1961. It is further agreed that in no event the conditions and limits referred to in section 44C shall be less favourable than those in force on the date of the signing of this Convention.

Ad Article 13

For the purposes of paragraphs 1 and 4, it is agreed that the Contracting State of which the person deriving the capital gains is a resident is also entitled to tax such capital gains.

Ad Article 23

It is understood that the term economic development used in paragraph 5 of Article 23 would mean industrial development or development of infrastructural facilities.

Ad Article 24

1. The provisions of Article 24 do not preclude the application of any provision of the tax law of the Contracting States dealing with in capitalisation problems.
2. The provisions of Article 24 shall be construed in the sense that insofar as the deductibility of the incurred disbursements is concerned, each Contracting State may apply its own procedures regarding the burden of proof.
3. The provisions of paragraph 2 shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which a company of the other Contracting State has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first-mentioned Contracting State subject to the difference between the two rates not being more than 10%.

In witness whereof, the undersigned, duly authorised thereto, have signed this Protocol.

Done in duplicate, at Lisbon this September 11th day of 1998 in Hindi, Portuguese and English languages, each text being equally authentic, the English text prevailing in case of doubt.

Qatar

Agreement for avoidance of double taxation and prevention of fiscal evasion with Qatar

Whereas the annexed Agreement between the Government of the Republic of India and the Government of the State of Qatar for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income has come into force on the 15th day of January, 2000, on the notification by both the Contracting States to each other, under Article 29 of the said Agreement, of the completion of the procedures required by their respective laws for bringing into force of the said Agreement;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Agreement shall be given effect to in the Union of India.

Notification : No. GSR 96(E), dated 8-2-2000.

ANNEXURE

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE STATE OF QATAR FOR THE AVOIDANCE OF DOUBLE TAXATION AND FOR THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of India and the Government of the State of Qatar, desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and with a view to promoting economic cooperation between the two countries, have agreed as follows :

ARTICLE 1 : *Persons covered* – This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2 : *Taxes covered* – 1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its political sub-divisions or local authorities irrespective of the manner in which they are levied.

2. The existing taxes to which the Agreement shall apply are in particular :

(a) In India :

the income-tax, including any surcharge thereon; and
(hereinafter referred to as Indian tax);

(b) In the State of Qatar :

the Income-tax ;
(hereinafter referred to as Qatari Tax).

3. The Agreement shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes referred to in para 2. The competent authorities of the Contracting States shall notify each other of significant changes which have been made in their respective taxation laws.

ARTICLE 3 : *General definitions* – 1. For the purposes of this Agreement, unless the context otherwise requires :

(a) the term India means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law, including the U.N. Convention on the Law of the Sea;

(b) the term The State of Qatar means the territory of the State of Qatar as well as its territorial sea and its continental shelf over which it exercises sovereign rights and jurisdiction according to the Qatari Law and in accordance with International Laws.

(c) the term person includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States;

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

- (e) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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;
- (f) the term international traffic means any transport by a ship or aircraft operated by an enterprise which is a resident of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (g) the term competent authority means :
 - (i) in India : the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative;
 - (ii) in the State of Qatar : the Minister of Finance, Economy and Commerce or his authorised representative;
- (h) the term national means :
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
- (i) the term fiscal year means :
 - (i) in the case of India, previous year as defined in the Income-tax Act, 1961 (43 of 1961);
 - (ii) in the case of the State of Qatar taxable year as defined in Qatar Income Tax Law;
- (j) the term tax means Indian tax or Qatari tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Agreement applies or which represents a penalty or fine imposed relating to those taxes;
- (k) the terms a Contracting State and the other Contracting State mean the Republic of India or the State of Qatar as the context requires.

2. As regards the application of the Agreement by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Agreement applies.

ARTICLE 4 : *Resident* – 1. For the purposes of this Agreement, the term resident of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows :

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 State in which its place of effective management is situated. If the State in which its place of effective management is situated cannot be determined, then the competent authorities of the Contracting States shall settle the question by mutual agreement.

ARTICLE 5 : *Permanent establishment* – 1. For the purposes of this Agreement, the term permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of natural resources;
- (g) a sales outlet;
- (h) a warehouse in relation to a person providing storage facilities for others;
and
- (i) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on.

3. A building site, construction, assembly project or supervisory activities in connection therewith constitute a permanent establishment only if such site, project or activity lasts more than six months.

4. An enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it provides services or facilities in connection with, or supplies plant and machinery on hire used for or to be used in the prospecting for, or extraction or exploitation of mineral oils in that State.

5. Notwithstanding the preceding provisions of this Article, the term permanent establishment shall be deemed not to include :

- (a) the use of facilities solely for the purpose of storage or display or delivery 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, display or delivery;
- (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 of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

6. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 8 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 Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person :

- (a) has and habitually exercises, in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 5 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
- (b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise; or
- (c) habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise itself or for the enterprise and other enterprises controlling, controlled by, or subject to the same control, as that enterprise.

7. Notwithstanding the preceding provisions of this Article an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated

therein through a person other than an agent of an independent status to whom paragraph 8 applies.

8. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

9. 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 otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6 : *Income from immovable property* – 1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may also be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded 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, the profits of the enterprise may also be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, 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.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business 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, in accordance with the provisions of and subject to the limitations of the tax laws of that State.

4. 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.

5. For the purposes 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.

6. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8 : *Shipping and air transport* – 1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. In the case of the State of Qatar for the purposes of the preceding paragraph the ships and aircraft shall mean Gulf Air Company and United Arab Shipping Company so long as the State of Qatar owns a share in these companies or any other air or sea transport enterprise designated by the Government of the State of Qatar.

3. Profits derived by a transportation enterprise which is a resident of a Contracting State from the use, maintenance, or rental of containers (including trailers and other equipment for the transport of containers) used for the transport of goods or merchandise in international traffic shall be taxable only in that Contracting State unless the containers are used solely within the other Contracting State.

4. For the purposes of this Article, interest on funds connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft, and the provisions of Article 11 shall not apply in relation to such interest.

5. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9 : *Associated enterprises* – 1. 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.

2. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall, if necessary consult each other. However, in such circumstances a Contracting State shall not adjust the profits of an enterprise after the expiry of the time limits provided under its statute of limitations.

ARTICLE 10 : *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 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 laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed :

- (a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which owns at least ten per cent of the shares of the company paying the dividend; and
- (b) 10 per cent of the 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 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 14, 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 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 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 State, nor subject the companys undistributed profits to a tax on the companys undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11 : *Interest* – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by :

- (i) the Government, a political sub-division or a local authority of the other Contracting State; or
- (ii) the Central Bank of the other Contracting State; or any other bank or governmental financial institutions/agencies that may be mutually agreed upon between the two Contracting States.

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 debtors 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 and 2 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 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 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that 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 resident 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 such 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 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 the other provisions of this Agreement.

ARTICLE 12 : *Royalties and fees for technical services* – 1. Royalties or fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

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

3. (a) 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 including cinematograph films and films or tapes for television or radio broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or any industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience ;

(b) The term fees for technical services means payment of any kind in consideration for the rendering of any managerial, technical or consultancy services including the provision of services by technical or other personnel but does not include payments for services mentioned in Articles 14 and 15 of this Agreement.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services being a resident of a Contracting State, carries on business in the other Contracting State, in which the royalties

or fees for technical services 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 or fees for technical services are paid in effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties or fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties or fees for technical services, 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 or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment, or fixed base then such royalties or fees for technical services shall be deemed to arise in the 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 or fees for technical services 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 the other provisions of this Agreement.

ARTICLE 13 : *Capital gains* – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may also be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting

State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may also be taxed in that other State.

3. Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in that State.

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from the alienation of shares other than those mentioned in paragraph 4 in a company which is a resident of a Contracting State may be taxed in that State.

6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5, shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14 : *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 State except in the following circumstances, when such income may also be taxed in the other Contracting State:

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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 State; or
- (b) if his stay in the other State is for a period or periods aggregating 183 days or more in any 12 month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

ARTICLE 15 : *Dependent personal services* – 1. Subject to the provisions of Articles 16, 18 and 19, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if :

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any 12 month period commencing or ending in the fiscal year concerned; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, by an enterprise of a Contracting State may be taxed in that State.

4. Notwithstanding the preceding provisions of this Article, the two Contracting States shall exempt salaries, wages, allowances and perquisites from tax in the case of employees of a designated national air transport carrier of either Contracting State provided that they are nationals of the other Contracting State.

ARTICLE 16 : *Directors fees* – Directors fees and other 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 may also be taxed in that other State.

ARTICLE 17 : *Artistes and sportspersons* – 1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. The provisions of paragraphs 1 and 2, shall not apply to income from activities performed in a Contracting State by entertainers or sportspersons if the visit to that State is substantially supported by public funds of one or both of the Contracting States or of political sub-divisions or local authorities thereof. In such a case, the income is taxable only in the Contracting State of which the entertainer or sportsperson is a resident.

ARTICLE 18 : *Pensions* – Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

ARTICLE 19 : *Government Service* – 1. (a) Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who :

- (i) is a national of that State; or
- (ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

ARTICLE 20 : *Students and apprentices* – A student or business apprentice who is or was a resident of a Contracting State immediately before visiting the other Contracting State and who is present in that other Contracting State solely for the purpose of his education or training shall be exempt from tax in that other State on :

- (a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training; and
- (b) remuneration from employment in that other State, in an amount not exceeding US \$ 1000 or its equivalent amount during any fiscal year,

as the case may be, provided that such employment is directly related to his studies or is undertaken for the purpose of his maintenance.

ARTICLE 21 : *Professors, teachers and research scholars* – 1. A professor or teacher who is or was a resident of the Contracting State immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college, school or other approved institution in that other Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival in that other State.

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

3. For the purposes of this Article and Article 20, an individual shall be deemed to be a resident of a Contracting State if he is resident in that State in the fiscal year in which he visits the other Contracting State or in the immediately preceding fiscal year.

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

ARTICLE 22 : *Other income* – 1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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 income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing articles of this Agreement and arising in the other Contracting State may also be taxed in that other State.

ARTICLE 23 : *Mutual Agreement Procedure* – 1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he

is a resident or, if his case comes under paragraph 1 of Article 25, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

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 a satisfactory 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 which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law 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 the Agreement. They may also consult each other for the elimination of double taxation in cases not provided for in the Agreement.

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. 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.

ARTICLE 24 : *Elimination of Double Taxation* – 1. The laws in force in either of the Contracting States will continue to govern the taxation of income in the respective Contracting States except where provisions to the contrary are made in this Agreement.

2. In the case of India, double taxation shall be eliminated as follows :

Where a resident of India derives income which, in accordance with the provisions of this Agreement, may be taxed in the State of Qatar, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in the State of Qatar whether directly or by

deduction at source. Such amount shall not, however, exceed that part of the income-tax as computed before the deduction is given, which is attributable to the income which may be taxed in the State of Qatar.

3. In the case of the State of Qatar double taxation shall be eliminated as follows :

Where a resident of the State of Qatar derives income which, in accordance with the provisions of this Agreement, may be taxed in India, the State of Qatar shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in India. Such deduction shall not, however, exceed that part of the income-tax, as computed before the deduction is given, which is attributable to the income which may be taxed in India.

4. The tax payable in the Contracting State mentioned in paragraphs 2 and 3 of this Article shall be deemed to include the tax which would have been payable but for the tax incentives granted under the laws of the Contracting State and which are designed to promote economic development.

ARTICLE 25 : *Non-discrimination* – 1. 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. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

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. This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which a company of the other Contracting State has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first-mentioned Contracting State, nor as

being in conflict with the provisions of paragraph 3 of Article 7 of this Agreement.

3. Nothing in this Article shall be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own nationals.

4. Nothing in this Article shall be construed as imposing a legal obligation on a Contracting State to extend to the residents of the other Contracting State the benefit of any treatment preference or privilege which may be accorded to any other State or its residents through agreements to which the first-mentioned Contracting State may be a party.

5. 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 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 the first-mentioned State are or may be subjected.

6. Except where the provisions of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

7. In this Article, the term taxation means taxes which are the subject of this Agreement.

ARTICLE 26 : *Exchange of information* – 1. The competent authorities of the Contracting States shall exchange such information (including documents), as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. 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 and administrative practice of that or of the other Contracting State;
- (b) to supply information or documents which is 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 27 : *Collection assistance* – 1. The Contracting States undertake to lend assistance to each other in the collection of taxes to which this Agreement relates, together with interest, costs, and civil penalties relating to such taxes, referred to in this Article as a revenue claim.

2. Request for assistance by the competent authority of a Contracting State in the collection of a revenue claim shall include a certification by such authority that, under the laws of that State, the revenue claim has been finally

determined. For the purposes of this Article, a revenue claim is finally determined when a Contracting State has the right under its internal law to collect the revenue claim and the taxpayer has no further rights to restrain collection.

3. Amounts collected by the competent authority of a Contracting State pursuant to this Article shall be forwarded to the competent authority of the other Contracting State. However, the first-mentioned Contracting State shall be entitled to reimbursement of costs, if any, incurred in the course of rendering such assistance to the extent mutually agreed between the competent authorities of the two States.

4. Nothing in this Article shall be construed as imposing on either Contracting State the obligation to carry out administrative measures of a different nature from those used in the collection of its own taxes or those which would be contrary to its public policy.

ARTICLE 28 : *Diplomatic agents and consular officers* – Nothing in this Agreement shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

ARTICLE 29 : *Entry into force* – 1. The Contracting States shall notify each other in writing, through diplomatic channels, the completion of the procedures required by the respective laws for the entry into force of this Agreement.

2. This Agreement shall enter into force thirty days after the receipt of the later of the notifications referred to in paragraph 1 of this Article.

3. The provisions of this Agreement shall have effect in India and in the State of Qatar in respect of income arising on or after the first day of the fiscal year next following the calendar year in which the Agreement enters into force.

ARTICLE 30 : *Termination* – This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate this Agreement, through diplomatic channels, by giving notice of termination at

least six months before the end of any calendar year after the expiration of five years from the date of entry into force of the Agreement. In such event, the Agreement shall cease to have effect in India and the State of Qatar, in respect of income arising on or after the first day of the fiscal year next following the calendar year in which the notice of termination is given.

In witness whereof the undersigned, being duly authorised thereto, have signed this Agreement.

Signed in two originals at New Delhi, this seventh day of April, 1999 in Arabic, Hindi and English languages, all three texts being equally authentic. In case of divergence between the texts, the English text shall be the operative one.

Romania

Agreement for avoidance of double taxation with Romania

Whereas the annexed Convention between the Government of the Republic of India and the Government of the Socialist Republic of Romania for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income has come into force on the 14th November, 1987 on the exchange of the Instruments of Ratification by both the Contracting States, as required by paragraph (1) of article 31 of the said Convention ;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961) and section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in the Union of India.

Notification: No. GSR 80(E), dated 8-2-1988.

TEXT OF ANNEXED AGREEMENT, DATED 10-3-1987

The Government of the Republic of India and the Government of the Socialist Republic of Romania desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and to promote and strengthen the economic relations between the two countries on the basis of equality in rights and reciprocal advantage, have agreed as follows :

ARTICLE 1 – *Personal scope* – This Convention shall apply to persons who are residents of one or both the Contracting States.

ARTICLE 2 – *Taxes covered* – 1. The taxes to which this Convention shall apply are :

(a) In the case of India :

(1) Income-tax and any surcharge thereon ; and

(2) Surtax ;

(hereinafter referred to as Indian tax).

(b) In the case of Romania :

- (1) the tax on incomes derived by individuals and corporate bodies ;
 - (2) the tax on the profits of joint companies constituted with the participation of some Romanian economic organisations and some foreign partners ; and
 - (3) the tax on income realised from agricultural activities ;
- (hereinafter referred to as Romanian tax).

2. The Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of the present Convention in addition to, or in place of, the taxes referred to in paragraph (1).

3. The competent authorities of the Contracting States shall notify to each other any significant changes which are made in their respective taxation laws which are the subject of this Convention and furnish copies of relevant enactments and regulations.

ARTICLE 3 – *General definitions* – 1. In this Convention, unless the context otherwise requires :

- (a) the term India means the territory of India and includes the territorial sea and air space above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdictions, according to the Indian law and in accordance with international law ;
- (b) the term Romania used in a geographical sense, means the territory of the Socialist Republic of Romania including the territorial sea and the continental shelf as well as any other area beyond the territorial waters of Romania where Romania exercises sovereign rights, in accordance with the international law and with its own law concerning the exploration and exploitation of the natural, biological and mineral resources existing in the sea, waters, seabed and sub-soil of these waters ;
- (c) the terms a Contracting State and the other Contracting State mean India or Romania as the context requires ;
- (d) the term tax means Indian tax or Romanian tax, as the context requires, but shall not include any amount which is payable in respect of any default

or omission in relation to the taxes to which this Convention applies or which represents a penalty imposed relating to those taxes ;

- (e) the term person shall have the meaning assigned to it in the taxation laws in force in the respective Contracting States ;
- (f) the term company means any body corporate including a joint company which is incorporated under the Romanian law or any entity which is treated as a company under the taxation laws of the respective Contracting States ;
- (g) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean, 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 ;
- (h) the term competent authority means in the case of India the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative, and in the case of Romania the Ministry of Finance or its authorised representative ;
- (i) the term national means :

- in the case of India, any individual possessing the nationality of India and any legal person, partnership or association deriving its status from the laws in force in India ;

- in the case of Romania, any individual possessing the citizenship of Romania and any legal person, partnership or association deriving its status from the laws in force in Romania ;

- (j) the term a political sub-division means a political sub-division in India;
- (k) the term an administrative territorial unit means an administrative territorial unit in Romania ;
- (l) 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. In the application of the provisions of this Convention by one of the Contracting States, any term not defined herein shall, unless the context

otherwise requires, have the meaning which it has under the laws in force in that State relating to the taxes which are the subject of this Convention.

ARTICLE 4 – *Fiscal domicile* – 1. For the purposes of this Convention, the term resident of a Contracting State means any person who is a resident of that State in accordance with the taxation laws of that State.

2. Where by reason of the provision of paragraph (1), an individual is a resident of both the Contracting States, then his residential status for the purposes of this Convention 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 (hereinafter referred to as his centre of vital interests) ;
- (b) If the Contracting States in which he has his centre of vital interests cannot be determined or if he does not have 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 national ;
- (d) If he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 means a fixed place of business through which the business of the enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (a) a place of management ;
- (b) a branch ;
- (c) an office ;
- (d) a factory ;
- (e) a workshop ;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources ;
- (g) a warehouse in relation to a person providing storage facilities for others ;
- (h) a farm, plantation or other place where agriculture, forestry, plantation or related activities are carried on ;
- (i) a premises used as a sales outlet or for receiving or soliciting orders ;
- (j) an installation or structure used for the exploration of natural resources ;
- (k) a building site or construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or supervisory activity (together with other such sites, projects or activities, if any) continues for a period of more than six months, or where such project or supervisory activity, being incidental to the sale of machinery or equipment, continues for a period not exceeding six months and the charges payable for the project or supervisory activity exceed 10 per cent of the sale price of the machinery or equipment.

3. Notwithstanding the preceding provisions of this article, the term permanent establishment shall be deemed not to include :

- (a) the use of facilities solely for the purpose 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 ;
- (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 ;
- (f) the selling of goods or merchandise belonging to the enterprise displayed in an occasional temporary fair or exhibition in the process of closing down of such fair or exhibition ;
- (g) project or supervisory activity, being incidental to sale of machinery or equipment, carried on by an enterprise other than the seller of machinery or equipment and not continuing for a period exceeding six months.

However, the provisions of sub-paragraphs (a) to (g) shall not be applicable where the enterprise maintains any other fixed place of business in the other Contracting State for any purposes other than the purposes specified in the said sub-paragraphs.

4. Notwithstanding the provisions of paragraphs (1) and (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 that State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise ;
- (b) he has no such authority, but habitually maintains in the first mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise 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 and other enterprises controlling, controlled by, or subject to the same common control as, that 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 carried on business in that other State through a broker, general commission agent or any other agent of an independent status provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise itself or on behalf of that enterprise and other enterprises controlling, controlled by, or subject to the same common control as, that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

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 carried 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 – *Income from immovable property* – 1. Income from immovable property may be taxed 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 of the Contracting State in which the property is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, oil wells, quarries and other places of extraction of natural resources. Ships and aircraft shall not be regarded 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, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to (a) that permanent establishment; (b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or (c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.

2. Subject to the provisions of paragraph (3), 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 or the determination thereof presents exceptional difficulties, the profits attributable to the permanent establishment may be estimated 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 purposes of the business 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, in accordance with the provisions of the taxation laws of that State. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head

office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. 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.

5. For the purposes 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.

6. 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 State.

2. The provisions of paragraph (1) shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

3. For the purposes of this Article, interest on funds connected with the operation of aircraft in international traffic shall be regarded as profits derived

from the operation of such aircraft, and the provisions of Article 12 shall not apply in relation to such interest.

4. The term operation of aircraft shall mean business of transportation by air of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of aircraft, including the sale of tickets for such transportation on behalf of other enterprises, the incidental lease of aircraft and any other activity directly connected with such transportation.

ARTICLE 9 – *Shipping* – 1. Profits derived by an enterprise of a Contracting State from the operation of ships in international traffic shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph (1), such profits may also be taxed in the other Contracting State if the shipping activities connected with the operation of ships in international traffic are carried on in that other State, but the tax so charged shall not exceed 2.50 per cent of the gross amount payable in respect of operation of ships in that other State.

3. The provisions of paragraphs (1) and (2) shall also apply to profits from the participation in a pool, a joint business or an international operating agency engaged in the operation of ships.

4. For the purposes of this Article, the gross amount payable in respect of operation of ships in a Contracting State shall mean the aggregate of the following amounts, namely :

- (a) the gross amount payable on account of carriage of passengers, livestock, mail or goods shipped at a port or ports in that Contracting State ;
- (b) interest arising in that Contracting State on funds connected with the operation of ships in international traffic ; and
- (c) the gross amount payable in that State on account of the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) in connection with the transport of goods or merchandise in international traffic.

The provisions of Article 12 shall not apply in relation to interest referred to in (b) above.

5. In determining the income of an enterprise of a Contracting State for the purposes of taxation in the other Contracting State, no deduction shall be allowed in respect of any loss or depreciation allowance admissible to that enterprise for any earlier previous year or calendar year, as the case may be.

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 only the 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 resident of a Contracting State to a resident of the other Contracting State may be taxed in that other 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 laws of that State, but if the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed :

- (a) 15 per cent of the gross amount of the dividends if the beneficial owner is a company which owns at least 25 per cent of the shares of the company paying the dividends ;
- (b) 20 per cent of the 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 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. In this context, the profits distributed by Romanian Joint Companies to the capital subscribers are assimilated to dividends.

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 16, 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 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 State or so far 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 State, nor subject the companys undistributed profits to a tax on the companys undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other 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 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

beneficial owner of the interest the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph (2),

(a) interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by :

(i) the Government, a political sub-division, an administrative territorial unit, or a local authority of the other Contracting State ; or

(ii) the Central Bank of the other Contracting State ;

(b) interest arising in a Contracting State shall be exempt from tax in that State if it is beneficially owned by a resident of the other Contracting State and is derived in connection with a loan or credit extended or endorsed by :

(i) in the case of Socialist Republic of Romania, BANCA ROMANA DE COMERT EXTERIOR to the extent such interest is attributable to financing of exports and imports only;

(ii) in the case of India, the Export-Import Bank of India (Exim Bank), to the extent such interest is attributable to financing of exports and imports only;

(iii) any institution of a Contracting State in charge of public financing of external trade;

(iv) any other person provided that the loan or credit is approved by the Government of the first-mentioned Contracting State.

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 debtors 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) and (2) 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 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 cases, the provisions of Article 7 or Article 16, 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, an administrative territorial unit, a local authority or a resident of that State. Where, however, the person paying the interest, 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 indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such 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 to the last-mentioned amount. In such cases, 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.

ARTICLE 13 – *Commission* – 1. Commission arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such commission may be taxed in the Contracting State in which it arises and according to the law of that State, but the tax so charged shall not exceed 5 per cent of the amount of the commission. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. The term commission as used in this Article means a payment made to a broker, a general commission agent or to any other person assimilated to such a broker or agent by the taxation law of the Contracting State in which such payment arises.

4. The provisions of paragraphs (1) and (2) shall not apply if the recipient of the commission, being a resident of a Contracting State, has in the other Contracting State in which the commission arises a permanent establishment with which the activity giving rise to the commission is effectively connected. In such a case, the provisions of Article 7 shall apply.

5. Commission shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, an administrative territorial unit, a local authority or a resident of that State. Where, however, the person paying the commission, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the activities for which the payment is made was incurred, and such commission is borne by such permanent establishment, then such commission shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where, by reason of a special relationship between the payer and the recipient or between both of them and some other person, the amount of the commission, having regard to the transaction for which it is paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such cases, the excess part of the payment shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 14 – *Royalties and fees for technical services* – 1. Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and according to the laws of that

State, but if the recipient is the beneficial owner of the royalties, or fees for technical services, the tax so charged shall not exceed 22.5 per cent of the gross amount of the royalties or fees for technical services.

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, including 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.

4. The term fees for technical services as used in this Article means payments of any amount to any person other than payments to an employee of a person making payments, in consideration for the services of a managerial, technical or consultancy nature, including the provision of services of technical or other personnel.

5. The provisions of paragraphs (1) and (2) shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services arise, through a permanent establishment situated therein, and performs in that other State independent personal services from a fixed base situated therein, and the right, property or contract in respect of which the royalties or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such cases, the provisions of Article 7 or Article 16, as the case may be, shall apply.

6. Royalties and fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, an administrative territorial unit, a local authority or a resident of that State. Where, however, the person paying the royalties or fees for technical services, 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 or fees for technical services was incurred, and such

royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of royalties or fees for technical services paid exceeds the amount which would have been paid in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such cases, 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.

ARTICLE 15 – *Capital gains* – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains arising from a capital asset being ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft by an enterprise of a Contracting State shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from the alienation of any property other than that referred to in paragraphs (1), (2), (3) and (4) shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 16 – *Independent personal services* – 1. Income derived by an individual who is a resident of a Contracting State from the performance of professional services or other independent activities of a similar character shall be taxable only in that State except in the following circumstances when such income may also be taxed in the other Contracting State :

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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 State ; or
- (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in the relevant previous year or calendar year, as the case may be, in that case, only so much of the income as is derived from his activities performed in that other state may be taxed in that other State.

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

ARTICLE 17 – *Dependent personal services* – 1. Subject to the provisions of Articles 18, 19, 20, 21, 22 and 23, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the relevant previous year or calendar year, as the case may be ;
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State ; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in the State.

ARTICLE 18 – *Directors fees and remuneration of top level managerial officials* –

1. Directors fees and other 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 may be taxed in that other State.

2. Salaries, wages and other similar remuneration derived by a resident of a Contracting State in his capacity as an official in a top level managerial position of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 19 – *Artistes and athletes* – 1. Notwithstanding the provisions of Articles 16 and 17, income derived by a resident of a Contracting State as an entertainer such as a 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 State.

2. Where income in respect of personal activities exercised by an entertainer or 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, 16 and 17, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. Notwithstanding the provisions of paragraph (1), income derived by an entertainer or an athlete who is a resident of a Contracting State from his personal activities as such exercised in the other Contracting State shall be taxable only in the first-mentioned Contracting State, if the activities in the other Contracting State are supported wholly or substantially from the public funds of the first-mentioned Contracting State, including any of its political sub-divisions, administrative territorial units or local authorities.

4. Notwithstanding the provisions of paragraph (2) and Articles 7, 16 and 17, where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such in a Contracting State accrues not to the entertainer or athlete himself but to another person, that income shall be taxable only in the other Contracting State, if that other person is supported wholly or substantially from the public funds of that other State, including any of its political sub-divisions, administrative territorial units or local authorities.

ARTICLE 20 – Remuneration and pensions in respect of Government service – 1.

(a) Remuneration, other than a pension, paid by a Contracting State, a political sub-division, an administrative territorial unit or a local authority thereof to an individual in respect of services rendered to that State, sub-division, unit or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who :

(i) is a national of that State ; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by a Contracting State, a political sub-division, an administrative territorial unit or a local authority thereof to an individual in respect of services rendered to that State, sub-division, unit or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State, if the individual is a resident of, and a national of that other State.

3. The provisions of Articles 17, 18 and 19 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State, a political sub-division, an administrative territorial unit or a local authority thereof.

ARTICLE 21 – *Non-Government pensions and annuities* – 1. Any pension, other than a pension referred to in Article 20, or any annuity derived by a resident of a Contracting State from sources within the other Contracting State may be taxed only in the first-mentioned Contracting State.

2. The term pension means a periodic payment made in consideration of past services or by way of compensation for injuries received in the course of performance of services.

3. 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 moneys worth.

ARTICLE 22 – *Students, apprentices and persons sent for specialisation* – 1. An individual who is or was resident of one of the Contracting States and who is temporarily present in the other Contracting State solely

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

shall be exempt from tax in that other State for a period of six years from his arrival in that other Contracting State in respect of

- (i) the remittance from abroad for the purposes of his maintenance, education, study or training ;
- (ii) the grant, allowance or award ; or
- (iii) any remuneration from abroad.

2. The same exemption shall apply to income derived by the above-mentioned individual from an employment which he exercises in the other Contracting State in order to supplement his means for maintenance, education, training and other expenses for specialisation, for the period limited to two years from his arrival in that other State.

3. A resident of one of the Contracting States present in the other Contracting State under arrangements with the Government of that other State or any agency or instrumentality thereof solely for the purpose of training, study or orientation shall be exempt from tax for a period not exceeding two years from his arrival in that other Contracting State in respect of remuneration received by him on account of such training or study.

4. For the purposes of paragraph (1), the term recognised university, college or school means a university, college or school which has been recognised in this regard by the competent authority of the concerned Contracting State.

ARTICLE 23 – *Professors, teachers and research scholars* – 1. A professor or teacher who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college, school or other approved institution in that other Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival in that other 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 22, 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 the calendar year, as the case may be, in which he visits the other Contracting State or in the immediately preceding previous year or the calendar year.

4. For the 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.

ARTICLE 24 – *Other income* – 1. Items of income of a resident of a Contracting State, wherever arising, which are not expressly dealt with in the foregoing Articles of this Convention, shall be taxable only in that Contracting State.

2. The provisions of paragraph (1) shall not apply to income, other than income from immovable property as defined in paragraph (2) of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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 income is paid is effectively connected with such permanent establishment or fixed base.

In such cases, the provisions of Article 7 or Article 16, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs (1) and (2) items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention, and arising in the other Contracting State may also be taxed in that other State.

ARTICLE 25 – *Avoidance of double taxation* – 1. The laws in force in either of the Contracting States shall continue to govern the taxation of income in the respective Contracting States except where provisions to the contrary are made in the Convention.

2. The amount of Romanian tax payable, under the laws of Romania and in accordance with the provisions of this Convention, whether directly or by deduction, by a resident of India, in respect of profits or income arising in Romania, which has been subjected to tax both in India and in Romania, shall be allowed as a credit against Indian tax payable in respect of such profits or income provided that such credit shall not exceed Indian tax (as computed

before allowing any such credit) which is appropriate to the profits or income arising in Romania. Further, 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.

3. The amount of Indian tax payable under the laws of India and in accordance with the provisions of this Convention, whether directly or by deduction, by a resident of Romania, in respect of profits or income arising in India, which has been subjected to tax both in India and in Romania, shall be allowed as a credit against Romanian tax payable in respect of such profits or income provided that such credit shall not exceed Romanian tax (as computed before allowing any such credit) which is appropriate to the profits or income arising in India.

For the purposes of this paragraph, profits paid by the Romanian State enterprises to the State budget shall be deemed to be Romanian tax.

4. For the purposes of the credit referred to in paragraph (3), the term Indian tax payable shall be deemed to include any amount which would have been payable as Indian tax for any assessment year but for an exemption or reduction of tax granted for that year or any part thereof by the special incentive measures under the provisions of the Income-tax Act, 1961 (43 of 1961), which are designed to promote economic development, or which may be introduced hereafter in modification of, or in addition to, the existing provisions for promoting economic development in India.

5. Where under this Convention a resident of a Contracting State is exempt from tax in that Contracting State in respect of income derived from the other Contracting State, then the first-mentioned Contracting State may, in calculating tax on the remaining income of that person, apply the rate of tax which would have been applicable if the income exempted from tax in accordance with this Convention had not been so exempted.

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 State than the taxation levied on enterprises of that other State carrying on the same activities in the same circumstances and under the same conditions.

3. Nothing contained in this Article shall be construed as obliging a Contracting State to grant to persons not residents in that State any personal allowance, reliefs, reductions and deductions for taxation purposes which are by law available only to persons who are so resident.

4. 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 in the same circumstances and under the same 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 States, present his case to the competent authority of the Contracting State of which he is a resident. This case must be presented within three years of the date of receipt of notice of the action which gives rise to taxation not in accordance with the Convention.

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 avoidance of taxation not in accordance with the 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 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. 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.

ARTICLE 28 – *Exchange of information* – 1. The competent authorities of the Contracting States shall exchange such information (including documents) as is necessary for carrying out the provisions of the Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention, insofar as the taxation thereunder is not contrary to the Convention, in particular for the prevention of fraud or evasion of such taxes. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State. However, if the information is originally regarded as secret in the transmitting State, it shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Convention. Such persons or authorities shall use the information only for such purposes but may disclose the information in public court proceedings or in judicial decisions.

The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchange of information shall be made, including, where appropriate, exchange of information regarding tax avoidance.

2. The exchange of information or documents shall be either on 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 the information or documents 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 or documents 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 or documents 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 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 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 State in accordance with the laws applicable to the enforcement and collection of its taxes.

3. In the case of Indian tax, the request will be sent by the Central Board of Direct Taxes, Department of Revenue, to the Ministry of Finance of the Socialist Republic of Romania 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 Romanian tax, the request will be sent by the Ministry of Finance of the Socialist Republic of Romania to the Central Board of Direct Taxes, Department of Revenue, in India and will be accompanied by such certificate as is required by the laws of Romania 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 any reasonable costs incurred in the course of rendering assistance in the recovery of such tax.

ARTICLE 30 – *Diplomatic and consular activities* – Nothing in this Convention shall affect the fiscal privileges and diplomatic or consular officials under the general rules of international law or under the provisions of special agreements.

ARTICLE 31 – *Entry into force* – 1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Bucharest.

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

- (a) in India, in respect of income arising in any previous year beginning on or after the first day of April next following the calendar year in which the instruments of ratification are exchanged ;

(b) in Romania, in respect of income arising in any calendar year beginning on or after the first day of January next following the calendar year in which the instruments of ratification are exchanged.

3. The existing agreement for the avoidance of double taxation of income of enterprises operating aircraft and ships in international traffic dated the 25th September, 1968 shall cease to have effect upon the entry into force of this Convention.

ARTICLE 32 – *Termination* – This Convention shall remain in force indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give the other Contracting State through diplomatic channels, written notice of termination and, in such event, this Convention shall cease to have effect :

- (a) in India, in respect of income arising in any previous year beginning on or after the first day of April next following the calendar year in which the notice is given ;
- (b) in Romania, in respect of income arising in any calendar year beginning on or after the 1st day of January next following the calendar year in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed the present Convention.

DONE in duplicate at New Delhi, this tenth day of March, one thousand nine hundred and eighty-seven in the Hindi, Romanian and English languages, all the texts being equally authentic. In case of divergence amongst the three texts, the English text shall be the operative one.

Russia

Agreement for avoidance of double taxation and prevention of fiscal evasion with Russian Federation

Whereas the annexed agreement between the Government of the Russian Federation and the Government of the Republic of India for the avoidance of double taxation with regard to taxes on income has entered into force on the eleventh day of April, 1998, thirty days after the receipt of later of notifications by both the Contracting States to each other of the completion of the procedures required under their respective laws for entry into force of the said agreement in accordance with article 28 of the said agreement.

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said agreement shall be given effect to in the Union of India.

Notification : No. 10677 [F. No. 501/6/92-FTD], dated 21-8-1998.

ANNEXURE

TEXT OF DOUBLE TAXATION AVOIDANCE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE RUSSIAN FEDERATION FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of India and the Government of the Russian Federation, desiring to conclude an Agreement for the avoidance of double taxation with respect to taxes on income and with a view to promoting economic cooperation between the two countries, have agreed as follows :

ARTICLE 1 : *Personal scope* – This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2 : *Taxes covered* – 1. This Agreement shall apply to taxes on income imposed in each Contracting State.

2. The taxes to which this Agreement shall apply are in particular :

(a) in the case of the Russian Federation :

(i) taxes on profits (income) of enterprises and organisations; and

(ii) the income-tax on individuals

(hereinafter referred to as Russian Tax) ;

(b) in the case of India :

income-tax, including any surcharge thereon

(hereinafter referred to as Indian tax).

3. This Agreement shall apply also to any identical or substantially similar taxes on income which are imposed by either Contracting State after the date of signature of this Agreement in addition to, or in place of, the taxes referred to in paragraph 2. The competent authorities of the Contracting States shall notify each other of any substantial changes which are made in their respective taxation laws.

ARTICLE 3 : *General definitions – 1.* In this Agreement, unless the context otherwise requires :

(a) the term the Russian Federation (Russia) means the territory of the Russian Federation and includes its internal waters, territorial sea and air space above them as well as exclusive economic zone and continental shelf within which the Russian Federation has and exercises sovereign rights and jurisdiction in accordance with its national legislation and international law including the 1982 United Nations Convention on the Law of the Sea, and where its tax legislation is applicable ;

(b) the term India means the territory of India and includes its internal waters, territorial sea and air space above them as well as exclusive economic zone and continental shelf within which the Republic of India has and exercises sovereign rights and jurisdiction in accordance with its national legislation and international law including the 1982 United Nations Convention on the Law of the Sea, and where its tax legislation is applicable ;

(c) the terms a Contracting State, and the other Contracting State mean the Russian Federation or India, as the context requires ;

- (d) the term person includes an individual, an enterprise, a company and any other entity which is treated as a taxable unit under the taxation laws in force in a Contracting State ;
- (e) the term company means any body corporate or any entity which is treated as a company or body corporate under the taxation laws in a Contracting State ;
- (f) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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 ;
- (g) the term national means :
 - (i) in the case of the Russian Federation, any individual possessing the citizenship of the Russian Federation, and in the case of India, any individual possessing the nationality of India ;
 - (ii) any person, partnership and association deriving its status as such from the laws in force in a Contracting State ;
- (h) the term international traffic means any transportation 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 ;
- (i) the term tax means Russian tax or Indian tax, as the context requires, but shall not include any penalty or interest imposed under the laws of either Contracting State in relation to the taxes which are the subject of this Agreement ;
- (j) the term fiscal year means :
 - (i) in the case of the Russian Federation, the financial year beginning on the 1st of January ;
 - (ii) in the case of India, the financial year beginning on the 1st of April;
- (k) the term competent authority means :
 - (i) in the case of the Russian Federation, the Ministry of Finance or its authorised representative ;
 - (ii) in the case of India – the Central Government in the Ministry of Finance (Department of Revenue) or their authorized representative.

2. As regards the application of this Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that State primarily concerning the taxes to which the Agreement applies.

ARTICLE 4 : *Resident* – 1. For the purposes of this Agreement, the term resident of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of registration, place of management or any other similar criterion.

2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his status shall be determined as follows :

- (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 States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests) ;
- (b) if the State in which he 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 State in which he has an habitual abode ;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national ;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 State in which its place of effective management is situated.

ARTICLE 5 : *Permanent establishment* – 1. For the purposes of this Agreement, the term permanent establishment means a fixed place of business through which the business of the enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (a) a place of management ;
- (b) a branch ;
- (c) an office ;
- (d) a factory ;
- (e) a workshop ;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources ;
- (g) an installation or structure used for the exploration or exploitation of natural resources ;
- (h) a farm, plantation or other place where agriculture, forestry, plantation or related activities are carried on ;
- (i) a premises used as a sales outlet or for receiving or soliciting orders ;
- (j) a building site or construction, installation or assembly project or supervisory activities in connection therewith, but only if such site, project or activities continue for a period of more than 12 months.

However, the competent authorities of the Contracting States may, in particular cases, agree by mutual agreement to consider the supervisory activities in connection with a building site or construction, installation or assembly project as not constituting a permanent establishment also in the cases in which the duration of works on a building site or construction, installation or assembly project exceeds 12 months.

3. Notwithstanding the preceding provisions of this Article, the term permanent establishment shall be deemed not to include :

- (a) the use of facilities solely for the purpose 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 of collecting information, for the enterprise ;
- (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 an auxiliary character ;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e).

4. Notwithstanding the provisions of paragraphs 1 and 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 Contracting State in respect of any activities which that person undertakes for the enterprise, if

- (a) he has, and habitually exercises in that State, an authority to conclude contracts or carry on any business activities on behalf of the enterprise, unless his activities are limited to those specified in paragraph 3 of this Article ; or
- (b) he habitually secures orders for the sale of goods or merchandise in that State exclusively or almost exclusively on behalf of the enterprise or other enterprises controlled by it or which have a controlling interest in it ; or
- (c) he has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise ; or
- (d) in acting as described in (b) above, he manufactures or processes in that State for the enterprise, goods or merchandise belonging to 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 State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise itself or on behalf of that enterprise and

other enterprises controlling, controlled by, or subject to the same common control as that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

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 otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6 : *Income from immovable property* – 1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may also be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the laws of the Contracting State in which the property in question is situated. Ships, boats, aircraft and road vehicles shall not be regarded as immovable property.

The term immovable property shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources.

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 derived in a Contracting State by an enterprise of the other Contracting State may be taxed in the first-mentioned State only if it is derived through a permanent establishment situated therein and only so much of them as is attributable to the activity of such permanent establishment.

2. Subject to the provisions of paragraph 3, 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.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes 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 in accordance with the provisions of and subject to the limitations of the taxation laws of that State.

4. 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.

5. For the purposes of the preceding paragraphs of this Article, 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.

6. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8 : *Income from international transport*¹ – 1. Income derived by an enterprise of a Contracting State from the operation or rental of ships or aircraft in international traffic and the rental of containers and related equipment which is incidental to the operation of ships or aircraft in international traffic shall be taxable only in that Contracting State.

2. The provisions of paragraph 1 shall also apply to income from the participation in a pool, a joint business or an international operating agency.

3. For the purposes of this Article, interest on funds connected directly with the operation of ships or aircraft in international traffic shall be regarded as income derived from the operation of such ships or aircraft; and the provisions of Article 11 shall not apply in relation to such interest, provided that such funds are incidental to that operation.

4. Notwithstanding the preceding provisions of this Article, income derived by an enterprise of a Contracting State from the operation of ships between the ports of the other Contracting State and the ports of third countries may be taxed in that other Contracting State, but the tax imposed in that other State shall be reduced by an amount equal to two-third thereof.

ARTICLE 9 : *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 10 : *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 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 laws of that State, but if the beneficial owner of the dividends is subject to tax thereon in the other State, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

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, 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, or performs independent personal services from a fixed base situated therein and the dividends are attributable to such permanent establishment or fixed base. In such case, the provisions of Article 7 or 14 of this Agreement, 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 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 State or so far 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 State, nor subject the companys undistributed profits to a tax on the companys undistributed profits, even if the dividends paid or the un-distributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11 : *Interest* – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by :

- (i) the Government, a political sub-division or a local authority of the other Contracting State ; or
- (ii) the Central Bank of the other Contracting State ; or
- (iii) the other Governmental agencies or financial institutions as may be specified and agreed to in an exchange of notes between the competent authorities of the Contracting States.

4. The term interest as used in this Article means income from debt-claims of every kind, and in particular income from Government securities, 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 and 2 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 or performs 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 14 of this Agreement, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is the Contracting State itself, a political sub-division, a local authority thereof or a resident of that Contracting State. Where, however, the person paying the interest, 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 indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or a fixed base, then such 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 of interest 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 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 the other provisions of this Agreement.

ARTICLE 12 : *Royalties and fees for technical services* – 1. Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

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

3. The term royalties as used in this Article means :

- (a) payments of any kind received as a consideration for the use of, or the right to use, any copyright of a literary, artistic, or scientific work, including cinematography films or recordings on any means of reproduction for use in connection with radio or television broadcasting, any patent, trade mark, design or model, plan, know-how, computer software programme, secret formula or process, or for information concerning industrial, commercial or scientific experience ; and
- (b) payments of any kind received as consideration for the use of, or the right to use, any industrial, commercial, or scientific equipment.

4. For the purposes of this Article, fees for technical services means payments of any kind in consideration for the rendering of any managerial, technical or consultancy services including the provision of services by technical or other personnel but does not include payments for services mentioned in Articles 14 and 15 of this Agreement.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services 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, property or contract in respect of which the royalties or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Royalties and fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties or fees for technical services, 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 or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the 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 royalties or fees for technical services paid exceeds the amount which would have been paid 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 the other provisions of this Agreement.

ARTICLE 13 : *Capital gains* – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may also be taxed in that other State.

2. Gains derived from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has

in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or such fixed base, may be taxed in that other State.

3. Gains derived from the alienation of ships or aircraft operated in international traffic or movable property pertaining to such operation shall be taxable only in the Contracting State of which the alienator is a resident.

4. Gains from the alienation of shares of a company which is a resident of a Contracting State may be taxed in that State.

5. Gains from the alienation of any property other than that mentioned in paragraphs 1, 2, 3 and 4 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14 : *Independent personal services* – 1. Income derived by an individual who is a resident of a Contracting State from the performance of professional services or other activities of an independent character in another Contracting State shall be taxable only in the first-mentioned State, unless :

- (a) such services are performed or were performed in the other Contracting State and the income is attributable to a fixed base which the individual has or had regularly available to him in that other State ; or
- (b) the recipient is present in the other Contracting State for a period or periods exceeding in the aggregate 183 days in any 12 month period.

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

ARTICLE 15 : *Dependent personal services* – 1. Subject to the provisions of Articles 16, 18 and 19, 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 State

unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable in the first-mentioned State if :

- (a) the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in any 12 month period ; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting State ; and
- (c) the remuneration is not borne by a permanent establishment or fixed base which the employer has in the other Contracting State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State shall be taxed in that State.

ARTICLE 16 : *Directors fees* – Directors fees and other 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 may be taxed in that other State.

ARTICLE 17 : *Income of entertainers and sportsmen* – 1. Notwithstanding the provisions of Articles 7, 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or a sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived by an entertainer or a sportsman who is a resident of a Contracting State from his personal activities as such exercised in the other Contracting State, shall be taxable only in the first-mentioned Contracting State, if the activities in the other Contracting State are financed wholly or substantially by the first-mentioned Contracting State, including any of its political sub-divisions or local authorities.

ARTICLE 18 : *Income from Government service* –

1.(a) Remuneration, other than a pension, paid by the Government of a Contracting State, a political sub-division or local authority thereof to an individual in respect of services rendered to that State, political sub-division or local authority thereof shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

(i) is a national of that State ; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2.(a) Any pension paid by, or out of funds created by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of that other State.

3. The provisions of Articles 15, 16 and 19 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or local authority thereof.

ARTICLE 19 : *Pensions and annuities* – 1. Pensions, other than those referred to in Article 18, and other similar remuneration paid in consideration of past employment to a resident of a Contracting State and any annuity paid to such a resident shall be taxable only in the State where such income is derived.

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 payment in return for adequate and full consideration in money or moneys worth.

ARTICLE 20 : *Students and trainees* – 1. A student or business apprentice who, immediately before visiting a Contracting State, is or was a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training shall be exempted from tax in that first-mentioned State, provided that such payments are received from outside that State.

2. An individual who immediately before visiting a Contracting State, is or was a resident of the other Contracting State and who is present in the first-mentioned State for a period not exceeding two years solely for the purpose of study, research or training as a recipient of a grant, allowance or award from a scientific, educational, religious or charitable organisation or under a technical assistance programme entered into by the Government of that other Contracting State shall, from the date of his arrival in the first-mentioned State in connection with that visit, be exempt from tax in the first-mentioned State.

ARTICLE 21 : *Professors, teachers and researchers* – 1. A professor, teacher or researcher who visits one of the Contracting States for the purpose of teaching or engaging in research at a university or any other educational institution approved by the Government in that State and who, immediately before that visit, was a resident of the other Contracting State shall be exempted from tax by the first-mentioned State in respect of any remuneration received for such teaching or research for a period not exceeding two years from the date of his first arrival in that State for such purpose.

2. This Article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the benefit of a specific person or persons.

ARTICLE 22 : *Other income* – 1. Items of income of a resident of a Contracting State, wherever arising, which are not dealt with in the foregoing Articles of this Agreement, shall be taxable only in that Contracting State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the beneficial owner of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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 income is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, any income in the form of winnings or prizes from lotteries, crossword puzzles, races including horse races, card games and other games of any form or nature whatsoever may be taxed in the Contracting State where they arise.

ARTICLE 23 : *Methods of elimination of double taxation* – 1. In the case of Russia, double taxation is eliminated as follows :

where a resident of Russia derives income which, in accordance with the provisions of this Agreement, may be taxed in India, the amount of tax on that income payable in India may be credited against the tax imposed on that resident of Russia. The amount of credit, however, shall not exceed the amount of the tax on that income computed in accordance with the taxation laws and regulations of Russia.

2. In the case of India, double taxation is eliminated as follows :

where a resident of India derives income which, in accordance with the provisions of this Agreement, may be taxed in Russia, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in Russia whether directly or by deduction at source. Such deduction in either case shall not, however, exceed that part of the income-tax (as computed before the deduction is given) which is attributable to the income which may be taxed in Russia.

3. For the purposes of this Article the term tax paid or payable as mentioned in paragraphs 1 and 2 of this Article shall be deemed to include the tax which would have been paid but for any exemption or reduction of tax granted under incentive

provisions contained in the law of a Contracting State designed to promote economic development to the extent that such exemption or reduction is granted for profits from industrial, construction, manufacturing or agricultural activities provided that the activities have been carried out within the Contracting State.

The competent authorities may agree to extend the application of this provision also to other activities.

The provisions of this paragraph shall apply only for the first ten years during which this Agreement is effective. This period may be extended by a mutual agreement between the competent authorities.

ARTICLE 24 : *Non-discrimination* – 1. 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, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

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 in the same circumstances and under the same conditions.

3. Nothing contained in this Article shall be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

4. Except where the provisions of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

5. 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 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 the first-mentioned State are or may be subjected in the same circumstances and under the same conditions.

6. The provisions of this Article shall apply to taxes which are the subject of this Agreement.

ARTICLE 25 : *Mutual agreement procedure* – 1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

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 a satisfactory 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 which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits provided for in the domestic laws of the Contracting State.

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 Agreement. They may also consult with each other for the elimination of double taxation in case not provided for in this Agreement.

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

ARTICLE 26 : *Exchange of information* – 1. The competent authorities of the Contracting States shall exchange such information (including documents) as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement, in particular for the prevention of fraud or evasion of such taxes. Any information received by a Contracting State shall be treated as confidential in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Agreement. Such persons or authorities shall use the information only for such purposes, but may disclose the information in public court proceedings or in judicial decisions.

2. The exchange of information or documents 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 the information or documents 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 and administrative practice of that or the other Contracting State ;
- (b) to supply information which is 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 27 : *Members of diplomatic missions and consular posts* – Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts or other persons for whom they are provided under the rules of international law or under the provisions of special agreements.

ARTICLE 28 : *Entry into force* – 1. The Contracting State shall notify each other in writing, through diplomatic channels, the completion of the procedure required by the respective laws for the entry into force of this Agreement.

2. This Agreement shall enter into force thirty days after the receipt of the latter of the notifications referred to in paragraph 1 of this Article.

3. The provisions of this Agreement shall have effect :

(a) In Russia :

(i) in respect of taxes withheld at source, to income arising on or after the first day of January in the calendar year next following the year in which this Agreement enters into force ;

(ii) in respect of other taxes on income, to taxes arising for any fiscal year beginning on or after the first day of January next following the calendar year in which this Agreement enters into force.

(b) In India :

in respect of income arising in any fiscal year beginning on or after the first day of April next following the calendar year in which this Agreement enters into force.

4. The provisions of this Agreement between the Government of the Union of the Soviet Socialist Republics and the Government of the Republic of India for the avoidance of double taxation of income signed in New Delhi on 20th of November, 1988 and subsequently extended to the Russian Federation on the basis of mutual agreement of the Contracting States shall cease to have effect on the date of coming into force of this Agreement.

ARTICLE 29 : *Termination* – 1. This Agreement shall remain in force unless terminated by a Contracting State. Either Contracting State may terminate this Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the expiration of a period of five years from the date of its entry into force.

2. This Agreement shall cease to have effect :

(a) In Russia :

- (i) in respect of taxes withheld at source, to income arising on or after the first day of January in the calendar year next following the year in which the notice of termination is given ;
- (ii) in respect of other taxes on income, to taxes arising for any fiscal year beginning on or after the first day of January in the calendar year next following the year in which the notice of termination is given.

(b) In India :

in respect of income arising in any fiscal year beginning on or after the first day of April next following the calendar year in which the notice of termination is given.

DONE at Moscow, this 25th day of March, 1997, in duplicate in the Russian, Hindi and English languages, all three texts being equally authentic. In case of divergence between the texts, the English text shall be the operative one.

PROTOCOL

To the Agreement between the Government of the Republic of India and the
Government of the Russian Federation for the avoidance of double taxation with
respect to taxes on income

The Government of the Republic of India and the Government of the Russian Federation,

Having regard to the Agreement between the Government of the Republic of India and the Government of the Russian Federation for the avoidance of double taxation with respect to taxes on income signed today (in this Protocol called the Agreement),

Have agreed as follows :

7. With reference to paragraph 4 of Article 8 of the Agreement, the Contracting States agree that at the end of three years from the date of entry into force of this Agreement, the provisions of paragraph 4 will cease to have effect.

2. With respect to clause (j) of paragraph 2 of Article 5 of the Agreement, the competent authorities of the Contracting States may invoke mutual agreement procedure referred to in the aforesaid clause in particular cases of supervisory activities relating to a project which satisfies the following conditions :

- (a) the project has been approved by the Government of the concerned Contracting State ;
- (b) it is a turnkey project;
- (c) the fees for supervisory activities do not exceed 10 per cent of the total cost of the project, including the cost of the machinery and the equipment mentioned in the contract ;
- (d) the total cost of the project is not less than US \$ 10 million ;
- (e) the duration of the project is for a period extending from 12 months to five years or such longer period as has been specified in the contract by the authority granting approval to the contract. The said time will include the further period which may be extended by the project approving authority in consultation with the competent authority of the concerned Contracting State ; and
- (f) the enterprise is not involved in avoidance or evasion of tax in the Contracting State in which supervisory activities are being rendered.

Where aforementioned conditions of sub-paragraphs (a) to (f) of this paragraph are fulfilled, the enterprise shall be liable to pay in that Contracting State where the project is situated, tax on its income by way of fees for supervisory activities at the rate not exceeding 10 per cent of the gross amount of such fees as is applicable under Article 12 in respect of royalties and fees for technical services.

3. Notwithstanding the provisions of paragraph 2 of Article 24 of this Agreement, either Contracting State may tax the profits of a permanent establishment of an enterprise of the other Contracting State at a rate which is higher than that applied to the profits of a similar enterprise of the first-mentioned Contracting State. It is also provided that in no case the differences in the two rates, referred to above will exceed 12 percentage points.

The taxation of a permanent establishment of an enterprise of one Contracting State in the other Contracting State shall not, after the coming into force of this Agreement, be less favourable than the tax treatment given by that other Contracting State to a permanent establishment of an enterprise of any third country.

This Protocol shall form an integral part of the Agreement.

DONE at Moscow, this 25th day of March, 1997, in duplicate in the Russian, Hindi and English languages, all three texts being equally authentic. In case of divergence between the texts, the English text shall be the operative one.

Saudi Arabia

Comprehensive Agreement

Agreement for avoidance of Double Taxation and Prevention of Fiscal Evasion with Saudi Arabia

Whereas the annexed Convention between the Government of the Republic of India and the Government of the Kingdom of Saudi Arabia for the avoidance of double taxation and the prevention of tax evasion with respect to taxes on income shall come into force on the 1st day of November, 2006, being the first day of the second month following the month in which the later of the notifications after completion of the procedures as required by the respective laws for the entry into force of this Convention was received, in accordance with Article 28 of the said Convention.

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in the Union of India.

Notification : No. 287/2006-FTD [F.No. 501/7/91-FTD], dated 17-10-2006.

CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE KINGDOM OF SAUDI ARABIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF TAX EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of India and the Government of the Kingdom of Saudi Arabia, desiring to conclude a Convention for the avoidance of double taxation and the prevention of tax evasion with respect to taxes on income and with a view to promoting economic cooperation between the two countries, have agreed as follows:

ARTICLE 1 : *Persons covered* – This Convention shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2 : *Taxes Covered* – 1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State or of its political sub-divisions or local authorities, irrespective of the manner in which they are levied.

2. They shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, and taxes on the total amounts of wages or salaries paid by enterprises.

3. The existing taxes to which the Convention shall apply are in particular:

(a) in the case of India:

- The income-tax, including any surcharge thereon;
(hereinafter referred to as Indian tax);

(b) in the case of the Kingdom of Saudi Arabia:

- The Zakat
- The income-tax including the natural gas investment tax;
(hereinafter referred to as Saudi tax).

4. The provisions of this Convention shall also apply to any identical or substantially similar taxes which are imposed by either contracting state after the date of signature of this Convention in addition to, or in place of, the existing taxes. The competent authorities in both Contracting States shall notify each other of any significant changes that have been made in their respective taxation laws.

ARTICLE 3 : *General Definitions* – 1. For the purposes of this Convention, unless the context otherwise requires :

(a) the term India means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other jurisdiction, according to the Indian law and in accordance with international law, including the U.N. Agreement on the Law of the Sea;

- (b) the term Kingdom of Saudi Arabia means the territory of the Kingdom of Saudi Arabia which also includes the area outside the territorial waters, where the Kingdom of Saudi Arabia exercises its sovereign and jurisdictional rights in their waters, seabed, subsoil and natural resources by virtue of its law and the international law;
- (c) the terms a Contracting State and the other Contracting State mean the Republic of India or the Kingdom of Saudi Arabia as the context requires;
- (d) the term person includes an individual, a company, any other body of persons.
- (e) the term company means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (f) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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;
- (g) 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;
- (h) the term competent authority means :
 - (i) In the case of India: The Finance Minister, Government of India or his authorized representative;
 - (ii) In the case of the Kingdom of Saudi Arabia, the Ministry of Finance represented by the Minister of Finance or his authorized representative;
- (i) the term national means:
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which this Convention applies, any meaning under the

applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

ARTICLE 4 : *Resident* – 1. For the purposes of this Convention, the term resident of a Contracting State means,

- (a) Any person who, under the laws of that State, is liable to taxes in that State by reason of his domicile, residence, place of management or any other criterion of a similar nature. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.
- (b) The Government of any of the two Contracting States or any of its political sub-division or local authorities.

2. Where by reason of the provisions of paragraph 1 of this Article an individual is a resident of both Contracting States, then his status shall be determined as follows :

- (a) he shall be deemed to be a resident only 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 the Contracting States, he shall be deemed to be a resident only of the Contracting State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either Contracting State, he shall be deemed to be a resident only of the Contracting State in which he has a habitual abode;
- (c) if he has a habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident only of the Contracting State of which he is a national;
- (d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 of this Article a person other than an individual is a resident of both Contracting States, then it shall be

deemed to be a resident only of the 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 means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, a gas well, a quarry or any other place of extraction of natural resources.

3. The term permanent establishment also includes :

- (a) A building site, a construction, assembly or installation project, or supervisory activities, in connection therewith, but only where such site, project or activities continue for a period of more than 182 days;
- (b) The furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the country for a period or periods aggregating more than 182 days within any 12-month period.

4. Notwithstanding the preceding provisions of this Article the term permanent establishment shall be deemed not to include :

- (a) the use of facilities solely for the purpose 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 of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 7 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 Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:

- (a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph, or
- (b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise;
- (c) habitually obtains orders in the first-mentioned State, wholly or almost wholly for the enterprise itself.

6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. 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, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

8. 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 otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6 : *Income from Immovable Property* – 1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other Contracting State.

2. The term immovable property shall have the meaning provided for in the laws of the Contracting State in which the property in question is situated. This term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 of this Article 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 of this Article 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, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, 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.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business 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. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of income from debt-claim with regard to moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar

payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of income from debt-claim with regard to moneys lent to the head office of the enterprise or any of its other offices.

4. 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.

5. For the purposes 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.

6. 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 : *Shipping and Air Transport* – 1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

3. The term profits derived from the operation of ships or aircraft in international traffic includes profits derived from the use or rental of containers and related equipment used in international transport that is incidental to income from the operation of ships or aircraft in international traffic.

4. The provisions of paragraph 1 shall also apply to profits from the participation in a pool; a joint business or an international operating agency.

5. Nothing contained in the foregoing provisions of this Article shall affect the existing Agreement between the Kingdom of Saudi Arabia and the Republic of India for Avoidance of Double Taxation by reciprocal exemption of taxes on

income on the Activities of Air Transport Enterprises signed on 14-11-1991 in respect of Air India and Saudi Arabian Airlines Corporation.

ARTICLE 9 : *Associated Enterprises* – 1. 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
- (a) 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.

2. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10 : *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 laws of that State, but if the recipient is the beneficial owner of the dividends the tax so

charged shall not exceed 5 per cent of the gross amount of the dividends. 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 jouissance shares or jouissance rights, mining shares, founders 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 14, 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 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 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 State, nor subject the companys undistributed profits to a tax on the companys undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11 : *Income from debt-claims* – 1. Income from debt-claims arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such income from debt-claims may also be taxed in the Contracting State in which it arises and according to the laws of that

Contracting State, but if the beneficial owner of the income from debt-claims is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the income from debt-claims.

3. Notwithstanding the provisions of paragraph 2, income from debt-claims arising in a Contracting State shall be exempt from tax in that State, provided that it is derived and beneficially owned by:

- (a) the Government, a political sub-division or a local authority of the other Contracting State; or
- (b) (i) in the case of India, the Reserve Bank of India, the Export-Import Bank of India, the National Housing Bank ; and
(ii) in the case of the Kingdom of Saudi Arabia, the Saudi Arabian Monetary Agency; or
- (c) any other financial institution wholly owned, directly, and controlled by the Government of the other Contracting State.

4. The term Income from Debt-Claims as used in this Article means income from Government securities and bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in the debtors profits; and debt-claims of every kind as well as all other income included as income from moneys lent under the taxation laws of the State in which the income arises. Penalty charges for late payment shall not be regarded as income from debt-claims for the purpose of this Article.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of income from Debt-Claims, being a resident of a Contracting State, carries on business in the other Contracting State in which the income from debt claims arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which such income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Income from debt-claims shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying such income, 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 indebtedness on which such income is paid was incurred, and such income is borne by such permanent establishment or fixed base, then such income shall be deemed to arise in the 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 income from debt-claims, 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 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 the other provisions of this Convention.

ARTICLE 12 : *Royalties* – 1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 beneficial owner of the royalties is a resident of the other Contracting State 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 including 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.

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 14 as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that 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 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 the other provisions of this Convention.

ARTICLE 13 : *Capital Gains* – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting

State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other Contracting State.

3. Gains from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from the alienation of shares other than those mentioned in paragraph 4 in a company which is a resident of a Contracting State may be taxed in that State.

6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5, shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14 : *Independent Personal Services* – 1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances when such income may also be taxed in the other Contracting State:

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any 12-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

ARTICLE 15 : *Dependent Personal Services* – 1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State, in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if :

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, by an enterprise of a Contracting State may be taxed in that State.

ARTICLE 16 : *Directors Fees* – Directors fees and other 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 may be taxed in that other State.

ARTICLE 17 : *Artistes and Sportspersons* – 1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an

entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. The provisions of paragraphs 1 and 2, shall not apply to income from activities performed in a Contracting State by entertainers or sportspersons if the activities are substantially supported by public funds of one or both of the Contracting States or of political sub-divisions or local authorities thereof or takes place under a cultural agreement or arrangement between the Governments of the Contracting States. In such a case, the income shall be taxable only in the Contracting State of which the entertainer or sportsperson is a resident.

ARTICLE 18 : *Pensions* – Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

ARTICLE 19 : *Government Service* – 1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who:

- (i) is a national of that State; or
- (ii) did not become a resident of that State solely for the purpose of rendering the services.

2.(a) Any pension paid by, or out of funds created by, a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that other State.

3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages and other similar remuneration and to pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

ARTICLE 20 : *Students* – 1. Payments, besides grants, loans and scholarships, which a student, trainee or apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

2. Payments received by a student, trainee or apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned Contracting State solely for the purpose of his education or training and which constitute remuneration in respect of services performed in that other Contracting State are not taxable in that other State, provided the services are connected with education or training and are necessary for maintenance purposes.

3. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article, for more than six consecutive years from the date of his first arrival in that other State.

ARTICLE 21 : *Teachers and Researchers* – 1. A teacher or researcher who is or was a resident of the Contracting State immediately before being invited to or

visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college or other similar institution in that other Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival in that other State.

2. This Article shall apply to income from research only if such research is undertaken by the individual in the public interest.

ARTICLE 22 : *Other Income* – 1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that Contracting State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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 income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

ARTICLE 23 : *Methods for Elimination of Double Taxation* – *Double taxation shall be eliminated as follows* – 1. Where a resident of a Contracting State derives income which, in accordance with the provisions of this Convention, may be taxed in the other Contracting State, the first-mentioned Contracting State shall allow as a deduction from the tax on the income of that resident, an amount equal to the tax paid in the other Contracting State.

Such deduction shall not, however, exceed that portion of the tax as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in the other Contracting State.

2. Where in accordance with any provision of the Convention income derived by a resident of a Contracting State is exempt from tax in that Contracting State,

that Contracting State may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

ARTICLE 24 : *Mutual Agreement Procedure* – 1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his 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 first notification of the action resulting in taxation not in accordance with the provisions of this Convention.

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 a satisfactory 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 which is not in accordance with this Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of both 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.

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. 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.

ARTICLE 25 : *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 of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation

thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes covered by this Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. 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 and administrative practice of that or of the other Contracting State;
- (b) to supply information which is 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 (order public).

ARTICLE 26 : *Other Provisions* – 1. Nothing in this Convention shall affect the application of the domestic provisions to prevent tax evasion.

2. An enterprise of a Contracting State shall not be entitled to the benefits of this Convention if the main purpose or one of the main purposes of the creation of such enterprise was to obtain the benefits under this convention that would not otherwise be available.

3. The case of legal entities not having *bona fide* business activities shall be covered by the provisions of this Article.

ARTICLE 27 : *Members of Diplomatic Missions and Consular Posts* – Nothing in this Convention shall affect the fiscal privileges of members of diplomatic

missions or consular posts under the general rules of international law or under the provisions of special agreements.

ARTICLE 28 : *Entry Into Force* – 1. The Contracting States shall notify each other in writing, through diplomatic channels, of the completion of the procedures required by the respective laws for the entry into force of this Convention.

2. This Convention shall enter into force on the first day of the second month following the month in which the later of these notifications were received.

3. The provisions of this Convention shall have effect:

- (a) In India, in respect of income derived in any fiscal year beginning on or after the first day of April next following the calendar year in which the Convention enters into force; and
- (b) In Saudi Arabia:
 - (i) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the first day of January next following the calendar year in which the Convention enters into force; and
 - (ii) with regard to other taxes, in respect of taxable years beginning on or after the first day of January next following the calendar year in which the Convention enters into force.

ARTICLE 29 : *Termination* – This Convention shall remain in force indefinitely until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year beginning after the expiration of five years from the date of entry into force of the Convention. In such event, the Convention shall cease to have effect:

- (a) In India, in respect of income derived in any fiscal year on or after the first day of April next following the calendar year in which the notice is given;
- (b) In Saudi Arabia :
 - (i) with regard to taxes withheld at source, in respect of amounts paid or credited after the end of the calendar year in which such notice is given; and

- (ii) with regard to other taxes, in respect of taxable years beginning after the end of the calendar year in which such notice is given.

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

Done in duplicate at New Delhi, this 25th day of January, 2006, corresponding to 25-12-1426 h, each in the Hindi, Arabic and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

For the Government of the Republic of India For the Government of the Kingdom of Saudi Arabia

Protocol

The Republic of India and the Kingdom of Saudi Arabia on signing at New Delhi, on 25th January, 2006, the Convention for the Avoidance of Double Taxation and the Prevention of Tax Evasion with respect to taxes on income have agreed upon the following provisions which shall form an integral part of the said Convention.

1. With regard to para 2(d) of Article 3 the term person shall include the state, its political sub-division or local authorities and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States.
2. It is understood that for the purposes of Article 2, the term tax means Indian or Saudi tax, as the context requires, but shall not include any penalty or fine imposed relating to those taxes.
3. For the purposes of Article 3, the term fiscal year means:
 - (i) in the case of India: the financial year beginning on the 1st day of April;
 - (ii) in the case of Saudi Arabia: taxable year as determined in the law and regulation of the Kingdom of Saudi Arabia.

4. It is understood that for the purposes of para 1(b) Article 4, the term resident shall include:

- (a) The legal institutions and agencies of the Government, wholly owned directly, and controlled by the Government.
- (b) In the case of the Kingdom of Saudi Arabia, an individual who is an Indian national and is present in the Kingdom of Saudi Arabia for a period or periods totalling in the aggregate at least 183 days in the fiscal year concerned.
- (c) A legal person organized under the laws of a Contracting State and that is generally exempt from tax in that State and is established and maintained in that State either:
 - (i) Exclusively for a religious, charitable, educational, scientific, or other similar purpose; or
 - (ii) To provide pensions to employees pursuant to a plan.

5. For the purposes of para 2 of Article 5, Permanent Establishment shall include the following:

- (a) a sales outlet;
- (b) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on.

6. For the purposes of paragraph 6 of Article 5, the person, who is not an agent of independent status and whose activities may create a Permanent Establishment for the insurance enterprise, may be either individual or company and need not be resident of, nor have a place of business in, the state in which it acts for the enterprise.

7. With regard to Article 7, the term business profits in the case of a Contracting State means the profits from business as defined under the laws of that Contracting State.

8. In respect of Article 7, it is understood that: –

- (i) The business profits derived by an enterprise of a Contracting State whether through a permanent establishment situated in the other

Contracting State or otherwise from the exportation of merchandise to the other Contracting State shall not be taxed in that other Contracting State. Where export contracts include other activities carried on in the other Contracting State, profits derived by the Permanent Establishment from such activities may be taxed in the other Contracting State but only so much of the profits as is attributable to the permanent establishment, relating to such other activities and any portion of these activities executed outside the other Contracting State shall not be taken into consideration in determining the profits of the permanent establishment.

- (ii) In the case of contracts for survey, constructions or installations, the profits of a permanent establishment shall not be determined on the total amount of the contract, but shall be determined only on the basis of that part of the contract, which is effectively carried out by the permanent establishment in the state where the permanent establishment is situated and any portion of the contract executed outside the other Contracting State shall not be taken into consideration in determining the profits of the permanent establishment.

9. For the purposes of Para 3 of Article 7, the deductions of expenses to be allowed by a Contracting State shall be in accordance with the provisions of and subject to the limitations of the tax laws of that Contracting State. In case India removes this restriction in any of its Conventions after the date of signing of this Convention, the two sides shall review this issue.

10. For the purposes of Article 21, an individual shall be deemed to be a resident of a Contracting State if he is resident in that State in the fiscal year in which he visits the other Contracting State or in the immediately preceding fiscal year.

11. For the purposes of this Convention, the Zakat shall be treated as a tax on income.

12. In the case of the Kingdom of Saudi Arabia, the methods for elimination of double taxation in Article 23 will not prejudice the provisions of the Zakat collection regime with regard to Saudi nationals.

13. It is understood that information referred to in Article 25, will include evidence available with a Contracting State, requested by the other Contracting State.

14. When Saudi Arabia introduces a provision in its domestic law regarding assistance in collection of taxes to other treaty partners or agrees to extend such assistance to any other treaty partner, then the competent authorities of the two Contracting States shall by mutual agreement settle the mode of application for extending assistance in the collection of tax to each other.

15. It is understood that the two Contracting States will review the provisions of this Convention after a period of 5 years from the date on which this Convention enters into force in order to consider the inclusion of an Article on Fees for Technical Services within the scope of this Convention.

Limited Agreements with respect to Income of Airlines/Merchant Shipping

Agreement for avoidance of double taxation

and

prevention of fiscal evasion with Saudi Arabia

Whereas the annexed Agreement between the Republic of India and the Kingdom of Saudi Arabia for avoidance of double taxation by reciprocal exemption of taxes on income on the activities of air transport enterprises of the two countries has entered into force on the 25th September, 1992 after sixty days after the exchange of letters certifying that the proper procedure was fulfilled in each Contracting State, as required by Article 6 of the said Agreement ;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961) and section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964), the Central Government hereby directs that all the provisions of the said Agreement shall be given effect to in the Union of India.

Notification : No. GSR 950(E), dated 29-12-1992.

ANNEXURE

AGREEMENT BETWEEN THE REPUBLIC OF INDIA AND THE KINGDOM OF SAUDI ARABIA FOR AVOIDANCE OF DOUBLE TAXATION BY RECIPROCAL EXEMPTION OF TAXES ON INCOME ON THE ACTIVITIES OF AIR TRANSPORT ENTERPRISES OF THE TWO COUNTRIES

The Republic of India and the Kingdom of Saudi Arabia desiring to conclude an Agreement for Avoidance of Double Taxation by Reciprocal Exemption of Taxes levied on income of enterprises and their employees from operation of air transport in international traffic have agreed as follows :

ARTICLE 1 – *Definitions* – 1. In this Agreement, unless the context otherwise requires :

- (a) the terms a Contracting State and the other Contracting State mean India or the Kingdom of Saudi Arabia, as the context requires ;
- (b) the term tax means Saudi tax or Indian tax as the context requires ;
- (c) the term air transport enterprise of a Contracting State means
 - (i) in the case of the Kingdom of Saudi Arabia, the Saudi Arabian Airlines Corporation or its successor ;
 - (ii) in the case of India, Air India or its successor ;
- (d) the term operation of air transport means the business of transportation by air of passengers, baggage, livestock, goods or mail conducted by an enterprise of a Contracting State including sale of tickets and similar documents used for the purpose of transport ;
- (e) the term international traffic means any transport by aircraft owned, leased or chartered and operated by an air transport enterprise of a Contracting State, except when such transport is made solely between places in the other Contracting State ;
- (f) the term Competent authority means
 - (i) in the case of the Kingdom of Saudi Arabia, the Ministry of Finance & National Economy ;
 - (ii) in the case of India, the Central Government in the Ministry of Finance, Department of Revenue ;

- (g) 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 ;
- (h) the term person includes an individual, a corporation, a company or any other body of persons ;
- (i) the term other payments means social security insurance, old age annuity or pension, sickness or medical insurance, unemployment insurance or any other payments measured by income levied on the salaries and allowances of the employees by the law of the Contracting State.

2. In the application of the provisions of this Agreement by one of the Contracting States, any term used but not defined herein shall, unless the context otherwise requires, have the meaning which it has under the laws in that State relating to the taxes which are the subject of this Agreement.

ARTICLE 2 – *Taxes covered* – 1. This Agreement shall apply to taxes on income imposed on behalf of each Contracting State irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable property and taxes on the total amounts of wages or salaries paid by enterprises.

3. The existing taxes to which the Agreement shall apply are in particular :

- (a) in the case of the Kingdom of Saudi Arabia the income-tax (hereinafter referred to as Saudi Tax) ;
- (b) in the case of India :
 - (i) the income-tax including any surcharge thereon ;
 - (ii) the surtax (hereinafter referred to as Indian Tax).

4. This Agreement shall also apply to any identical or substantially similar taxes as are subsequently imposed in addition to, or in place of, the taxes referred to in paragraph 3 of this Article. The competent authorities of the Contracting

States shall notify each other of any substantial changes which are made in their respective taxation laws.

ARTICLE 3 – *Taxation of income* – 1. Income and profits derived by an air transport enterprise of a Contracting State from the operation of air transport in international traffic shall be exempted from tax in the other Contracting State.

2. The provisions of paragraph 1 shall also apply to income and profits derived by an air transport enterprise of a Contracting State from its participation in a pool or a joint air transport operation.

3. For the purposes of this Article, profits derived by an air transport enterprise of a Contracting State, from the operation of air transport in international traffic also include income derived from :

- (a) the rental or lease of aircraft or ground equipment to the enterprise of the other Contracting State;
- (b) training schemes, management and other services rendered to the enterprise of the other Contracting State.

4. For the purposes of paragraph 1, interest or similar earnings on funds directly connected with the operation of aircraft in international traffic shall be regarded as income from the operation of aircraft.

ARTICLE 4 – *Remuneration for personal services* – 1. The two Contracting States undertake to extend exemption of all taxes and other payments levied or to be levied on salaries, wages, allowances and perquisites, wherever received, by an employee belonging to the air transport enterprise of either Contracting State, provided that he is a citizen of the other Contracting State.

ARTICLE 5 – *Mutual agreement procedure and settlement disputes* – 1. Consultation may be requested at any time by either Contracting State for the purpose of amendment to this Agreement. Such consultation shall begin within 90 days from the date of receipt of any such request.

2. The competent authorities of the Contracting States shall resolve by mutual agreement any difficulties or doubts regarding the interpretation or application of this Agreement.

ARTICLE 6 – *Entry into force* – 1. This Agreement shall be approved or ratified in accordance with the laws in each of the Contracting States. It shall enter into force sixty days after the exchange of letters certifying that the proper procedure was fulfilled in each Contracting State. The exchange of letters shall be through diplomatic channels.

2. The provisions of this Agreement shall have effect in respect of income derived on or after the 1st day of January, 1970.

ARTICLE 7 – *Termination* – This Agreement shall remain in force indefinitely but may be terminated by either Contracting State by giving notice of termination at least six months before the end of any calendar year, in which case, this Agreement shall cease to have effect from the end of the calendar year in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned duly authorized thereto, have signed this Agreement and have affixed thereto their seal.

DONE at New Delhi this 14th day of November, 1991, corresponding to 8th Jamuda 1, 1412, in two originals, in the Hindi, Arabic and English languages, all texts being equally authentic. In case of divergence between the three texts, the English text shall prevail.

Serbia

Agreement for avoidance of double taxation and prevention of fiscal evasion with Serbia

WHEREAS the annexed Convention between the Government of Republic of India and the Council of Ministers of Serbia and Montenegro for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital was signed at New Delhi on 8-2-2006;

AND WHEREAS the State Union of Serbia and Montenegro was disintegrated into two independent States after Montenegros formal declaration of independence on 3-6-2006 and Serbias formal declaration of independence on 5-6-2006;

AND WHEREAS the National Assembly of the Republic of Serbia has ratified the said Convention as published in the Official Gazette of the Republic of Serbia – International Treaties No. 102/07, dated 7-11-2007 and accordingly reference in the said Convention to Serbia and Montenegro shall be read as reference to Serbia;

AND WHEREAS the date of entry into force of the said Convention is the 23rd day of September, 2008, being the date of later of the notifications of completion of the procedures as required by the respective laws for entry into force of this Convention, in accordance with paragraph 2 of Article 30 of the said Convention;

AND WHEREAS sub-paragraph (2) of paragraph 2 of Article 30 of the said Convention provides that the provisions of the Convention shall have effect in India in respect of the taxes on income derived and taxes on capital owned in each fiscal year beginning on or after the first day of April in the calendar year next following the year in which the Convention enters into force;

NOW, THEREFORE, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961) and section 44A of the Wealth-tax Act,

1957 (27 of 1957), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in the Union of India.

Notification : No. 5/2009 [F.No. 503/1/797-FTD-1]/S.O. 97(E), dated 7-1-2009.

ANNEXURE

CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE COUNCIL OF MINISTERS OF SERBIA AND MONTENEGRO FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE COUNCIL OF MINISTERS OF SERBIA AND MONTENEGRO

desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income and on capital and with a view to promoting economic co-operation between the two countries,

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. This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which the Convention shall apply are in particular:

in Serbia and Montenegro:

- (1) the tax on profit;
- (2) the tax on income;
- (3) the tax on capital;
- (4) the tax on revenue from international transport (hereinafter referred to as Serbian and Montenegrin tax);

in India:

- (1) the Income-tax, including any surcharge thereon; and
- (2) the wealth tax.

(hereinafter referred to as Indian tax).

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

Article 3 : GENERAL DEFINITIONS – 1. For the purposes of this Convention:

- (1) the terms a Contracting State and the other Contracting State mean Serbia and Montenegro or India, as the context requires;
- (2) the term Serbia and Montenegro means the State community Serbia and Montenegro and when used in a geographical sense it means the land territory of Serbia and Montenegro, its internal sea waters and the belt of the territorial sea, the air space thereover, as well as the seabed and subsoil of the part of the continental shelf outside the outer limit of the territorial sea over which Serbia and Montenegro exercises its sovereign rights for the purpose of exploration and exploitation of their natural resources in accordance with its internal legislation and international law;
- (3) the term India means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law, including the U.N. Convention on the Law of the Sea;

- (4) the term political sub-divisions, in the State community Serbia and Montenegro, means Member States;
- (5) the term national means:
 - any individual possessing the nationality of a Contracting State;
 - any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
- (6) the term person includes an individual, a company, a body of persons and, in the case of India, any other entity which is treated as a taxable unit under the taxation laws in force in that country;
- (7) the term company means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (8) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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;
- (9) 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;
- (10) the term fiscal year means:
 - in the case of Serbia and Montenegro, the year beginning on the first day of January;
 - in the case of India, the year beginning on the first day of April.
- (11) the term competent authority means:
 - in the case of Serbia and Montenegro, the Ministry for International Economic Relations or its authorized representative;
 - in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorized representatives.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the

applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4 : RESIDENT – 1. For the purposes of this Convention, the term resident of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political sub-division or local authority thereof. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State, or capital situated therein.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

- (1) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);
- (2) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
- (3) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
- (4) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 only of the State in which its place of effective management is situated. If the State in which its place of effective management is situated cannot be determined, then the competent authorities of the Contracting States shall settle the question by mutual agreement.

Article 5 : PERMANENT ESTABLISHMENT – 1. For the purposes of this Convention, the term permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially:

- (1) a place of management;
- (2) a branch;
- (3) an office;
- (4) a factory;
- (5) a workshop;
- (6) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (7) a sales outlet;
- (8) a warehouse in relation to a person providing storage facilities for others; and
- (9) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on.

3. The term permanent establishment likewise encompasses a building site, or a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than twelve months;

4. Notwithstanding the preceding provisions of this Article, the term permanent establishment shall be deemed not to include:

- (1) the use of facilities solely for the purpose of storage, display or occasional delivery of goods or merchandise belonging to the enterprise;
- (2) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or occasional delivery;
- (3) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

- (4) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- (5) the maintenance of a fixed place of business solely for the purpose of advertising, supply of information, scientific research or similar activities which have a preparatory or auxiliary character, for the enterprise;
- (6) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (1) to (5) provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 7 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 Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:

- (1) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
- (2) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.

6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

8. 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 otherwise) shall not of itself constitute either company a permanent establishment of the other.

Article 6 : INCOME FROM IMMOVABLE PROPERTY – 1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term immovable property shall have the meaning, which it has under the 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded 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, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, 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.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business 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, in accordance with and subject to the limitations of domestic tax laws of that State. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise,

by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. Insofar 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 contained 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 purposes 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 : INTERNATIONAL TRAFFIC – 1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall mean the profits derived by an enterprise referred to in paragraph 1, from transportation by sea or air of passengers, goods, mail or livestock.

3. Profits derived by an enterprise referred to in paragraph 1, which is a resident of a Contracting State from the use or rental of containers (including trailers and other equipment for the transport of containers) used for the transport of goods or merchandise by that enterprise in international traffic

shall be taxable only in that Contracting State unless the containers are used solely within the other Contracting State.

4. For the purposes of this Article, interest on funds directly connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft, if they are incidental to the carrying on of such business, and the provisions of Article 11 shall not apply in relation to such interest.

5. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9 : ASSOCIATED ENTERPRISES – 1. Where

- (1) 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
- (2) 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.

2. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard

shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10 : 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 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 laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed :

- (1) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends;
- (2) 15 per cent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

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, 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 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 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 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 State.

Article 11 : INTEREST – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by :

- (1) the Government, a political sub-division or a local authority of the other Contracting State; or
- (2) the Reserve Bank, Central Bank or National Bank of the other Contracting State.

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 debtors 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 and 2 shall not supply 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 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 a resident of that State. Where, however, the person paying the interest, 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 indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or a fixed base, then such interest shall be deemed to arise in the 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 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 the other provisions of this Convention.

Article 12 : ROYALTIES – 1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount, of the royalties. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

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 including 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.

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 a resident of that 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 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 the other provisions of this Convention.

Article 13 : FEES FOR TECHNICAL SERVICES – 1. Fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such fees for technical services may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the fees for technical services is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the fees for technical services. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. The term fees for technical services as used in this article means payments of any kind received as a consideration for the rendering of any managerial, technical or consultancy services (including the provision of services by technical or other personnel) but does not include payments for services mentioned in articles 15 and 16.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the fees for technical services arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the fees for technical services are 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. Fees for technical services shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the fees for technical services, 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 fees for technical services was incurred, and such fees for technical services are borne by such permanent establishment or fixed base, then such fees for technical services shall be deemed to arise in the 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 fees for technical services, having regard to the services 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 the other provisions of this Convention.

Article 14 : CAPITAL GAINS – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in that State.

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from the alienation of shares other than those mentioned in paragraph 4 of a company which is a resident of a Contracting State may be taxed in that State.

6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.

Article 15 : INDEPENDENT PERSONAL SERVICES – 1. Income derived by an individual who is a resident of a Contracting State from the performance of professional services or other independent activities of any similar character shall be taxable only in that State, except in the following circumstances, when such income may also be taxed in the other Contracting State :

- (1) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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
- (2) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned; in that case, only so much of the income, as is derived from his activities performed in that other Contracting State may be taxed in that other State.

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

Article 16 : DEPENDENT PERSONAL SERVICES – 1. Subject to the provisions of articles 17, 19, 20, 21 and 22, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if :

- (1) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve months period commencing or ending in the fiscal year concerned; and
- (2) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (3) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

2. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

Article 17 : DIRECTORS FEES – Directors fees and other 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 may be taxed in that other State.

Article 18 : ENTERTAINERS AND SPORT PERSONS – 1. Notwithstanding the provisions of articles 15 and 16, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson 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 sportsperson are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived by a resident of a Contracting State from his personal activities as an entertainer or as a sportsperson shall be taxable only in that State if the activities are exercised in the other Contracting State within the framework of a cultural or sports exchange programme approved by both Contracting States.

Article 19 : PENSIONS – Subject to the provisions of paragraph 2 of Article 20, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

Article 20 : GOVERNMENT SERVICE – 1. (1) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(2) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who :

- is a national of that State; or
- did not become a resident of that State solely for the purpose of rendering the services.

2. (1) Any pension paid by, or out of funds created by, a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(2) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of that State.

3. The provisions of Articles 16, 17, 18 and 19 shall apply to salaries, wages and other similar remuneration and to pensions, in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

Article 21 : STUDENTS – 1. Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

2. In respect of grants, scholarships and remuneration from employment not covered by paragraph 1, a student or business apprentice referred to in paragraph 1 shall, in addition, be entitled during such education or training to the same exemptions, reliefs or reductions in respect of taxes available to residents of the Contracting State which he is visiting.

3. The benefit of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article for more than five years from the date of his first arrival in that other Contracting State.

Article 22 : PROFESSORS, TEACHERS AND RESEARCHERS – 1. A professor or teacher who visits a Contracting State for the purpose of teaching or carrying out research at a university, college, school or other approved educational institution in that State and who is or was immediately before that visit a resident of the other Contracting State, shall be exempt from taxation in the first-mentioned Contracting State on remuneration for such teaching or research for a period not exceeding two years from the date of his first visit for that purpose, provided that such remuneration arise from sources outside that State.

2. The provisions of paragraph 1 of this Article shall not apply to remuneration from research, if such research is undertaken primarily for the private benefit of a specific person or persons.

Article 23 : OTHER INCOME – 1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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

income 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.

3. Notwithstanding the provisions of paragraph 1, if a resident of a Contracting State derives income from sources within the other Contracting State in the form of lotteries, crossword puzzles, races including horse races, card games and other games of any sort or gambling or betting of any form or nature whatsoever, such income may be taxed in that other Contracting State.

Article 24 : CAPITAL – 1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.

3. Capital represented by ships and aircraft operated in international traffic, and by movable property pertaining to the operation of such ships and aircraft shall be taxable only in the Contracting State of which the enterprise owning such property is a resident.

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

Article 25 : ELIMINATION OF DOUBLE TAXATION – 1. Where a resident of a Contracting State derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in the other Contracting State, the first-mentioned State shall allow:

- as a deduction from the tax on the income of that resident, an amount equal to the income-tax paid in that other State;

- as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in that other State.

Such deduction in either case shall not, however, exceed that part of the income-tax or capital tax, as computed before the deduction is given, which is attributable, as the case may be, to the income or the capital which may be taxed in that other State.

2. Where in accordance with any provision of the Convention income derived or capital owned by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

3. For the purpose of allowance as a credit in a Contracting State the tax paid in the other Contracting State shall be deemed to include the tax which is otherwise payable in that other State but has been reduced or waived by that State under its legal provisions for tax incentives.

4. For the purposes of this Article, the term tax paid shall not include any amount which is payable in respect of any default or omission in relation to taxes to which this Convention applies.

Article 26 : NON-DISCRIMINATION – 1. 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, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

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. This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent

establishment which a company of the other Contracting State has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first-mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7 of this Convention. Further, this provision shall also not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

4. 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 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 the first-mentioned State are or may be subjected.

5. The provisions of this Article shall apply to the taxes referred to in Article 2.

Article 27 : MUTUAL AGREEMENT PROCEDURE – 1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 26, to that of the Contracting State of which he is a national. The case must be presented within

three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

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 a satisfactory 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 which is not in accordance with this Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law 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 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. When it seems advisable in order to reach an agreement to have oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

Article 28 : EXCHANGE OF INFORMATION – 1. The competent authorities of the Contracting States shall exchange such information (including documents or certified copies of the documents) as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities

shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on the competent authority of a Contracting State the obligation:

- (1) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (2) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (3) 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 29 : MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS – Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

Article 30 : ENTRY INTO FORCE – 1. The Contracting States shall notify each other in writing, through diplomatic channels, the completion of the procedure required by the respective laws for the entry into force of this Convention.

2. The Convention shall enter into force on the date of the later of the notifications referred to in paragraph 1 of this Article and its provisions shall have effect:

- (1) in Serbia and Montenegro : in respect of the taxes on income derived and the taxes on capital owned in each fiscal year beginning on or after the first day of January in the calendar year next following the year in which this Convention enters into force;
- (2) in India: in respect of the taxes on income derived and the taxes on capital owned in each fiscal year beginning on or after the first day of April in the calendar year, next following the year in which this Convention enters into force.

Article 31 : TERMINATION – This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the fifth year from the date of entry into force of the Convention. In such event the Convention shall cease to have effect:

- (1) in Serbia and Montenegro: in respect of the taxes on income derived and the taxes on capital owned in each fiscal year beginning on or after the first day of January in the calendar year next following the year in which the notice of termination is given;
- (2) in India: in respect of the taxes on income derived and the taxes on capital owned each fiscal year beginning on or after the first day of April in the calendar year next following the year in which the notice of termination is given.

In Witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done in duplicate at New Delhi this 8th day of February, 2006 in the English, Hindi and Serbian languages, all three texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Government of the Republic of India	For the Council of Ministers of Serbia and Montenegro

Sd/–

Sd/–

Shri P. Chidambaram
Finance Minister

Prof. Dr. Predrag Ivanovic
Minister for International Economic Relations

PROTOCOL

At the moment of signing the Convention between the Council of Ministers of Serbia and Montenegro and the Government of the Republic of India for the

Avoidance of Double Taxation with respect to taxes on Income and on Capital, the undersigned have agreed that the following provision shall form an integral part of the Convention.

Ad. Articles 6 and 14

With reference to paragraphs 1 of Article 6 and Article 14, it is understood that income from immovable property and capital gains on alienation of immovable property respectively may be taxed in both Contracting States.

IN WITNESS whereof the undersigned, being duly authorized thereto, have signed this Protocol.

DONE in duplicate at New Delhi this 8th day of February, 2006 in the, English, Hindi and Serbian languages, all three texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE
REPUBLIC OF INDIA

FOR THE COUNCIL OF MINISTERS OF
SERBIA AND MONTENEGRO

Sd/-

Sd/-

Shri P. Chidambaram
Finance Minister

Prof. Dr. Predrag Ivanovic
Minister for International Economic
Relations

Singapore

**Agreement for avoidance of double taxation and prevention of fiscal evasion
with Singapore**

Whereas the annexed Agreement between the Government of the Republic of India and the Government of the Republic of Singapore for the avoidance of double taxation and

the prevention of fiscal evasion with respect to taxes on income has entered into force on 27th May, 1994 on the notification by both the Contracting States to each other of the completion of the procedures required by their respective laws, as required by the said Agreement;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Agreement shall be given effect to in the Union of India.

Notification : No. GSR 610(E), dated 8-8-1994 as amended by Notification SO 1022(E), dated 18-7-2005.

TEXT OF AMENDED AGREEMENT

The Government of the Republic of India and the Government of the Republic of Singapore, desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have agreed as follows :

ARTICLE 1 : PERSONAL SCOPE – This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2 : TAXES COVERED – 1. The taxes to which this Agreement shall apply are :

(a) in India :

income-tax including any surcharge thereon

(hereinafter referred to as Indian tax) ;

(b) in Singapore :

the income-tax (hereinafter referred to as Singapore tax).

2. The Agreement shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of the present Agreement 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.

ARTICLE 3 : **GENERAL DEFINITIONS** – 7. In this Agreement, unless the context otherwise requires :

- (a) the term India means the territory of India and includes the territorial sea and air space above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdictions, according to the Indian law and in accordance with international law ;
- (b) the term Singapore means the Republic of Singapore ;
- (c) the terms a Contracting State and the other Contracting State mean India or Singapore as the context requires ;
- (d) the term company means any body corporate or any entity which is treated as a company or body corporate under the taxation laws in force in the respective Contracting States ;
- (e) the term competent authority means in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative; and in the case of Singapore, the Minister for Finance or his authorised representative ;
- (f) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean respectively and enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (g) the term fiscal year means :
 - (i) in the case of India, previous year as defined under section 3 of the Income-tax Act, 1961 ;
 - (ii) in the case of Singapore, calendar year ;
- (h) 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 ;
- (i) the term national means any individual, possessing the nationality of a Contracting State and any legal person, partnership or association deriving its status as such from the laws in force in the Contracting State ;

- (j) the term person includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States ;
- (k) the term tax means Indian tax or Singapore tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Agreement applies or which represents a penalty imposed relating to those taxes.

2. As regards the application of the Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have, the meaning which it has under the law of that State concerning the taxes to which the Agreement applies.

ARTICLE 4 : **RESIDENT** – 1. For the purposes of this Agreement, the term resident of a Contracting State means any person who is a resident of a Contracting State in accordance with the taxation laws of that State.

2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his status shall be determined as follows :

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests) ;
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode ;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national ;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 State in which its place of effective management is situated.

ARTICLE 5 : **PERMANENT ESTABLISHMENT** – 1. For the purposes of this Agreement, the term permanent establishment means a fixed place of business through which the business of the enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (a) a place of management ;
- (b) a branch ;
- (c) an office ;
- (d) a factory ;
- (e) a workshop ;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources ;
- (g) a warehouse in relation to a person providing storage facilities for others;
- (h) a farm, plantation or other place where agriculture, forestry, plantation or related activities are carried on ;
- (i) premises used as a sales outlet or for soliciting and receiving orders ;
- (j) an installation or structure used for the exploration or exploitation of natural resources but only if so used for a period of more than 120 days in any fiscal year.

3. A building site or construction, installation or assembly project constitutes a permanent establishment only if it continues for a period of more than 183 days in any fiscal year.

4. An enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it carries on supervisory activities in that Contracting State for a period of more than 183 days in any fiscal year in connection with a building site or construction, installation or assembly project which is being undertaken in that Contracting State.

5. Notwithstanding the provisions of paragraphs 3 and 4, and enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it provides services or facilities in that Contracting State for a period of more than 183 days in any fiscal year in

connection with the exploration, exploitation or extraction of mineral oils in that Contracting State.

6. An enterprise shall be deemed to have a permanent establishment in a Contracting State if it furnishes services, other than services referred to in paragraphs 4 and 5 of this Article and technical services as defined in Article 12, within a Contracting State through employees or other personnel, but only if :

- (a) activities of that nature continue within that Contracting State for a period or periods aggregating more than 90 days in any fiscal year; or
- (b) activities are performed for a related enterprise (within the meaning of Article 9 of this Agreement) for a period or periods aggregating more than 30 days in any fiscal year.

7. Notwithstanding the preceding provisions of this Article, the term permanent establishment shall be deemed not to include :

- (a) the use of facilities solely for the purpose of storage, display or occasional delivery 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, display or occasional delivery;
- (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 of collecting information, for the enterprise ;
- (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.

However, the provisions of sub-paragraphs (a) to (e) shall not be applicable where the enterprise maintains any other fixed place of business in the other Contracting State through which the business of the enterprise is wholly or partly carried on.

8. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 9 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 that State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise ;
- (b) he has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise 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 and other enterprises controlling, controlled by, or subject to the same common control, as that enterprise.

9. 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 provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise itself or on behalf of that enterprise and other enterprises controlling, controlled by, or subject to the same common control, as that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

10. 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 : INCOME FROM IMMOVABLE PROPERTY – 1. Income derived by a resident of a Contracting State from immovable property situated in the other Contracting State may be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the 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 and forestry, rights to which the provisions of general law respecting landed property apply usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall also 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, the profits of the enterprise may be taxed in the other State but only so much of them as it directly or indirectly attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, 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 or the determination thereof presents exceptional difficulties, the profits attributable to the permanent establishment may be estimated 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 purposes of the business 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, in accordance with the provisions of and subject to the limitations of the taxation laws of that State.

4. Insofar as it has been customary in the 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 contained 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 purposes 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 Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

8. For the purpose of paragraph 1, the term directly or indirectly attributable to the permanent establishment includes profits arising from transactions in which the permanent establishment has been involved and such profits shall be regarded as attributable to the permanent establishment to the extent appropriate to the part played by the permanent establishment in those transactions, even if those transactions are made or placed directly with the overseas head office of the enterprise rather than with the permanent establishment.

ARTICLE 8 : SHIPPING AND AIR TRANSPORT – 1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency engaged in the operation of ships or aircraft.

3. Interest on funds connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft, and the provisions of Article 11 shall not apply in relation to such interest.

4. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall mean profits derived from the transportation by sea or air of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of the ships or aircraft, including profits from :

- (a) the sale of tickets for such transportation on behalf of other enterprises;
- (b) the incidental lease of ships or aircraft used in such transportation;
- (c) the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) in connection with such transportation; and
- (d) any other activity directly connected with such transportation.

ARTICLE 9 : 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 10 : 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 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 laws of that 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 owns at least 25 per cent of the shares of the company paying the dividends;
- (b) 15 per cent of the 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. Notwithstanding the provisions of paragraph 2 of this Article, as long as Singapore does not impose a tax on dividends in addition to the tax chargeable on the profits or income of a company, dividends paid by a company which is a resident of Singapore to a resident of India shall be exempt from any tax in Singapore which may be chargeable on dividends in addition to the tax chargeable on the profits or income of the company.

4. The term dividends as used in this Article means income from 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.

5. 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 14, as the case may be, shall apply.

6. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other 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 State or so far 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 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 State.

7. (a) Dividends shall be deemed to arise in India if they are paid by a company which is a resident of India ;

(b) Dividends shall be deemed to arise in Singapore :

(i) if they are paid by a company which is a resident of Singapore ; or

(ii) if they are paid by a company which is a resident of Malaysia out of profits arising in Singapore and qualifying as dividends arising in Singapore under Article VII of the Agreement for the Avoidance of Double Taxation between Singapore and Malaysia signed on 26th December, 1968.

ARTICLE 11 : INTEREST – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed :

- (a) 10 per cent of the gross amount of the interest if such interest is paid on a loan granted by a bank carrying on a *bona fide* banking business or by a similar financial institution (including an insurance company) ;
- (b) 15 per cent of the gross amount of the interest in all other cases.

3. 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 debtors 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.

4. The provisions of paragraphs 1 and 2 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 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 14, as the case may be, shall apply.

5. 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, a statutory body or a resident of that State. Where, however, the person paying the interest, 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 indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest 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 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 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 the other provisions of this Agreement.

ARTICLE 12 : ROYALTIES AND FEES FOR TECHNICAL SERVICES – 1. Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

¹[2. However, such royalties and fees for technical services 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 or fees for technical services, the tax so charged shall not exceed 10 per cent.]

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 :

- (a) any copyright of a literary, artistic or scientific work, including cinematograph film or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience, including gains derived from the alienation of any such right, property or information ;
- (b) any industrial, commercial or scientific equipment, other than payments derived by an enterprise from activities described in paragraph 4(b) or 4(c) of Article 8.

4. The term fees for technical services as used in this Article means payments of any kind to any person in consideration for services of a managerial, technical or consultancy nature (including the provision of such services through technical or other personnel) if such services :

- (a) are ancillary and subsidiary to the application or enjoyment of the right, property or information for which a payment described in paragraph 3 is received ; or
- (b) make available technical knowledge, experience, skill, know-how or processes, which enables the person acquiring the services to apply the technology contained therein ; or
- (c) consist of the development and transfer of a technical plan or technical design, but excludes any service that does not enable the person acquiring the service to apply the technology contained therein.

For the purposes of (b) and (c) above, the person acquiring the service shall be deemed to include an agent, nominee, or transferee of such person.

5. Notwithstanding paragraph 4, fees for technical services does not include payments :

- (a) for services that are ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of property other than a sale described in paragraph 3(a) ;
- (b) for services that are ancillary and subsidiary to the rental of ships, aircraft, containers or other equipment used in connection with the operation of ships or aircraft in international traffic ;
- (c) for teaching in or by educational institutions ;
- (d) for services for the personal use of the individual or individuals making the payment;
- (e) to an employee of the person making the payments or to any individual or firm of individuals (other than a company) for professional services as defined in Article 14 ;
- (f) for services rendered in connection with an installation or structure used for the exploration or exploitation of natural resources referred to in paragraph 2(j) of Article 5 ;
- (g) for services referred to in paragraphs 4 and 5 of Article 5.

6. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services 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, property or contract in respect of which the royalties or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

7. Royalties and fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority, a statutory body or a resident of that State. Where, however, the person paying the royalties or fees for technical services, 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 or fees for technical services was

incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

8. 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 royalties or fees for technical services paid exceeds the amount which would have been paid 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 the other provisions of this Agreement.

ARTICLE 13 : CAPITAL GAINS – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property, referred to in Article 6, and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.

¹[4. *Gains derived by a resident of a Contracting State from the alienation of any property other than those mentioned in paragraphs 1, 2 and 3 of this Article shall be taxable only in that State.*]

ARTICLE 14 : INDEPENDENT PERSONAL SERVICES – 1. Income derived by an individual who is a resident of a Contracting State from the performance of professional services or other independent activities of a similar character shall be taxable only in that State except in the following circumstances when such income may also be taxed in the other Contracting State :

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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 State ; or
- (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 90 days in the relevant fiscal year, in that case, only so much of the income, as is derived from his activities, performed in that other State may be taxed in that other State.

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

ARTICLE 15 : DEPENDENT PERSONAL SERVICES – 1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State, if :

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the relevant fiscal year ; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State ; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. In the case of a recipient who satisfies all the conditions under sub-paragraphs (a), (b) and (c) of paragraph 2, if his remuneration is deductible as an expense against fees for technical services (dealt with under Article 12) derived by his employer and the employer has no permanent establishment in the other Contracting State, the remuneration may, notwithstanding the provisions of paragraph 2, be taxed in that State. In such case, the tax so charged shall not exceed 15 per cent of the gross amount of the remuneration.

4. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State shall be taxable only in that State.

ARTICLE 16 : DIRECTORS FEES – Directors 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 may be taxed in that other State.

ARTICLE 17 : ARTISTES AND SPORTSPERSONS – 1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an artiste such as a theatre, motion picture, radio or television artiste or a musician or as a sportsperson, from his personal activities as such exercised in the other Contracting State may be taxed in that other State.

2. Where income in respect of or in connection with personal activities exercised by an artiste or a sportsperson accrues not to the artiste or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the artistes or sportspersons are exercised.

3. Notwithstanding the provisions of paragraph 1, income derived by an artiste or a sportsperson who is a resident of a Contracting State from his personal activities as such exercised in the other Contracting State, shall be taxable only in the first-mentioned State, if the activities in the other State are supported wholly or substantially from the public funds of the first-mentioned State, including any of its political sub-divisions, local authorities or statutory bodies.

4. Notwithstanding the provisions of paragraph 2 and Articles 7, 14 and 15, where income in respect of or in connection with personal activities exercised by an artiste or a sportsperson in a Contracting State accrues not to the artiste or sportsperson himself but to another person, that income shall be taxable only in the other Contracting State, if that other person is supported wholly or substantially from the public funds of that other State, including any of its political sub-divisions, local authorities or statutory bodies.

ARTICLE 18 : REMUNERATION AND PENSIONS IN RESPECT OF GOVERNMENT SERVICE –

1. (a) Remuneration, other than a pension, paid by a Contracting State or a political sub-division, a local authority or a statutory body thereof to an individual in respect of

services rendered to that State or sub-division or authority or body shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who :

(i) is a national of that State ; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by a Contracting State or a political sub-division, a local authority or a statutory body thereof to an individual in respect of services rendered to that State or sub-division or authority or body shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of that other State.

3. The provisions of Articles 15, 16 and 19 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority or a statutory body thereof.

ARTICLE 19 : NON-GOVERNMENT PENSIONS AND ANNUITIES – 1. Any pension, other than a pension referred to in Article 18, or any annuity derived by a resident of a Contracting State from sources within the other Contracting State may be taxed only in the first-mentioned State.

2. The term pension means a periodic payment made in consideration of past services or by way of compensation for injuries received in the course of performance of services.

3. 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 moneys worth.

ARTICLE 20 : STUDENTS AND TRAINEES – 1. An individual who is or was a resident of a Contracting State immediately before making a visit to the other Contracting State and is temporarily present in the other State solely :

- (a) as a student at a recognised university, college, school or other similar recognised educational institution in that other State ;
- (b) as a business or technical apprentice ; or
- (c) as a recipient of a grant, allowance or award for the primary purpose of study, research or training from the Government of either State or from a scientific, educational, religious or charitable organisation or under a technical assistance programme entered into by the Government of either State ;

shall be exempt from tax in that other State on :

- (i) all remittances from abroad for the purposes of his maintenance, education, study, research or training ;
- (ii) the amount of such grant, allowance or award; and
- (iii) any remuneration not exceeding United States Dollars five hundred per month or its equivalent in local currency in respect of services in that other State provided the services are performed in connection with his study, research or training or are necessary for the purposes of his maintenance.

2. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article for more than five consecutive years from the date of his first arrival in that other Contracting State.

ARTICLE 21 : TEACHERS AND RESEARCHERS – 1. An individual who is or was a resident of a Contracting State immediately before making a visit to the other Contracting State, and who, at the invitation of any university, college, school or other similar educational institution, visits that other State for a period not exceeding two years solely for the purpose of teaching or research or both at such educational institution shall be exempt from tax in that other State on any remuneration for such teaching or research.

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.

ARTICLE 22 : INCOME OF GOVERNMENT – 1. The Government of a Contracting State shall be exempt from tax in the other Contracting State in respect of income derived by that Government from sources within the other State.

2. The types of income to which paragraph 1 applies are:

- (a) dividends under Article 10 ;

- (b) interest under Article 11 ; and
- (c) any other income or gains derived from transactions not pursuant to the conduct of commercial activities.

3. For the purposes of paragraph 1, the term Government :

- (a) in the case of Singapore means the Government of Singapore and shall include :
 - (i) the Monetary Authority of Singapore and the Board of Commissioners of Currency;
 - (ii) the Government of Singapore Investment Corporation Pvt. Ltd. to the extent it is not engaged in the conduct of commercial activities ;
 - (iii) a statutory body not engaged in the conduct of commercial activities ;
 - (iv) any other institution or body as may be agreed from time to time between the competent authorities of the Contracting States ;
- (b) 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 or any of its subsidiaries which is not engaged in the conduct of commercial activities;
 - (iii) a statutory body not engaged in the conduct of commercial activities;
 - (iv) any other institution or body as may be agreed from time to time between the competent authorities of the Contracting States.

ARTICLE 23 : INCOME NOT EXPRESSLY MENTIONED – Items of income which are not expressly mentioned in the foregoing Articles of this Agreement may be taxed in accordance with the taxation laws of the respective Contracting States.

ARTICLE 24 : LIMITATION OF RELIEF – 1. Where this Agreement provides (with or without other conditions) that income from sources in a Contracting State shall be exempt from tax, or taxed at a reduced rate in that Contracting State and under the laws in force in the other Contracting State the said income is subject to tax by reference to the amount thereof which is remitted to or received in that other Contracting State and not by reference to the full amount thereof, then the exemption or reduction of tax to be allowed under this Agreement in the first-mentioned Contracting State shall apply to so much of the income as is remitted to or received in that other Contracting State.

2. However, this limitation does not apply to income derived by the Government of a Contracting State or any person approved by the competent authority of that State for

the purpose of this paragraph. The term Government includes its agencies and statutory bodies.

ARTICLE 25 : AVOIDANCE OF DOUBLE TAXATION – 1. The laws in force in either of the Contracting States shall continue to govern the taxation of income in the respective Contracting States except where express provision to the contrary is made in this Agreement.

2. Where a resident of India derives income which, in accordance with the provisions of this Agreement, may be taxed in Singapore, India shall allow as a deduction from the tax on the income of that resident an amount equal to the Singapore tax paid, whether directly or by deduction. Where the income is a dividend paid by a company which is a resident of Singapore to a company which is a resident of India and which owns directly or indirectly not less than 25 per cent of the share capital of the company paying the dividend, the deduction shall take into account the Singapore tax paid in respect of the profits out of which the dividend is paid. Such deduction in either case shall not, however, exceed that part of the tax (as computed before the deduction is given) which is attributable to the income which may be taxed in Singapore.

3. For the purposes of paragraph 2 of this Article, Singapore tax paid shall be deemed to include any amount of tax which would have been payable but for the reduction or exemption of Singapore tax granted under :

(a) the provisions of the Economic Expansion Incentives (Relief from Income-tax) Act and the provisions of sections 13(1)(d), 13(1)(u), 13(1)(v), 13(2), 13A, 13B, 13F, 14B, 14E, 43A, 43C, 43D, 43E, 43F, 43G, 43H, 43-I, 43J and 43K of the Income-tax Act, insofar as they were in force and have not been modified since the date of signature of this Agreement, or have been modified in minor respects so as not to affect their general character.

(b) any other provision which may subsequently be enacted granting an exemption or reduction of tax which is agreed by the competent authorities of the Contracting States to be of a substantially similar character to any provision referred to in subparagraph (a) of this paragraph, if such provision has not been modified thereafter or has been modified only in minor respects so as not to affect its general character.

4. Subject to the provisions of the laws of Singapore regarding the allowance as a credit against Singapore tax of tax paid in any country other than Singapore, Indian tax paid, whether directly or by deduction, in respect of income from sources within India shall be allowed as a credit against Singapore tax payable in respect of that income. Where such income is a dividend paid by a company which is a resident of India to a resident of Singapore which owns not less than 25 per cent of the share capital of the company paying the dividends, the credit shall take into account Indian tax paid in respect of its profits by the company paying the dividends.

5. For the purposes of paragraph 4 of this Article the term Indian tax paid shall be deemed to include any amount of tax which would have been payable in India but for a deduction allowed in computing the taxable income or an exemption or reduction of tax granted for that year in question :

- (a) Sections 10(4), 10(4B), 10(5B), 10(15)(iv), 10A, 10B, 33AB, 80-I and 80-IA, insofar as these provisions were in force and have not been modified since the date of signature of this Agreement, or have been modified only in minor respects so as not to affect their general character,
- (b) any other provision which may subsequently be enacted granting an exemption or reduction of tax which is agreed by the competent authorities of the Contracting States to be of a substantially similar character to a provision referred to in subparagraph (a) of this paragraph, if such provision has not been modified thereafter or has been modified only in minor respects so as not to affect its general character.

6. Income which, in accordance with the provisions of this Agreement, is not to be subjected to tax in a Contracting State, may be taken into account for calculating the rate of tax to be imposed in that Contracting State.

ARTICLE 26 : NON-DISCRIMINATION – 7. 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 State than the taxation levied on enterprises of that other State carrying on the same activities in the same circumstances or under the same conditions. This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which an enterprise of the other Contracting State has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar enterprise of the first-mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7 of this Agreement.

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 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 in the same circumstances and under the same conditions.

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, reductions and deductions 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) obliging a Contracting State to grant to nationals of the other Contracting State those personal allowances, reliefs, reductions and deductions for tax purposes which it grants to its own citizens who are not resident in that State or to such other persons as may be specified in the taxation laws of that State; and
- (d) 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 Agreement.

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 Agreement, 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. This case must be presented within three years of the date of receipt of notice of the action which gives rise to taxation not in accordance with the Agreement.

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 avoidance of taxation not in accordance with the Agreement. 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 the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

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. 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.

ARTICLE 28 : EXCHANGE OF INFORMATION – 1. The competent authorities of the Contracting States shall exchange such information (including documents) as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement, insofar as the taxation thereunder is not contrary to the Agreement, in particular for the prevention of fraud or evasion of such taxes. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State. However, if the information is originally regarded as secret in the

transmitting State, it shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Agreement. Such persons or authorities shall use the information only for such purposes but may disclose the information in public court proceedings or in judicial decisions.

2. The exchange of information or documents shall be either on a routine basis or on request with reference to particular cases or both.

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 or documents 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 or documents 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 : DIPLOMATIC AND CONSULAR OFFICIALS – Nothing in this Agreement 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 30 : ENTRY INTO FORCE – 1. Each of the Contracting States shall notify the other the completion of the procedures requires by its law for the bringing into force of this Agreement. This Agreement shall enter into force on the date of the later of these notifications and shall thereupon have effect :

- (a) in India, in respect of income arising in any fiscal year beginning on or after the first day of April, 1994;
- (b) in Singapore, in respect of income arising in any fiscal year beginning on or after the first day of January, 1994.

2. The Agreement between the Government of the Republic of India and the Government of the Republic of Singapore for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed in Singapore on 20th April, 1981 shall terminate and cease to be effective from the date on which this Agreement comes into effect.

ARTICLE 31 : *Termination* – This Agreement shall remain in force indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give the other Contracting State through diplomatic channels, written notice of termination and, in such event, this Agreement shall cease to have effect :

- (a) in India, in respect of income arising in any fiscal year beginning on or after the 1st day of April next following the date on which the notice of termination is given;
- (b) in Singapore, in respect of income arising in any fiscal year beginning on or after the 1st day of January next following the date on which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed the present Agreement.

DONE in duplicate at India this twenty-fourth day of January, one thousand nine hundred and ninety-four in the Hindi and English languages, both texts being equally authentic. In the case of divergence between the two texts, the English text shall be the operative one.

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JUDICIAL ANALYSIS

- Income from Singapore cannot be subjected to tax in India where same is in accordance with the agreement for avoidance of double taxation of income *CIT v. S.R.M. Meyyappan Karalkudi* 1995 Tax LR 42 (Mad.).

- See also *Advance Ruling A No. P-11 of 1995*, In re [1997] 94 Taxman 152.

Slovenia

Agreement for Avoidance of Double Taxation and Prevention of Fiscal Evasion with foreign countries – With Slovenia

Whereas the annexed Convention between the Government of the Republic of India and the Government of the Republic of Slovenia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, has come into force on the 17th day of February, 2005, the day on which the Instruments of Ratification were exchanged by the representatives of the two Governments, under Article 28 of the said Convention, for the entry into force of this Convention.

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in the Union of India.

Notification : No. GSR 344(E), dated 31-5-2005.

ANNEXURE

CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE REPUBLIC OF SLOVENIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of Slovenia and the Government of the Republic of India, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and with a view to promoting economic cooperation between the two countries, 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. This Convention shall apply to taxes on income imposed on behalf of a Contracting State or of its political sub-divisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property and taxes on the total amounts of wages or salaries paid by enterprises.

3. The existing taxes to which the Convention shall apply are in particular :

(a) in Slovenia :

(i) the tax on profits of legal persons;

(ii) the tax on income of individuals, including wages and salaries, income from agricultural activities, income from business, capital gains and income from immovable and movable property;

(hereinafter referred to as Slovenian tax).

(b) in India:

the income-tax, including any surcharge thereon;

(hereinafter referred to as Indian tax).

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of significant changes which have been made in their respective taxation laws.

ARTICLE 3 : GENERAL DEFINITIONS – 1. For the purposes of this Convention, unless the context otherwise requires :

(a) the term Slovenia means the Republic of Slovenia and, when used in a geographical sense, means the territory of Slovenia, including the sea area, sea-bed and subsoil and adjacent to the territorial sea, if Slovenia may exercise its sovereign rights and jurisdiction over such sea area, sea-bed and subsoil in accordance with its domestic legislation and international law;

- (b) the term India means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law, including the U.N. Convention on the Law of the Sea;
- (c) the terms Contracting State and the other Contracting State mean the Republic of Slovenia or the Republic of India as the context requires;
- (d) the term person includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States;
- (e) the term company means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (f) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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;
- (g) 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;
- (h) the term competent authority means :
 - (i) in Slovenia : the Ministry of Finance of the Republic of Slovenia or its authorized representative;
 - (ii) in India : the Central Government in the Ministry of Finance (Department of Revenue) or their authorized representative;
- (i) the term national means :
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State.

2. As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

ARTICLE 4 : RESIDENT – 1. For the purposes of this Convention, the term resident of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows :

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 State in which its place of effective management is situated. If the State in which its place of effective management is situated cannot be determined, then the competent authorities of the Contracting States shall settle the question by mutual agreement.

ARTICLE 5 : PERMANENT ESTABLISHMENT – 1. For the purposes of this Convention, the term permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a sales outlet;
- (g) a warehouse in relation to a person providing storage facilities for others,
- (h) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on, and
- (i) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site or construction, installation or assembly project constitutes a permanent establishment only if it lasts more than twelve months.

4. Notwithstanding the preceding provisions of this Article the term permanent establishment shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage, display or delivery 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, display or delivery;
- (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 of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall

activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 7 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 Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:

- (a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph, or
- (b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise, or
- (c) habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise itself.

6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph unless the transactions are at arms length.

8. 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 otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6 : INCOME FROM IMMOVABLE PROPERTY – 1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the 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 agricultural and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded 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, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, 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.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes 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, in accordance with the provisions of and subject to the limitations of the tax laws of that State.

4. 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.

5. For the purposes 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.

6. 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 : SHIPPING AND AIR TRANSPORT – 1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

3. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall mean the profits derived by an enterprise referred to in paragraph 1 from transportation by sea or air of passengers, livestock or goods.

4. Profits derived by an enterprise referred to in paragraph 1 shall also include profits from the use, maintenance or rental of containers used for the transport of goods or merchandise in international traffic.

5. For the purposes of this Article interest on funds connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft if they are incidental to the carrying on of such business, and the provisions of Article 11 shall not apply in relation to such interest.

6. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9 : ASSOCIATED ENTERPRISES – 1. 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.

2. Where a Contracting State includes in the profits of an enterprise of the State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so

included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10 : 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 other 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 laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed :

- (a) 5 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 the 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 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 14, 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 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 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 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 State.

ARTICLE 11 : INTEREST – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 beneficial owner of the interest, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State, provided that it is derived and beneficially owned by the Government of the other Contracting State, including its political sub-divisions or local authorities, the Central Bank, Slovene Export Company and Export-Import Bank of India.

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 debtors 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 and 2 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 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 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that 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 resident 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 such interest shall be deemed to arise in the 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 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 the other provisions of this Convention.

ARTICLE 12 : ROYALTIES AND FEES FOR TECHNICAL SERVICES – 1. Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties and fees for

technical services, the tax so charged shall not exceed 10 per cent of the gross amount of such royalties and fees for technical services.

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 including cinematograph films or films or tapes used for television or radio 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.

4. The term fees for technical services as used in this Article means payments of any amount, other than those mentioned in Articles 14 and 15 of this Convention, in consideration for the services of managerial, technical or consultancy nature, including the provision of services of technical or other personnel.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services 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 or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Royalties and fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties or fees for technical services, 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 or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such

royalties or fees for technical services shall be deemed to arise in the 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 royalties or fees for technical services, 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 the other provisions of this Convention.

ARTICLE 13 : CAPITAL GAINS – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircrafts shall be taxable only in the Contracting State of which the alienator is a resident.

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from the alienation of shares other than those mentioned in paragraph 4 in a company which is a resident of a Contracting State may be taxed in that State.

6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5, shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14 : INDEPENDENT PERSONAL SERVICES – 1. Income derived by an individual who is a resident of a Contracting State from the performance of professional services or other independent activities of a similar character shall be taxable only in that State except in the following circumstances when such income may also be taxed in the other Contracting State:

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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 State; or
- (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any period of 12 months; in that case, only so much of the Income as is derived from his activities performed in that other State may be taxed in that other State.

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

ARTICLE 15 : DEPENDENT PERSONAL SERVICES – 1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- (a) the recipient is present in the other State or a period or periods not exceeding in the aggregate 183 days in any 12 month period commencing or ending in the fiscal year concerned, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, by an enterprise of a Contracting State may be taxed in that State.

ARTICLE 16 : DIRECTORS FEES – Directors fees and other 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 may be taxed in that other State.

ARTICLE 17 : ARTISTES AND SPORTSPERSONS – 1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. The provisions of paragraphs 1 and 2, shall not apply to income from activities performed in a Contracting State by entertainers or sportspersons if

the visit to that State are substantially supported by public funds of one or both of the Contracting States or of political sub-divisions or local authorities thereof. In such a case, the income shall be taxable only in the Contracting State of which the entertainer or sports person is a resident.

ARTICLE 18 : PENSIONS – Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

ARTICLE 19 : GOVERNMENT SERVICE – 1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages and other similar remuneration and to pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

ARTICLE 20 : PROFESSORS, TEACHERS AND RESEARCH SCHOLARS – 1. A professor, teacher or research scholar who is or was a resident of the Contracting State immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college, school or other approved institution in that other Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival in that other 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 paragraph 1 approved institution means an institution which has been approved in this regard by the competent authority of the concerned State.

ARTICLE 21 : STUDENTS – 1. A student or business apprentice who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State and who is present in that other State solely for the purpose of his education or trading, shall be exempt from tax in that other State on:

- (a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training; and
- (b) remuneration which he derives from an employment which he exercises in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in any period of twelve months if the employment is directly related to his studies or apprenticeship.

2. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article, for more than five consecutive years from the date of his first arrival in that other State.

ARTICLE 22 : OTHER INCOME – 1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the receipt of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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 income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraph 1, if a resident of a Contracting State derives income from sources within the other Contracting State in form of lotteries, crossword puzzles, races including horse races, card games and other games of any sort or gambling or betting of any nature whatsoever such income may be taxed in the other Contracting State.

ARTICLE 23 : METHODS OR ELIMINATION OF DOUBLE TAXATION – Double taxation shall be eliminated as follows:

1. In Slovenia:

(a) Where a resident of Slovenia derives income which, in accordance with the provisions of this Convention, may be taxed in India, Slovenia shall allow as a deduction from the tax on the income of that resident, an amount equal to the income-tax paid in India.

Such deduction shall not, however, exceed that portion of the income-tax as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in India.

(b) Where in accordance with any provision of the Convention, income derived by a resident of Slovenia is exempt from tax in Slovenia, Slovenia may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

2. In India:

(a) Where a resident of India derives income which, in accordance with the provisions of this Convention, may be taxed in Slovenia, India shall allow as

a deduction from the tax on the income of that resident, an amount equal to the income-tax paid in Slovenia.

Such deduction shall not, however, exceed that portion of the income-tax as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in Slovenia.

- (b) Where in accordance with any provision of the Convention income derived by a resident of India is exempt from tax in India, India may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

ARTICLE 24 : NON-DISCRIMINATION – 1. 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, in particular with respect to resident, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

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. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 7 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

4. 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 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 the first-mentioned State are or may be subjected.

5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

ARTICLE 25 : MUTUAL AGREEMENT PROCEDURE – 1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

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 a satisfactory 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 which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law 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 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. 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.

ARTICLE 26 : EXCHANGE OF INFORMATION – 1. The competent authorities of the Contracting States shall exchange such information (including documents or certified copies of the documents) as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. 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 and administrative practice of that or of the other Contracting State;
- (b) to supply information (including documents or certified copies of the documents) which is 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 27 : DIPLOMATIC AGENTS AND CONSULAR OFFICERS – Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

ARTICLE 28 : ENTRY INTO FORCE – 1. This Convention shall be ratified and the instruments of ratification shall be exchanged at New Delhi as soon as possible

2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:

- (a) in Slovenia, in respect of income arising in any fiscal year beginning on or after the first day of January next following the calendar year in which the exchange of instrument of ratification takes place;
- (b) in India, in respect of income arising in any fiscal year beginning on or after the first day of April next following the calendar year in which the exchange of instruments of ratification takes place.

ARTICLE 29 : TERMINATION – This Convention shall remain in force indefinitely but either of the Contracting States may on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give the other Contracting State through diplomatic channels, written notice of termination and, in such event, this Convention shall cease to have effect:

- (a) in Slovenia, in respect of income arising in any fiscal year beginning on or after the first day of January next following the calendar year in which the notice of termination is given:
- (b) in India, in respect of income arising in any fiscal year beginning on or after the first day of April next following the calendar year in which the notice of termination is given.

In witness whereof the Plenipotentiaries of the two Contracting States, duly authorized thereto, have signed this Convention.

Done in duplicate at Ljubljana on this 13th day of January, 2003, in the Slovenian, Hindi and English languages, all the texts being equally authentic. In case of divergence among the texts, the English text shall be the operative one.

PROTOCOL

At the moment of signing the Convention between the Government of the Republic of Slovenia and the Government of the Republic of India for the

avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income, the Plenipotentiaries of the two Contracting States, duly authorized thereto, have agreed that the following provisions shall form an integral part of the Convention:

The laws in force in either of the Contracting States will continue to govern the taxation of income in the respective Contracting States except where the provisions to the contrary are made in this Convention.

1. With reference to Articles 3 and 23:

- (a) The term tax means Slovenian or Indian tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty or fine imposed relating to those taxes.
- (b) The term fiscal year means:
 - (i) in the case of Slovenia: the calendar year;
 - (ii) in the case of India: financial year beginning on the 1st day of April.

2. With reference to Article 6 and Article 13:

With reference to paragraphs 1 of Articles 6 and 13 it is understood that in case of India income from immovable property and capital gains on alienation of immovable property respectively may be taxed in both Contracting States subject to the provisions of Article 23.

3. With reference to Article 20:

For the purposes of Article 20, an individual shall be deemed to be a resident of a Contracting State if he is resident in that State in the fiscal year in which he visits the other Contracting State or in the immediately preceding fiscal year.

4. With reference to Article 24:

It is understood that the provisions of Article 24 paragraph 2 shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which a company of the other Contracting State has

in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first-mentioned Contracting State, nor being in conflict with the provisions of paragraph 3 of Article 7. However the difference in tax rate shall not exceed 15 percentage points.

In witness whereof the Plenipotentiaries of the two Contracting States, duly authorized thereto, have signed this Protocol.

Done in duplicate at Ljubljana on this 13th day of January, 2003, in the Slovenian, Hindi and English languages, all the texts being equally authentic. In case of divergence among the texts, the English text shall be the operative one.

South Africa

Agreement for Avoidance of double taxation and fiscal evasion with foreign countries

Whereas the annexed agreement between the Government of the Republic of India and the Government of the Republic of South Africa for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, has entered into force on the twenty-eighth day of November, 1997, in accordance with Article 28 of the said Agreement, after the notification by both the contracting States to each other of the completion of the procedures required under their laws for the bringing into force of the said agreement;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said agreement shall be given effect to in the Union of India.

Notification : No. GSR 198(E), dated 21-4-1998.

ANNEXURE

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

Preamble

The Government of the Republic of India and the Government of the Republic of South Africa desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have agreed as follows :

ARTICLE 1 : *Personal scope* – This Agreement 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 Agreement shall apply are :

- (a) in India, the income-tax (including any surcharge thereon);
(hereinafter referred to as Indian tax);
- (b) in South Africa :
 - (i) the income-tax (the normal tax); and
 - (ii) the secondary tax on companies;
(hereinafter referred to as South African tax).

2.. The Agreement shall apply also to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws.

ARTICLE 3 : *General definitions* – 1. For the purposes of this Agreement, unless the context otherwise requires :

- (a) the term India means the territory of the Republic of India and includes the territorial sea and air space above it. For the purposes of this Agreement, the term shall cover any other maritime zone in which the Republic of India has sovereign rights, other rights and jurisdictions, according to the Indian law and in accordance with international law in particular as laid down in the UN Convention of the Law of the Sea, 1982; and
- (b) the term South Africa means the Republic of South Africa and, when used in a geographical sense, includes the territorial sea thereof as well as any area outside the territorial sea, including the continental shelf, which has been or may hereafter be designated, under the laws of South Africa and in accordance with international law, as an area within which South Africa may exercise sovereign rights or jurisdiction;
- (c) the terms a Contracting State and the other Contracting State mean India or South Africa, as the context requires;

- (d) the term company means any body corporate or any entity which is treated as a company or body corporate for tax purposes;
- (e) the term competent authority means :
 - (i) in India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative; and
 - (ii) in South Africa, the Commissioner for Inland Revenue or his authorised representative;
- (f) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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;
- (g) the term fiscal year means :
 - (i) in India, the twelve-month period beginning on 1st April;
 - (ii) in South Africa, the year of assessment as defined in the Income-tax Act, 1962;
- (h) 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;
- (i) the term national means :
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person or association deriving its status as such from the laws in force in a Contracting State;
- (j) the term person includes an individual, a company and any other body of persons which is treated as an entity for tax purposes under the taxation laws in force in the respective Contracting States; and
- (k) the term tax means Indian tax or South African tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Agreement applies or which represents a penalty imposed relating to those taxes.

2. As regards the application of the provisions of the Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has at that time under the law of

that State for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

ARTICLE 4 : *Resident* – 1. For the purposes of this Agreement, the term resident of a Contracting State means :

- (a) in India, any person who, under the laws of India, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, but this term does not include any person who is liable to tax in India in respect only of income from sources in India;
- (b) in South Africa, any individual who is ordinarily resident in South Africa and any other person which has its place of effective management in South Africa.

2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his status shall be determined as follows :

- (a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 only of the State in which its place of effective management is

situated. If the State in which its place of effective management is situated cannot be determined, then the competent authorities of the Contracting States shall settle the question by mutual agreement.

ARTICLE 5 : *Permanent establishment* – 1. For the purposes of this Agreement, the term permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources, including an installation or structure used for the exploration or exploitation of natural resources; and
- (g) a warehouse, in relation to a person providing storage facilities for others.

3. A building site, a construction, installation or assembly project or any supervisory activity in connection with such site or project constitutes a permanent establishment only if it lasts more than six months.

4. Notwithstanding the preceding provisions of this Article, the term permanent establishment shall be deemed not to include :

- (a) the use of facilities solely for the purpose of storage, display or delivery 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, display or delivery;
- (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;

- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character; and
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 6 applies – is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

7. 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 otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6 : *Income from immovable property* – 1. Income derived by a resident of a Contracting State from immovable property, including income from agriculture or forestry, situated in the other Contracting State may be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraphs 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, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, 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.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative

expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere, in accordance with and subject to the limitations prescribed in the taxation laws in that Contracting State.

4. Insofar 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 contained 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 purposes 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 Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8 : *Shipping and air transport* – 1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall include :

- (a) profits derived from the rental on a bare boat basis of ships or aircraft used in international traffic,
- (b) profits derived from the use or rental of containers,

if such profits are incidental to the profits to which the provisions of paragraph 1 apply.

3. For the purposes of this Article, interest on funds connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft and the provisions of Article 11 shall not apply in relation to such interest.

4. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9 : *Associated enterprises* – 1. 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.

2. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits if that other State considers the adjustment justified. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10 : *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 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 laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

The competent authorities of the Contracting States shall settle the mode of application of these limitations by mutual agreement.

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 or other rights participating in profits (not being debt-claims), 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 Contracting 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 14, 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 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 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 State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11 : *Interest* – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraphs 1 and 2, interest arising in a Contracting State shall be exempt from tax in that State if it is derived and beneficially owned by :

- (a) the Government, a political sub-division or a local authority of the other Contracting State;
- (b) the Reserve Bank of India or the South African Reserve Bank; or
- (c) any agency or instrumentality which is wholly owned by the Government of a Contracting State and which has been approved in writing by the competent authorities of the Contracting States for the purposes of this paragraph.

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 debtors 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 purposes of this Article.

5. The provisions of paragraph 1 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 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 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that 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 resident 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 such interest shall be deemed to arise in the 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 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 the other provisions of this Agreement.

ARTICLE 12 : *Royalties and fees for technical services* – 1. Royalties or fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

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

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 (including cinematograph films and films, tapes or discs 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.

4. The term fees for technical services as used in this Article means payments of any kind received as a consideration for services of a managerial, technical or consultancy nature, including the provision of services by technical or other personnel, but does not include payments for services mentioned in Article 15.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services 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, property or contract in respect of which the royalties or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Royalties or fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties or fees for technical services, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base with which the right, property or contract in respect of which the royalties or fees for technical services are paid is effectively connected, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the 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 royalties or fees for technical services 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 the other provisions of this Agreement.

ARTICLE 13 : *Capital gains* – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains of an enterprise of a Contracting State from the alienation of a ship or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.

4. Gains from the alienation of shares or similar rights in a company, or of an interest in a partnership, trust or estate, the assets of which consist principally of immovable property situated in a Contracting State, may be taxed in that State.

5. Gains derived by a resident of a Contracting State from the sale, exchange or other disposition, directly or indirectly, of shares or similar rights in a company, other than those mentioned in paragraph 4, which is a resident of the other Contracting State, may be taxed in that other State.

6. Gains from the alienation of any property other than that referred to in the preceding paragraphs, shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14 : *Independent personal services* – 1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base. For the purposes of this Agreement, where an individual who is a resident of a Contracting State stays in the other Contracting State for a period or periods exceeding in the aggregate 183 days in any twelve months period commencing or ending in the fiscal year concerned, he shall be deemed to have a fixed base regularly available to him in that other State and the income that is derived from his activities that are performed in that other State shall be attributable to that fixed base.

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

ARTICLE 15 : *Dependent personal services* – 1. Subject to the provisions of Articles 16, 18 and 19, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if :

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve months period commencing or ending in the fiscal year concerned;
- (b) the remuneration is paid by or on behalf of an employer who is not a resident of the other State; and

(c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

ARTICLE 16 : *Directors fees* – Directors 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 may be taxed in that other State.

ARTICLE 17 : *Entertainers and sportspersons* – 1. Notwithstanding the provisions of Articles 7, 14 and 15, income derived by a resident of a Contracting State as an entertainer such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. Notwithstanding the provisions of paragraph 1, income derived by an entertainer or sportsperson from his personal activities as such shall be exempt from tax in the Contracting State in which these activities are exercised if the activities are exercised within the framework of a visit which is wholly or mainly supported by the other Contracting State, political sub-division, a local authority or public institution thereof.

ARTICLE 18 : *Pensions and annuities* – 1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration and annuities arising

in a Contracting State and paid to a resident of the other Contracting State, may be taxed in the first-mentioned 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 moneys worth.

ARTICLE 19 : *Government services* – 1. (a) Salaries, wages and similar remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such salaries, wages and similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who :

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Article 15, 16, 17 or 18 shall apply to salaries, wages and similar remuneration, and to pensions, in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

ARTICLE 20 : *Students, apprentices and business trainees* – 1. A student, apprentice or business trainee who is present in a Contracting State solely for

the purpose of his education or training and who is, or immediately before being so present was, a resident of the other Contracting State, shall be exempt from tax in the first-mentioned State on payments received from outside that first-mentioned State for the purposes of his maintenance, education or training.

2. Payments which a student or business apprentice receives as remuneration from employment in the first-mentioned State, in an amount not exceeding a sum equivalent to 3000 US dollars in the currency of the first-mentioned State during any fiscal year shall be exempt from tax in the first-mentioned State during the period ending five years after the date of his first arrival in the first-mentioned Contracting State.

ARTICLE 21 : *Other income* – Items of income arising in a Contracting State which are not dealt with in the foregoing Articles of this Agreement may be taxed in that State.

ARTICLE 22 : *Elimination of double taxation* – Double taxation shall be eliminated as follows :

- (a) In India, where a resident of India derives income which, in accordance with the provisions of this Agreement, may be taxed in South Africa, India shall allow as a deduction from the tax on the income of that resident an amount equal to the South African tax paid, whether directly or by deduction. Such deduction shall not, however, exceed that part of the income-tax (as computed before the deduction is given) which is attributable to the income which may be taxed in South Africa.
- (b) In South Africa, Indian tax paid by residents of South Africa in respect of income taxable in India, in accordance with the provisions of the Agreement, shall be deducted from the taxes due according to South African fiscal law. Such deduction shall not, however, exceed an amount which bears to the total South African tax payable the same ratio as the income concerned bears to the total income.

ARTICLE 23 : *Non-discrimination* – 1. 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. This provision shall notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

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. This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which a company of the other Contracting State has in the first-mentioned State at a rate of tax which is not more than 10 percentage points higher than that imposed on the profits of a similar company of the first-mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7 of this Agreement.

3. Nothing contained in this Article shall be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

4. 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 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.

5. Except where the provisions of paragraph 1 of Article 9, paragraph 5 of Article 11 or paragraph 6 of Article 12 apply, interest, royalties, fees for technical services and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

6. In this Article, the term taxation means taxes which are the subject of the Agreement.

ARTICLE 24 : *Mutual agreement procedure* – 1. Where a person 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 Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 23, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the Agreement.

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 a satisfactory 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 which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time-limits in the domestic law 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 the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

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. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a joint commission consisting of representatives of the competent authorities of the Contracting States.

ARTICLE 25 : *Exchange of information* – 1. The competent authorities of the Contracting States shall exchange such information, including documents, as is necessary for carrying out the provisions of this Agreement or of the domestic

laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic law of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. 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 the administrative practice of that or of the other Contracting State;
- (b) to supply information which is 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 26 : *Assistance in recovery* – 1. The Contracting States shall, to the extent permitted by their respective domestic law, lend assistance to each other in order to recover the taxes referred to in Article 2 as well as interest and penalties with regard to such taxes, provided that reasonable steps to recover such taxes have been taken by the Contracting State requesting such assistance.

2. Claims which are the subject of requests for assistance shall not have priority over taxes owing in the Contracting State rendering assistance and the provisions of paragraph 1 of Article 25 shall also apply to any information which, by virtue of this Article, is supplied to the competent authority of a Contracting State.

3. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of the provisions of this Article.

ARTICLE 27 : *Members of diplomatic missions and consular posts* – Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

ARTICLE 28 : *Entry into force* – 1. Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Agreement. The Agreement shall enter into force on the date of receipt of the later of these notifications.

2. The provisions of the Agreement shall apply :

(a) in India :

(i) in respect of taxes withheld at source, for amounts paid or credited in the fiscal year beginning in the calendar year next following that in which the Agreement enters into force; and

(ii) in respect of other taxes, for any fiscal year beginning in the calendar year next following that in which the Agreement enters into force;

(b) in South Africa, in respect of fiscal years beginning on or after the first day of January next following the date upon which the Agreement enters into force.

ARTICLE 29 : *Termination* – 1. This Agreement shall remain in force indefinitely but either of the Contracting States may terminate the Agreement through the diplomatic channel, by giving to the other Contracting State written notice of termination not later than 30th June of any calendar year starting five years after the year in which the Agreement entered into force :

2. In such event, the Agreement shall cease to apply :

(a) in India :

(i) in respect of taxes withheld at source, for amounts paid or credited in the fiscal year beginning in the calendar year next following that in which notice is given; and

- (i) in respect of other taxes, for any fiscal year beginning in the calendar year next following that in which such notice is given;
- (b) in South Africa, in respect of fiscal years beginning after the end of the calendar year in which such notice is given.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Agreement.

DONE at New Delhi in duplicate, this Fourth day of December, 1996, in the English and Hindi languages, both texts being equally authentic. In case of divergence in interpretation, the English text shall prevail.

Sd/-

(P. CHIDAMBARAM)

*The Minister of Finance
For the Government of
the Republic of India*

Sd/-

ALEC ERWIN

*The Minister of Trade and Industry
For the Government of the
Republic of South Africa*

PROTOCOL

At the signing of the Agreement concluded today between the Government of the Republic of India and the Government of the Republic of South Africa for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, the undersigned have agreed that the following provisions shall form an integral part of the said Agreement :

1. With reference to any provision of the Agreement in terms of which income derived by a resident of a Contracting State may be taxed in the other Contracting State, it is understood that such income may, subject to the provisions of Article 22, also be taxed in the first-mentioned Contracting State.

2. With reference to paragraph 1 of Article 7, it is understood that where a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, participates, itself or together with other parts of that

enterprise or with an associated enterprise, in the negotiation, conclusion or fulfilment of a contract entered into by that enterprise or associated enterprise, there shall be attributed to the permanent establishment that portion of the profits of the contract arising in the other State as relates to the contribution by the permanent establishment to the negotiation, conclusion or fulfilment of the contract.

3. With reference to paragraph 3 of Article 7, it is agreed that the limitations referred to therein shall in no event be less than those prevailing on the day of the signing of the Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Protocol.

DONE at New Delhi in duplicate, this Fourth day of December, 1996, in the English and Hindi languages, both texts being equally authentic. In case of any divergence in interpretation, the English text shall prevail.

Spain

Agreement for avoidance of double taxation and prevention of fiscal evasion with Spain

Whereas the annexed Convention between the Government of the Republic of India and the Kingdom of Spain for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital has entered into force on 12th January, 1995 after the exchange of Instruments of Ratification as required by paragraph 2 of Article 30 of the said Convention ;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in the Union of India.

Notification : No. GSR 356(E), dated 21-4-1995.

ANNEXURE

CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE KINGDOM OF SPAIN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Government of the Republic of India and the Government of the Kingdom of Spain desiring to conclude a Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income and on 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. This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which the Convention shall apply are in particular :

(a) in Spain :

- (i) The Income-tax on Individuals (el Impuesto sobre la Renta de las Personas Físicas);
 - (ii) The Corporation Tax (el Impuesto sobre Sociedades);
 - (iii) The Capital Tax (el Impuesto sobre el Patrimonio);
- (hereinafter referred to as Spanish tax).

(b) In India :

- (i) The income-tax including any surcharge thereon;
- (ii) The surtax; and
- (iii) The wealth-tax (hereinafter referred to as Indian tax).

4. This Convention shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify to each other any significant changes which have been made in their respective taxation laws.

ARTICLE 3 : *General Definitions* – 1. In this Convention, unless the context otherwise requires :

- (a) the term Spain means the territory of Spain and includes the territorial sea and airspace above it. It also includes any other maritime zone in which Spain has sovereign rights, other rights and jurisdiction, according to the Spanish law and in accordance with international law;
- (b) the term India means the territory of India and includes the territorial sea and airspace above it. It also includes any other maritime zone in which India has sovereign rights, other rights and jurisdictions, according to the Indian Law and in accordance with international law;

- (c) the terms a Contracting State and the other Contracting State mean Spain or India as the context requires;
- (d) the term tax means Indian tax or Spanish tax, as the context requires;
- (e) the term person includes an individual, a company, any other body of persons or any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting State;
- (f) the term company means any body corporate or any entity which is treated as a company or body corporate under the taxation laws in force in the respective Contracting State;
- (g) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean, 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;
- (h) the term national means :
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership and association deriving its status as such from the law in force in a Contracting State;
- (i) 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;
- (j) the term competent authority means :
 - (i) in the case of Spain, the Minister of Economy and Finance or his authorised representative;
 - (ii) in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or its authorised representative.

2. In the application of this Convention by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law 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 laws of that

State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State, or capital situated therein.

2. Where by reason of the provisions of paragraph 1 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 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 (centre of vital interests).
- (b) If the Contracting State in which he 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 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 national.
- (d) If he is a national of both Contracting States or of neither of them the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (a) a place of management;

- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) a warehouse in relation to a person providing storage facilities for others;
- (h) a farm, plantation or other place where agriculture, forestry, plantation or related activities are carried on;
- (i) a premises used as a sales outlet;
- (j) an installation or structure used for the exploration or exploitation of natural resources, but only if so used for a period of more than three months;
- (k) a building site or construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or activities (together with other such sites, projects or activities, if any) continue for a period of more than six months in any twelve-months period, or where such project or supervisory activity, being incidental to the sale of machinery or equipment, continues for a period not exceeding six months and the charges payable for the project or supervisory activity exceed 10 per cent of the sale price of the machinery and equipment :

Provided that, for the purpose of this paragraph, an enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it provides services or facilities in connection with or supplies plant and machinery on hire used or to be used in, the prospecting for, or extraction or production of mineral oils in the State if the activities continue for a period of more than thirty days in any twelve-month period.

3. Notwithstanding the preceding provisions of this Article, the term permanent establishment shall be deemed not to include :

- (a) the use of facilities solely for the purpose 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 and merchandise, or of collecting information for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of advertising, for 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 and 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 that State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise;
- (b) he has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of 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 State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise itself or on behalf of that enterprise and other enterprises controlling, controlled by, or subject to the same common control, as that

enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

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 otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6 : *Income from immovable property* – 1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in other Contracting State may be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the 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, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall also 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 or 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, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to (a) that permanent establishment; (b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that

permanent establishment; or (c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.

2. Subject to the provisions of paragraph 3, 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.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses, research and development expenses, interest and other similar expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere, in accordance with the provisions of and subject to the limitations of the taxation laws of that State. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. 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.

5. For the purposes 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.

6. 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 State.

2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

3. The term operation of aircraft shall mean business of transportation by air of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of aircraft, including the sale of tickets for such transportation on behalf of other enterprises, the incidental lease of aircraft and any other activity directly connected with such transportation.

ARTICLE 9 : *Shipping* – 1. Profits derived by an enterprise of a Contracting State from the operation of ships in international traffic shall be taxable only in that State.

2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency engaged in the operation of ships.

3. For the purposes of this Article, profits derived from the operation of ships include profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) in connection with the transport of goods or merchandise in the international traffic.

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 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 laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

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 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 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 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 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 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 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 beneficial owner of the interest the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2 :

- (a) interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by :
 - (i) the Government, a political sub-division or a local authority of the other Contracting State; or
 - (ii) the Central Bank of the other Contracting State;
- (b) interest arising in a Contracting State shall be exempt from tax in that Contracting State to the extent approved by the Government of that State if it is derived and beneficially owned by any person [other than a person referred to in sub-paragraph (a)] who is a resident of the other Contracting State provided that transaction giving rise to the debt-claim has been

approved in this regard by the Government of the first-mentioned Contracting State.

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 debtors 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 and 2 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 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 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 resident 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 such 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 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 the other provisions of this Convention.

ARTICLE 13 : *Royalties and fees for technical services* – 1. Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and according to the law of that State, but if the recipient is the beneficial owner of the royalties or fees for technical services the tax so charged shall not exceed :

- (i) in the case of royalties relating to the payments for the use of, or the right to use, industrial, commercial or scientific equipment, 10 per cent of the gross amount of the royalties;
- (ii) in the case of fees for technical services and other royalties, 20 per cent of the gross amount of fees for technical services or 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, including cinematographic 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.

4. The term fees for technical services as used in this Article means payments of any kind to any person other than payments to an employee of the person making the payments and to any individual for independent personal services mentioned in Article 15 (Independent Personal Services), in consideration for the services of a technical or consultancy nature, including the provision of services of technical or other personnel.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services 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, property or contract in respect of which the royalties or fees for technical services 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.

6. Royalties and fees for technical services shall be deemed to arise in a Contracting State when the payer in that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties or fees for technical services whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or fixed base in connection with which the liability to pay the royalties or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the 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 royalties or fees for technical services paid, exceeds the amount which would have been paid 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 the other provisions of this Convention.

ARTICLE 14 : *Capital gains* – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property, referred to in Article 6, and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or

together with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or of movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.

4. Gains from the alienation of shares of the capital stock of a company the property of which consists, directly or indirectly, principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains for the alienation of shares of the capital stock of a company forming part of a participation of at least 10 per cent in a company which is a resident of a Contracting State may be taxed in that Contracting State.

6. Gains from the alienation of any property other than that mentioned in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 15 : *Independent personal services* – 1. Income derived by a resident of a Contracting State from the performance of professional services or other independent activities of a similar character shall be taxable only in that State except in the following circumstances when such income may also be taxed in the other Contracting State :

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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 State; or
- (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in the relevant taxable year; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

2. The term professional services includes 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, 18, 19, 20, 21 and 22, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the relevant taxable year; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard, a ship or aircraft operated in international traffic, by an enterprise of a Contracting State may be taxed in that State.

ARTICLE 17 : *Directors fees* – Directors 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 may be taxed in that other State.

ARTICLE 18 : *Artistes 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 State.

2. While 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. Notwithstanding the provisions of paragraphs 1 and 2, income derived by an entertainer or an athlete who is a resident of a Contracting State from his personal activities as such exercised in the other Contracting State, shall be taxable only in the first-mentioned Contracting State, if the activities in the other Contracting State are supported wholly or substantially from the public funds of the first-mentioned Contracting State, including any of its political sub-divisions or local authorities.

ARTICLE 19 : *Pensions* – Subject to the provisions of paragraph 2 of Article 20, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

ARTICLE 20 : *Remuneration and pensions in respect of Government services* –

1. (a) Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who :

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that other State.

3. The provisions of Articles 16, 17 and 19 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

ARTICLE 21 : *Students* – Payments which a student or business apprentice who is or was immediately before visiting a Contracting State, a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of this maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

ARTICLE 22 : *Payments received by professors, teachers and research scholars* –

1. A professor or teacher who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at an officially recognised university, college, school or other institution in that other Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival in that other State.

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

ARTICLE 23 : *Other income* – 1. Subject to the provisions of paragraph 2, items of income of a resident of a Contracting State, wherever arising, which are not expressly dealt with in the foregoing Articles of this Convention, shall be taxable only in that Contracting State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State carries on business in the other Contracting State 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 income is paid is effectively connected with such permanent establishment, or fixed base. In such a case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention, and arising in the other Contracting State may be taxed in that other State.

ARTICLE 24 : *Capital* – 1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.

3. Capital represented by ships or aircraft, operated in international traffic or by movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the enterprise operating such ships, aircraft or property is a resident.

4. Capital represented by shares of the capital stock of a company the property of which consists, directly or indirectly, principally of immovable property situated in Contracting State may be taxed in that State.

5. Capital represented by shares of the capital stock of a company which is a resident of a Contracting State representing a participation of at least 10 per cent in the capital stock of that company may be taxed in that Contracting State.

6. All other elements of capital of a resident of a Contracting State shall be taxable only in that Contracting State.

ARTICLE 25 : *Elimination of double taxation – 1.* The laws in force in either of the Contracting States will continue to govern the taxation of income and capital in the respective Contracting States except where express provisions to the contrary are made in this Convention.

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

(a) Where a resident of India derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Spain, India shall allow :

- (i) as a deduction from the tax on the income of that resident, an amount equal to the income-tax paid in Spain, whether directly or by deduction; and
- (ii) as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in Spain.

Such deduction in either case shall not, however, exceed that part of the income-tax or capital tax, as computed before the deduction is given, which is attributable, as the case may be, to the income or the capital which may be taxed in Spain.

(b) Where a resident of India derives income or owns capital which in accordance with the provisions of this Convention, shall be taxable only in Spain, India may include this income or capital in the tax base but shall allow as a deduction from the income-tax or capital tax, that part of the income-tax or capital tax which is attributable, as the case may be, to the income derived from or the capital owned in Spain.

3. In Spain, subject to the provisions of its internal law, double taxation will be avoided in the following manner :

(a) Where a resident of Spain derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in India, Spain shall allow :

- (i) as a deduction from the tax on the income of that resident, an amount equal to the income-tax paid in India;
 - (ii) as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in India.
- (b) In the case of a dividend paid by a company which is a resident of India to a company which is a resident of Spain and which holds at least 25 per cent of the capital of the company paying the dividend, the deduction shall take into account [in addition to the deduction provided under sub-paragraph (a)] the income-tax paid in India by the company in respect of the profits out of which such dividend is paid provided that such tax is taken into account in calculating the base of the Spanish tax.
- Such deduction in either case shall not, however, exceed that part of the income-tax or capital tax, as computed before the deduction is given, which is attributable, as the case may be, to the income or the capital which may be taxed in India.
- (c) Where in accordance with any provision of the Convention income derived or capital owned by a resident of Spain is exempt from tax in Spain, Spain may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

4. For the purposes of deduction referred to in paragraph 3, the term income-tax paid in India shall be deemed to include any amount which would have been payable as Indian tax under the laws of India and in accordance with this Convention for any year but for an exemption from, or reduction of, tax granted for that year under :

- (i) Sections 10(4), 10(15)(ii), 10A, 10B, 32A, 32AB, 80HH, 80HHC and 80-I of the Income-tax Act, 1961 (43 of 1961) so far as they were in force on, and have not been modified since, the date of the signature of this Convention, or have been modified only in minor respects so as not to affect their general character; or
- (ii) any other provisions which may be enacted hereafter granting a deduction in computing the taxable income or an exemption or reduction from tax which the competent authorities of the Contracting States agree 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.

5. The provisions of paragraph 4 shall apply for the first 10 years for which this Convention is effective but the competent authorities of the Contracting States may consult each other to determine whether this period shall be extended.

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 State than the taxation levied on enterprises of that other State carrying on the same activities in the same circumstances or 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 in 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. Except where the provisions of Article 10, paragraph 7 of Article 12, or paragraph 7 of Article 13 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State shall, for the purpose of determining the

taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

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 States, present his case to the competent authority of the Contracting State of which he is a resident, or, if his case comes under paragraph 1 of Article 26, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

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. 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 the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention. The competent authorities shall also, by mutual agreement, develop appropriate actions, methods and techniques to improve the exchange of information carried out under Article 28 of this 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. 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.

ARTICLE 28 : *Exchange of information* – 1. The competent authorities of the Contracting States shall exchange such information (including copies of documents when relevant) as is necessary for carrying out the provisions of the Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention, insofar as the taxation thereunder is not contrary to the Convention, in particular for the prevention of fraud or tax evasion and of tax avoidance. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State. However, if the information is originally regarded as secret in the transmitting State, it shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes which are the subject of the Convention. Such persons or authorities shall use the information only for such purposes but may disclose the information in public court proceedings or in judicial decisions.

2. 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 is 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 : *Diplomatic and consular officers* – Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

ARTICLE 30 : *Entry into force* – 1. This Convention shall be ratified and the instruments of ratification shall be exchanged 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 Spain :

in respect of taxes chargeable on income or on capital for any taxable year beginning on or after the first day of January of the calendar year next following that in which the Convention enters into force.

(b) in India :

(i) in respect of income arising in any taxable year beginning on or after the first day of April of the calendar year next following that in which the Convention enters into force,

(ii) in respect of capital which is held on the last day of any taxable year beginning on or after the first day of April of the calendar year next following that in which the Convention enters into force.

ARTICLE 31 : *Termination* – 1. The Convention shall remain in force indefinitely, but either of the Contracting States may, on or before the thirtieth day of June 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 Spain, in respect of taxes chargeable for any taxable year beginning on or after the first day of January of the calendar year next following that in which the notice of termination is given;

(b) in India, in respect of income arising in any taxable year beginning on or after the first day of April of the calendar year next following that in which the notice of termination is given and in respect of capital which is held on the last day of any taxable year beginning on or after the first day of April next following the calendar year in which the notice of termination is given.

In witness whereof the undersigned, being duly authorised thereto, have signed the present Convention.

Done in duplicate at New Delhi this 8th day of February, one thousand nine hundred and ninety three in the Hindi, Spanish and English languages, all the

texts being equally authentic. In case of divergence between any of the texts, the English text shall be the operative one.

For the Government of the

Republic of India

*For the Government
of the*

Kingdom of Spain

PROTOCOL

At the moment of signing the Convention between the Government of the Republic of India and the Government of the Kingdom of Spain for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income and on capital, the undersigned have agreed upon the following provisions which shall be an integral part of the Convention :

1. In respect of clause (d) of paragraph 1 of Article 3 (General Definitions), it is understood that the term tax shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty imposed relating to those taxes.

2. In respect of clause (g) of paragraph 2 of Article 5 (Permanent Establishment), it is understood that this clause refers to a warehouse where space is rented to other persons.

3. In respect of clauses (b) and (c) of paragraph 1 of Article 7 (Business Profits), it is understood that in the case of any doubt as to whether the goods or merchandise sold are of the similar kind as those sold through the permanent establishment or whether the other business activities carried on are of the similar kind as those effected through the permanent establishment, the competent authorities may consult each other with a view to resolving the case by mutual agreement.

4. In respect of paragraph 3 of Article 7 (Business Profits), it is understood that in case of any substantial changes in the provisions of the taxation laws of a Contracting State relating to limitation on the deductibility of the expenses which are incurred for the purposes of the business of a permanent

establishment, the competent authorities of the Contracting States shall consult each other on the necessity of modifying the provisions of this paragraph.

5. In respect of Article 8 (Air Transport) and Article 9 (Shipping), it is understood that interest on funds connected with the operation of aircraft or ships in international traffic shall be regarded as profits derived from the operation of such aircraft or ships, as the case may be, and the provisions of Article 12 (Interest) shall not apply in relation to such interest.

6. Paragraph 2 of Article 11 (Dividends), shall not be applicable, in the case of Spain, to the income attributable, whether distributed or not, to the shareholders of the corporations and entities referred to in Article 12.2 of Law 44/1978 of 8 September, 1978, and Article 19 of Law 61/1978 of 27 December, 1978, as long as the said income is not subject to the Spanish Corporation Tax. Such income may be taxed in Spain according to its Internal Law.

7. The competent authorities shall initiate the appropriate procedures to review the provisions of Article 13 (Royalties and fees for technical services) after a period of five years from the date of its entry into force. However, if under any Convention or Agreement between India and a third State which is a Member of the OECD, which enters into force after 1-1-1990, India limits its taxation at source on royalties or fees for technical services to a rate lower or a scope more restricted than the rate or scope provided for in this Convention on the said items of incomes, the same rate or scope as provided for in that Convention or Agreement on the said items of income shall also apply under this Convention with effect from the date on which the present Convention comes into force or the relevant Indian Convention or Agreement, whichever enters into force later.

8. In respect of paragraph 2 of Article 26 (Non-discrimination), it is understood that the provision of this paragraph shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which an enterprise of the other Contracting State has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar enterprise of the first-mentioned State, nor as being in conflict with the provisions of paragraph 3 of Article 7 (Business Profits) of this Convention. It is

also understood that in no case the taxation of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall be less favourably levied than the taxation levied on a permanent establishment of an enterprise of a third State carrying on the same activities under a double taxation Convention concluded by the other Contracting State with that third State.

9. Notwithstanding the provisions of paragraph 4 of Article 26 (Non-discrimination), it is understood that in the case of India, payments by way of interest, royalties and fees for technical services made by an enterprise of India to a resident of Spain, shall not be allowed as a deduction for the purpose of determining the taxable profits of such enterprise unless tax has been paid or deducted at source from such payments under Indian law and in accordance with the provisions of this Convention.

10. For the purposes of this Convention, it is understood that the term taxable year in the case of India shall mean the previous year as defined in the Income-tax Act, 1961.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed the present Protocol.

DONE in duplicate at New Delhi this 8th day of February, one thousand nine hundred and ninety-three in the Hindi, Spanish and English languages, all the texts being equally authentic. In case of divergence between any of the texts, the English text shall be the operative one.

For the Government of the

Republic of India

*For the Government
of the*

Kingdom of Spain

Sri Lanka

Agreement for avoidance of double taxation and prevention of fiscal evasion with Sri Lanka

Whereas the annexed Convention between the Government of the Republic of India 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 on capital has been ratified and the instruments of ratification exchanged as required by article 29 of the said Convention ;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), and section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in the Union of India.

Notification : No. GSR 342(E), dated 19-4-1983.

TEXT OF CONVENTION, DATED 27-1-1982

The Government of the Republic of India and the Government of the Democratic Socialist Republic of Sri Lanka desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on 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. This Convention shall apply to taxes on income and on capital imposed on behalf of each Contracting State irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital including taxes on gains from the alienation of movable or immovable property as well as taxes on capital appreciation.

3. The existing taxes to which this Convention shall apply are :

(a) In Sri Lanka

(i) the income-tax, including the income-tax based on the turnover of enterprises licensed by the Greater Colombo Economic Commission ; and

(ii) the wealth-tax;

(hereinafter referred to as Sri Lanka tax).

(b) In India

(i) the income-tax including any surcharge thereon;

(ii) the surtax ; and

(iii) the wealth-tax ;

(hereinafter referred to as Indian tax).

4. This Convention shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any important changes which have been made in their respective taxation laws.

ARTICLE 3 – *General definitions* – 1. In this Convention, unless the context otherwise requires:

(a) the terms a Contracting State and the other Contracting State mean Sri Lanka or India as the context requires;

(b) the term person includes an individual, a company and any other body of persons;

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

(d) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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 ;

(e) the term international traffic means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State,

except when the ship or aircraft is operated solely between places in the other Contracting State ;

(f) the term national means :

(i) an individual possessing the nationality of a Contracting State ;

(ii) a legal person, partnership or an association deriving its status as such from the laws in force in a Contracting State ;

(g) the term competent authority means :

(i) in the case of Sri Lanka, the Commissioner-General of Inland Revenue;

(ii) in the case of India, the Central Government in the Ministry of Finance (Department of Revenue).

2. As regards the application of this Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that State relating to the taxes which are the subject of this Convention.

ARTICLE 4 – *Fiscal domicile* – 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 tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

2. Where by reason of the provisions of paragraph (1) of this article an individual is a resident of both Contracting States, then his status shall be determined as follows :

(a) he shall be deemed to be a resident of the State in which he has a permanent home available to him. If he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests) ;

(b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State he shall be deemed to be a resident of the State in which he has an habitual abode ;

- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national ;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph (1) of this article a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the 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 means a fixed place of business through 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 mine, an oil or gas well, a quarry or any other place of extraction of natural resources ;
- (g) an agricultural or farming estate or plantation ;
- ¹(h) a building site or construction or assembly project which exists for more than 183 days ;
- ¹(i) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel, where activities of that nature continue within the country for a period or periods aggregating more than 183 days within any twelve-month period.

3. Notwithstanding the preceding provisions of this article, the term permanent establishment shall be deemed not to include :

- (a) the use of facilities solely for the purpose of storage, display or delivery 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, display or delivery ;
- (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 of collecting information, for the enterprise ; and
- (e) the maintenance of a fixed place of business solely for the purpose of advertising for the supply of information or for scientific research, being activities solely of a preparatory or auxiliary character in the trade or business of the enterprise.

4. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State – other than an agent of an independent status to whom paragraph (6) of this article applies – shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in that 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. Notwithstanding the preceding provisions of this article, an insurance enterprise of a Contracting State shall, except in regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of independent status to whom paragraph (6) of this article applies.

6. 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 State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

7. 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 otherwise) shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6 – *Income from immovable property* – 1. Income from immovable property may be taxed in the Contracting State in which such property is situated.

2. The term immovable property shall have the meaning which it has under the 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph (1) of this article 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) of this article shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional 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, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to :

- (a) that permanent establishment,
- (b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment,

- (c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.

The provisions of sub-paragraphs (b) and (c) above shall not apply if the enterprise proves that such sales or activities are not attributable to the permanent establishment.

2. Subject to the provisions of paragraph (3) of this article, 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.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deduction expenses which are incurred for the purposes of the business 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. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments, in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on money lent to the permanent establishment. Likewise, no account shall be taken in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or except in the case of a banking enterprise by way of interest on money lent to the head office of the enterprise or any of its other offices.

4. Insofar 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) of this Article shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary ; the method of apportionment shall, however, be such that the result will be in accordance with the principles contained 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 purposes 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 – *Shipping and air transport* – 1. Profits derived by an enterprise of a Contracting State 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. Notwithstanding the provisions of paragraph (1), profits derived from the operation of ships in international traffic may be taxed in the Contracting State in which such operation is carried on ; but the tax so charged shall not exceed 50 per cent of the tax otherwise imposed by the internal law of that State :

Provided that for the purpose of the calculation of the tax, such profits shall be deemed to be an amount not exceeding the rates presently provided in the taxation laws of the respective States for the computation of such profits.

3. The provisions of paragraphs (1) and (2) of this article shall likewise apply in respect of profits from the participation in a pool, a joint business or an international

operating agency of any kind by enterprises engaged in the operation of ships or aircraft in international traffic.

4. For the purpose of paragraph (7), interest on funds connected with the operation of ships or aircraft in international traffic shall be regarded as income from the operation of such aircraft, and the provisions of article 11 shall not apply in relation to such interest.

5. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or if there is no such home harbour, in the State of which the operator of the ship is a resident.

ARTICLE 9 – *Associated enterprises* – 1. 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.

2. Where a Contracting State includes in the profits of an enterprise of that State and taxes accordingly profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included as profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between the independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining

such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States, shall if necessary, consult each other.

ARTICLE 10 – *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 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 laws of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

3. The term dividends as used in this article means income from shares, mining shares, founders 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 taxation law of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs (1) and (2) of this article 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 and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of article 7 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 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 State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11 – *Interest* – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph (2) of this article interest arising in a Contracting State shall be exempt from tax in that State if :

- (a) the payer of the interest is the Government of that Contracting State or a local authority thereof, or
- (b) the interest is paid to the Government of the other Contracting State or local authority thereof or any agency or instrumentality (including a financial institution) wholly owned by that other Contracting State or local authority thereof.

4. The term interest as used in this article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the State in which the income arises.

5. The provisions of paragraphs (1) to (3) of this article 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 and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case, the provisions of article 7 shall apply.

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

establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment 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 last-mentioned amount. In such a 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.

ARTICLE 12 – *Royalties* – 1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalty, 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 any copyright of literary, artistic or scientific work including cinematograph films, or tapes for television or 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.

4. The provisions of paragraphs (1) and (2) of this article 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 and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such a case the provisions of article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a local authority or a resident of that 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 in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment 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 a case, the excess part of the payment shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 13 – *Capital gains* – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in paragraph (2) of Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of immovable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State (including such gains from the alienation of such a permanent establishment alone or with the whole enterprise) may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains from the alienation of stocks/shares of a company may be taxed in the Contracting State in which they have been issued.

5. Gains from the alienation of any property other than that referred to in paragraphs (1) to (4) of this Article, shall be taxable only in the Contracting State of which the alienator is a resident.

6. The term alienation means the sale, exchange, transfer, or relinquishment of the property or the extinguishment of any rights therein or the compulsory acquisition hereof under any law in force in the respective Contracting States.

ARTICLE 14 – *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 State unless his stay in the other Contracting State is for a period or periods exceeding in the aggregate 120 days within any 12 month period, when such income may also be taxed in the other Contracting State.

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

ARTICLE 15 – *Dependent personal services* – 1. Subject to the provisions of articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment is exercisable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom, may be taxed 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 exercised in the other Contracting State shall be taxable only in the first-mentioned State if

- (a) the recipient is present in other State for a period or periods not exceeding in the aggregate 183 days within any 12-month period ; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State ; and

(c) the remuneration is not borne by a permanent establishment or a fixed base, which the employer has in the other State.

3. Notwithstanding the preceding provisions of this article, remuneration in respect of an employment exercised aboard a ship or aircraft in international traffic, may be taxed only in the Contracting State in which the place of effective management of the enterprise is situated.

ARTICLE 16 – *Directors fees* – Directors fees and other 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 may be taxed in that other State.

ARTICLE 17 – *Artistes and athletes* – 1. Notwithstanding the provisions of articles 14 and 15 income derived by public entertainers (such as theatre, motion picture, radio or television artistes and musicians) or athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised :

Provided that such income shall not be taxed in the Contracting State if the visit of the public entertainers or athletes to that State is directly or indirectly supported wholly or substantially, from the public funds of the Government of the other Contracting State.

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, 14 and 15 be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. For the purposes of this article, the term Government includes a State Government, a political sub-division or a local authority of either Contracting State.

ARTICLE 18 – *Government service* – 1. (a) Remuneration other than a pension, paid by the Government of a Contracting State to an individual in respect of services rendered to that State or a local authority thereof shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is resident of that State who

(i) is a national of that State, or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. Any pension paid by the Government of one of the Contracting States to any individual may be taxed in that Contracting State.

3. The provisions of articles 15, 16 and 19 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a local authority thereof.

4. For the purposes of this article, the term Government shall include any State Government or local authority of either Contracting State, the Reserve Bank of India and the Central Bank of Ceylon.

ARTICLE 19 – *Non-Government pensions and annuities* – 1. Any pension (other than a pension referred to in article 18) or annuity derived by a resident of a Contracting State from sources within the other Contracting State may be taxed only in the first-mentioned Contracting State.

2. The term pension means a periodic payment made in consideration of services rendered in the past or by way of compensation for injuries received in the course of performance of services.

3. The term annuity means 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 moneys worth.

ARTICLE 20 – *Professors and teachers* – A professor or teacher who makes a temporary visit to a Contracting State for a period not exceeding two years for the purpose of teaching or conducting research at a university, college, school or other educational institution, and who is, or immediately before such visit was a resident of the other

Contracting State shall be exempt from tax in the first-mentioned Contracting State in respect of remuneration for such teaching or research.

ARTICLE 21 – *Students and apprentices* – 1. Payments which a student or business apprentice who is or was immediately before visiting a Contracting State, a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

2. In respect to grants, scholarships and remuneration from employment not covered by paragraph (1) of this article a student or business apprentice described in paragraph (1) of this article shall, in addition, be entitled during such education or training to the same exemptions, reliefs or reductions in respect of taxes available to residents of the State which he is visiting.

ARTICLE 22 – *Other income* – Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing article of this agreement in respect of which he is subject to tax in that State shall be taxable only in that State.

ARTICLE 23 – *Capital* – 1. Capital represented by immovable property referred to in paragraph (2) of article 6 may be taxed in the Contracting State in which such property is situated.

2. Capital represented by 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) of this article, ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft, shall 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 of a resident of a Contracting State shall be taxable only in that State.

ARTICLE 24 – *Elimination of double taxation* – 1. The laws in force in either of the Contracting States shall continue to govern the taxation of income and capital in the respective Contracting States except when express provision to the contrary is made in this Convention. When income or capital is subject to tax in both Contracting States, relief from double taxation shall be given in accordance with the following paragraphs of this article.

2. Subject to the provisions of the law of India regarding the allowance as a credit against Indian tax of tax payable in a territory outside India (which shall not affect the general principle hereof) Sri Lanka tax payable under the law of Sri Lanka and in accordance with this Convention whether directly or by deduction on profits, income or chargeable gains from sources within Sri Lanka (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) or capital in Sri Lanka shall be allowed as a credit against any Indian tax computed by reference to the same items of income or capital by reference to which the Sri Lanka tax is computed :

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 Sri Lanka or to capital in Sri Lanka, 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.

3. For the purposes of paragraph (2) of this article, the term Sri Lanka tax payable shall be deemed to include any amount which would have been payable as Sri Lanka 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 sections 11, 16, 17, 18, 19, 20, 21, 22 and 85 of the Sri Lanka Inland Revenue Act No. 28 of 1979 so far as they were in force on, and have not been modified since, the date of the signature of this Convention, or have been modified only in minor respects so as not to affect their general character; or
- (b) any agreement entered into under section 17 of the Greater Colombo Economic Commission Law No. 4 of 1978; or

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

4. Subject to the provisions of the law of Sri Lanka regarding the allowance as a credit against Sri Lanka tax of tax payable in a territory outside Sri Lanka (which shall not affect the general principle hereof) Indian tax payable under the law of India and in accordance with the Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within India (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) or capital in India shall be allowed as a credit against any Sri Lanka tax computed by reference to the same items of income or capital by reference to which the Sri Lanka tax is computed:

Provided that such credit shall not exceed Sri Lanka tax (as computed before allowing any such credit), which is appropriate to the income derived from sources within India or to capital in India.

5. For the purpose of paragraph (4) 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, sections 10(4), 10(4A), 10(15)(iv), 32A, 33A, 35C, 54E, 80CC, 80HH, 80J, 80K 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 authorities 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.

ARTICLE 25 – Non-discrimination – 1. 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. This provision shall, notwithstanding the provisions of article 1, also apply to persons who are not residents of one or both of the Contracting States.

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. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph (7) of article 9, paragraph (7) of article 11 or paragraph (6) of article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

4. 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 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 the first-mentioned State are or may be subjected.

5. The provisions of this article shall, notwithstanding the provisions of article 2, apply to taxes of every kind and description.

ARTICLE 26 – *Mutual agreement procedure* – 1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the

remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph (1) of article 25 to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

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 a satisfactory 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 which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law 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 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. The competent authorities, through consultations, shall develop appropriate bilateral procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this article. In addition, a competent authority may devise appropriate unilateral procedures, conditions, methods and techniques to facilitate the above-mentioned bilateral actions and the implementation of the mutual agreement procedure.

ARTICLE 27 – 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 of the domestic laws of the Contracting States concerning taxes covered by the Convention, insofar as the taxation thereunder is not contrary to the Convention in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by article 1. Any information

received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State. However, if the information is originally regarded as secret in the transmitting State it shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Convention. Such persons or authorities shall use the information only for such purposes but may disclose the information in public court proceedings or in judicial decisions. The competent authorities shall through consultation develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchanges of information shall be made, including, where appropriate, exchanges of information regarding tax avoidance.

2. 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 and administrative practice of that or of the other Contracting State;
- (b) to supply information which is 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 28 – *Diplomatic agents and consular officials* – Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officials under the general rules of international law or under the provisions of special agreements.

ARTICLE 29 – *Entry into force* – 1. This convention shall be ratified and the instruments of ratification shall be exchanged at Colombo as soon as possible.

2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect

- (a) in Sri Lanka
 - (i) in respect of income assessable for any year of assessment commencing on or after 1st April, 1980;

(ii) in respect of capital assessable for any year of assessment commencing on or after 1st April, 1980.

(b) in India

(i) in respect of income assessable for any year of assessment commencing on or after 1st April, 1981;

(ii) in respect of capital assessable for any year of assessment commencing on or after 1st April, 1980.

3. The agreement between the Government of Ceylon and the Government of India or relief from or the avoidance of double taxation of income, signed on 10th September, 1956, shall terminate and cease to have effect as respects taxes on income to which the present Convention applies in accordance with the provisions of paragraph (2) of this Article.

ARTICLE 30 – *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 Sri Lanka

(i) in respect of income assessable for any year of assessment commencing on or after 1st April in the calendar year next following that in which such notice is given;

(ii) in respect of capital assessable for any year of assessment commencing on or after 1st April in the calendar year next following that in which such notice is given.

(b) in India

(i) in respect of income assessable for the assessment year commencing on the 1st day of April in the second calendar year next following the calendar year in which the notice is given, and subsequent years;

(ii) in respect of capital assessable for any year of assessment commencing on or after 1st April in the calendar year next following that in which such notice is given.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Convention.

DONE in duplicate at New Delhi this 27th day of January, 1982, in the Sinhala, Hindi and English languages, all texts being equally authentic. In the case of divergence of interpretations the English text shall prevail.

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JUDICIAL ANALYSIS

- Amount of tax attributable to income-tax in a country means the tax actually payable in that country *O.A.P. Andiappan v. CIT* [1971] 82 ITR 876 (SC).
- Agreement with Ceylon allows only abatement of tax and not total exemption *A.C. Paul v. CIT* [1974] 97 ITR 652 (Mad.).
- Mere failure to produce finality certificate is not enough to deny assessee relief from double taxation *A.S. Sivan Pillai v. CIT* [1960] 40 ITR 450 (Mad.).
- Revenue should allow an abatement equal to lower of amounts of tax attributable to such excess in either country *CIT v. V.S. Sivalingam Chettiar* [1972] 86 ITR 772 (Mad.) / *CIT v. S.K. Srinivasan* [1970] 75 ITR 93 (Mad.).
- Under article III of agreement between India and Ceylon abatement is equal to lower of two taxes on the same income *M. Abubacker v. CIT* [1968] 69 ITR 809 (Ker.).
- Ceylon income-tax for the purpose of double income-tax relief would be tax as computed under section 20(7) of the Ceylon Income-tax Ordinance less the deduction under section 45(4)(b)(i) of that Ordinance *CIT v. Madras Palyakai Co. (P.) Ltd.* [1969] 74 ITR 642 (Mad.).

Sudan

Agreement for Avoidance of Double Taxation and Prevention of Fiscal Evasion with Sudan

Whereas the annexed Agreement between the Government of the Republic of India and the Government of the Republic of the Sudan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, has come into force on the 15th day of April, 2004 on the date of receipt of the later of the notifications by both the Contracting States to each other, under Article 29 of the said Agreement of the completion of the procedures required by the respective laws for the entry into force of this Agreement.

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Agreement shall be given effect to in the Union of India.

Notification : No. GSR 723(E), dated 1-11-2004.

ANNEXURE

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE REPUBLIC OF THE SUDAN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of India and the Government of the Republic of the Sudan desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, and with a view to promoting economic cooperation between the two countries, have agreed as follows :

ARTICLE 1 : PERSONS COVERED – This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2 : TAXES COVERED – 1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its political sub-divisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property and taxes on the total amounts of wages or salaries paid by enterprises.

3. The existing taxes to which the Agreement shall apply are in particular :

(a) in India, the income-tax, including any surcharge thereon;

(Hereinafter referred to as Indian Tax)

(b) in the Sudan

(1) the income-tax which includes :

(i) Business profit-tax on individuals and companies;

(ii) Rental income-tax;

(iii) Personal income-tax on wages and salaries.

(2) the capital gains tax.

(Hereinafter referred to as the Sudanese Tax);

4. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their respective taxation laws.

ARTICLE 3 : GENERAL DEFINITIONS – 1. For the purposes of this Agreement, unless the context otherwise requires :

(a) the term India means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law, including the U.N. Agreement on the Law of the Sea;

- (b) the term the Sudan means the Republic of the Sudan and, when used in the geographical sense, it includes any area outside the territorial sea of the Republic of the Sudan, which in accordance with international law, has been or may hereafter be designated under the laws of the Republic of the Sudan, concerning the continental shelf, as an area within which the sovereign right of the Republic of the Sudan with respect to the seabed and sub-soil and their natural resources may be exercised.
- (c) the terms Contracting State and the other Contracting State mean the Republic of India or the Republic of the Sudan as the context requires;
- (d) the term person includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States;
- (e) the term company means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (f) the term enterprise applies to the carrying on of any business;
- (g) 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;
- (h) 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;
- (i) the term competent authority means :
 - (i) in India : the Central Government in the Ministry of Finance (Department of Revenue) or its authorized representative;
 - (ii) in the Sudan : the Minister of Finance and National Economy or his authorized representative;
- (j) the term national means :
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
- (k) the term tax means Indian or the Sudanese tax, as the context requires, but shall not include any amount which is payable in respect of any default or

omission in relation to the taxes to which this Agreement applies or which represents a penalty or fine imposed relating to those taxes;

(/) the term fiscal year means:

- (i) in the case of India: the financial year beginning on the 1st day of April;
- (ii) in the case of the Sudan: the financial year beginning on the first day of January.

2. As regards the application of the Agreement by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Agreement applies and any meaning under the applicable tax laws of that State shall prevail over a meaning given to the term under other laws of that State.

ARTICLE 4 : **RESIDENT** – 1. For the purposes of this Agreement, the term resident of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, or any other criterion of a similar nature. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

- (a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either state, he shall be deemed to be a resident only of the State in which he has an habitual abode;
- (c) if he has a habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;

(d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall endeavour to settle the question by mutual agreement.

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 only of the State in which its place of effective management is situated. If the State in which its place of effective management is situated cannot be determined, then the competent authorities of the Contracting States shall endeavour to settle the question by mutual agreement.

ARTICLE 5 : PERMANENT ESTABLISHMENT – 1. For the purposes of this Agreement, the term permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a sales outlet;
- (g) a warehouse in relation to a person providing storage facilities for others;
- (h) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on; and
- (i) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site or construction, installation or assembly project or supervisory activities in connection therewith constitutes a permanent establishment only if such site, project or activities last more than six months.

4. Notwithstanding the preceding provisions of this Article the term permanent establishment shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage, display or delivery 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, display or delivery;
- (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 of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 7 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 Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:

- (a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph, or
- (b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise; or
- (c) habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise itself; or

(d) in so acting, he manufactures or processes in that Contracting State goods and merchandise on behalf of the enterprise.

6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

8. 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 otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6 : INCOME FROM IMMOVABLE PROPERTY – 1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other

natural resources, but ships, boats and aircraft shall not be regarded 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, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, 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.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes 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, in accordance with the provisions of and subject to the limitations of the tax laws of that State.

4. 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.

5. For the purposes 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.

6. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8 : SHIPPING AND AIR TRANSPORT – 1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

3. Profits derived by a transportation enterprise which is a resident of a Contracting State from the use, maintenance, or rental of containers (including trailers and other equipment for the transport of containers) used for the transport of goods or merchandise in international traffic shall be taxable only in that Contracting State unless the containers are used solely within the other contracting State.

4. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9 : ASSOCIATED ENTERPRISES – 1. 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.

2. Where a Contracting State includes in the profits of an enterprise of the State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10 : 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 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 laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 10 per cent of the gross amount of the dividends. 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 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 effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 17, 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 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 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 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 State.

ARTICLE 11 : INTEREST OR GAINS – 1. Interest or gains arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest or gains 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 beneficial owner of the interest or gains, the tax so charged shall not exceed 10 per cent of the gross amount of the interest or gains.

3. Notwithstanding the provisions of paragraph 2, interest or gains arising in a Contracting State shall be exempt from tax in that State, provided that it is derived and beneficially owned by:

- (a) the Government, a political sub-division or a local authority of the other Contracting State; or
- (b) (i) in the case of India, the Reserve Bank of India, the Industrial Finance Corporation of India, the Industrial Development Bank of India, the Export-

Import Bank of India the National Housing Bank, the small Industries Development Bank of India and the Industrial Credit and Investment Corporation of India (ICICI); and

(ii) in the case of the Sudan, the Bank of Sudan and the Sudanese Development Corporation; or

(c) any other institution as may be agreed upon from time to time between the Competent authorities of the Contracting States through exchange of letters.

4. The term interest or gains 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 debtors 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 or gains for the purpose of this Article.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest or gains, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest or gains arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt claim in respect of which the interest or gains is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest or gains shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest or gains, 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 indebtedness on which the interest or gains is paid was incurred, and such interest or gains is borne by such permanent establishment or fixed base, then such interest or gains shall be deemed to arise in the 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 or gains, 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 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 the other provisions of this Agreement.

ARTICLE 12 : ROYALTIES AND FEES FOR TECHNICAL SERVICES – 1. Royalties or fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties or fees for technical services may also be taxed in the Contracting State in which they arise, and according to the laws of the State, but if the beneficial owner of the royalties or fees for technical services is a resident of the other Contracting State the tax so charged shall not exceed 10 per cent of the gross amount of the royalties or fees for technical services.

3. (a) 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 including cinematograph films or films or tapes used for television or radio 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.

(b) The term fees for technical services as used in this Article means payments of any kind, other than those mentioned in Articles 14 and 15 of this Agreement as consideration for managerial or technical or consultancy services, including the provision of services of technical or other personnel.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties

or fees for technical services 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 or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties or fees for technical services shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties or fees for technical services, 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 or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the 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 or fees for technical services, 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 the other provisions of this Agreement.

ARTICLE 13 : CAPITAL GAINS – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including

such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from the alienation of shares other than those mentioned in paragraph 4 in a company which is a resident of a Contracting State may be taxed in that State.

6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14 : INDEPENDENT PERSONAL SERVICES – 7. Income derived by an individual who is a resident of a Contracting State from the performance of professional services or other independent activities of a similar character shall be taxable only in that State except in the following circumstances when such income may also be taxed in the other Contracting State.

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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 State; or
- (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any period of 12-months; in that case; only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

2. The term professional services includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent

activities of physicians, lawyers, engineers, architects, surgeons, dentists and accountants.

ARTICLE 15 : DEPENDENT PERSONAL SERVICES – 1. Subject to the provisions of Articles, 16, 18, 19, 20 and 21, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if :

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, by an enterprise of a Contracting State may be taxed in that State.

ARTICLE 16 : DIRECTORS FEES – Directors fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors having supervisory functions in a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 17 : ARTISTES AND SPORTSPERSONS – 1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television

artiste, or a musician, or as a sportsperson, from personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. The provisions of paragraphs 1 and 2, shall not apply to income from activities performed in a Contracting State by entertainers or sportspersons if the activities are substantially supported by public funds of one or both of the Contracting States or of political sub-divisions or local authorities thereof. In such a case, the income shall be taxable only in the Contracting State of which the entertainer or sportsperson is a resident.

ARTICLE 18 : PENSIONS – Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

ARTICLE 19 : GOVERNMENT SERVICE – 1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who :

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political sub-division or a local authority thereof to an individual in respect of

services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages and other similar remuneration and to pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

ARTICLE 20 : PROFESSORS, TEACHERS AND RESEARCH SCHOLARS – 1. A professor, teacher or research scholar who is or was a resident of the Contracting State immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college or other similar institution in that other Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival in that other State.

2. This Article shall apply to income from research only if such research is undertaken by the individual in the public interest and not primarily for the benefit of some private person or persons.

3. For the purposes of this Article, an individual shall be deemed to be a resident of a Contracting State if he is resident in that State in the fiscal year in which he visits the other Contracting State or in the immediately preceding fiscal year.

ARTICLE 21 : STUDENTS – 1. A student who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State and who is present in that other Contracting State solely for the purpose of his education or training, shall besides grants, loans and scholarships be exempt from tax in that other State on :

(a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training; and

(b) remuneration which he derives from an employment which he exercises in the other Contracting State if the employment is directly related to his studies.

2. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article, for more than six consecutive years from the date of his first arrival in that other State.

ARTICLE 22 : OTHER INCOME – 1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6 if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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 income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraph 1, if a resident of a Contracting State derives income from sources within the other Contracting State in form of lotteries, crossword puzzles, races including horse races, card games and other games of any sort or gambling or betting of any nature whatsoever, such income may be taxed in the other Contracting State.

ARTICLE 23 : METHODS FOR ELIMINATION OF DOUBLE TAXATION – 1. Where a resident of a Contracting State derives income from the other Contracting State which in accordance with the provisions of this Agreement, may be taxed in the other Contracting State, the first-mentioned Contracting State shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in that other Contracting State. Such deduction shall not

however exceed that part of the income-tax as computed before the deduction is given, which is attributable, as the case may be to the income which may be taxed in that other Contracting State.

2. Where in accordance with any provision of the Agreement income derived by a resident of a Contracting State is exempted from tax in that Contracting State, such State may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

3. The tax payable in the Contracting State mentioned in paragraphs 1 and 2 of this Article shall be deemed to include the tax which would have been payable but for the tax incentives gained under the laws of the Contracting State and which are designed to promote economic development.

ARTICLE 24 : NON-DISCRIMINATION – 1. 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, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

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. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents. This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which a company of the other Contracting State has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 7 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

4. 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 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 the first-mentioned State are or may be subjected.

5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

ARTICLE 25 : MUTUAL AGREEMENT PROCEDURE – 1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

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 a satisfactory 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 which is not in

accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law 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 the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

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. 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.

ARTICLE 26 : EXCHANGE OF INFORMATION – 1. The competent authorities of the Contracting States shall exchange such information (including documents or certified copies of the documents) as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes covered by the Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. 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 and administrative practice of that or of the other Contracting State;

- (b) to supply information (including documents or certified copies of the documents) which is 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 27 : COLLECTION ASSISTANCE – 1. The Contracting States undertake to lend assistance to each other in the collection of taxes to which this Agreement relates, together with interest, costs, and civil penalties relating to such taxes, referred to in this Article as a revenue claim.

2. Request for assistance by the Competent Authority of a Contracting State in the collection of a revenue claim shall include:

- (i) a certification by such authority that, under the laws of that State, the revenue claim has been finally determined and concerns a tax covered by the Agreement;
- (ii) an official copy of the notice issued by the authority collecting the tax.

3. For the purposes of this Article, a revenue claim is finally determined when a Contracting State has the right under its internal law to collect the revenue claim and the taxpayer has no further rights to restrain collection. The requesting State shall certify that it has exhausted all means of recovery of the revenue claim.

4. Amounts collected by the competent Authority of a Contracting State pursuant to this Article shall be forwarded to the Competent Authority of the other Contracting State. However, the first-mentioned Contracting State shall be entitled to reimbursement of costs, if any, incurred in the course of rendering such assistance to the extent mutually agreed between the Competent Authorities of the two States.

5. Nothing in this Article shall be construed as imposing on either Contracting State the obligation to carry out administrative measures of a different nature

from those used in the collection of its own taxes or those which would be contrary to its public policy.

ARTICLE 28 : MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS –

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

Article 29 : ENTRY INTO FORCE – 1. The Contracting States shall notify each other in writing, through diplomatic channels, of the completion of the procedures required by the respective laws for the entry into force of this Agreement.

2. This Agreement shall enter into force on the date of the later of the notifications referred to in paragraph 1 of this Article.

3. The provisions of this Agreement shall have effect :

- (a) In India, in respect of income derived in any fiscal year beginning on or after the first day of April next following the calendar year in which the Agreement enters into force; and
- (b) In the Sudan, in respect of income derived in any fiscal year beginning on or after the first day of January next following the calendar year in which the Agreement enters into force.

ARTICLE 30 : TERMINATION – This Agreement shall remain in force indefinitely until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year beginning after the expiration of five years from the date of entry into force of the Agreement. In such event, the Agreement shall cease to have effect:

- (a) in India, in respect of income derived in any fiscal year on or after the first day of April next following the calendar year in which the notice is given;
- (b) in the Sudan, in respect of income derived in any fiscal year on or after the first day of January next following the calendar year in which the notice is given.

Sweden

Agreement for avoidance of double taxation and prevention of fiscal evasion with Sweden*

Whereas the annexed Convention between the Government of the Kingdom of Sweden 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 and on capital shall come into force, on the twenty-fifth day of the December, 1997, thirty days after the receipt of the letter of the notifications by both the Contracting States to each other of the procedures required under their laws for bringing into force of the said Convention in accordance with Article 30 of the said Convention;

Now, therefore, in exercise of the powers conferred under section 90 of the Income-tax Act, 1961 (43 of 1961) and section 44A of the Wealth-tax Act, 1957 (27 of 1957), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in the Union of India.

Notification : No. GSR 705(E), dated 17-12-1997

ANNEXURE

CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE KINGDOM OF SWEDEN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Government of the Republic of India and the Government of the Kingdom of Sweden, desiring to conclude a Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income and on capital and with a view to promoting economic co-operation between the two countries, have agreed as follows :

ARTICLE 1 : *Personal scope* – This Convention shall apply to persons who are residents of one or both the Contracting States.

ARTICLE 2 : *Taxes covered* – 1. This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its political sub-divisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which this Convention shall apply are in particular :

(a) in India :

- (i) the income-tax, including any surcharge thereon; and
 - (ii) the tax on capital (the wealth-tax);
- (hereinafter referred to as Indian tax);

(b) in Sweden :

- (i) the income-tax, including the national income-tax (den statliga inkomstskatten), including the tax on employees at sea (sjmansskatten) and the withholding tax on dividends (kupongskatten);
 - (ii) the income-tax on non-residents (den sarskilda inkomstskatten for utomlands bosatta);
 - (iii) the income-tax on non-resident artistes and athletes (den sarskilda inkomstskatten for utomlands bosatta artister m.fl.);
 - (iv) the municipal income-tax (den kommunala inkomstskatten);
 - (v) the tax on means intended for expansion purposes (expansionsmedelsskatt); and
 - (vi) the net wealth-tax;
- (hereinafter referred to as Swedish tax).

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes referred to in paragraph (3). The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

ARTICLE 3 : *General definitions* – 1. For the purposes of this Convention, unless the context otherwise requires :

- (a) the term India means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law, including the U.N. Convention on the Law of the Sea;
- (b) the term Sweden means the Kingdom of Sweden and, when used in a geographical sense, includes the national territory, the territorial sea of Sweden as well as other maritime areas over which Sweden in accordance with international law exercises sovereign rights or jurisdiction;
- (c) the terms a Contracting State and the other Contracting State mean India or Sweden, as the context requires;
- (d) the term person includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States;
- (e) the term company means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (f) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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;
- (g) 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;
- (h) the term national means :
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership and association deriving its status as such from the laws in force in a Contracting State;
- (i) the term competent authority means :
 - (i) in India : the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative;
 - (ii) in Sweden : the Minister of Finance, his authorised representative or the authority which is designated as a competent authority for the purposes of this Convention;

(j) the term fiscal year means :

(i) in the case of India, previous year as defined under section 3 of the Income-tax Act, 1961;

(ii) in the case of Sweden, beskattningsar as defined under section 3 of the Kommunalsskattelagen, 1928;

(k) the term tax means Indian tax or Swedish tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty imposed relating to those taxes.

2. As regards, the application of the Convention by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

ARTICLE 4 : *Resident* – 1. For the purposes of this Convention, the term resident of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State, a political sub-division, a local authority and any governmental body or agency thereof. In the case of a partnership or estate, the term applies only to the extent that the income derived by such partnership or estate is subject to tax in that State as the income of a resident, either in its hands or in the hands of its partners or beneficiaries.

The term resident of a Contracting State does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

2. Where by reason of the provisions of paragraph (1), an individual is a resident of both Contracting States, then his status shall be determined as follows :

(a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);

- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 State in which its place of effective management is situated. If the State in which its place of effective management is situated cannot be determined, then the competent authorities of the Contracting States shall settle the question by mutual agreement.

ARTICLE 5 : *Permanent establishment* – 1. For the purposes of this Convention, the term permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) a sales outlet;
- (h) a warehouse in relation to a person providing storage facilities for others; and
- (i) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on.

3. A building site or a construction, assembly or installation project or supervisory activities in connection therewith constitute a permanent establishment only if such site, project or activities continue for a period of more than six months.

4. An enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it provides services or facilities in connection with, or supplies plant and machinery on hire used for or to be used in the prospecting for, or extraction or exploitation of mineral oils in that State.

5. Notwithstanding the preceding provisions of this Article, the term permanent establishment shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage, display or delivery 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, display or delivery;
- (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 of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

6. Notwithstanding the provisions of paragraphs (1) and (2), where a person – other than an agent of an independent status to whom paragraph (8) 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 Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person :

- (a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph (5) which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
- (b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise; or
- (c) habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise itself or for the enterprise and other enterprises controlling, controlled by, or subject to the same control, at that enterprise.

7. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph (8) applies.

8. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

9. 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 otherwise) shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6 : *Income from immovable property* – 1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the 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 and forestry, rights to which the provisions of general law respecting landed property apply, buildings, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded 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, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph (3), 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.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes 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, in accordance with the provisions of and subject to the limitations of the tax laws of that State.

4. 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.

5. For the purposes 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.

6. 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 : *Shipping and air transport* – 1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. Profits derived by a transportation enterprise which is a resident of a Contracting State from the use, maintenance, or rental of containers (including trailers and other equipment for the transport of containers) used for the transport of goods or merchandise in international traffic shall be taxable only in that Contracting State unless the containers are used solely within the other Contracting State.

3. With respect to profits derived by the Swedish, Danish and Norwegian air transport consortium Scandinavian Airlines System (SAS), the provisions of paragraph (1) shall apply only to such part of the profits as corresponds to the participation held in that consortium by SAS Sverige AB, the Swedish partner of Scandinavian Airlines System (SAS).

4. The provisions of paragraphs (1) and (2) shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9 : *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.

Any case resulting in double taxation from the application of this Article may be resolved under the mutual agreement procedure.

ARTICLE 10 : *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 State.

2. Notwithstanding the provisions of paragraph (1), such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

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 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 14, 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 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 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 State, nor subject to companys undistributed profits to a tax on the companys undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11 : *Interest* – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph (2), interest arising in a Contracting State shall be exempt from tax in that Contracting State provided it is derived and beneficially owned by, or derived in connection with a loan or credit extended or endorsed by :

- (i) the Government, a political sub-division, a statutory body, or a local authority of the other Contracting State; or
- (ii) in the case of India, the Reserve Bank of India, the Industrial Finance Corporation of India, the Industrial Development Bank of India, the Export-Import Bank of India, the National Housing Bank, the Small Industrial Development Bank of India and the Industrial Credit and Investment Corporation of India (ICICI); and
in the case of Sweden, the Swedish International Development Authority (SIDA), SWEDECORP (Styrelsen for internationellt näringslivsbistånd), Swedfund International AB or The Swedish Export Credits Guarantee Board (Exportkreditnämnden); or
- (iii) any other institution as may be agreed from time to time between the competent authorities of the Contracting States.

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 debtors 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), (2) and (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 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 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is resident 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 such interest shall be deemed to arise in the 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 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 the other provisions of this Convention.

ARTICLE 12 : *Royalties and fees for technical services* – 1. Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. Notwithstanding the provisions of paragraph (1), such royalties and fees for technical services may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the recipient is the beneficial owner of the royalties or fees for technical services, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties or fees for technical services.

3. (a) 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 including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

(b) The term fees for technical services means payment of any kind in consideration for the rendering of any managerial, technical or consultancy services including the provisions of services by technical or other personnel but does not include payments for services mentioned in Articles 14 and 15 of this Convention.

4. The provisions of paragraphs (1) and (2) shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of a Contracting State, carries

on business in the other Contracting State in which the royalties or fees for technical services 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 or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties or fees for technical services shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties or fees for technical services, 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 or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the 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 or fees for technical services, 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 the other provisions of this Convention.

ARTICLE 13 : *Capital gains* – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of

performing independent personal services including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.

With respect to gains derived by the Swedish, Danish and Norwegian air transport consortium Scandinavian Airlines System (SAS), the provisions of this paragraph shall apply only to such portion of the gains as corresponds to the participation held in that consortium by SAS Sverige AB, the Swedish partner of Scandinavian Airlines System (SAS).

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from the alienation of any property other than that referred to in paragraphs (1), (2), (3) and (4), shall be taxable only in the Contracting State of which the alienator is a resident, provided that such resident is subject to tax thereon in that State. If the resident is not subject to tax thereon, then such gains may be taxed in the other Contracting State.

6. Notwithstanding the provisions of paragraph (5), gains from the alienation of any property derived by an individual who has been a resident of a Contracting State and who has become a resident of the other Contracting State, may be taxed in the first-mentioned State if the alienation of the property occurs at any time during the four years next following the date on which the individual has ceased to be a resident of the first-mentioned State.

ARTICLE 14 : *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 State except in the following circumstances, when such income may be taxed in the other Contracting State :

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case only so much of the income as is attributable to that fixed base may be taxed in the other State; or
- (b) if his stay in the other State is for a period or periods aggregating 183 days or more in any twelve-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

ARTICLE 15 : *Dependent personal services* – 1. Subject to the provisions of Articles 16, 18 and 19, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State. Where a

resident of Sweden derives remuneration in respect of an employment exercised aboard an aircraft operated in international traffic by the Swedish, Danish and Norwegian air transport consortium Scandinavian Airlines System (SAS), such remuneration shall be taxable only in Sweden.

ARTICLE 16 : *Directors fees* – Directors fees and other 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 may be taxed in that other State.

ARTICLE 17 : *Artistes and sportspersons* – 1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an artiste, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an artiste or a sportsperson in his capacity as such accrues not to the artiste or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the artiste or sportsperson are exercised.

3. The provisions of paragraphs (1) and (2), shall not apply to income from activities performed in a Contracting State by artistes or sportspersons if the visit to that State is substantially supported by public funds of the other Contracting State or of a political sub-division or local authority thereof. In such a case, the income shall be taxable only in the Contracting State of which the artiste or sportsperson is a resident.

ARTICLE 18 : *Pensions, social security payments and annuities* – 1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration in consideration of past employment, annuities and payments under the Social Security legislation arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the first-mentioned 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 moneys worth.

ARTICLE 19 : *Government service* – 1. (a) Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who :

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2.(a) Any pension paid by, or out of funds created by, a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and to pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

ARTICLE 20 : *Students and apprentices* – 1. A student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training shall, besides loans on preferential conditions provided by the Government or any other organisation or institution of the first-mentioned State and tax exempt grants and scholarships, be exempt from tax in the first-mentioned State on :

- (a) payments made to him by persons residing outside the first-mentioned State for the purpose of his maintenance, education or training; and
- (b) remuneration from employment in the first-mentioned State, in an amount not exceeding 10,000 (ten thousand) Swedish Kronor or its equivalent amount during any fiscal year, as the case may be, provided that such employment is directly related to his studies or is undertaken for the purpose of his maintenance and that his stay in the first-mentioned State lasts for six months or more.

2. The benefit of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article for more than five consecutive years from the date of his first arrival in the first-mentioned State.

ARTICLE 21 : *Professors, teachers and research scholars* – 1. A professor, teacher or research scholar who visits a Contracting State at the invitation of that State or of a university, college, school or other such institution of that State not exceeding three years solely for the purpose of teaching, giving lectures or carrying out research at such institution and who is, or was immediately before that visit, a resident of the other Contracting State shall be exempt from tax in the first-mentioned State, provided that the institution in question receives approval from the competent authority of that Contracting State, on his remuneration for such activity during the period of the first year from the date of his arrival and in the subsequent years, the exemption will be only in respect of remuneration derived by him from outside that 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.

ARTICLE 22 : *Other income* – 1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph (1) shall not apply to income, other than income from immovable property as defined in paragraph (2) of Article 6, if the recipient of such

income, being a resident of a Contracting State, carries on business in the other Contracting State 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 income is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraph (1), if a resident of a Contracting State derives income from sources within the other Contracting State in the form of lotteries, crossword puzzles, races including horse races, card games and other games of any sort or gambling or betting of any form or nature whatsoever, such income may be taxed in the other Contracting State.

ARTICLE 23 : *Capital* – 1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.

3. Capital represented by ships and aircraft operated in international traffic by an enterprise of a Contracting State and by movable property pertaining to the operation of such ships and aircraft, shall be taxable only in that State.

With respect to capital owned by the Swedish, Danish and Norwegian air transport consortium Scandinavian Airlines System (SAS), the provisions of this Article shall apply only to such part of the capital as relates to the participation held in that consortium by SAS Sverige AB, the Swedish partner of SAS.

ARTICLE 24 : *Elimination of double taxation* – 1. The laws in force in either of the Contracting State will continue to govern the taxation of income in the respective

Contracting States except where provisions to the contrary are made in this Convention.

2. In the case of India, double taxation shall be avoided as follows :

- (a) Where a resident of India derives income which, in accordance with the provisions of this Convention, may be taxed in Sweden, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in Sweden whether directly or by way of deduction at source. Such amount shall not, however, exceed that part of the income-tax, as computed before the deduction is given, which is attributable to the income which may be taxed in Sweden.
- (b) Where a resident of India derives income which, in accordance with the provisions of this Convention, shall be taxable only in Sweden, India may, when determining the graduated rate of Indian tax, take into account the income which shall be taxable only in Sweden.
- (c) Where a resident of India owns assets which, in accordance with the provisions of this Convention, may be taxed in Sweden, India shall allow as a deduction from tax on such assets an amount equal to the tax on net wealth paid in Sweden in respect of such assets. Such deduction shall not, however, exceed that part of the Indian tax on net wealth as computed before the deduction is given which is appropriate to the assets which may be taxed in Sweden.

3. In the case of Sweden, double taxation shall be avoided as follows :

- (a) Where a resident of Sweden derives income which under the laws of India and in accordance with the provisions of this Convention may be taxed in India, Sweden shall allow – subject to the provisions of the laws of Sweden concerning credit for foreign tax (as it may be amended from time to time without changing the general principle hereof) – as a deduction from the tax on such income, an amount equal to the Indian tax paid in respect of such income.
- (b) Where a resident of Sweden derives income which, in accordance with the provisions of this Convention, shall be taxable only in India, Sweden may, when determining the graduated rate of Swedish tax, take into account the income which shall be taxable only in India.

- (c) Notwithstanding the provisions of sub-paragraph (a) of this paragraph, dividends paid by a company which is a resident of India to a company which is a resident of Sweden shall be exempt from Swedish tax according to the provisions of Swedish law governing the exemption of tax on dividends paid to Swedish companies by subsidiaries abroad.
- (d) For the purposes of sub-paragraph (a) of this paragraph, the term Indian tax paid shall be deemed to include the Indian tax which would have been paid but for any exemption or reduction of tax granted under incentive provisions contained in the Indian law designed to promote economic development to the extent that such exemption or reduction is granted for profits from industrial or manufacturing activities or from agriculture, fishing or tourism (including restaurants and hotels) provided that the activities have been carried out within India. For the purpose of sub-paragraph (c) of this paragraph, a tax of 15 per cent calculated on a Swedish tax base shall be considered to have been paid for such activities under those conditions mentioned in the previous sentence.

The competent authorities may agree to extend the application of this provision also to other activities.

- (e) The provisions of paragraph (d) shall apply only for the first ten years during which this Convention is effective. This period may be extended by a mutual agreement between the competent authorities.
- (f) Where a resident of Sweden owns assets which, in accordance with the provisions of this Convention, may be taxed in India, Sweden shall allow as a deduction from tax on such assets an amount equal to the tax on net wealth paid in India in respect of such assets. Such deduction shall not, however, exceed that part of the Swedish tax on net wealth as computed before the deduction is given which is appropriate to the assets which may be taxed in India.

ARTICLE 25 : *Non-discrimination* – 1. 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. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

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. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs or reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents. Further this provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which a company of the other Contracting State has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first-mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7 of this Convention.

3. Except where the provisions of Article 9, paragraph (7) of Article 11, or paragraph (6) of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

4. 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 subject in the first-mentioned 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 the first-mentioned State are or may be subjected.

5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

ARTICLE 26 : *Mutual agreement procedure* – 1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph (1) of Article 25, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

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 a satisfactory 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 which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time-limits in the domestic law 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 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. 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.

ARTICLE 27 : *Exchange of information* – 1. The competent authorities of the Contracting States shall exchange such information (including documents), as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention, insofar as the taxation thereunder is not contrary to the Convention, in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by

Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. 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 and administrative practice of that or of the other Contracting State;
- (b) to supply information which is 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 28 : *Collection assistance* – 1. The Contracting States undertake to lend assistance to each other in the collection of taxes to which this Convention relates, together with interest, costs, and civil penalties relating to such taxes, referred to in this Article as a revenue claim.

2. A request for assistance by the competent authority of a Contracting State in the collection of a revenue claim shall include a certification by such authority that, under the laws of that State, the revenue claim has been finally determined. For the purposes of this Article, a revenue claim is finally determined when a Contracting State has the right under its internal law to collect the revenue claim and the taxpayer has no further rights to restrain collection.

3. An amount collected by the competent authority of a Contracting State pursuant to this Article shall be forwarded to the competent authority of the other Contracting State. However, the first-mentioned Contracting State shall be entitled to reimbursement of costs, if any, incurred in the course of rendering such assistance to the extent mutually agreed between the competent authorities of the two States.

4. Nothing in this Article shall be construed as imposing on either Contracting State the obligation to carry out administrative measures of a different nature from those used in the collection of its own taxes or those which would be contrary to its public policy.

ARTICLE 29 : *Members of diplomatic missions and consular posts* – Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions and consular posts under the general rules of international law or under the provisions of special agreements.

ARTICLE 30 : *Entry into force* – 1. The Contracting States shall notify each other in writing, through diplomatic channels, the completion of the procedures required by the respective laws for the entry into force of this Convention.

2. This Convention shall enter into force thirty days after the receipt of the latter of the notifications referred to in paragraph 1 of this Article.

3. The provisions of this Convention shall have effect :

(a) in India,

(i) in respect of income arising in any fiscal year beginning on or after the first day of April next following the calendar year in which the Convention enters into force;

(ii) in respect of capital which is held on the last day of any fiscal year beginning on or after the first day of April following the calendar year in which this Convention enters into force;

(b) in Sweden,

(i) in respect of taxes on income, on income derived on or after the first day of January of the year next following that of the entry into force of the Convention;

(ii) in respect of tax on net wealth, for tax which is assessed on or after the second calendar year following that in which the Convention enters into force.

4. The Convention of 7th June, 1988, between the Government of the Republic of India and the Government of the Kingdom of Sweden for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income and on capital with Protocol shall terminate upon the coming into force of this Convention and accompanying Protocol. The provisions of the said 1988 Convention with Protocol shall cease to have effect from the date on which the corresponding provisions of this

Convention and accompanying Protocol shall, for the first time, have effect according to the provisions of paragraph 2 of this Article.

ARTICLE 31 : *Termination* – This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving written notice of termination at least six months before the end of any calendar year. In such case, the Convention shall cease to have effect :

(a) in India,

- (i) in respect of income arising in any fiscal year beginning on or after the first day of April following the calendar year in which the notice of termination is given;
- (ii) in respect of capital which is held on the last day of any fiscal year beginning on or after the first day of April following the calendar year in which the notice of termination is given;

(b) in Sweden,

- (i) in respect of taxes on income, on income derived on or after the first day of January of the year next following the end of the six months period;
- (ii) in respect of tax on net wealth, for tax which is assessed in or after the second calendar year following the end of the six months period.

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

Done in duplicate at New Delhi, this 24th day of June, 1997, in the Swedish, Hindi and English languages, all three texts being equally authentic. In case of divergence between the texts the English text shall be the operative one.

PROTOCOL

At the signing of the Convention between the Government of the Republic of India and the Government of the Kingdom of Sweden for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, the

undersigned have agreed that the following shall form an integral part of the Convention :

With reference to Article 2 :

The fees paid under the Swedish Social Security Legislation and according to the provisions of the Act (1990 : 659) on Special salary tax on earned income and the Act (1991 : 687) on Special salary tax on pension costs are not included in this Convention.

With reference to Article 7 :

In respect of paragraphs (1) and (2) of Article 7, where an enterprise of one of the Contracting States sells goods or merchandise or carries on business in the other Contracting State through a permanent establishment situated therein, the profits of that permanent establishment shall not be determined on the basis of the total amount received by the enterprise, but shall be determined only on the basis of the remuneration which is attributable to the actual activity of the permanent establishment for such sales or business. Especially, in the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, when the enterprise has a permanent establishment, the profits of such permanent establishment shall not be determined on the basis of the total amount of the contract, but shall be determined only on the basis of that part of the contract which is effectively carried out by the permanent establishment in the Contracting State where the permanent establishment is situated.

With reference to Articles 10, 11 and 12 :

In respect of Articles 10 (Dividends), 11 (Interest) and 12 (Royalties and fees for technical services) if under any Convention. Agreement or Protocol between India and a third State which is a member of the OECD, India limits its taxation at source on dividends, interest, royalties, or fees for technical services to a rate lower or a scope more restricted than the rate or scope provided for in this Convention on the said items of income, the same rate or scope as provided for in that Convention, Agreement or Protocol on the said items of income shall also apply under this Convention.

With reference to Article 25 :

The taxation in India of permanent establishments of Swedish companies, shall in no case differ more from the taxation of similar Indian companies than is provided by the Indian law on the date of signature of this Convention.

IN WITNESS WHEREOF the undersigned being duly authorised thereto have signed this Protocol.

DONE in duplicate at New Delhi, this 24th day of June, 1997, in the Swedish, Hindi and English languages, all three texts being equally authentic. In case of divergence between the texts the English text shall be the operative one.

JUDICIAL ANALYSIS

See Ericsson Telephone Corpn. India v. CIT [1997] [90 Taxman 144](#) (AAR – New Delhi).

Swiss Confederation

Agreement for avoidance of double taxation and prevention of fiscal evasion with Swiss Confederation

Whereas the annexed Agreement between the Government of the Republic of India and the Government of the Swiss Confederation for the avoidance of double taxation with respect to taxes on income has entered into force on 29th December, 1994, after the notification by both the Contracting States to each other of the completion of the procedures required under their laws for bringing into force of the said Agreement in accordance with paragraph 1 of Article 26 of the said Agreement;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Agreement shall be given effect to in the Union of India.

Notification: No. GSR 357(E), dated 21-4-1995, as amended by Notification No. GSR 74(E), dated 7-2-2001.

ANNEXURE

AGREEMENT BETWEEN THE REPUBLIC OF INDIA AND THE SWISS CONFEDERATION FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME

The Government of the republic of India and the Swiss federal council

Desiring to conclude an Agreement for the avoidance of double taxation with respect to taxes on income,

Have agreed as follows :

ARTICLE 1 : *Personal Scope* – This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2 : *Taxes covered 1.* – The taxes to which this Agreement shall apply are :

(a) in the case of India :

the Income-tax including any surcharge thereon; and

(b) in the case of Switzerland :

the federal, cantonal and communal taxes on income (total income, earned income, income from capital, industrial and commercial profits, capital gains, and other items of income).

2. The Agreement shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of the present Agreement in addition to, or in place of, the taxes referred to in paragraph 1 of this Article.

3. In this Agreement, the term Indian tax means tax imposed by India, being tax to which this Agreement applies; the term Swiss tax means tax imposed in Switzerland, being tax to which this Agreement applies; and the term tax means Indian tax or Swiss tax, as the context requires; but the taxes in the preceding paragraphs of this Article do not include any penalty or interest imposed under the law in force in either Contracting State relating to the taxes to which this Agreement applies.

4. The competent authorities of the Contracting States shall notify to each other any significant changes which have been made in their relevant respective taxation laws.

ARTICLE 3 : *General definitions* 1. – In this Agreement, unless the context otherwise requires :

- (a) the term India means the territory of India and includes the territorial sea and the air space above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdictions, according to the Indian law and in accordance with international law, including the UN Convention on the Law of the Sea;
- (b) the term Switzerland means the Swiss Confederation;
- (c) the terms a Contracting State and the other Contracting State mean India or Switzerland, as the context requires;
- (d) the term person includes an individual, a company, a body of persons, or any other entity which is taxable under the laws in force in either Contracting State;

- (e) the term company means any body corporate or any entity which is treated as a company under the taxation laws of the respective Contracting States;
- (f) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean, 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;
- (g) the term competent authority means, in the case of India, the Central Government in the Department of Revenue or their authorised representative, and, in the case of Switzerland, the Director of the Federal Tax Administration or his authorised representative;
- (h) the term national means any individual possessing the nationality of a Contracting State and any legal person, partnership or association deriving its status from the laws in force in the Contracting State;
- (i) the term international traffic means any transport by an aircraft operated by an enterprise of a Contracting State, except when the aircraft is operated solely between places in the other Contracting State;
- (j) the term operation of aircraft shall mean business of transportation by air of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of aircraft, including the sale of tickets for such transportation on behalf of other enterprises, the incidental lease of aircraft and any other activity directly connected with such transportation;
- (k) the term fiscal year means :
 - (i) in the case of India, the previous year as defined in the Income-tax Act of India; and
 - (ii) in the case of Switzerland, the calendar year.

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

ARTICLE 4 : *Fiscal domicile 1.* – For the purposes of this Agreement, the term resident of a Contracting State means any person who, under the laws of that State, is liable to

taxation therein by reason of his domicile, residence, place of incorporation, 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 residential status for the purposes of this Agreement 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 (hereinafter referred to as his centre of vital interests);
- (b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he does not have 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 national;
- (d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 Agreement, the term permanent establishment means a fixed place of business through which the business of the enterprises 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 store or other sales outlet;
- (e) a factory;
- (f) a workshop;
- (g) a warehouse in relation to a person providing storage facilities for others;
- (h) a permanent sales exhibition;
- (i) a mine, a quarry, an oil or gas well, or any other place of extraction of natural resources;
- (j) a building site or construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or supervisory activity continues for a period of more than six months;
- (k) an installation or structure used for the exploration or development of natural resources for more than 90 days; and
- (l) the furnishing of technical services, other than services as defined in Article 12, within a Contracting State by an enterprise through employees or other personnel, but only if :–
 - (i) activities of that nature continue within that State for a period or periods aggregating more than 90 days within any twelve month period; or
 - (ii) the services are performed within that State for a related enterprise (within the meaning of paragraph 1 of Article 9) for a period or periods aggregating more than 30 days within any twelve-month period.

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

- (a) the use of facilities solely for the purpose 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;

- (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information or for scientific research, being activities solely of a preparatory or auxiliary character in the trade or business of the enterprise.
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

4. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 6 applies.

5. A person acting in a Contracting State for or on behalf of an enterprise of the other Contracting State – other than an agent of an independent status to whom paragraph 6 applies – shall be deemed to be a permanent establishment of that enterprise in the first-mentioned State if :

- (i) he has and habitually exercises in that State, an authority to negotiate and enter into contracts for or on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or
- (ii) he habitually maintains in the first-mentioned Contracting State a stock of goods or merchandise from which he regularly delivers goods or merchandise for or on behalf of the enterprise; or
- (iii) in so acting, he manufactures or processes in that State for the enterprise goods or merchandise belonging to the enterprise, provided that this provision shall apply only in relation to the goods or merchandise so manufactured or processed.

6. 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. However, when the activities of such an agent are devoted wholly or almost

wholly on behalf of that enterprise or for the enterprise and other enterprises which are controlled by it or have a controlling interest in it, he would not be considered an agent of an independent status within the meaning of this paragraph.

7. 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 for either company a permanent establishment of the other.

ARTICLE 6 : *Income from immovable property 1.* – Income from immovable property may also be taxed in the Contracting State in which such property is situated.

2. The term immovable property shall be defined in accordance with the law of the Contracting State in which the property is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, oilwells, quarries and other places of extraction of natural resources. Ships and aircraft shall not be regarded 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 professional services.

ARTICLE 7 : *Business profits 1.* – The business profits of an enterprise of a Contracting State, other than the profits from the operation of ships in international traffic, 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, the profits of the enterprise may be taxed in the other

State but only so much of them as is directly or indirectly attributable to that permanent establishment.

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.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions for expenses which are incurred for the purposes of the permanent establishment, whether in the State in which the permanent establishment is situated or elsewhere. Executive and general administrative expenses shall be allowed as deductions in accordance with the taxation laws of that State. Nothing in this paragraph shall, however, authorise a deduction for expenses which would not be deductible if the permanent establishment were a separate enterprise.

4. Insofar 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. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8 : *Air transport* ¹¹ – Profits derived by an enterprise of a Contracting State from the operation of aircraft in international traffic shall be taxable only in that State.

2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9 : *Associated enterprises* 1. – 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 profit 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.

2. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustments, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall, if necessary consult each other.

ARTICLE 10 : *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 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 laws of that State, but

if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

3. The term dividends as used in this Article means income from shares, jouissance shares or jouissance rights, mining shares, founders 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 taxation law 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 14, 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 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 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 State, nor subject the companys undistributed profits to a tax on the companys undistributed profits, even if the dividends paid or the undisputed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11 : *Interest 1.* – Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2 :

- (a) interest arising in Switzerland and paid to a resident of India shall be taxable only in India if it is paid in respect of a loan made, guaranteed or insured, or a credit extended, guaranteed or insured by the Government, a political sub-division, a statutory body or a local authority of India or the Export-Import Bank of India, the Reserve Bank of India, the Industrial Finance Corporation of India, the Industrial Development Bank of India, the National Housing Bank, the Small Industries Development Bank of India or by any institution specified and agreed in letters exchanged between the competent authorities of the Contracting States;
- (b) interest arising in India and paid to a resident of Switzerland shall be taxable only in Switzerland if it is paid in respect of a loan made, guaranteed or insured, or credit extended, guaranteed or insured under the Swiss provisions regulating the Export or Investment Risk Guarantee or by any institution specified and agreed in letters exchanged between the competent authorities of the Contracting States;
- (c) interest arising in a Contracting State and paid to a resident of the other Contracting State engaged in the operation of aircraft in international traffic shall be taxable only in that other State to the extent that such interest is paid on funds connected with such activity;
- (d) interest arising in India and paid to a resident of Switzerland shall be exempt from Indian tax if the loan or other indebtedness in respect of which the interest is paid is an approved loan. The term approved loan means any loan or other indebtedness approved by the Government of India in this behalf.

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 debtors 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 and 2 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 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 a case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that 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 resident 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 such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

7. Where, owing to a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest paid, 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 last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 12 – *Royalties and fees for technical services* 1. – Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and according to the laws of that State; but if the beneficial owner of the royalties or fees for technical services is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties or the fees for technical services.

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 a literary, artistic, or scientific work, including cinematography films or work on film, tape or other means of reproduction for use in connection with radio or television broadcasting, any patent trademark, design or model, plan, secret formula or process, or for the use of, or the right to use, any industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. For purposes of this Article the term fees for technical services means payments of any kind to any person in consideration for the rendering of any managerial, technical or consultancy services, including the provision of services by technical or other personnel.

5. Notwithstanding paragraph 4, fees for technical services does not include amounts paid:

- (a) for teaching in or by educational institutions;
- (b) for services covered by Article 14 or Article 15, as the case may be.

6. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the contract in respect of which the royalties or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

7. Royalties and fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties or fees for technical services, 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 or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or

fixed base, then such royalties or fees for technical services shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

8. 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 or fees for technical services paid exceeds the amount which would have been paid in the absence of such relationship, the provisions of this Article shall apply on the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of such Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 13 : *Capital gains 1.* – Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may also be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains from the alienation of shares of a company, the property of which consists principally of immovable property situated in a Contracting State, may be taxed in that State.

5. Gains from the alienation of shares other than those mentioned in Paragraph 4, of a company which is a resident of a Contracting State:

- (a) shall be taxable only in the Contracting State of which the alienator is a resident;
- (b) notwithstanding the provision of sub-paragraph (a), India may tax gains from the alienation of shares in a company which is a resident of India.

In this case the provisions of sub-paragraph (b) of paragraph 1, of Article 23 shall apply.

6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14 – *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 State except in the following circumstances, when such income may also be taxed in the other Contracting State :

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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 State; or
- (b) if his stay in the other State is for a period or periods aggregating 183 days or more in any 12 month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

ARTICLE 15 – *Dependent personal services* 1. – Subject to the provisions of Articles 16, 18, 19, 20 and 21, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if :

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any 12 month period commencing or ending in the fiscal year concerned, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, by an enterprise of a Contracting State may be taxed in that State.

ARTICLE 16 : *Directors fees* – Directors 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 17 : *Artistes and athletes 1.* – Notwithstanding the provisions of Articles 7 and 14, income derived by entertainers (such as stage, motion picture, radio or television artistes and musicians) or athletes, from their personal activities as such shall be taxable only in the Contracting State in which these activities are exercised.

2. Where income as a result of personal activities as such exercised in a Contracting State by an entertainer or athlete accrues not to that entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in that Contracting State.

3. The provisions of paragraphs 1 and 2 shall not apply if the visit to a Contracting State of the entertainer or the athlete is directly or indirectly supported, wholly or substantially, from the public funds of the other Contracting State, including any political sub-division, local authority or statutory body of that other State.

ARTICLE 18 : *Pension and annuities* 1. – Any pension (other than a pension referred to in Article 18) or annuity derived by a resident of a Contracting State shall be taxable only in that State.

2. The term pension means a periodic payment made in consideration of past employment or by way of compensation for injuries received in the course of the performance of services.

3. The term annuity means 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 moneys worth.

ARTICLE 19 : *Government remuneration and pensions* 1. – Remuneration, other than a pension, paid by the Government of a Contracting State to any individual who is a citizen of that State in respect of services rendered in the discharge of governmental functions in the other Contracting State shall be taxable only in the first-mentioned State.

2. Any pension paid by the Government of a Contracting State to any individual in respect of services rendered shall be taxable only in that Contracting State.

3. The provisions of paragraphs 1 and 2 of this Article shall not apply to payments in respect of services rendered in connection with any business carried on by the Government of either of the Contracting States for the purpose of profit.

4. For the purposes of this Article, the term Government shall include any State Government, canton or local or statutory authority of either Contracting State and in particular the Reserve Bank of India and the Swiss National Bank.

ARTICLE 20 : *Students and apprentices* 1. – Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

2. In respect of grants, scholarships and remuneration from employment not covered by paragraph 1, a student or business apprentice described in paragraph 1 shall, in addition, be entitled during such education or training to the same exemptions, reliefs or reductions in respect of taxes available to residents of the State which he is visiting.

ARTICLE 21 : *Professors, teachers and researchers* 1. – An individual who is or was a resident of a Contracting State and who visits the other Contracting State for a period not exceeding 24 months for the primary purpose of teaching or engaging in research, or both, at a university or other recognised educational institution shall be exempt from tax in that other Contracting State on his income from personal services for teaching or research at the university or the recognised educational institution.

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.

ARTICLE 22 – *Other income* 1. – Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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 income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraph 1, if a resident of a Contracting State derives income from sources within the other Contracting State in the form of lotteries, crossword puzzles, races including horse races, card games and other games of any sort or gambling or betting of any form or nature whatsoever, such income may be taxed in that other Contracting State.

ARTICLE 23 : *Elimination of double taxation 1.* – (a) Subject to any provisions of the law of India which may from time to time be in force and which relates to the relief of taxes paid in a country outside India, where a resident of India derives income which, in accordance with the provisions of this Agreement, may be taxed in Switzerland, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in Switzerland whether directly or by deduction. Such deduction shall not, however, exceed that part of the income-tax (as computed before the deduction is given) which is attributable to the income which may be taxed in Switzerland.

(b) Where a resident of Switzerland derives gains from the alienation of shares which may be taxed in India according to Article 13, paragraph 5, sub-paragraph (b), India shall allow as a deduction from tax on that income, an amount equal to the income-tax paid in Switzerland on these capital gains. The deduction shall not, however, exceed that part of the Indian income-tax, which is imposed on these capital gains.

2. (a) Where a resident of Switzerland derives income which, in accordance with the provisions of this Agreement may be taxed in India, Switzerland shall, subject to the provisions of sub-paragraphs (b) and (c) exempt such income from tax but may, in calculating tax on the remaining income of that resident, apply the rate of tax which would have been applicable, if the exempted income had not been so exempted : provided, however, that such exemption shall apply to gains referred to in paragraph of Article 13 only if actual taxation of such gains in India is demonstrated.

(b) Where a resident of Switzerland derives dividends, interest, royalties or fees for technical services which, in accordance with the provisions of Articles 10, 11 and 12, may be taxed in India, Switzerland shall allow, upon request, a relief to such resident. The relief may consist of,

(i) a credit from the Swiss tax on the income of that resident of an amount equal to the tax levied in India in accordance with the provisions of Articles 10, 11 and 12, such credit shall not, however, exceed that part of the Swiss tax, as computed before the credit is given, which is appropriate to the income which may be taxed in India; or

(ii) a lump sum reduction of the Swiss tax; or

(iii) a partial exemption of such dividends, interest, royalties or fees for technical services from Swiss tax, in any case consisting at least of the deduction of the tax levied in India from the gross amount of the dividends, interest, royalties or fees for technical services.

Switzerland shall determine the applicable relief and regulate the procedure in accordance with the Swiss provisions relating to the carrying out of international Conventions of the Swiss Confederation for the avoidance of double taxation.

(c) Where a resident of Switzerland derives interest dealt with in sections 10(4), 10(4B), 10(15)(iv) and 80L of the Indian Income-tax Act of 1961 (43 of 1961) and referred to in sub-paragraph (d) of paragraph 3 of Article 11, Switzerland shall allow, upon request, a relief to such resident of an amount equal to 10 per cent of the gross amount of the interest.

ARTICLE 24 : *Non-discrimination 1.* – 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. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. Nothing contained in this Article shall be construed as obliging a Contracting State to grant to persons not residents in that State any personal allowances, reliefs and reductions for taxation purposes which are by law available only to persons who are so resident.

3. Except where the provisions of Article 9, paragraph 7 of Article 11, or paragraph 8 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

4. 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 in the same circumstances and under the same conditions.

5. In this Article, the term taxation means taxes which are the subject of this Agreement.

ARTICLE 25 : *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 Agreement, 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. The case must be presented within three years from the first notification of the action giving rise to taxation not in accordance with the Agreement.

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 which is not in accordance with the Agreement.

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

4. The competent authorities of the Contracting States shall settle the limitations provided for in Articles 10, 11 and 12.

5. 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. 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.

ARTICLE 26 : *Exchange of information 1.* – The competent authorities of the Contracting States shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of this Agreement in relation to the taxes which are the subject of this Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of this Agreement. No information as aforesaid shall be exchanged which would disclose any trade, business, industrial or professional secret or trade process.

2. In no case shall the provisions of this Article be construed as imposing upon either of the Contracting States the obligation to carry out administrative measures at variance with the regulations and practice of either Contracting State or which would be contrary to its sovereignty, security or public policy or to supply particulars which are not procurable under its own legislation or that of the State making application.

ARTICLE 27 : *Diplomatic and consular officials* – Nothing in this Agreement 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 28 : *Entry into force 1.* – This Agreement shall come into force when the Contracting States have notified each other through diplomatic channels that all legal requirements and procedures for giving effect to this Agreement have been satisfied.

2. This Agreement shall enter into force upon the date of such notification and its provisions shall have effect :

- (a) in India, in respect of income arising in any fiscal year beginning on or after the first day of April next following the calendar year in which the Agreement enters into force; and

(b) in Switzerland, in respect of income arising in any fiscal year beginning on or after the first day of January next following the calendar year in which the Agreement enters into force.

3. The Agreement between the Government of India and the Swiss Federal Council concerning the taxation of enterprises operate aircraft signed at New Delhi on August 28, 1958 (in this Article called the 1958 Agreement) shall cease to have effect with respect to taxes to which the Agreement applies when the provisions of this Agreement become effective in accordance with paragraph 2.

4. The 1958 Agreement shall terminate on the expiration of the last date on which it has effect in accordance with the foregoing provisions of this Article.

ARTICLE 29 : *Termination* – This Agreement shall continue in effect indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year, give notice of termination to the other Contracting State and, in such event, this Agreement shall cease to be effective :

- (a) in India, in respect of income arising in any fiscal year beginning on or after the first day of April next following the calendar year in which the notice of termination is given; and
- (b) in Switzerland, in respect of income arising in any fiscal year beginning on or after the first day of January next following the calendar year in which the notice of termination is given.

PROTOCOL

To the Agreement between the Republic of India and the Swiss Confederation for the avoidance of double taxation with respect to taxes on income.

At the signing of the Agreement concluded today between the Government of the Republic of India and the Swiss Federal Council for the avoidance of double taxation with respect to taxes on income, the undersigned have agreed upon the following additional provisions which shall form an integral part of the said Agreement.

With reference to Article 5

1. It is understood that the remuneration for furnishing of services covered by sub-paragraph (1) of paragraph 2 shall be taxed according to Article 7 or, on request of the enterprise, according to the rates provided for in paragraph 2 of Article 12.

With respect to paragraph 3 of Article 5, it is understood that the maintenance of a stock of goods or merchandise for the purpose of delivery, or facilities used for delivery of goods and merchandise do not constitute a permanent establishment as long as the conditions of paragraph 2 or 4 of the same Article are not fulfilled.

With respect to paragraph 5 of Article 5, it is understood that a person who habitually secures orders in a Contracting State wholly or almost wholly for the enterprise itself, shall be deemed to be a permanent establishment of that enterprise only if such person habitually represents to persons offering to buy goods or merchandise that acceptance of an order by such person constitutes that agreement of the enterprise to supply goods or merchandise under the terms and conditions specified in the order.

With reference to Article 7

2. With respect to paragraph 1 of Article 7, it is understood the words directly or indirectly mean, for the purposes of this Article, that where a permanent establishment takes an active part in negotiating, concluding or fulfilling contracts entered into by the enterprise, then, notwithstanding that other parts of the enterprise have also participated in those transactions, there shall be attributed to the permanent establishment that proportion of profits of the enterprise arising out of those contracts as the contribution of the permanent establishment to those transactions bears to that of the enterprise as a whole. It is also understood that profits shall be regarded as attributable to the permanent establishment to the abovementioned extent, even when the contracts in question are made directly with the head office of the enterprise rather than with the permanent establishment.

In the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, which are carried out by an enterprise having a permanent establishment, in a Contracting State the business profits of such permanent establishment shall not be determined on the basis of the total amount of the contract, but shall be determined only on the basis of that part of the contract which is effectively carried out by the permanent establishment in the State where the permanent establishment is situated; the profits related to that part of the contract which is carried out outside that Contracting State by the head office of the enterprise shall be taxable only in the State of which the enterprise is a

resident, provided that the amount payable is not covered under the provisions of Article 12.

With reference to paragraph 2 of Article 9

3. It is understood that Switzerland shall only make an appropriate adjustment after consultation with the competent authority of India and after reaching an agreement on the adjustments of profits in both Contracting States.

With reference to Articles 10, 11 and 12

4. If after the signature of the Protocol of 16th February, 2000 under any Convention, Agreement or Protocol between India and a third State which is a member of the OECD India should limit its taxation at source on dividends, interest, royalties or fees for technical services to a rate lower or a scope more restricted than the rate or scope provided for in this Agreement on the said items of income, then, Switzerland and India shall enter into negotiations without undue delay in order to provide the same treatment to Switzerland as that provided to the third State.

With reference to sub-paragraph (b) of paragraph 5 of Article 13

5. It is understood that if at a later stage Switzerland shall introduce a capital gains tax on the alienation of shares of a Swiss company other than shares of a company mentioned in paragraph 4, paragraph 5 of Article 13 shall be replaced by the following :

5. Gains from the alienation of shares other than those mentioned in paragraph 4 in a company which is a resident of a Contracting State may be taxed in that State.

In this case sub-paragraph (b) of paragraph 1 of Article 23 of the Agreement shall be deleted.

With reference to Article 12

6. It is understood that gains derived from the alienation of a right or a property mentioned in paragraph 3 of Article 12 may be taxed according to Article 7 or Article 13. However, gains derived from the alienation of any such right or property which are contingent on the profits, productivity or use thereof may be taxed according to Article 12.

With reference to paragraph 4 of Article 24

7. It is understood that this provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which a company of the other Contracting State has in the first mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first-mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7 of this Agreement.

With reference to Article 25

8. With respect to paragraph 2 it is understood that if the mutual agreement procedure has been introduced within five years from the moment when the tax assessment became final, then any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

JUDICIAL ANALYSIS

See Advance Ruling P. No. 8 of 1995, In re [1997] 90 Taxman 47 (AAR – New Delhi).

Syrian Arab Republic

Section 90 of the Income-tax Act, 1961 – Double taxation agreement – Agreement for Avoidance of Double Taxation and Prevention of Fiscal Evasion with Foreign Countries – With the Government of the Syrian Arab Republic

NOTIFICATION NO. 33/2009-FTD-II [F.NO. 503/7/2005-FTD-II], DATED 30-3-2009

WHEREAS the annexed Agreement and Protocol between the Government of the Republic of India and the Government of the Syrian Arab Republic for the Avoidance of Double Taxation and the prevention of fiscal evasion with respect to taxes on income signed in India on the 18th day of June, 2008 shall come into force on the 10th day of November, 2008, being the date of receipt of later of the notifications after completion of the procedures as required by the respective laws for the entry into force of this Agreement, in accordance with Article 29 of the said Agreement.

NOW, THEREFORE, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Agreement and Protocol annexed hereto shall be given effect to in the Union of India with effect from the 1st day of April, 2009.

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE SYRIAN ARAB REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

PREAMBLE

The Government of the Republic of India and the Government of the Syrian Arab Republic, desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, and with a view to promoting economic cooperation between the two countries, have agreed as follows:

Article 1 : PERSONAL SCOPE – This Agreement shall apply to persons who are residents of one or both of the Contracting States.

Article 2 : TAXES COVERED – 1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its political sub-divisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises.

3. The existing taxes to which the Agreement shall apply are in particular:

(a) In the case of the Syrian Arab Republic:

- (i) the income-tax on commercial, industrial, and non-commercial profits;
- (ii) the income-tax on salaries and wages;
- (iii) the income-tax on non-residents;
- (iv) the income-tax on revenue of movable and immovable capital; and
- (v) surcharges imposed as percentages of the above-mentioned taxes; including surcharges imposed by the local authorities.

(hereinafter referred to as the tax of the Syrian Arab Republic).

(b) In the case of the Republic of India, the income-tax, including any surcharge thereon;

(hereinafter referred to as Indian tax)

4. The Agreement shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

Article 3 : GENERAL DEFINITIONS – 1. For the purposes of this Agreement, unless the context otherwise requires:

- (a) The term Syria means, in accordance with international law, the territories of the Syrian Arab Republic including its internal waters, territorial sea, the subsoil thereof and the airspace above them to which Syria has sovereign rights and other maritime areas to which Syria has the right to exercise sovereign rights for the purposes of exploration, exploitation and conservation of natural resources.
- (b) The term India means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law, including the United Nations Convention on the Law of the Sea, 1982;
- (c) The terms Contracting State and other Contracting State mean the Syrian Arab Republic or the Republic of India, as the context requires;
- (d) The term person includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States;
- (e) The term national means:
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
- (f) The term company means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (g) The term enterprise applies to the carrying on of any business;
- (h) The terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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 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;
- (j) The term competent authority means :

- (a) in the case of Syria, the Minister of Finance or his authorized representative;
- (b) in the case of India: the Finance Minister, Government of India, or his authorized representative;
- (k) The term tax means Indian tax or the tax of the Syrian Arab Republic, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Agreement applies or which represents a penalty or fine imposed relating to those taxes;
- (l) The term fiscal year means:
 - (i) in the case of India: the financial year beginning on the 1st day of April;
 - (ii) in the case of Syria: the financial year beginning on the 1st day of January.

2. As regards the application of the Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4 : RESIDENT – 1. For the purposes of this Agreement, the term resident of a Contracting State means any person who, under the laws of that State is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political sub-division or local authority thereof. This term, however, does not include any person who is liable to tax in a Contracting State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 of this Article an individual is a resident of both Contracting States, then his status shall be determined as follows:

- (a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to

him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);

- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall endeavour to settle the question by mutual agreement.

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 only of the State in which its place of effective management is situated.

Article 5 : PERMANENT ESTABLISHMENT – 1. For the purposes of this Agreement, the term permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) a sales outlet; and
- (h) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on;

(i) a warehouse in relation to a person providing storage facilities for others on payment of charges.

3. (a) A building site or construction, assembly or installation project or supervisory activities in connection therewith constitutes a permanent establishment but only if such site, project or activities continue for a period of 270 days or more.

(b) The furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or connected project) within the country for a period or periods aggregating more than 183 days within any 12-month period.

4. Notwithstanding the preceding provisions of this Article, the term permanent establishment shall be deemed not to include:

- (a) the use of facilities solely for the purpose 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 of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activities of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 7 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 Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:

- (a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph, or
- (b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise; or
- (c) habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise itself.

6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

8. 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 otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6 : INCOME FROM IMMOVABLE PROPERTY – 1. Income from immovable property (including income from agriculture or forestry) may be taxed in the Contracting State in which such immovable property is situated in accordance with the laws of that State.

2. For the purposes of this Agreement, the term immovable property shall have the meaning which it has under the 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded 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, the profits of the enterprise may be taxed in the other Contracting State but only so much of them as are attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, 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.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes 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, in accordance with the provisions of and subject to the limitations of the tax laws of that State.

4. Insofar 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 contained 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 purposes of the preceding paragraphs of this Article, 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 Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8 : INTERNATIONAL TRAFFIC – 1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

3. Profits derived by a transportation enterprise which is a resident of a Contracting State from the use, maintenance, or rental of containers (including trailers and other equipment for the transport of containers) used for the transport of goods or merchandise in international traffic which is incidental to its operation of ships or aircraft in international traffic, shall be taxable only in that Contracting State unless the containers are used solely within the other Contracting State.

4. For the purposes of this Article interest on investments directly connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft if they are integral to the carrying on of such business, and the provisions of Article 11 shall not apply in relation to such interest.

5. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9: ASSOCIATED ENTERPRISES – 1. 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.

2. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits if that other State considers the adjustment justified. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10 – 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 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 laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed :

- (a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which owns at least 10 per cent of the shares of the company paying the dividends;
- (b) 10 per cent of the 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 any 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 14, 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 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 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 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 State.

Article 11 : INTEREST – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 beneficial owner of the interest, is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State, provided that it is derived and beneficially owned by:

- (a) the Government, a political sub-division or a local authority of the other Contracting State; or

- (b) (i) in the case of India, the Reserve Bank of India; and
(ii) in the case of Syria, the Central Bank of Syria.

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 debtors 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 and 2 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 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 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, 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 indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the 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 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 the other provisions of this Agreement.

Article 12 : ROYALTIES – 1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State 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 including cinematograph films or films or tapes used for television or radio 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.

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 14, as the case may be, shall apply.

5. (a) Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that 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.

(b) Where under sub-paragraph (a) royalties do not arise in one of the Contracting States, and the royalties relate to the use of, or the right to use, the right or property, in one of the Contracting States, the royalties shall be deemed to arise in that Contracting State.

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 the other provisions of this Agreement.

Article 13 : CAPITAL GAINS – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.

4. Gains from the alienation of shares in a company which is a resident of a Contracting State may be taxed in that State.

5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4 shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14 : INDEPENDENT PERSONAL SERVICES – 1. Income derived by an individual who is a resident of a Contracting State from the performance of professional services or other activities of an independent character shall be taxable only in that State. However, such income may be taxed in the other Contracting State in the following circumstances :

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any period of twelve months commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from the activities performed in the other Contracting State may be taxed in that other 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 15 : DEPENDENT PERSONAL SERVICES – 1. Subject to the provisions of Articles 16, 18, 19, 20 and 21 of this Agreement, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if :

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period, commencing or ending in the fiscal year concerned; and
- (b) the remuneration is paid by or on behalf of, an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, by an enterprise of a Contracting State may be taxed in that State.

Article 16 : DIRECTORS FEES – 1. Directors fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors in a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17 : ARTISTES AND SPORTSPERSONS – 1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportspersons are exercised.

3. The provisions of paragraphs 1 and 2, shall not apply to income from activities performed in a Contracting State by entertainers or sportspersons if

the activities are substantially supported by public funds of one or both of the Contracting States or of political sub-divisions or local authorities thereof. In such a case, the income shall be taxable only in the Contracting State of which the entertainer or sportsperson is a resident.

Article 18 : PENSIONS – 1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State, in accordance with its laws.

2. Nothing contained in paragraph 1 shall affect the provisions of the law of a Contracting State concerning the exemption of pensions from tax.

Article 19 : GOVERNMENT SERVICE – 1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State, or sub-division or local authority shall be taxable only in that State.

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who :

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages and other similar remuneration and pensions in respect of services rendered in

connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

4. Nothing contained in paragraph 2 shall affect the provisions of the law of a Contracting State concerning the exemption of pensions from tax.

Article 20 : PROFESSORS, TEACHERS AND RESEARCH SCHOLARS – 1. Remuneration which an individual, who is or was immediately before visiting a Contracting State, a resident of the other Contracting State and who is present in the first-mentioned State for the purpose of teaching, giving lectures, or engaging in research at a University, college, school, scientific research institution or any other similar institution recognized by the Government of the first-mentioned State, for such teaching, lectures or research shall not be taxed in the first-mentioned State, for a period of one year from the date of his first arrival in the first-mentioned State.

2. The provisions of paragraph 1 shall not apply to income from research carried out primarily for the benefit of a private person or persons and not for public interest.

3. For the purposes of this Article, an individual shall be deemed to be a resident of a Contracting State if he is resident in that State in the fiscal year in which he visits the other Contracting State or in the immediately preceding fiscal year.

Article 21 : STUDENTS – 1. A student who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State and who is present in that other Contracting State solely for the purpose of his education or training, shall besides grants, loans and scholarships be exempt from tax in that other State on :

- (a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training; and
- (b) remuneration which he derives from an employment which he exercises in the other Contracting State if the employment is directly related to his studies.

2. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this article, for more than six consecutive years from the date of his first arrival in that other State.

Article 22 : OTHER INCOME – 1. Items of income of a resident of a Contracting State, wherever arising, not dealt within the foregoing Articles of this Agreement shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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 income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraph 1, if a resident of a Contracting State derives income from sources within the other Contracting State in form of lotteries, crossword puzzles, races including horse races, card games and other games of any sort or gambling or betting of any nature whatsoever, such income may be taxed in the other Contracting State.

Article 23 : ELIMINATION OF DOUBLE TAXATION – 1. The laws in force in either of the Contracting States shall continue to govern the taxation of income in the respective Contracting States. However, the provisions of this Agreement shall apply where express provisions have been made in this Agreement. When income is subject to tax in both Contracting States, relief from double taxation shall be given in accordance with the following paragraphs of this article.

2. In India :

(a) Where a resident of India derives income which, in accordance with the provisions of this Agreement, may be taxed in Syria, India shall allow as a

deduction from the tax on the income of that resident, an amount equal to the tax paid in Syria,

such deduction shall not, however, exceed that portion of the tax as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in Syria.

- (b) Where in accordance with any provision of the Agreement income derived by a resident of India is exempt from tax in India, India may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

3. In Syria :

- (a) Where a resident of Syria derives income which, in accordance with the provisions of this Agreement, may be taxed in India, Syria shall allow as a deduction from the tax on the income of that resident, an amount equal to the tax paid in India,

such deduction shall not, however, exceed that portion of the tax as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in India.

- (b) Where in accordance with any provision of the Agreement, income derived by a resident of Syria is exempt from tax in Syria, Syria may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

Article 24 : NON-DISCRIMINATION – 1. 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, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

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. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

4. 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 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 the first-mentioned State are or may be subjected.

5. The provisions of this article shall, notwithstanding the provisions of Article 2, apply to taxes covered by this Agreement.

Article 25 : MUTUAL AGREEMENT PROCEDURE – 1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

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 a satisfactory 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 which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law 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 the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

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 of this Article. 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.

Article 26 : EXCHANGE OF INFORMATION – 1. The competent authorities of the Contracting States shall exchange such information (including documents or certified copies of the documents) as is necessary for carrying out the provisions of this Agreement or of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political sub-divisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes referred to in the first sentence. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraphs 1 be construed so as to impose on a Contracting State the obligation :

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to supply information (including documents and certified copies of the documents) which is 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 27 : LIMITATION OF BENEFITS – A resident of a Contracting State shall not be entitled to the benefit of any reduction in or exemption from tax provided for in this Agreement if its affairs were arranged in such a manner that the primary purpose was to obtain the benefits under this Agreement. The cases of legal entities not having *bona fide* business activities shall be covered by the provisions of this article.

Article 28 : MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS – Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

Article 29 : ENTRY INTO FORCE – 1. The Contracting States shall notify each other in writing, through diplomatic channels that the procedures required by the respective laws for the entry into force of this Agreement have been completed.

2. This Agreement shall enter into force on the date of receipt of letter of the notifications referred to in paragraph 1 of this article.

3. The provisions of this Agreement shall have effect :

- (a) In India, in respect of income derived in any fiscal year beginning on or after the first day of April next following the calendar year in which the Agreement enters into force; and
- (b) In Syria :

- (i) in respect of taxes withheld at source, on the amounts paid or credited to the account on or after the first day of January immediately following the calendar year in which the Agreement enters into force as per paragraph 1 of this article.
- (ii) in respect of other taxes on income, in respect of income derived in the fiscal year beginning on or after the first day of January following the calendar year in which the Agreement enters into force as per paragraph 1 of this Article.

4. The Agreement between the Government of the Republic of India and the Government of the Syrian Arab Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed at New Delhi on the 6th day of February, 1984 shall cease to have effect when the provisions of this Agreement become effective in accordance with the provisions of paragraph 3.

Article 30 : TERMINATION – 1. This Agreement shall remain in force indefinitely until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year beginning after the expiry of five years from the date of entry into force of the Agreement. In such event, the agreement shall cease to have effect :

- (a) In India, in respect of income derived in any fiscal year on or after the first day of April next following the calendar year in which the notice is given;
- (b) In Syria :
 - (i) In respect of taxes withheld at the source, on the amounts paid or credited to the account on or after the 1st day of January of the calendar year following the year in which the notice of termination is given;
 - (ii) In respect of other taxes on income in respect of the income derived during the fiscal year beginning on or after the 1st day of January of the calendar year following the year in which the notice of termination has been given.

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

Done in duplicate at New Delhi this 18th day of June, 2008, each in the Hindi, Arabic and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

For the Government of the
Republic of India

For the Government of the
Syrian Arab Republic

PROTOCOL

The Government of the Republic of India and the Government of the Syrian Arab Republic, on signing at New Delhi on the 18th day of June, 2008, the Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income have agreed upon the following provisions which shall form an integral part of the said Agreement :

1. For the purposes of paragraph 3 of Article 4, it is clarified that in cases where the State in which the place of effective management of a person (other than an individual) is situated cannot be determined, then the competent authorities of the Contracting States shall endeavour to settle the question by mutual agreement.
2. With reference to paragraph 2 of Article 24, it is understood that this provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment, which a company of the other Contracting State has in the first-mentioned State, within the framework of provisions of domestic law of the first-mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7.
3. With reference to Article 26 on Exchange of Information, it is understood that on a request made by a Contracting State, the competent authority of the other

Contracting State shall give necessary information, for carrying out the provisions of this Agreement or of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political sub-divisions or local authorities, to the competent authority of the first-mentioned State, which it can obtain under its domestic laws.

4. With reference to collection assistance, it is understood that if after the date of signature of this Agreement, Syria enters into an arrangement with another country to permit such assistance in collection, then Syria shall inform the Indian competent authority and shall immediately enter into negotiations for the purpose of incorporating provisions with regard to collection assistance in this Agreement.

For the Government of the
Republic of India

For the Government of
the Syrian Arab Republic

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Tajikistan

Agreement for Avoidance of Double Taxation and Prevention of Fiscal Evasion with Foreign countries with the Government of the Republic of Tajikistan

Notification No. 58/2009-FT & TR-II [F.No. 503/10/95-FT & TR-II], dated 16-7-2009

Whereas the annexed Agreement between the Government of the Republic of India and the Government of the Republic of Tajikistan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income signed in India on the 20th day of November, 2008 shall come into force on the 10th day of April, 2009, being the date of the later of the notifications after completion of the procedures as required by the respective laws for the entry into force of this Agreement, in accordance with Article 30 of the said Agreement.

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Agreement annexed hereto shall be given effect to in the Union of India with effect from the 1st day of April, 2010.

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA

AND

THE GOVERNMENT OF THE REPUBLIC OF TAJIKISTAN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of India and the Government of the Republic of Tajikistan, desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income

and with a view to promoting economic cooperation between the two countries, HAVE AGREED as follows:

Article 1

PERSONS COVERED

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

Article 2

TAXES COVERED

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its political/administrative/territorial subdivisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property and taxes on the total amounts of wages or salaries paid by enterprises.
3. The existing taxes to which the Agreement shall apply are in particular:
 - a) in India, the income tax, including any surcharge thereon;
(hereinafter referred to as Indian tax);
 - b) in the Republic of Tajikistan:
 - taxes on income of legal persons;
 - taxes on income of individuals;
(hereinafter referred to as Tajik tax).
4. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their respective taxation laws.

Article 3

GENERAL DEFINITIONS

1. For the purposes of this Agreement, unless the context otherwise requires:

a) the term India means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law, including the U.N. Convention on the Law of the Sea;

b) the term Tajikistan means the Republic of Tajikistan, and when used in a geographical sense, it means its territory including inland waters and the air space over it, over which the Republic of Tajikistan can exercise its sovereign rights and jurisdiction, including rights on using the subsoil and natural resources, according to its legislation and international law;

c) the terms a Contracting State and the other Contracting State mean the Republic of India or the Tajikistan as the context requires;

d) the term person includes an individual, a company, a body of persons and any other entity which. is treated as a taxable unit under the taxation laws in force in the respective Contracting States;

e) the term company means any body corporate or any entity that is treated as a body corporate for tax purposes;

f) the term enterprise applies to the carrying on of any business;

g) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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;

h) 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;

i) the term competent authority means:

(i) in India: the Finance Minister, Government of India, or his authorized representative;

(ii) in Tajikistan, the Ministry of Finance or its authorized representative;

j) the term national means:

(i) any individual possessing the nationality of a Contracting State;

(ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;

k) the term tax means Indian or Tajik tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Agreement applies or which represents a penalty or fine imposed relating to those taxes;

l) The term fiscal year means:

(i) in the case of India: the financial year beginning on the 1st day of April;

(ii) in the case of Tajikistan: the financial year beginning on 1st day of January.

2. As regards the application of the Agreement at any time by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Agreement applies and any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4

RESIDENT

1. For the purposes of this Agreement, the term resident of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature and also includes that State and any political/administrative/territorial subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to

him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);

b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;

c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;

d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall endeavour to settle the question by mutual agreement.

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 only of the State in which its place of effective management is situated. If the State in which its place of effective management is situated cannot be determined, then the competent authorities of the Contracting States shall endeavour to settle the question by mutual agreement.

Article 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Agreement, the term permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially:

a) a place of management;

b) a branch;

c) an office;

d) a factory;

e) a workshop;

f) a warehouse in relation to a person providing storage facilities for others;

g) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on; and

h) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. The term permanent establishment like wise encompasses a building site, or construction, installation or assembly project or supervisory activities in connection therewith, but only if such site, project or activities last more than one year.

4. Notwithstanding the preceding provisions of this Article the term permanent establishment shall be deemed not to include:

a) the use of facilities solely for the purpose of storage, display or delivery 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, display or delivery;

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 of collecting information, for the enterprise;

e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 6 applies – is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment

in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed base of business a permanent establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

7. 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 otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6

INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property situated in the other Contracting State may be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded 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, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, 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.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes 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, in accordance with the provisions of and subject to the limitations of the tax laws of that State.

4. Insofar 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 contained 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 purposes 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 Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

SHIPPING AND AIR TRANSPORT

1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that Contracting State.

2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbor of the ship is situated, or, if there is no such home harbor, in the Contracting State of which the operator of the ship is a resident.

3. Profits derived by a transportation enterprise which is a resident of a Contracting State from the use, maintenance, or rental of containers (including trailers and other equipment for the transport of containers) used for the transport of goods or merchandise in international traffic that is incidentally to income from the operation of ships or aircraft in international traffic shall be taxable only in that Contracting State unless the containers are used solely within the other contracting State.

4. For the purposes of this Article interest on investments directly connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft if they are integral to the carrying on of such business and the provisions of Article 11 shall not apply in relation to such interest.

5. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9

ASSOCIATED ENTERPRISES

1. 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.

2. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10

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 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 laws of

that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

(a) Five (5) per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least twenty five (25) per cent of the share capital of the company paying the dividends;

(b) Ten (10) per cent of the 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 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 payment 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 14, 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 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 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 State, nor subject the companys undistributed profits to a tax on the companys undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11

INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.
3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State, provided that it is derived and beneficially owned by:
 - a) the Government, a political/administrative/territorial sub-division or a local authority of the other Contracting State; or
 - b) (i) in the case of India, the Reserve Bank of India, the Export-Import Bank of India, the National Housing Bank; and
(ii) in the case of Tajikistan, the National Bank; or
 - c) any other institution as may be agreed upon from time to time between the Competent authorities of the Contracting States through exchange of letters.
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 and 2 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 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 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, 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 indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the 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 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 the other provisions of this Agreement.

Article 12

ROYALTIES

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

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State 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 including cinematograph films or films or tapes used for television or radio 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.

4. The provisions of paragraph 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 14, as the case may be, shall apply.

5.(a) Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political/ administrative/territorial sub-division, a local authority, or a resident of that 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.

(b) Where under sub-paragraph (a) royalties do not arise in one of the Contracting States, and the royalties relate to the use of, or the right to use, the right or property in one of the Contracting States, the royalties shall be deemed to arise in that Contracting State.

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 the other provisions of this Agreement.

Article 13

CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.
3. Gains from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.
4. Gains from the alienation of shares in a company which is a resident of a Contracting State may be taxed in that State.
5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4 shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14

INDEPENDENT PERSONAL SERVICES

1. Income derived by an individual who is a resident of a Contracting State from the performance of professional services or other independent activities of a similar character shall be taxable only in that State except in the following circumstances when such income may also be taxed in the other Contracting State:
 - a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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 State; or
 - b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any period of 12 –

months; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

Article 15

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned, and
- b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft, operated in international traffic, by an enterprise of a Contracting State may be taxed in that State.

Article 16

DIRECTORS FEES

Directors fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors in a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17

ARTISTES AND SPORTSPERSONS

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. The provisions of paragraphs 1 and 2, shall not apply to income from activities performed in a Contracting State by entertainers or sportspersons if the activities are substantially supported by public funds of one or both of the Contracting States or of political/administrative/territorial subdivisions or local authorities thereof.

In such a case, the income shall be taxable only in the Contracting State of which the entertainer or sportsperson is a resident.

Article 18

PENSIONS

Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

Article 19

GOVERNMENT SERVICE

1. a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political/administrative/territorial subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. a) Any pension paid by, or out of funds created by, a Contracting State or a political/ administrative/ territorial subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages and other similar remuneration and to pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political/administrative/territorial subdivision or a local authority thereof.

Article 20

PROFESSORS, TEACHERS AND RESEARCH SCHOLARS

1. A professor, teacher or research scholar who is or was a resident of the Contracting State immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college or other similar approved institution in that other Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding 2 years from the date of his arrival in that other State.

2. This Article shall apply to income from research only if such research is undertaken by the individual in the public interest and not primarily for the benefit of some private person or persons.

3. For the purposes of this Article, an individual shall be deemed to be a resident of a Contracting State if he is resident in that State in the fiscal year in which he visits the other Contracting State or in the immediately preceding fiscal year.

Article 21

STUDENTS

1. A student who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State and who is present in that other Contracting State solely for the purpose of his education or training, shall besides grants, loans and scholarships be exempt from tax in that other State on:

- a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training; and
- b) remuneration which he derives from an employment which he exercises in the other Contracting State if the employment is directly related to his studies.

2. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article, for more than six consecutive years from the date of his first arrival in that other State.

Article 22

OTHER INCOME

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient

of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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 income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraph 1, if a resident of a Contracting State derives income from sources within the other Contracting State in form of lotteries, crossword puzzles, races including horse races, card games and other games of any sort or gambling or betting of any nature whatsoever, such income may be taxed in the other Contracting State.

Article 23

METHODS FOR ELIMINATION OF DOUBLE TAXATION

1. The laws in force in either of the Contracting States will continue to govern the taxation of income in the respective Contracting States except where provisions to the contrary are made in this Agreement.

2. Double taxation shall be eliminated as follows:

In India:

a) Where a resident of India derives income which, in accordance with the provisions of this Agreement, may be taxed in Tajikistan, India shall allow as a deduction from the tax on the income of that resident, an amount equal to the tax paid in Tajikistan.

Such deduction shall not, however, exceed that portion of the tax as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in Tajikistan.

b) Where in accordance with any provision of the Agreement income derived by a resident of India is exempt from tax in India, India may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

3. In Tajikistan:

a) Where a resident of Tajikistan derives income which, in accordance with the provisions of this Agreement, may be taxed in India, Tajikistan shall allow as a deduction from the tax on the income of that resident, an amount equal to the tax paid in India.

Such deduction shall not, however, exceed that portion of the tax as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in India.

b) Where in accordance with any provision of the Agreement, income derived by a resident of Tajikistan is exempt from tax in Tajikistan, Tajikistan may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

Article 24

NON-DISCRIMINATION

1. 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, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents. This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which a company of the other Contracting State has in the first mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

4. 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 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 the first-mentioned State are or may be subjected.

5. The provisions of this Article shall apply to taxes covered by this Agreement.

Article 25

MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

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 a satisfactory 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 which is not in

accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law 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 the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

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. 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.

Article 26

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information (including documents or certified copies of the documents) as is necessary for carrying out the provisions of this Agreement or of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

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 and administrative practice of that or of the other Contracting State;
- b) to supply information (including documents or certified copies of the documents) which is 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 (order public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting state to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 27

ASSISTANCE IN THE COLLECTION OF TAXES

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 & 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. The term revenue claim as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the

Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Agreement or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

3. Where a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State, that revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection. 5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall only be brought before the courts or administrative bodies of that State. Nothing in this Article shall be construed as

creating or providing any right to such proceedings before any court or administrative body of the other Contracting State.

7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be

- a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or
- b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection.

The competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

8. In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:

- a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- b) to carry out measures which would be contrary to public policy (order public);
- c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
- d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

Article 28

LIMITATION OF BENEFITS

1. Except as otherwise provided in this Article, a person (other than an individual), which is a resident of a Contracting State and which derives income from the other Contracting State shall be entitled to all the benefits of this Agreement otherwise accorded to residents of a Contracting State only if such a person is a qualified person as defined in paragraph 2 and meets the other conditions of this Agreement for the obtaining of any of such benefits.

2. A person of a contracting state is a qualified person for a fiscal year only if such a person is either:

(a) Governmental entity; or

(b) a company incorporated in either of the Contracting States, if –

(i) the principal class of its shares is listed on a recognised stock exchange as defined in paragraph 5 of this Article and is regularly traded on one or more recognised stock exchanges, or

(ii) at least 50% of the aggregate vote or value of the shares in the company is owned directly or indirectly by one or more individuals residents of either of the Contracting States or/and by other persons incorporated in either of the Contracting States, atleast 50% of the aggregate vote or value of the shares or beneficial interest of which is owned directly or indirectly by one or more individuals residents of either of the Contracting States, or

(c) a partnership or association of persons, at least 50% or more of whose beneficial interests is owned by one or more individuals residents of either of the Contracting States or/and by other persons incorporated in either of the Contracting States, at least 50% of the aggregate vote or value of the shares or beneficial interest of which is owned directly or indirectly by one or more individuals residents of either of the Contracting States, or

(d) A charitable institution or other tax exempt entity whose main activities are carried on in either of the Contracting States:

Provided that the persons mentioned above will not be entitled to the benefits of the Agreement if more than 50% of the persons gross income for the taxable year is paid or payable directly or indirectly to persons who are not residents of either of the Contracting States in the form of payments that are deductible for

the purpose of computation of tax covered by this Agreement in the persons state of residence (but not including arms length payment in the ordinary course of business for services or tangible property and payments in respect of financial obligations to a bank incurred in connection with a transaction entered into with the Permanent Establishment of the bank situated in either of the Contracting States).

3. The provisions of Paragraph 1 and 2 shall not apply and a resident of a Contracting State will be entitled to benefits of the Agreement with respect to an item of income derived from the other. State, if the person actively carries on business in the State of residence (other than the business of making or managing investments for the resident's own account unless these activities are banking, insurance or security activities) and the income derived from the other Contracting States is derived in connection with or is incidental to that business and that resident satisfies the other conditions of this Agreement for the obtaining of such benefits.

4. A resident of a Contracting State shall nevertheless be granted the benefits of the Agreement if the Competent Authority of the other Contracting State determines that the establishment or acquisition or maintenance of such person and the conduct of its operations did not have as one of its principal purposes the obtaining of benefits under the Agreement.

5. For the purposes of this Article the term recognised stock exchange means

(a) in India, a Stock Exchange which is for the time being recognized by the Central Government under section 4 of the Securities Contracts (Regulation) Act, 1956;

(b) in Tajikistan, The Stock Exchange of Tajikistan as recognized by the Securities and Exchange Act;

(c) any other stock exchange which the Competent Authorities agree to recognise for the purposes of this Article.

6. Notwithstanding anything contained in paragraphs 2 to 5 above, any person shall not be entitled to the benefits of this Agreement, if its affairs were arranged in such a manner as if it was the main purpose or one of the main purposes to avoid taxes to which this Agreement applies.

Article 29

MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

Article 30

ENTRY INTO FORCE

1. The Contracting States shall notify each other in writing through diplomatic channels, the completion of the procedures required by the respective laws for the entry into force of this Agreement.

2. This Agreement shall enter into force on the date of the later of the notifications referred to in paragraph 1 of this Article.

3. The provisions of this Agreement shall have effect:

(a) In India, in respect of income derived in any fiscal year beginning on or after the first day of April next following the calendar year in which the Agreement enters into force; and

(b) In Tajikistan, in respect of income derived in any financial year beginning on or after the first day of January next following the calendar year in which the Agreement enters into force.

4. The contracting States by mutual agreement may introduce amendments into the agreement by separate protocol, the provisions of which shall form an integral part of the Agreement.

Article 31

TERMINATION

This Agreement shall remain in force indefinitely until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year beginning after the expiration of five years from the date of entry into force of the Agreement. In such event, the Agreement shall cease to have effect:

(a) In India, in respect of income derived in any fiscal year on or after the first day of April next following the calendar year in which the notice is given;

(b) In Tajikistan, in respect of income derived in any financial year beginning on or after the first day of January next following the calendar year in which the notice is given.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed this Agreement.

DONE in duplicate at New Delhi this 20th day of November, 2008, each in the Hindi, Tajik and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

Tanzania

Agreement for avoidance of double taxation and prevention of fiscal evasion with Tanzania

Whereas the annexed Agreement between the Government of the Republic of India and the Government of the United Republic of Tanzania for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income has been

ratified and the instruments of ratification exchanged, as required by article 30 of the said Agreement;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961) and section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964), the Central Government hereby directs that all the provisions of the said Agreement shall be given effect to in the Union of India.

Notification : No. GSR 559(E), dated 16-10-1981.

TEXT OF ANNEXED AGREEMENT, DATED 5-9-1979

The Government of the Republic of India and the Government of the United Republic of Tanzania, desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows :

CHAPTER I – SCOPE OF THE AGREEMENT

ARTICLE 1 – *Personal scope* – This Agreement shall apply to persons who are residents of one of both of the Contracting States.

ARTICLE 2 – *Taxes covered* – 1. The taxes to which this Agreement shall apply are :

(a) in the case of India,

(1) the income-tax including any surcharge thereon imposed under the Income-tax Act, 1961 (43 of 1961);

(2) the surtax imposed under the Companies (Profits) Surtax Act, 1964 (7 of 1964)

(hereinafter referred to as Indian tax);

(b) in the case of Tanzania, the income-tax and any other tax deemed to be an income-tax under the Income-tax Act, 1973 (hereinafter referred to as Tanzanian tax).

2. The Agreement shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of the present

Agreement in addition to or in place of, the taxes referred to in paragraph (7) of this article.

3. At the end of each year, the competent authorities of the Contracting States shall notify to each other any significant changes which have been made in their respective taxation laws which are the subject of this Agreement and furnish copies of relevant enactments and regulations.

CHAPTER II – DEFINITIONS

ARTICLE 3 – *General definitions* – 1. In this Agreement, unless the context otherwise requires,

- (a) the term India means the territory of India and includes the territorial sea and air space above it as well as any other maritime zone referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (Act No. 80 of 1976), in which India has certain rights and to the extent these rights can be exercised therein as if such maritime zone is a part of the territory of India;
- (b) the term Tanzania means the United Republic of Tanzania, including any area outside the territorial waters of Tanzania which, in accordance with international law, has been or may be designated, under the laws of Tanzania concerning the Continental Shelf, as an area over which Tanzania may exercise sovereign rights with respect to the exploration for and exploitation of natural resources;
- (c) the terms a Contracting State and the other Contracting State mean India or Tanzania, as the context requires;
- (d) the term tax means Indian tax or Tanzanian tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Agreement applies or which represents a penalty imposed relating to those taxes;
- (e) the term person includes individual companies and all other entities which are treated as taxable units under the taxation laws in force in the respective Contracting States;

- (f) the term company means anybody corporate or any entity which is treated as a company under the taxation laws in force in the respective Contracting States;
- (g) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean, 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;
- (h) the term competent authority means in the case of India, the Central Government in the Ministry of Finance (Department of Revenue); and in the case of Tanzania, the Minister responsible for Finance or his authorised representative;
- (i) the term nationals means :
 - (1) all individuals possessing the nationality of a Contracting State;
 - (2) all legal persons, partnerships and associations deriving their status as such from the law in force in a Contracting State.

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

ARTICLE 4 – *Fiscal domicile* – 1. For the purpose of this Agreement, 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 similar nature.

2. Where by reason of the provisions of paragraph (1), an individual is a resident of both Contracting States, then his residential status for the purposes of this Agreement 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 the Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (hereinafter referred to as his centre of vital interests).
- (b) If the Contracting State in which he has his centre of vital interests cannot be determined, or if he does not have 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 national.
- (d) If he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph (1), a person other than an individual is a resident of both the 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 purpose of this Agreement, 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

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, a quarry, an oil-field or other place of extraction of natural resources;
- (g) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on;
- (h) a building site or construction or assembly project or supervisory activities in connection therewith, where such site, project or supervisory activity continues for a period of more than six months.

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

- (a) the use of facilities solely for the purpose 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;
- (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information or for scientific research being activities solely of a preparatory or auxiliary character in the trade or business of the enterprise.

4. A person acting in a Contracting State for or on behalf of an enterprise of the other Contracting State – other than an agent of an independent status to whom the provisions of paragraph (5) apply – shall be deemed to be a permanent establishment of that enterprise in the first-mentioned State if

- (i) he has and habitually exercises in that State, an 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
- (ii) he habitually maintains in the first-mentioned Contracting State a stock of goods or merchandise belonging to that enterprise from which he regularly fulfils orders on behalf of 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 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. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he would not be considered an agent of an independent status within the meaning of this paragraph.

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 for 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 theatre, motion picture, radio or television artistes and musicians) or athletes in that other Contracting State unless the enterprise is directly or indirectly supported, wholly or substantially, from the public funds of the Government of the first-mentioned Contracting State in connection with the provision of such services.

CHAPTER III – TAXATION OF INCOME

ARTICLE 6 – *Income from immovable property* – 1. Income from immovable property may be taxed 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 of the Contracting State in which the property is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, oil wells, quarries and other places of extraction of natural resources. Ships and aircraft shall not be regarded 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 professional services.

ARTICLE 7 – *Business profits* – 1. The profits of an enterprise of a Contracting State shall be taxable only in that Contracting 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, the profits of the enterprise may be taxed in the other Contracting State but only so much of them as is attributable to that permanent establishment.

2. If an enterprise of a Contracting State, which has a permanent establishment in the other Contracting State, sells goods or merchandise of the same or similar kind as those sold by the permanent establishment or renders services of the same or similar kind as those rendered by the permanent establishment, the profits of such activities may be attributed to the permanent establishment unless the enterprise proves that such sales or services are not attributable to the activity of the permanent establishment.

3. 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 or the ascertainment thereof presents exceptional difficulties, the profits attributable to the permanent establishment may be estimated on a reasonable basis.

4. Insofar 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 (3) 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. In the determination of the profits of a permanent establishment, there shall be allowed as deductions, expenses which are incurred for the purposes of the business 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.

6. 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.

7. For the purposes 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.

8. The term business profits means income derived by an enterprise from the carrying on of business; but does not include income in the form of rents, royalties (including rents or royalties in respect of cinematographic films or video tapes for television), fees for technical services, management charges, or remuneration or fees for providing services of technical or other personnel, interest, dividends, capital gains, remuneration for labour or personal (including professional) services or income from the operation of ships or aircraft.

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 the Contracting State in which the place of effective management of the enterprise is situated.

2. The provisions of paragraph (1) of this article shall also apply to a share of profits from the operation of aircraft in international traffic derived by an enterprise of a Contracting State through participation in a pooled service, in a joint air transport operation or in an international operating agency.

3. For the purposes of paragraph (1), interest on funds directly connected with the operation of aircraft in international traffic shall be regarded as income from the operation of such aircraft, and the provisions of Article 12 shall not apply in relation to such interest.

ARTICLE 9 – *Shipping* – 1. Income of an enterprise of one of the Contracting States 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 50 per cent of such tax.

2. For the purposes of paragraph (1) of this article, income derived from the other Contracting State from the operation of ships shall mean income from the carriage of passengers, mail, livestock, or goods shipped in that other Contracting State.

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

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 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 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 law of that State, but the tax so charged shall not exceed

- (a) 10 per cent of the gross amount of the dividends if the recipient is a company which owns at least 10 per cent of the shares of the company paying the dividends

during the period of six months immediately preceding the date of payment of the dividends;

(b) 15 per cent of the gross amount of the dividends in all other cases.

3. The term dividends as used in this Article means income from shares or other rights, not being debt-claims, participating in profits as well as income from other corporate rights assimilated to income from shares or any other item which is deemed to be a dividend or distribution of a company by the taxation law of the Contracting State of which the company making the distribution is a resident.

4. The provisions of paragraphs (1) and (2) shall not apply if the recipient 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 professional 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 a case the provisions of article 7 or article 16, 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 State may not impose any tax on the dividends paid by the company to persons who are not resident of that other State, or subject the companys undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other 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 State.

2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the law of that State, but the tax so charged shall not exceed 12.5 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph (2), interest arising in a Contracting State and paid to the Government of the other Contracting State Bank or local authority thereof, the Central Bank of that other Contracting State, or any agency wholly owned by that Government or local authority shall be exempt from tax of the first-mentioned Contracting State.

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

4. The term interest as used in this article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and other debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the Contracting State in which the income arises.

5. The provisions of paragraphs (1) and (2) shall not apply if the recipient 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 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 a case the provisions of article 7 or article 16, 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 resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by that permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

7. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, 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 recipient in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

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 State.

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the law of that State, but the tax so charged shall not exceed 20 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 (including cinematographic films, and films or tapes 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.

4. The provisions of paragraphs (1) and (2) shall not apply if the recipient 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 professional 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 a case, the provisions of article 7 or article 16, 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 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 in connection with which the liability to pay the royalties was incurred and such royalties

are borne by such permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of royalties paid, 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 recipient in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 14 – *Capital gains* 1. Gains from the alienation of immovable property, as defined in paragraph (2) of article 6, may be taxed in the Contracting State in which such property is situated.

2. Gains from the alienation of movable property forming part of the business property of permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in that other State.

3. Notwithstanding the provisions of paragraph (2), gains by an enterprise of a Contracting State from the alienation of ships and aircraft which it operates in international traffic and movable property pertaining to the operation of such ships and aircraft shall be taxable only in that State.

4. Gains derived by a resident of a Contracting State from the alienation of any property other than those mentioned in paragraphs (1), (2) and (3) shall be taxable only in that State.

5. The term alienation means the sale, exchange, transfer or relinquishment of the property or the extinguishment of any rights therein or the compulsory acquisition thereof under any law in force in the respective Contracting States.

ARTICLE 15 – *Management fees* – 1. Management or professional fees arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such management or professional fees may be taxed in the Contracting State in which they arise, and according to the law of that State, but the tax so charged shall not exceed 20 per cent of the gross amount of the management or professional fees.

3. The term management or professional fees as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a managerial, technical or consultancy nature.

4. The provisions of paragraphs (1) and (2) shall not apply if the recipient of the management or professional fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the management or professional fees arise, through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the right or property in respect of which the management or professional fees are paid, is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of article 7 or article 16, as the case may be, shall apply.

5. Management or professional fees 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 management or professional fees, whether he is a resident of that State or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the management or professional fees was incurred and such management or professional fees are borne by such permanent establishment, then such management or

professional fees shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the management or professional fees paid having regard to the services for which it is paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 16 – *Independent personal services* – 1. Subject to the provisions of article 15, income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless

- (a) he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities, in which case so much of the income may be taxed in that other State as is attributable to that fixed base; or
- (b) he is present in the other Contracting State for the purpose of performing his activities for a period or periods exceeding in the aggregate 183 days in the relevant year of income and in which case so much of the income may be taxed in that other State as is attributable to the activities performed in that other State.

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

ARTICLE 17 – *Dependent personal services* – 1. Subject to the provisions of articles 18, 19, 20, 21, 22 and 23, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised such remuneration as is derived therefrom may be taxed in that other State.

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

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the relevant year of income,
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- (c) the remuneration is not borne by a permanent establishment or fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft in international traffic, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

ARTICLE 18 – *Directors fees* – Directors 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 may be taxed in that other Contracting State.

ARTICLE 19 – *Artistes and athletes* – 1. Notwithstanding the provisions of articles 16 and 17, income derived by public entertainers (such as theatre, motion picture, radio or television artistes and musicians) or athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised :

Provided that such income shall not be taxed in the said Contracting State if the visit of the public entertainers or athletes to that State is directly or indirectly supported, wholly or substantially, from the public funds of the Government of the other Contracting State.

2. For the purposes of this article, the term Government includes a State Government, a political sub-division, or a local or statutory authority of either Contracting State.

ARTICLE 20 – *Government functions* – 1. Remuneration (not being a pension) paid by the Government of a Contracting State or any individual who is a citizen of that State in respect of services rendered in the discharge of governmental functions in the other Contracting State shall be taxable only in the first-mentioned Contracting State.

2. Any pension paid by the Government of one of the Contracting States to any individual may be taxed in that Contracting State.

3. The provisions of paragraphs (1) and (2) 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 for the purposes of profit.

4. For the purposes of this article, the term Government shall include any State Government or local or statutory authority of either Contracting State and in particular the Reserve Bank of India and the Bank of Tanzania.

ARTICLE 21 – *Non-Government pensions and annuities* – 1. Any pension (other than a pension referred to in article 20) or annuity derived by a resident of a Contracting State from sources within the other Contracting State may be taxed only in the first-mentioned Contracting State.

2. The term pension means a periodic payment made in consideration of services rendered in the past or by way of compensation for injuries received in the course of performance of services.

3. 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 moneys worth.

ARTICLE 22 – *Students and apprentices* – 1. A student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned Contracting State solely for the purpose of his education or training, shall be exempt from tax in the first-mentioned Contracting State on

- (a) payments made to him by persons residing outside that first-mentioned Contracting State for the purpose of his maintenance, education or training; and
- (b) remuneration from employment in that first-mentioned Contracting State, in an amount not in excess of Rs. 10,000 or its equivalent in Tanzanian currency during any previous year or the year of income as the case may be, provided that such employment is directly related to his studies or is undertaken for the purpose of his maintenance.

2. The benefits of this article shall extend only for such period of time as may be reasonably or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article more than three consecutive years from the date of his first arrival in the first-mentioned Contracting State.

ARTICLE 23 – *Professors and teachers* – 1. A professor or teacher who visits a Contracting State for the purpose of teaching or engaging in research, or both, at a university, or other approved educational institution in that Contracting State and who is, or was immediately before such visits, 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 24 months 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 22, an individual shall be deemed to be a resident of a Contracting State if he is resident

- (i) in the case of India, in the previous years, and
- (ii) in the case of Tanzania, in the year of income in which he visits the other Contracting State or in the immediately preceding previous year or year of income, as the case may be.

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

ARTICLE 24 – *Income not expressly mentioned* – Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing articles of this Agreement in respect of which he is a subject to tax in that State shall be taxable only in that State.

CHAPTER IV – METHOD FOR ELIMINATION OF DOUBLE TAXATION

ARTICLE 25 – *Avoidance of double taxation* – 1. The laws in force in either of the Contracting States will continue to govern the taxation of income in the respective Contracting States except where provisions to the contrary are made in this Agreement.

2. (a) The amount of Tanzanian tax payable, under the laws of Tanzania and in accordance with the provisions of this Agreement, whether directly or by deduction by a resident of India, in respect of income from sources within Tanzania which has been subjected to tax both in India and Tanzania, shall be allowed as a credit against the Indian tax payable in respect of such income 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 Tanzania; 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 of India and as to the balance, if any, against surtax payable by it in India.

(b) For the purposes of the credit referred to in sub-paragraph (a) above the term Tanzanian tax payable shall be deemed to include any amount which would have been payable as Tanzanian tax for any year but for

- (i) any exemption from tax on interest granted under paragraph (1) of the First Schedule, Part II of the Income-tax Act, 1973; or
- (ii) any investment deduction granted under paragraphs (24), (25) and (26) of the Second Schedule to the Income-tax Act, 1973; or
- (iii) the lower corporation rate of income-tax provided by paragraph 4(b) of the Third Schedule to the Income-tax Act, 1973; or

- (iv) any other provisions which may subsequently be enacted granting an exemption or reduction of tax which the competent authorities of the Contracting States agree to be for the purpose of economic development.

3.(a) The amount of Indian tax payable, under the laws of India and in accordance with the provisions of this Agreement, whether directly or by deduction, by a resident of Tanzania in respect of income from sources within India which has been subjected to tax both in India and Tanzania shall be allowed as a credit against Tanzanian tax payable in respect of such income provided that such credit shall not exceed the Tanzanian tax (as computed before allowing any such credit), which is appropriate to the income derived from sources within India;

(b) For the purposes of the credit referred to in sub-paragraph (a) above the term Indian tax payable shall be deemed to include any amount by which Indian tax has been reduced by the special incentive measures set forth in the following sections of the Income-tax Act, 1961:

- (i) section 10(4) relating to exemption from tax on interest payable to a non-resident on any security notified by the Government of India;
- (ii) section 10(4A) relating to exemption from tax on interest payable to a non-resident on moneys in a Non-resident (External) Account;
- (iii) section 10(15)(iv) relating to exemption from tax of (a) non-resident in respect of moneys lent by him to the Government or local authority in India; (b) an approved foreign financial institution in respect of interest on moneys lent by it to an industrial undertaking in India under a loan agreement; and (c) a non-resident in respect of interest on moneys lent or credit facilities allowed by him to an industrial undertaking in India for the purchase outside India of raw materials or capital plant and machinery or for industrial development in India;
- (iv) section 32A relating to investment allowance in respect of ships, aircraft, machinery or plant;
- (v) section 33A relating to development allowance for planting or replanting of tea bushes;
- (vi) section 35CC relating to the rural development allowance;
- (vii) section 54E relating to capital gains;
- (viii) section 80HH relating to deduction in respect of profits and gains from newly established industrial undertakings or hotel business in backward areas;
- (ix) section 80HHA relating to deduction in respect of profits and gains from newly established small-scale industrial undertakings in certain areas;

- (x) section 80J relating to deduction in respect of profits and gains from eligible industrial undertakings or ships or hotels;
- (xi) section 80K relating to deduction in respect of dividends attributable to profits and gains from eligible industrial undertakings or ships or hotels;
- (xii) section 80L relating to deduction in respect of interest on certain securities, dividends, etc.; and
- (xiii) any other provisions which may subsequently be enacted granting an exemption or reduction of tax which the competent authorities of the Contracting States agree to be for the purposes of economic development.

4. Income which, in accordance with the provisions of this Agreement is not to be subjected to tax in a Contracting State, may be taken into account for calculating the rate of tax to be imposed in that Contracting State.

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 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 State than the taxation levied on enterprises of that other State carrying on the same activities in the same circumstances.

3. Nothing contained in this article shall be construed as obliging a Contracting State to grant to persons not resident in that State any personal allowances, reliefs and reductions for taxation purposes which are by law available only to persons who are resident.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, or 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 in the same circumstances.

5. In this article, the term taxation means taxes which are the subject of this Agreement.

ARTICLE 27 – *Mutual agreement procedure* – 1. Where the 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 Agreement, 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. This case must be presented within three years of the date of receipt of notice of the action which gives rise to taxation not in accordance with the Agreement.

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

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. When it seems advisable in order to reach an 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.

ARTICLE 28 – *Exchange of information* – 1. The competent authorities of the Contracting States shall exchange such information or document as is necessary for carrying out the provisions of this Agreement or for the prevention of evasion of taxes which are the subject of this Agreement. Any information or document so exchanged shall be treated as secret but may be disclosed to persons (including a court or other authorities) concerned with the assessment, collection, enforcement, investigation or prosecution in respect of the taxes which are the subject of this Agreement, or to persons with respect to whom the information or document relates.

2. The exchange of information or documents shall be either on a routine basis or on request with reference to a particular case or both, the competent authorities of the Contracting States shall agree from time to time on the list of the information or documents 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 or documents 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 or documents 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 – *Diplomatic and consular activities* – Nothing in this Agreement shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreements.

CHAPTER VI – FINAL PROVISIONS

ARTICLE 30 – *Entry into force* – 1. The present Agreement shall be ratified by the Contracting States according to their own internal legislation.

2. The instruments of ratification shall be exchanged at Dar-es-Salaam as soon as possible.

3. Upon exchanges of the instruments of ratification, the present Agreement shall have effect

- (a) in India, in respect of income arising in any year of account commencing on or after the first day of January following the calendar year in which the instruments are exchanged;
- (b) in Tanzania, in respect of income arising for any year of account commencing on or after the first day of January following the calendar year in which instruments of ratification are exchanged.

ARTICLE 31 – *Termination* – This Agreement shall continue in effect indefinitely but either of the Contracting States may on or before the 30th of June in the sixth or any

subsequent calendar year following the calendar year in which the exchange of instruments of ratification takes place, give to the other Contracting State notice of termination and in such event this agreement shall cease to have effect

- (a) in India, in respect of income assessable for any year of assessment commencing on or after the first day of April in the second calendar year next following the calendar year in which the notice of termination is given;
- (b) in Tanzania in respect of income arising for any year of income commencing on or after the first day of January in the calendar year next following the calendar year in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed the present Agreement.

DONE in duplicate at Dar-es-Salaam this 5th day of September, 1979¹ in the English language.

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Thailand

Agreement for avoidance of double taxation of income and the prevention of fiscal evasion with Thailand

Whereas the annexed Convention between the Government of the Republic of India and the Government of the Kingdom of Thailand for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income has been ratified and the instruments of ratification exchanged as required by Article 28 of the said Convention on 13th March, 1986;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961) and section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in Union of India.

Notification : No. GSR 915(E), dated 27-6-1986.

TEXT OF ANNEXED AGREEMENT, DATED 22-3-1985

The Government of the Republic of India and the Government of the Kingdom of Thailand, desiring to conclude a Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income have agreed as follows :

CHAPTER I – 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. This Convention shall apply to taxes on income imposed on behalf of each Contracting State or of its political sub-divisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or

immovable property, as well as taxes on the total amounts of wages or salaries paid by enterprises.

3. The existing taxes to which this Convention shall apply are :

(a) in the case of India

(i) the income-tax including any surcharge thereon imposed under the Income-tax Act, 1961 (43 of 1961); and

(ii) the surtax imposed under the Companies (Profits) Surtax Act, 1964 (7 of 1964);

(hereinafter referred to as Indian tax);

(b) in the case of Thailand

(i) the income-tax; and

(ii) the petroleum income-tax;

(hereinafter referred to as Thai tax).

4. The Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Convention in addition to, or in place of, the taxes referred to in paragraph (3) of this article. The competent authorities of the Contracting States shall notify each other of significant changes which have been made in their respective taxation laws.

CHAPTER II – DEFINITIONS

ARTICLE 3 – *General definitions* – 1. For the purpose of this Convention, unless the context otherwise requires :

(a) the term India means the territory of India and includes the territorial sea and air space above it as well as any other maritime zone referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (Act No. 80 of 1986), in which India has sovereign rights and to the extent that these rights can be exercised therein in accordance with international law, as if such maritime zone is a part of the territory of India;

(b) the term Thailand means the Kingdom of Thailand and includes any maritime area adjacent to the territorial waters of the Kingdom of Thailand which by Thai legislation, and in accordance with international law has been or may hereafter be designated as an area within which the rights of the Kingdom of Thailand may be exercised;

- (c) the terms a Contracting State and the other Contracting State mean India or Thailand as the context requires;
- ¹(d) the term tax means Indian tax or Thai 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 taxation laws in force in the respective Contracting States;
- (f) the term company means any body corporate or any entity which is treated as a company or a body corporate under the taxation laws in force in the respective Contracting States;
- (g) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean, 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;
- (h) the term competent authority means in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative; and in the case of Thailand, the Ministry of Finance or his authorised representative;
- (i) the term national means an individual possessing the nationality of a Contracting State and any legal person, partnership, association and any other entity deriving its status as such from the laws in force in a Contracting State;
- (j) the term international traffic means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except where the ship or aircraft is operated solely between places in the other Contracting State.

2. In the application of the provisions of this Convention by one of the Contracting States, any term not defined herein shall, unless the context otherwise requires, have the meaning which it has for the purposes of the laws in force in that 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 laws of that State, is liable to taxation therein by reason of his domicile, residence, place of incorporation, 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 residential status for the purposes of this Convention 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 (hereinafter referred to as his centre of vital interests);
- (b) If the Contracting State in which he has his centre of vital interests cannot be determined, or if he does not have 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 national;
- (d) If he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph (1), a person other than an individual is a resident of both Contracting States, then the competent authorities of the Contracting States shall settle the question by mutual agreement.

ARTICLE 5 – *Permanent establishment* – 1. For the purposes of this Convention, the term permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term permanent establishment shall include

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, a quarry, an oil or gas well or other place of extraction of natural resources;

- (g) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on;
- (h) a building site or construction or assembly project or supervisory activities in connection therewith, where such a site, project or activity continues for the same or a connected project for a period or periods aggregating to more than 183 days;
- (i) a warehouse, in relation to a person providing storage facilities for others;
- (j) the furnishing of services, including consultancy services, by a resident of one of the Contracting States through employees or other personnel provided activities of that nature continue (for the same or a connected project) within the other Contracting State for a period or periods aggregating to more than 183 days.

3. Notwithstanding the preceding provisions of this article, the term permanent establishment shall be deemed not to include

- (a) the use of facilities solely for the purpose of storage, display or delivery 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, display or delivery;
- (c) the maintenance of 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;
- (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 the preceding paragraphs, a person (other than a broker, general commission agent or any other agent of an independent status to whom paragraph (5) applies) acting in a Contracting State on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment in the first-mentioned Contracting State, if

- (a) he has habitually exercises in the first-mentioned Contracting State, an 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;
- (b) he habitually maintains in the first-mentioned Contracting State a stock of goods or merchandise belonging to that enterprise from which he regularly delivers goods or merchandise on behalf of the enterprise; or

(c) he habitually secures orders in the first-mentioned State wholly or almost wholly for the enterprise or for the enterprise and other enterprises which are controlled by it or have a 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. This shall not apply if such broker or agent carries on in that other State an activity described in paragraph (4) wholly or almost wholly for the enterprise itself or for the enterprise and other enterprises which are controlled by or have a controlling interest in it.

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 or a permanent establishment of the other.

7. Notwithstanding the preceding provisions of this article, an insurance enterprise of a Contracting State shall, except in regard to reinsurance, be deemed to have a permanent establishment in the other State if it collects premiums in the territory of that State or insures risks situated therein through an employee or through a representative who is not an agent of an independent status within the meaning of paragraph (5) of this article.

CHAPTER III – TAXATION OF INCOME

ARTICLE 6 – *Income from immovable property* – 1. Income from immovable property (including income from agriculture or forestry) may be taxed in the Contracting State in which such property is situated.

2. The term immovable property shall have the meaning which it has under the 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work,

mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded 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 income or 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, the income or profits of the enterprise may be taxed in the other State but only so much of them as is attributable to

- (a) that permanent establishment;
- (b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or
- (c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.

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 income or 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 or independently with the enterprise of which it is a permanent establishment.

3. In the determination of the income or profits of a permanent establishment, there shall be allowed as deduction expenses which are incurred for the purposes of the business 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.

4. Insofar as it has been customary in a Contracting State to determine the income or profits to be attributed to permanent establishment on the basis of a certain

percentage of the gross receipts of the enterprise or on the basis of an apportionment of the total income or profits of the enterprise to its various parts, nothing in paragraph (2) of this article shall preclude that Contracting State from determining the income or 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 contained in this article.

5. No income or 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 purposes of the preceding paragraphs, the income or 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 income or 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 – *Shipping and air transport* – 1. Income 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. Income derived by an enterprise of a Contracting State from the operation of ships in international traffic may be taxed in the other Contracting State, but the tax imposed in that other Contracting State shall be reduced by an amount equal to 50 per cent thereof.

3. The provisions of paragraphs (1) and (2) of this article shall also apply to income from the participation in a pool, a joint business or an international operating agency engaged in the operation of aircraft or ships.

4. For the purposes of paragraphs (1) and (2), interest on funds connected with the operation of ships or aircraft in international traffic shall be regarded as income from the operation of such ships or aircraft.

5. The term operation of ships or aircraft shall mean business of transportation of persons, mail, livestock or goods by the ships or aircraft including the incidental lease of ships or aircraft and any other activity directly connected with such transportation.

ARTICLE 9 – *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 10 – *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 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 laws of that State, but if the beneficial owner of the dividends is a company which is a resident of the other Contracting State, the tax shall not exceed

- (a) 15 per cent of the gross amount of dividends, in a case where the company paying the dividends is engaged in an industrial undertaking and the beneficial owner of the dividends is a company of the other Contracting State owning at least 10 per cent of the voting shares of the company paying the dividends ;
- (b) in the case not covered by sub-paragraph (a) above, 20 per cent of the gross amount of dividends if the company paying the dividends is engaged in an industrial undertaking or if the beneficial owner of the dividends is a company of

the other Contracting State owning at least 25 per cent of the voting shares of the company paying the dividends.

3. (a) The term dividends as used in this article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights assimilated to income from shares according to the taxation laws of the Contracting State of which the company making the distribution is a resident.

(b) In this article, the term industrial undertaking means an undertaking falling under any of the classes mentioned below :

- (i) manufacturing, assembling and processing ;
- (ii) construction, civil engineering and ship-building ;
- (iii) production of electricity, hydraulic power or gas or the supply of water :
- (iv) agriculture, forestry and fishery and the carrying on of a plantation ;
- (v) any other undertaking entitled to the privileges accorded under the laws of either Contracting State on the promotion of industrial investment ; and
- (vi) any other undertaking which may be declared to be an industrial undertaking for the purposes of this article by the competent authority of the Contracting State in which the undertaking is situated.

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 a case, the provisions of article 7 or article 14, as the case may be, shall apply.

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

ARTICLE 11 – *Interest* – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may be taxed in the Contracting State in which it arises, and according to the laws of that State, but the tax so charged shall not exceed

- (a) 10 per cent of the gross amount of the interest if it is received by any financial institution (including an insurance company) ;
- (b) in all other cases, 25 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph (2), interest arising in a Contracting State shall be exempt from tax in the State if

- (a) the recipient of the interest is the Government, or local authority or the Central Bank of the other Contracting State ; or
- (b) the interest is paid to any agency or institution including a financial institution which may be agreed upon for the purposes of this paragraph by the competent authorities of the Contracting States.

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 debtors 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, as well as income assimilated to income from money lent by the taxation laws of the Contracting State in which the income arises.

5. The provisions of paragraphs (1) and (2) shall not apply if the recipient 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 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 14, 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 resident of a Contracting State or not, has in a Contracting State a permanent establishment, or fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by that permanent establishment or fixed base, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

7. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, having regard to the debt-claims for which it is paid exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In that 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.

ARTICLE 12 – *Royalties* – 1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may be taxed in the Contracting State in which they arise, but the tax so charged shall not exceed 15 per cent of the gross amount of royalties.

3. The term royalties as used in this article means payments of any kind received as a consideration for the alienation or the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films, phonographic records and films or tapes 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.

4. The provisions of paragraphs (1) and (2) shall not apply if the recipient 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 a case, the provisions of article 7 or article 14, 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 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 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, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of royalties paid, 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 recipient in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 13 : *Capital gains* – 1. Gains from the alienation of immovable property, as defined in paragraph (2) of article 6, may be taxed in the Contracting State in which such property is situated.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment, which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of

performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in that other State.

3. Notwithstanding the provisions of paragraph (2), gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft which it operates in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in that State.

4. Gains derived by a resident of a Contracting State from the alienation of any property other than those mentioned in paragraphs (1), (2) and (3) above and article 12 shall be taxable only in that State.

ARTICLE 14 – *Independent personal services* – 1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless such activities were performed in the other Contracting State. Income in respect of professional services or independent activities performed within that other State may be taxed by that other State.

2. Notwithstanding the provisions of paragraph (1), income derived by a resident of a Contracting State in respect of professional services or other independent activities performed in the other Contracting State shall not be taxable in the other State if

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the relevant previous year or tax year concerned, as the case may be, and
- (b) the recipient does not maintain a fixed base in the other State for a period or periods exceeding in the aggregate 183 days in such year, and
- (c) the income is not borne by an enterprise or a permanent establishment situated in that other State.

3. 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 15 – *Dependent personal services* – 1. Subject to the provisions of articles 16, 17, 18, 19, 20 and 21, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed 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 exercised in the other Contracting State shall be taxable only in the first-mentioned State if

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the relevant previous year or tax year concerned, as the case may be, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- (c) the remuneration is not borne by an enterprise of the other Contracting State or by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operating in international traffic, by an enterprise of a Contracting State shall be taxable only in that State.

ARTICLE 16 – *Directors fees and remuneration of top level managerial officials* – 1. Directors fees and other 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 may be taxed in that other State.

2. Salaries, wages and other similar remuneration derived by a resident of a Contracting State in his capacity as an official in a top-level managerial position of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 17 – *Artistes and athletes* – 1. Notwithstanding the provisions of articles 14 and 15, income derived by public entertainers, such as theatre, motion picture, radio, or television artistes, musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are performed.

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, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. Notwithstanding the provisions of article 7, where the activities mentioned in paragraph (1) of this article are provided in a Contracting State by an enterprise of the other Contracting State, the profits derived from providing these activities by such an enterprise may be taxed in the first-mentioned Contracting State unless the enterprise is substantially supported by the public funds of the other Contracting State, including any political sub-division, local authority or statutory body thereof, in connection with the provisions of such activities.

4. The provisions of paragraphs (1) and (2) of this article shall not apply to remuneration or profits, salaries, wages and similar income derived from activities performed in a Contracting State by public entertainers or athletes if the visit to that Contracting State is substantially supported by public funds of the other Contracting State, including any political sub-division, local authority or statutory body thereof.

ARTICLE 18 – *Governmental functions* – 1. Remuneration (not being a pension) paid by the Government of a Contracting State to any individuals who is a citizen of that State in respect of services rendered in the discharge of governmental functions in the other Contracting State shall be taxable only in the first-mentioned Contracting State.

2. Any pension paid by the Government of one of the Contracting States to any individual may be taxed in that Contracting State.

3. The provisions of paragraphs (1) and (2) 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 for the purposes of profit.

4. For the purposes of this article, the term Government shall include any State Government or local or statutory authority of either Contracting State and in particular the Reserve Bank of India and the Bank of Thailand.

ARTICLE 19 – *Non-Government pensions and annuities* – 1. Any pension (other than a pension referred to in article 18) or annuity derived by a resident of a Contracting State from sources within the other Contracting State may be taxed only in the first-mentioned Contracting State.

2. The term pension means a periodic payment made in consideration of services rendered in the past or as compensation for injuries received in the course of performance of services.

3. 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 moneys worth.

ARTICLE 20 – *Students and apprentices* – A student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned Contracting State solely for the purpose of his education or training, shall be exempt from tax in the first-mentioned Contracting State on

- (a) the grant, allowance or award for the purposes of his maintenance, education or training ;
- (b) payments made to him by persons residing outside that first-mentioned Contracting State for the purposes of his maintenance, education or training ; and
- (c) remuneration from employment in that first-mentioned Contracting State, in an amount not in excess of Rs. 15,000 or its equivalent in Thai currency during any previous year or tax year, as the case may be, provided that such employment is directly related to his studies or is undertaken for the purpose of his maintenance.

ARTICLE 21 – *Professors, teachers and research scholars* – 1. A professor, teacher or research scholar who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State at the invitation of that other Contracting State, or of a university, college, school or other approved institution in that other Contracting State for the purpose of teaching or engaging in research, or both, at the university, college, school or other approved institution, shall be exempt from tax in that other Contracting State or any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival in that other Contracting State.

2. This article shall only apply to income from research if such research is undertaken by the individual for the public interest and not primarily for the benefit of some other private person or persons.

3. For the purposes of this article and article 20, 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 the tax year, as the case may be, in which he visits the other Contracting State or in the immediately preceding previous year or the tax year.

4. For the 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.

ARTICLE 22 – *Other income* – Items of income of a resident of a Contracting State, wherever arising, not expressly dealt with in the foregoing articles may be taxed in that State. Such items of income may also be taxed in the Contracting State where the income arises.

CHAPTER IV – METHODS FOR ELIMINATION OF DOUBLE TAXATION

ARTICLE 23 – *Elimination of double taxation* – 1. The laws in force in either of the Contracting State shall continue to govern the taxation of income in the respective Contracting States except where provisions to the contrary are made in this Convention.

2. The amount of Thai tax payable, under the laws of Thailand and in accordance with the provisions of this Convention, whether directly or by deduction, by a resident of India, in respect of profits or income arising in Thailand, which has been subjected to tax both in India and in Thailand, shall be allowed as a credit against the Indian tax payable in respect of such profits or income provided that such credit shall not exceed the Indian tax (as computed before allowing any such credit) which is appropriate to the profits or income arising in Thailand. Further, 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.

3. For the purposes of the credit referred to in paragraph (2), the term Thai tax payable shall be deemed to include any amount which would have been payable as Thai tax for any year but for an exemption or reduction of tax granted for that year or any part thereof under the provisions of the Investment Promotion Act (B.E. 2520) or of the Revenue Code (B.E. 2481) which are designed to promote economic development in Thailand, or which may be introduced hereafter in modification of, or in addition to, the existing laws for promoting economic development in Thailand.

4. The amount of Indian tax payable under the laws of India and in accordance with the provisions of this Convention, whether directly or by deduction, by a resident of Thailand, in respect of profits or income arising in India, which has been subjected to tax both in India and Thailand, shall be allowed as a credit against Thai tax payable in respect of such profits or income provided that such credit shall not exceed the Thai tax (as computed before allowing any such credit) which is appropriate to the profits or income arising in India.

5. For the purposes of the credit referred to in paragraph 4, the term Indian tax payable shall be deemed to include any amount which would have been payable as Indian tax for any assessment year but for an exemption or reduction of tax granted for that year or any part thereof by the special incentive measures under the provisions of the Income-tax Act, 1961 (43 of 1961), which are designed to promote economic development, or which may be introduced hereafter in modification of, or in addition to the existing provisions for promoting economic development in India.

6. Where under this Convention a resident of a Contracting State is exempt from tax in that Contracting State in respect of income derived from the other Contracting State, then the first-mentioned Contracting State may, in calculating tax on the remaining income of that person, apply the rate of tax which would have been applicable if the income exempted from tax in accordance with this Convention had not been so exempted.

CHAPTER V – SPECIAL PROVISIONS

ARTICLE 24 – *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 favourable levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities in the same circumstances.

3. Nothing contained in this article shall be construed as obliging a Contracting State to grant to persons not resident in that State any personal allowances, reliefs and reductions for taxation purposes which are by law available only to persons who are so resident.

4. 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 in the same circumstances.

5. In this article, the term taxation means taxes which are the subject of this Convention.

ARTICLE 25 – *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. This case must be presented within three years of the date of receipt of notice of the action which gives rise to taxation not in accordance with the Convention.

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. 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.

ARTICLE 26 – *Exchange of information* – 1. The competent authorities of the Contracting States shall exchange such information or document as is necessary for carrying out the provisions of this Convention or for the prevention of fraud or evasion of taxes which are the subject of this Convention. Any information or document received by a Contracting State shall be treated as secret in the same manner as information or document obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes covered by the Convention. Such persons or authorities shall use the information or document only for such

purposes. They may disclose the information or document in public court proceedings or in judicial decisions.

¹(2) The exchange of information or document 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 the information or documents 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 or documents 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 or documents 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 27 – *Diplomatic and consular activities* – Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officials under the general rules of inter-national law or under the provisions of special agreement.

CHAPTER VI – FINAL PROVISIONS

ARTICLE 28 – *Entry into force* – 1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Bangkok as soon as possible.

2. This Convention shall enter into force upon the exchange of the instruments of ratification and shall have effect

- (a) in India, in respect of income derived during the previous years beginning on or after the first day of January of the calendar year next following the calendar year in which the instruments of ratification are exchanged ;

(b) in Thailand, in respect of income derived during tax years or accounting periods beginning on or after the first day of January of the calendar year next following the calendar year in which the instruments of ratification are exchanged.

ARTICLE 29 – *Termination* – This Convention shall remain in force indefinitely but either Contracting State may terminate the Convention, through diplomatic channels, by giving to the other Contracting State, written notice of termination on or before June 30th of any calendar year after the expiration of five years from the year in which the Convention entered into force. In such event, the Convention shall cease to have effect

(a) in India, in respect of income derived during the previous years beginning on or after the first day of January of the calendar year next following the calendar year in which the notice is given ;

(b) in Thailand, in respect of income derived during tax years or accounting periods beginning on or after the first day of January of the calendar year next following the calendar year in which the notice is given.

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

DONE at New Delhi on this 22nd day of March, 1985, in six originals, two each in the Hindi, Thai and English languages, all texts being equally authentic, except in case of divergence when the English text shall prevail.

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Trinidad and Tobago

Agreement for avoidance of double taxation and prevention of fiscal evasion

Whereas the annexed Convention between the Government of the Republic of India and the Government of the Republic of Trinidad and Tobago for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, has entered into force on the thirteenth day of October, 1999, thirty days after the receipt of the later of the notifications by both the Contracting States to each other of the completion of the procedures required under their laws for bringing into force of the said Convention in accordance with article 29 of the said Convention;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in the Union of India.

Notification : No. GSR 720(E), dated 26-10-1999.

ANNEXURE

CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE REPUBLIC OF TRINIDAD AND TOBAGO FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of India and the Government of the Republic of Trinidad and Tobago desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and with a view to promoting economic co-operation between the two countries 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. This Convention shall apply to taxes on income imposed on behalf of a Contracting State or of its political sub-divisions or local authorities irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes which are the subject of this Convention are :

- (a) in the case of Trinidad and Tobago, the corporation tax, the income-tax, the unemployment levy and the petroleum profits tax (hereinafter referred to as Trinidad and Tobago tax);
- (b) in the case of India, the income-tax, including any surcharge thereon (hereinafter referred to as Indian tax).

4. This Convention shall apply also to any identical or substantially similar taxes which are imposed by a Contracting State after the date of signature of this Convention in addition to, or in place of, the taxes referred to in paragraph 3. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws.

ARTICLE 3 : *General Definitions* – 1. For the purposes of this Convention, unless the context otherwise requires :

- (a) the term Trinidad and Tobago means the Archipelagic State of Trinidad and Tobago, comprising the several islands of Trinidad and Tobago, its archipelagic waters, territorial sea and the airspace thereof, together with the adjacent submarine areas of the Exclusive Economic Zone and the continental shelf beyond the territorial sea over which Trinidad and Tobago exercises sovereign or other rights in accordance with the laws of Trinidad and Tobago and with international law;
- (b) the term India means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law

and in accordance with international law, including the U.N. Convention on the Law of the Sea;

- (c) the terms a Contracting State and the other Contracting State mean the Republic of Trinidad and Tobago or the Republic of India, as the context requires;
- (d) the term person includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States;
- (e) the term company means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (f) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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;
- (g) the term international traffic means any transport by a ship or aircraft operated by an enterprise which is a resident of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (h) the term competent authority means :
 - (i) in the case of Trinidad and Tobago, the Minister to whom the responsibility for Finance is assigned or his authorized representative;
 - (ii) in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative;
- (i) the term national means :
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
- (j) the term fiscal year means :
 - (i) in the case of Trinidad and Tobago, the year of income as defined in section 2(1) of the Income-tax Act, Chapter 75 : 01 ;
 - (ii) in the case of India, previous year as defined under section 3 of the Income-tax Act, 1961;

(k) the term tax means Trinidad and Tobago tax or Indian tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty or fine imposed relating to those taxes.

2. In the application of this Convention by a Contracting State any term not defined herein 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 purposes of this Convention, the term resident of a Contracting State means any person who, under the laws of that State is liable to tax 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 status shall be determined as follows :

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode ;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 State in which its place of effective management is situated. If the State in which its place of effective management is situated cannot be determined, then the competent authorities of the Contracting States shall settle the question by mutual agreement.

ARTICLE 5 : *Permanent Establishment* – 1. For the purposes of this Convention the term permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a warehouse in relation to a person providing storage facilities for others;
- (g) a sales outlet;
- (h) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (i) a drilling rig or ship used for, or in connection with, the exploration or development of natural resources;
- (j) a dredging project;
- (k) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on; and
- (l) a building site or construction or assembly project or supervisory activities in connection therewith only if such site, project or activity last more than nine months.

3. Notwithstanding the preceding provisions of this Article, the term permanent establishment shall be deemed not to include :

- (a) the use of facilities solely for the purpose of storage, display or delivery 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, display or delivery;
- (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 of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

4. Notwithstanding the provisions of paragraphs 1 and 2, where a person, other than an agent of an independent status to whom paragraph 6 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 Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person :

- (a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 3 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph ; or
- (b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise ; or
- (c) habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise itself or for the enterprise and other enterprises controlling, controlled by, or subject to the same control, as that enterprise.

5. Notwithstanding the preceding provisions of this Article an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 6 applies.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such person is acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

7. 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 otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6 : *Income from Immovable Property* – 1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may also be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the laws 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources ; ships, boats, motor vehicles and aircraft shall not be regarded 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, the profits of the enterprise may also be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, 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.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business 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, in accordance with the provisions of and subject to the limitations of the tax laws of that State.

4. 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.

5. For the purposes 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.

6. 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 : *Shipping and Air Transport* – 1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. Profits derived by a transportation enterprise which is a resident of a Contracting State from the use, maintenance, or rental of containers (including trailers and other equipment for the transport of containers) used in the transport of goods or merchandise in international traffic shall be taxable only in that Contracting State unless the containers are used solely within the other Contracting State.

3. For the purposes of this Article, interest earned incidentally on funds connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft, and the provisions of Article 11 shall not apply in relation to such interest.

4. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9 : *Associated Enterprises* – 1. 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.

2. Where a Contracting State includes in the profits of an enterprise of that State and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall, if necessary, consult each other.

ARTICLE 10 : *Dividends* – 1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may also be taxed in that other 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 laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 10 per cent of the gross amount of the dividends. 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 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 14, 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 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 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 state, nor subject the companys undistributed profits to a tax on the companys undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11 : *Interest* – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by

- (i) the Government, a political sub-division or a local authority of the other Contracting State; or

- (ii) (a) in the case of Trinidad and Tobago, the Central Bank of Trinidad and Tobago, the Agricultural Development Bank, the Export Insurance Company, the National Housing Authority, the National Insurance Board, the Home Mortgage Bank, the Deposit Insurance Corporation, the Small Business Development Company, the Development Finance Limited and the Trinidad and Tobago Mortgage Finance Company ;
- (ii) (b) in the case of India, the Reserve Bank of India, the Industrial Finance Corporation of India, the Industrial Development Bank of India, the Export Import Bank of India, the National Housing Bank, the Small Industries Development Bank of India and the Industrial Credit and Investment Corporation of India (ICICI) ; or
- (iii) any other institution or agency as may be mutually agreed upon between the two Contracting States.

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 debtors 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, but shall not include any item which is treated as a distribution under the provisions of Article 10 of this Convention. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1 and 2 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 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 14, as the case may be, shall, apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that 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 resident

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 such interest shall be deemed to arise in the 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 last – mentioned amount. In such case, the excess part of the payment shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 12 : *Royalties and Fees for Technical Services* – 1. Royalties or fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

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

3.(a) 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 a literary, artistic or scientific work including cinematograph films or recordings on any means of reproduction for use in connection with television or radio broadcasting, any patent, trade mark, design or model, plan, know-how, computer software programme, secret formula or process, or any industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience ;

(b) The term fees for technical services means payment of any kind in consideration for the rendering of any managerial, technical or

consultancy services including the provision of services by technical or other personnel but does not include payments for services mentioned in Articles 14 and 15 of this Convention.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services being a resident of a Contracting State, carries on business in the other Contracting State, in which the royalties or fees for technical services 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 or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties or fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties or fees for technical services, 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 or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment, or fixed base then such royalties or fees for technical services shall be deemed to arise in the 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 or fees for technical services 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 the other provisions of this Convention.

ARTICLE 13 : *Capital Gains* – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may also be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may also be taxed in that other State.

3. Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships, aircraft shall be taxable only in that State.

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from the alienation of shares other than those mentioned in paragraph 4 in a company which is a resident of a Contracting State may be taxed in that State.

6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5, shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14 : *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 State except in the following circumstances, when such income may also be taxed in the other Contracting State :

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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 State; or

- (b) if his stay in the other State is for a period or periods aggregating 183 days or more in any 12 month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State; or
- (c) if the remuneration for his activities in the other Contracting State is paid by a resident of that Contracting State or is borne by a permanent establishment or a fixed base situated in that Contracting State and exceeds in the fiscal year a sum of Rupees 40,000 or its equivalent in Trinidad and Tobago currency.

2. The term professional services includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of medical practitioners, lawyers, engineers, architects, dentists and accountants.

ARTICLE 15 : *Dependent Personal Services* – 1. Subject to the provisions of Articles 16, 18 and 19 salaries, wages, emoluments and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may also be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if :

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any 12 month period commencing or ending in the fiscal year concerned ; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and

(c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, by an enterprise of a Contracting State may be taxed in that State.

ARTICLE 16 : *Directors Fees* – Directors fees and other 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 may also be taxed in that other State.

ARTICLE 17 : *Artistes and Sports persons* – 1. Notwithstanding the provisions of Articles 14 and 15 income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sports person, from his personal activities as such exercised in the other Contracting State, may also be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sports person in his capacity as such accrues not to the entertainer or sports person himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15 be taxed in the Contracting State in which the activities of the entertainer or sports person are exercised.

3. The provisions of paragraphs 1 and 2, shall not apply to income from activities performed in a Contracting State by entertainers or sports persons if the visit to that State is substantially supported by public funds of one or both of the Contracting States or of political sub-divisions or local authorities thereof. In such a case, the income is taxable only in the Contracting State of which the entertainer or sports person is a resident.

ARTICLE 18 : *Pensions and Social Security Payments* – 1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid in consideration of past employment to a resident of a

Contracting State and any annuity paid to such a resident may also be taxed in that State.

2. Notwithstanding the provisions of paragraph 1, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State or a political sub-division or a local authority thereof shall be taxable only in that State.

ARTICLE 19 : *Government Service* – 1. (a) Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who :

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that other State.

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

ARTICLE 20 : *Students and Apprentices* – 1. A student or business apprentice who is or was a resident of a Contracting State immediately before visiting the other Contracting State and who is present in that other Contracting State solely

for the purpose of his education or training shall, besides grants, loans and scholarships, be exempt from tax in that other State on :

- (a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training; and
- (b) remuneration from employment in that other State for an amount not exceeding the amount which is exempt from tax under the laws of that other Contracting State for any fiscal year, provided that such employment is directly related to his studies or is undertaken for the purpose of his maintenance.

2. The benefit of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article for more than seven consecutive years from the date of his first arrival in that other Contracting State.

ARTICLE 21 : *Professors, Teachers and Research Scholars* – 1. A professor, teacher or research scholar who is or was a resident of the Contracting State immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college, school or other approved institution in that other Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival in that other 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 20, an individual shall be deemed to be a resident of a Contracting State if he is resident in that State in the fiscal year in which he visits the other Contracting State or in the immediately preceding fiscal year.

4. For the purposes of paragraph 1 approved institutions means an institution which has been approved in this regard by the competent authority of the State in which the institution is located.

ARTICLE 22 : *Other Income* – 1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6,

- (a) if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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 income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply ;
- (b) if the resident of a Contracting State derives income from sources within the other Contracting State in the form of lotteries, crossword puzzles, races including horse races, card games and other games of any sort or gambling or betting of any form or nature whatsoever, such income may be taxed in, the other Contracting State.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention and arising in the other Contracting State may also be taxed in that other State.

ARTICLE 23 : *Elimination of Double Taxation* – 1. The laws in force in either of the Contracting State will continue to govern the taxation of income in the respective Contracting States except where provisions to the contrary are made in this Convention.

2. In the case of Trinidad and Tobago, double taxation shall be eliminated as follows :

Where a resident of Trinidad and Tobago derives income which, in accordance with the provisions of this Convention, may be taxed in India, Trinidad and Tobago shall allow as a deduction from the tax on the income of that resident

an amount equal to the income-tax paid in India, whether directly or by deduction at source. Such deduction shall not, however, exceed that part of the income-tax as computed before the deduction is given, which is attributable to the income which may be taxed in India.

3. In the case of India, double taxation shall be eliminated as follows :

Where a resident of India derives income which, in accordance with the provisions of this Convention, may be taxed in Trinidad and Tobago, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in Trinidad and Tobago, whether directly or by deduction at source. Such deduction shall not, however, exceed that part of the income-tax, as computed before the deduction is given, which is attributable to the income which may be taxed in Trinidad and Tobago.

4. The tax payable in the Contracting State mentioned in paragraphs 2 and 3 of this Article shall be deemed to include the tax which would have been payable but for the tax incentives granted under the laws of the Contracting State and which are designed to promote economic development.

5. Income which in accordance with the provisions of this Convention, is not to be subjected to tax in a Contracting State, may be taken into account for calculating the rate of tax to be imposed in that Contracting State.

ARTICLE 24 : *Non-discrimination* – 1. 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. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

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. This provision shall not be construed as

preventing a Contracting State from charging the profits of a permanent establishment which a company of the other Contracting State has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first-mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7 of this Convention.

3. Nothing in this Article shall be construed as obliging a Contracting State to grant to the residents of the other Contracting State any personal allowances, reliefs or deductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

4. Except where the provisions of Article 9, paragraph 7 of Article 11 or paragraph 6 of Article 12 apply, interest, royalties and fees for technical services and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

5. 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 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 the first-mentioned State are or may be subjected.

6. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

ARTICLE 25 : *Mutual Agreement Procedure* – 1. Where a person considers that the action of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the

Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Convention.

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 a satisfactory 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 which is not in accordance with this Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law 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.

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. The competent authorities shall, through consultations, develop appropriate bilateral procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article.

ARTICLE 26 : *Exchange of Information* – 1. The competent authorities of the Contracting States shall exchange such information (including documents), as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is not contrary to this Convention in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this

Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. 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 and administrative practice of that or of the other Contracting State;
- (b) to supply information or documents 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 or documents 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 27 : *Diplomatic Agents and Consular Officers* – Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

ARTICLE 28 : *Collection Assistance* – 1. The Contracting States undertake to lend assistance to each other in the collection of taxes to which this Convention relates, together with interest, costs, and civil penalties relating to such taxes, referred to in this Article as a revenue claim.

2. Request for assistance by the competent authority of a Contracting State in the collection of a revenue claim shall include a certification by such authority that, under the laws of that State, the revenue claim has been finally determined. For the purposes of this Article, a revenue claim is finally determined when a Contracting State has the right under its internal law to collect the revenue claim and the taxpayer has no further rights to restrain collection.

3. Amount collected by the competent authority of a contracting State pursuant to this Article shall be forwarded to the competent authority of the other

Contracting State. However, the first-mentioned Contracting State shall be entitled to reimbursement of costs, if any, incurred in the course of rendering such assistance to the extent mutually agreed between the competent authorities of the two States.

4. Nothing in this Article shall be construed as imposing on either Contracting State the obligation to carry out administrative measures of a different nature from those used in the collection of its own taxes or those which would be contrary to its public policy.

ARTICLE 29 : *Entry into Force* – 1. The Contracting States shall notify each other in writing, through diplomatic channels, of the completion of the procedures required by the respective laws for the entry into force of this Convention.

2. This Convention shall enter into force thirty days after the receipt of the later of the Notifications referred to in paragraph 1 of this Article.

3. The provisions of this Convention shall have effect :

(a) in Trinidad and Tobago :

(i) in respect of taxes withheld at source, to income paid or credited on or after first January in the calendar year next following that in which this Convention enters into force;

(ii) in respect of other taxes on income, to income in any taxable year beginning on or after first January in the calendar year next following that in which this Convention enters into force; and

(b) in India, in respect of income derived in any fiscal year beginning on or after the first day of April next following the calendar year in which this Convention enters into force.

ARTICLE 30 : *Termination* – This Convention shall remain in force indefinitely until terminated by a Contracting State. Either Contracting State may terminate this Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year beginning after the expiration of five years from the date of entry into force of this Convention. In such event, this Convention shall cease to have effect :

(a) in Trinidad and Tobago :

(i) in respect of taxes withheld at source, to income paid or credited on or after first January in the calendar year next following that in which the notice is given ;

(ii) in respect of other taxes on income, to income in any taxable year beginning on or after first January in the calendar year next following that in which the notice is given ;

(b) in India, in respect of income derived in any previous year on or after the first April next following the calendar year in which the notice is given.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done in duplicate at Port of Spain this 8th day of February, 1999 in English and Hindi languages, both texts being equally authentic. In case of divergence, between the texts, the English text shall be the operative one.

Turkey

Agreement for avoidance of double taxation and the prevention of fiscal evasion with Turkey

Whereas the annexed Agreement between the Government of the Republic of India and the Government of the Republic of Turkey for the Avoidance of Double Taxation and the prevention of fiscal evasion with respect to taxes on income has come into force on the first day of February, 1997, after the notification by the Contracting States to each other of the completion of the procedures required for bringing into force the said Agreement in accordance with paragraph 1 of Article 27 of the said Agreement ;

Now, therefore, in exercise of the powers conferred under section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Agreement shall be given effect to in the Union of India :

Notification: No. SO 74(E), dated 3-2-1997.

ANNEXURE

AGREEMENT BETWEEN THE REPUBLIC OF INDIA AND THE REPUBLIC OF TURKEY FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE REPUBLIC OF TURKEY

Desiring to conclude an Agreement for the Avoidance of Double Taxation and the prevention of fiscal evasion with respect to taxes on income have agreed as follows :

ARTICLE 1 : *Personal scope* – This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2 : *Taxes covered* – 1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises as well as taxes on capital appreciation.

3. The existing taxes to which the Agreement shall apply are in particular :

(a) in the case of Turkey :

- (i) the income-tax (*gelir vergisi*) ;
- (ii) the corporation tax (*kurumlar vergisi*) ;
- (iii) the levy imposed on the income-tax and the corporation tax (hereinafter referred to as Turkish tax) ;

(b) in the case of India :

- (i) the income-tax including any surcharge thereon ;
- (hereinafter referred to as Indian tax).

4. The Agreement shall apply also to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of the Agreement in addition to or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of significant changes which have been made in their respective taxation laws.

ARTICLE 3 : *General definitions* – 1. For the purposes of this Agreement, unless the context otherwise requires :

- (a) (i) the term Turkey means the territory of the Republic of Turkey including any area in which the laws of Turkey are in force, as well as the maritime zones over which Turkey is entitled to sovereign rights and exercises jurisdiction in accordance with international law and Turkish law ;
- (ii) the term India means the territory of India and includes the territorial sea and air space above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdictions, according to the Indian law and in accordance with international law ;
- (b) the terms a Contracting State and the other Contracting State mean Turkey or India as the context requires ;

- (c) the term tax means Indian tax or Turkish tax as the context requires ;
- (d) the term person includes an individual, a company and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States ;
- (e) the term company means any body corporate or any entity which is treated as a company or body corporate under the taxation laws in force in the respective Contracting States ;
- (f) the term registered office shall have the same meaning which it has under the laws of each Contracting State ;
- (g) the term national means any individual possessing the nationality of a Contracting State and any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State ;
- (h) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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 competent authority means :
 - (i) in Turkey, the Minister of Finance or his authorised representative;
 - (ii) in India, the Central Government in the Ministry of Finance (Department of Revenue) or its authorised representative;
- (j) the term international traffic means any transport by a ship or an 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 the Agreement by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that State concerning the taxes to which the Agreement applies.

ARTICLE 4 : *Resident* – 1. For the purposes of this Agreement, the term resident of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of this domicile, resident, legal head office (registered office), 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 status shall be determined as follows :

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests) ;
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either 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, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall settle the question by mutual agreement in accordance with Article 25 of this Agreement.

ARTICLE 5 : *Permanent establishment* – 1. For the purposes of this Agreement, the term permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (a) a place of management ;
- (b) a branch ;
- (c) an office ;
- (d) a factory ;
- (e) a workshop ;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources ;
- (g) an installation or structure used for the exploration or exploitation of natural resources ;

- (h) a warehouse in relation to a person providing storage facilities for others ;
- (i) a premises used as a sales outlet or for receiving or soliciting orders;
- (j) (i) a building site or construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or activities (together with other such sites, projects or activities, if any) continue for a period of more than six months ; or
- (ii) where such project or supervisory activity, being incidental to the sale of machinery or equipment, continues for a period not exceeding six months and the charges payable for the project or supervisory activity exceed 10 per cent of the sale price of the machinery and equipment :

Provided that for the purpose of this paragraph, an enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it provides services or facilities in that Contracting State for more than six months in connection with or supplies plant and machinery on hire used or to be used in, the prospecting for, or extraction or production of mineral oils in the State.

3. Notwithstanding the preceding provisions of this Article, the term permanent establishment shall be deemed not to include :

- (a) the use of facilities solely for the purpose of storage, display or occasional delivery 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, display or occasional delivery ;
- (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 of collecting information, for the enterprise;
- (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 ;

- (f) the selling of goods or merchandise belonging to the enterprise displayed in an occasional temporary fair or exhibition in the process of closing down of such fair or exhibition ;
- (g) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (f).

4. Notwithstanding the provisions of paragraphs 1 and 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 that State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise,
- (b) he has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise, or
- (c) he habitually secures orders in the first-mentioned State, wholly for the enterprise itself or for the enterprise and other enterprises controlling, controlled by, or subject to the same common control, as that 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 State through a broker, general commission agent or any other agent of an independent status, provided that 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 State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6 : *Income from immovable property* – 1. Income derived by a resident of a Contracting State from immovable property (including income from

forestry) situated in the other Contracting State may be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the 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 and forestry, fishing places of every kind, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded 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, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, 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.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of business 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, in accordance with the provisions of and subject to the limitations of the taxation laws of that State.

4. 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.

5. For the purposes 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.

6. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8 : *Shipping and air transport* – 1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall mean profits derived by an enterprise described in paragraph 1 from the transportation by sea or air respectively of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of ships or aircraft including :

- (a) the sale of tickets for such transportation on behalf of other enterprises;
- (b) other activity directly connected with such transportation ; and
- (c) the rental of ships or aircraft incidental to any activity directly connected with such transportation.

3. Profits of an enterprise of a Contracting State described in paragraph 1 from the use, maintenance or rental of containers (including trailers, barges, and related equipment for the transport of containers) used in connection with the

operation of ships or aircraft in international traffic shall be taxable only in that State.

4. The provisions of paragraphs 1 and 3 shall also apply to profits from participation in a pool, a joint business or an international operating agency.

5. For the purposes of this Article, interest on funds connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft, and the provisions of Article 11 (Interest) shall not apply in relation to such interest.

ARTICLE 9 : *Associated enterprises* – 1. 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.

2. Where a Contracting State includes in the profits of an enterprise of that State and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are by the first-mentioned State claimed to be profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits, where that other State considers the adjustment justified. In determining such adjustment, due regard shall be had to the other provisions

of this Agreement and the competent authorities of the Contracting States shall, if necessary, consult each other.

ARTICLE 10 : *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 State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, in according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

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, jouissance shares or jouissance rights, founders 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, and income derived from an investment fund and investment trust.

4. Profits of a company of a Contracting State carrying on business in the other Contracting State through a permanent establishment situated therein may, after having been taxed under Article 7 be taxed on the remaining amount in the Contracting State in which the permanent establishment is situated and in accordance with paragraph 2 of this Article.

5. 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, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

ARTICLE 11 : *Interest* – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 beneficial owner of the interest the tax so charged shall not exceed :

- (a) 10 per cent of the gross amount, if such interest is paid on any loan of whatever kind granted by a bank or a financial institution; and
- (b) 15 per cent of the gross amount in all other cases.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State, provided that it is derived and beneficially owned by :

- (a) the Government, a political sub-division or a local authority of the other Contracting State;
- (b) the Central Bank of the other Contracting State; or
- (c) the Turkish Export-Import Bank (Exim Bank) and the EXIM Bank of India.

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 debtors profits, and in particular, income from Government securities and income from bonds or debentures, including premiums attaching to such securities, bonds or debentures, and other income assimilated to income from money lent which is treated as interest.

5. The provisions of paragraphs 1 and 2 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, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that 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 resident

of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base 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 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 the other provisions of this Agreement.

ARTICLE 12 : *Royalties and fees for technical services* – 1. Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties or fees for technical services may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties and fees for technical services, the tax so charged shall not exceed 15 per cent of the gross amount of the royalties or fees for technical services.

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 including 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 experiment.

4. The term fees for technical services as used in this Article means payments of any amount to any person other than payments to an employee of the person making payments, in consideration for the services of a managerial, technical or

consultancy nature, including the provisions of services of technical or other personnel.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services arise, through a permanent establishment situated therein, and the right or property or contract in respect of which the royalties or fees for technical services are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

6. Royalties or fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties or fees for technical services, 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 right or property or contract giving rise to the royalties or fees for technical services is effectively connected, and such royalties or fees for technical services are borne by such permanent establishment or fixed base then such royalties or fees for technical services 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 royalties or fees for technical services paid, having regard to the use, right, information or technical services 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 the other provisions of this Agreement.

ARTICLE 13 : *Capital gains* – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such a fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the registered office of the enterprise is situated.

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from the alienation of shares other than those mentioned in paragraph 4 in a company which is a resident of a Contracting State may be taxed in that State.

6. Gains from the alienation of any property other than that referred to in paragraphs 1 to 5 shall be taxable in the Contracting State of which the alienator is a resident. However, the capital gains mentioned in the foregoing sentence and derived from the other Contracting State shall be taxable in the other Contracting State if the time period does not exceed one year between acquisition and alienation.

ARTICLE 14 : *Independent personal services* – 1. Income derived by an individual who is a resident of a Contracting State from the performance of professional services or other independent activities of a similar character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State :

(a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in the relevant previous year or year of income, as the case may be; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

ARTICLE 15 : *Dependent personal services* – 1. Subject to the provisions of Articles 16, 18, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if :

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned in the case of Turkey and 183 days in the financial year concerned in the case of India, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft

operated in international traffic, may be taxed in the Contracting State in which the registered office of the enterprise is situated.

ARTICLE 16 : *Directors fees* – Directors fees and other 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 may be taxed in that other State.

ARTICLE 17 : *Artistes and sportspersons* – 1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply to income derived from activities performed in a Contracting State by artistes or sportspersons if the visit to that State is substantially supported directly or indirectly by public funds of the other Contracting State or a political sub-division or a local authority thereof. In such circumstances, such income shall be taxable only in the other State.

ARTICLE 18 : *Non-Government persons* – 1. Any pension, other than a pension referred to in Article 19, or any annuity derived by a resident of a Contracting State from sources within the other Contracting State for his past employment may be taxed only in the first-mentioned Contracting State. This provision shall also apply to life annuities paid to a resident of a Contracting State.

2. Pensions and life annuities paid, and other periodical or occasional payments made by a Contracting State, or one of its political sub-divisions in respect of insuring personal accidents, may be taxed only in that State.

3. The term pension means a periodic payment made in consideration of past employment or by way of compensation for injuries received in the course of performance of services.

4. 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 moneys worth.

ARTICLE 19 : *Remuneration and pensions in respect of Government services* –

1. (a) Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who :

(i) is a national of that State; or

(ii) not being the national of the first-mentioned State, did not become a resident of that State solely for purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of that other State.

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

ARTICLE 20 : *Teachers and students* – 1. Payments which a student or business apprentice who is a national of a Contracting State and who is present in the

other Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that other State, provided that such payments arise from sources outside that other State.

2. Likewise, remuneration received by a teacher or by an instructor who is a national of a Contracting State and who is present in the other Contracting State for the primary purpose of teaching or engaging in scientific research for a period or periods not exceeding two years shall be exempt from tax in that other State on his remuneration from personal services for teaching or research, provided that such payments arise from sources outside that other State.

3. Remuneration which a student or a trainee who is a national of a Contracting State derives from an employment which he exercises in the other Contracting State for a period or periods not exceeding 183 days in a calendar year in the case of Turkey and 183 days in a financial year in the case of India, in order to obtain practical experience related to his education or training shall not be taxed in that other State.

ARTICLE 21 : *Other income* – 1. Subject to the provisions of paragraph 2, items of income of a resident of a Contracting State, wherever arising, which are not expressly dealt with in the foregoing Articles of this Agreement shall be taxable only in that Contracting State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case, provisions of Article 7 shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with the foregoing Articles of this

Agreement arising in the other Contracting State may also be taxed in that other State.

ARTICLE 22 : *Elimination of double taxation – 1.* The laws in force in either of the Contracting States shall continue to govern the taxation of income in the respective Contracting States except where express provisions to the contrary is made in this Agreement.

2. (a) Where a resident of India derives income which, in accordance with the provisions of this Agreement, may be taxed in Turkey, India shall allow as deduction from the tax on the income of that resident an amount equal to the income-tax paid in Turkey, whether directly or by deduction. Such deduction in either case shall not, however, exceed that part of the income-tax (as computed before the deduction is given) which is attributable to the income which may be taxed in Turkey.

(b) Where a resident of India derives income which in accordance with the provisions of this Agreement, shall be taxable only in Turkey, India may include this income in the tax base but shall allow as a deduction from the income-tax that part of the income-tax which is attributable to the income derived from Turkey.

3. Double taxation for the residents of Turkey shall be eliminated as follows :

- (a) Where a resident of Turkey derives income covered by sub-paragraph (b) which, in accordance with the provisions of this Agreement, may be taxed in India, Turkey shall exempt such income from tax but may, in calculating tax on the remaining income of that person, apply that rate of tax which would have been applicable if the exempted income had not been so exempted.
- (b) Where a resident of Turkey derives income which in accordance with the provisions of Articles 10, 11, 12 and paragraph 6 of Article 13 of this Agreement, may be taxed in India, Turkey shall allow as a deduction from the tax on the income of that person, an amount equal to the tax paid in India.

Such deduction shall not, however, exceed, that part of the income-tax computed before the deduction is given, which is appropriate to the income which may be taxed in India.

ARTICLE 23 : *Non-discrimination* – 1. 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. Subject to the provisions of paragraph 4 of Article 10, the taxation of 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 in the same circumstances or under the same conditions. This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which an enterprise of the other Contracting State has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar enterprise of the first-mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7 of this Agreement.

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 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 the first-mentioned State are or may be subjected in the same circumstances or under the same conditions.

4. These provisions shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

ARTICLE 24 : *Exchange of information* – 1. The competent authorities of the Contracting States shall exchange such information (including documents) as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement, in particular for the prevention of fraud or evasion of such taxes. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State. However, if the information is originally regarded as secret in the transmitting State, it shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Agreement. Such persons or authorities shall use the information only for such purposes but may disclose the information in public Court proceedings or in judicial decisions. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchange of information shall be made, including where appropriate, exchange of information regarding tax avoidance.

2. 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 and the administrative practice of that or of the other Contracting State;
- (b) to supply information or documents 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 or documents 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 25 : *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 the provisions of this Agreement, 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 Agreement. Any agreement reached shall be implemented notwithstanding any time limits or other procedural limitations in the domestic laws of the Contracting States, provided that the competent authority of the other Contracting State has received notification that such a case exists within five years from the end of the taxable year to which the case relates.

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

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. 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.

ARTICLE 26 : *Diplomatic and consular officials* – Nothing in this Agreement 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 27 : *Entry into force* – 1. Each Contracting State shall notify to the other the completion of the procedure required as far as it is concerned for the bringing into force of this Agreement. This Agreement shall enter into force on the first day of the following month when the latter of those notifications has been received.

2. Its provisions shall have effect :

- (a) in Turkey, for taxes with respect to every taxable year beginning on or after the first day of January of the year Nineteen Hundred Ninety-four;
- (b) in India, for taxes with respect to every previous year beginning on or after the first day of April of the year Nineteen Hundred Ninety-four.

ARTICLE 28 : *Termination* – This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after expiration of a period of five years from the date of its entry into force. In such case, the Agreement shall cease to have effect :

- (a) in Turkey, for taxes with respect to every taxable year beginning on or after the first day of January of the year following that in which the notice of termination is given;
- (b) in India, for taxes with respect to every previous year beginning on or after the first day of April of the year following that in which the notice of termination is given.

IN WITNESS WHEREOF, the undersigned being duly authorised thereto have signed the present Agreement.

DONE in duplicate at New Delhi this 31st day of January, 1995 in the Hindi, Turkish and English languages, all three texts being equally authentic. In case of divergence between the texts, the English text shall be the operative one.

PROTOCOL

At the time of signing the Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income, concluded this day between the Republic of India and the Republic of Turkey, the undersigned have agreed that the following provisions shall form an integral part of the Agreement.

With respect to sub-paragraph (c) of paragraph 1 of Article 3

7. The term tax shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Agreement applies or which represents a penalty.

With respect to proviso to sub-paragraph (j) of paragraph 2 of Article 5

2. It is understood that an enterprise covered therein will be subject to taxation accordingly and not in accordance with provisions of Article 12 (Royalties and Fees for Technical Services) and Article 14 (Independent Personal Services).

With respect to paragraph 1 of Article 7

3. It is understood that, where an enterprise of a Contracting State has a permanent establishment in the other Contracting State, and the enterprise;

- (a) effects sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment, or
- (b) carries on other business activities in that other State of the same or similar kind as those effected through that permanent establishment,

profits derived from such sales and business activities may be taxed in that other Contracting State as part of the profits of the permanent establishment.

With respect to paragraph 3 of Article 7

4. With regard to a permanent establishment in India, it is understood that, the executive and general administrative expenses incurred outside India which will be allowed as a deduction in determining the profits of the permanent establishment shall be the least of the following amounts :

- (a) an amount equal to 5 per cent of the adjusted total income; or
- (b) an amount equal to the average head office expenditure; or
- (c) the amount of so much of the expenditure in the nature of head office expenditure incurred which is attributable to the business of the permanent establishment in India.

In a case where the adjusted total income is a loss, the amount under clause (a) above shall be computed at the rate of 5 per cent of the average adjusted total

income. The expressions adjusted total income, average adjusted total income, average head office expenditure and head office expenditure will have the same meaning as defined in the Indian Income-tax Act, 1961.

With respect to paragraph (1) of Article 23

5. It is understood that the expression in the same circumstances, refers to taxpayers (individuals, legal persons, partnerships and associations) placed from the point of view of the application of the ordinary taxation laws and regulations, in substantially similar circumstances both in law and in fact.

Amongst other things this means that a national of one of the States, resident of a third State and doing business in the other State will be subjected to the same taxation or requirements connected therewith in that other State to which a national of that other State, resident in a third State and doing business in that other State, is or may be subjected.

6. It is understood that the provisions of this Agreement shall not apply to income derived by a resident of a Contracting State from agricultural activities in the other Contracting State.

IN WITNESS WHEREOF, the undersigned being duly authorised thereto have signed the present Protocol.

DONE in duplicate at New Delhi this 31st day of January, 1995 in the Hindi, Turkish and English languages, all three texts, being equally authentic. In case of divergence between the texts, the English text shall be the operative one.

Turkmenistan

Agreement for avoidance of double taxation and the prevention of fiscal evasion with Turkmenistan

Whereas the annexed Convention between the Government of the Republic of India and the Government of Turkmenistan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital has entered into force on the seventh day of July, 1997 after the notification by the Contracting States to each other of the completion of procedures required by its law for bringing into force of the said Convention in accordance with Article 30 of the said Convention ;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961) and section 44A of the Wealth-tax Act, 1957 (27 of 1957), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in the Union of India.

Notification : No. GSR 567(E), dated 25-9-1997.

ANNEXURE

CONVENTION BETWEEN THE GOVERNMENT OF REPUBLIC OF INDIA AND THE GOVERNMENT OF TURKMENISTAN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Government of the Republic of India and the Government of Turkmenistan desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital and with a view to promoting economic co-operation between the two countries.

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. This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The taxes to which the Convention shall apply are in particular :

(a) In Turkmenistan :

- (i) the profits (income) tax ;
- (ii) the personal income-tax from the individuals ;
- (iii) the tax on natural resources ;
- (iv) the tax on the property of the enterprises ;
- (v) the payment for the lands ;
- (hereinafter referred to as Turkmen tax) ;

(b) In India :

- (i) the income-tax including any surcharge thereon ;
- (ii) the wealth-tax ;
- (hereinafter referred to as Indian tax).

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the taxes referred to in paragraph 3. The competent authorities of the Contracting States shall notify each other of significant changes which have been made in their respective taxation laws.

ARTICLE 3 : *General definitions* – 1. For the purposes of this Convention, unless the context otherwise requires :

- (a) the term Turkmenistan means Turkmenistan and, when used in a geographical sense, includes any area beyond the territorial waters of

Turkmenistan which in accordance with international law and the laws of Turkmenistan is an area within which Turkmenistan may exercise rights with respect to the seabed and subsoil and their natural resources;

- (b) the term India means the territory of India and includes the territorial sea and airspace above it, and other maritime zones in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law, including the UN Convention on the law of the Sea;
- (c) the term person includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States;
- (d) the term company means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (e) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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;
- (f) 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;
- (g) the term competent authority means :
 - (i) in Turkmenistan, the Head of the Main State Tax Inspectorate or his authorised representative;
 - (ii) in India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative;
- (h) the term national means :
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
- (i) the term fiscal year means :
 - (i) in the case of Turkmenistan, the calendar year from 1st of January to 31st of December of the year under review;

(ii) in the case of India, the previous year as defined under section 3 of the Income-tax Act, 1961;

(j) the term tax means Indian tax or Turkmen tax as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty imposed relating to those taxes.

2. As regards the application of the Convention by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

ARTICLE 4 : *Resident* – 1. For the purposes of this Convention, the term resident of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his status shall be determined as follows :

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 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 means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) sales outlet;
- (h) warehouse in relation to a person providing storage facilities for others.

3. The term permanent establishment likewise encompasses a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only when such site, project, or activities continue for a period of more than six months.

4. Notwithstanding the preceding provisions of this Article, the term permanent establishment shall be deemed not to include:

- (a) the use of facilities solely for the purpose 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 of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 7 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 Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:

- (a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
- (b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.

6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a

broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

8. 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 otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6 : *Income from immovable property* – 1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may also be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded 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, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, 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.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes 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, in accordance with the provisions of and subject to the limitations of the tax laws of that State.

4. 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.

5. For the purposes 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.

6. 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 : *Shipping and air transport* – 1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. Profits derived by a transportation enterprise which is a resident of a Contracting State from the use, maintenance, or rental of containers (including trailers and other equipment for the transport of containers) used for the transport of goods or merchandise in international traffic shall be taxable only in that Contracting State unless the containers are used solely within the other Contracting State.

3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9 : *Associated enterprises* – 1. 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.

2. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10 : *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 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 laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 10 per cent of the gross amount of the dividends. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation. 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 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 14, 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 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 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 State, nor subject the companys undistributed profits to a tax on the companys undistributed profits,

even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11 : *Interest* – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by:

- (i) the Government, a political sub-division or a local authority of the other Contracting State; or
- (ii) the Central Bank of the other Contracting State, or any other bank that may be mutually agreed upon between the two Contracting States.

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 right to participate in the debtors 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 and 2 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 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 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that 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 resident 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 such interest shall be deemed to arise in the 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 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 the other provisions of this Convention.

ARTICLE 12 : *Royalties and fees for technical services* – 1. Royalties or fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

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

3. (a) 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 including cinematograph films, or recordings on any means of reproduction for use in connection with radio or television

broadcasting, computer software, 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;

(b) The term fees for technical services means payments of any kind in consideration for the rendering of any managerial, technical or consultancy services including the provision of services by technical or other personnel but does not include payments for services mentioned in Articles 14 and 15 of this Convention.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services 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 or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

ARTICLE 13 : *Capital gains* – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft shall be taxable only in that State.

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from the alienation of shares other than those mentioned in paragraph 4 in a company which is a resident of a Contracting State may be taxed in that State.

6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14 : *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 State except in the following circumstances, when such income may also be taxed in the other Contracting State:

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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 State; or
- (b) if his stay in the other Contracting State is for a period or periods aggregating 183 days or more in any 12-month period commencing or ending in the fiscal year concerned; in that case only so much of the income as is derived from his activities performed in that other State in the year may be taxed in that other State.

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

ARTICLE 15 : *Dependent personal services* – 1. Subject to the provisions of Articles 16, 18 and 19, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any 12-month period commencing or ending in the fiscal year concerned, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and

(c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercise aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State

ARTICLE 16 : *Directors fees* – Directors fees and other 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 may be taxed in that other State.

ARTICLE 17 : *Artistes and sportsmen* – 1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply to income derived from activities performed in a Contracting State by entertainers or sportsmen if the visit to that State is substantially supported by public funds of one or both of the Contracting States or of political sub-divisions or local authorities thereof. In such a case, the income is taxable only in the Contracting State of which the entertainer or sportsman is a resident.

ARTICLE 18 : *Pensions* – Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

ARTICLE 19 : *Government service* – 1. (a) Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

ARTICLE 20 : *Students and apprentices* – 1. A student or business apprentice who is or was a resident of a Contracting state immediately before visiting the other Contracting State and who is present in that other Contracting State solely for the purpose of his education or training shall be exempt from tax in that other State on:

(a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training; and

(b) remuneration from employment in that other State, in an amount not exceeding US \$ 500 or its equivalent amount during any fiscal year,

as the case may be, provided that such employment is directly related to his studies or is undertaken for the purpose of his maintenance.

2. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article for more than five consecutive years from the date of his first arrival in that other Contracting State.

ARTICLE 21 : *Professors, teachers and research scholars* – 1. A professor or teacher who is or was a resident of the Contracting State immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college, school or other approved institution in that other Contracting state shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival in that other 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 20, an individual shall be deemed to be a resident of a Contracting State if he is a resident in that State in the fiscal year in which he visits the other Contracting State or in the immediately preceding fiscal year.

4. For the 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.

ARTICLE 22 : *Other income* – 1. Subject to the provisions of paragraph 2, items of income of a resident of a Contracting State, wherever arising, which are not expressly dealt with in the foregoing Articles of this Convention, shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient

of such income, being a resident of a Contracting State, carries on business in the other Contracting state 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 income is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention and arising in the other Contracting State may also be taxed in that other State.

ARTICLE 23 : *Capital* – 1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Capital represented by movable property, forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.

3. Capital owned by an enterprise of a Contracting State and represented by ships and aircraft operated in international traffic, and by movable property pertaining to the operations of such ships and aircraft, shall be taxable only in that State.

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

ARTICLE 24 : *Elimination of double taxation* – 1. The laws in force in either of the Contracting States will continue to govern the taxation of income and capital in the respective Contracting States, except where provisions to the contrary are made in this Convention.

2. Where a resident of India derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Turkmenistan, India shall allow as a deduction from the tax on the income of that resident, an amount equal to the income-tax paid in Turkmenistan, whether directly or by deduction; and as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in Turkmenistan. Such deduction in either case shall not, however, exceed that part of income-tax or tax on capital (as paid before the deduction is given), which is attributable to the income or the capital which may be taxed in Turkmenistan.

3. In the case of Turkmenistan, the double taxation shall be avoided by a method which is identical to that mentioned in paragraph 2.

4. For the purposes of paragraphs 2 and 3 of this Article, the tax payable in the Contracting State shall be deemed to include the tax which would have been payable but for the tax incentives according to which such tax is not payable under the laws of the Contracting State and which are designed to promote economic development.

5. Income which in accordance with the provisions of this Convention, is not to be subjected to tax in a Contracting State, may be taken into account for calculating the rate of tax to be imposed in that Contracting State.

ARTICLE 25 : *Non-discrimination* – 1. 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, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

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. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State

any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents. This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which an enterprise of the other Contracting State has in the first-mentioned Contracting state at a rate higher than that imposed on the profits of similar enterprise of the first-mentioned State, nor as being in conflict with the provisions of paragraph 3 of Article 7 of this Convention.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 6 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties, fees for technical services and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting state shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first mentioned State.

4. 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 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 the first mentioned State are or may be subjected.

5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

ARTICLE 26 : *Mutual agreement procedure* – 1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 25, to that of the

Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

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 a satisfactory 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 which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time-limits in the domestic law 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 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. 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.

ARTICLE 27 : *Exchange of information* – 1. The competent authorities of the Contracting States shall exchange such information (including documents) as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals, in relation to, the taxes covered by the Convention. Such persons or authorities shall use the

information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. 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 and administrative practice of that or of the other Contracting State;
- (b) to supply information or documents 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 28 : *Collection assistance* – 1. The Contracting States undertake to lend assistance to each other in the collection of taxes to which this Convention relates, together with interest, costs and civil penalties relating to such taxes, referred to in this Article as a revenue claim.

2. Request for assistance by the competent authority of a Contracting State in the collection of a revenue claim shall include a certification by such authority that, under the laws of that State, the revenue claim has been finally determined. For the purposes of this Article, a revenue claim is finally determined when a Contracting State has the right under its internal law to collect the revenue claim and the taxpayer has no further rights to restrain collection.

3. Amounts collected by the competent authority of a Contracting State pursuant to this Article shall be forwarded to the competent authority of the other Contracting State. However, the first-mentioned Contracting State shall be entitled to reimbursement of costs, if any, incurred in the course of rendering of such assistance to the extent mutually agreed between the competent authorities of the two States.

4. Nothing in this Article shall be construed as imposing on either Contracting State the obligation to carry out administrative measures of a different nature from those used in the collection of its own taxes or those which would be contrary to its public policy.

ARTICLE 29 : *Diplomatic agents and consular officers* – Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

ARTICLE 30 : *Entry into force* – 1. Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Convention. This Convention shall enter into force on the date of the later of these notifications and shall thereupon have effect:

- (a) in India, in respect of income or capital arising in any fiscal year beginning on or after the first day of April next following the calendar year in which the Convention enters into force; and
- (b) in Turkmenistan, in respect of income or capital arising in any fiscal year beginning on or after the first day of January next following the calendar year in which the Convention enters into force.

ARTICLE 31 : *Termination* – This Convention shall remain in force indefinitely until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year beginning after the expiration of five years from the date of entry into force of the Convention. In such event, the Convention shall cease to have effect:

- (a) in India, in respect of income arising in any previous year beginning on or after the 1st April next following the calendar year in which the notice is given in respect of capital which is held at the expiry of any previous year beginning on or after the 1st April next following the calendar year in which the notice of termination is given;
- (b) in Turkmenistan, in respect of income arising in any year of income beginning on or after the 1st January next following the calendar year in which the notice is given and in respect of capital which is held at the

expiry of any year of income next following the calendar year in which the notice of termination is given.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto, have signed this Convention.

DONE in duplicate at New Delhi this 25th day of February, 1997 in the Turkmen, Hindi and English Languages, all three texts being equally authentic. In case of divergence between the texts, the English text shall be the operative one.

PROTOCOL

At the signing of the Convention between the Government of the Republic of India and the Government of Turkmenistan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income and on capital, the undersigned have agreed the following shall form an integral part of the Convention.

With reference of Article 7:

In respect of paragraphs 1 and 2 of Article 7, where an enterprise of one of the Contracting States sells goods or merchandise or carries on business in the other Contracting State through a permanent establishment situated therein, the profits of that permanent establishment shall not be determined on the basis of the total amount received by the enterprise, but shall be determined only on the basis of the remuneration which is attributed to the actual activity of the permanent establishment for such sales or business. For instance, in the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, when the enterprise has a permanent establishment, the profits of such permanent establishment shall not be determined on the basis of the total amount of the contract, but shall be determined only on the basis of that part of the contract which is effectively carried out by the permanent establishment in the Contracting State where the permanent establishment is situated.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto, have signed this Protocol.

DONE in duplicate at New Delhi this 25th day of February, 1997 in Turkmen, Hindi and English languages, all texts being equally authentic. In case of divergence between the texts, the English text shall prevail.

UAE**Comprehensive Agreement****Agreement for avoidance of double taxation and the prevention of fiscal evasion with United Arab Emirates**

Whereas the annexed agreement between the Government of the United Arab Emirates 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 and on capital has entered into force on the 22nd September, 1993 after the notification by both the Contracting States to each other of the completion of the proceedings required by laws for bringing into force of the said agreement in accordance with paragraph 1 of Article 30 of the said agreement.

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964) and section 44A of the Wealth-tax Act, 1957 (27 of 1957), the Central Government hereby directs that all the provisions of the said agreement shall be given effect to in the Union of India.

Notification : No. GSR 710(E), dated 18-11-1993, as amended by Notification No. SO 2001(E), dated 28-11-2007.¹

ANNEXURE

**AN AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE
GOVERNMENT OF THE UNITED ARAB EMIRATES FOR THE AVOIDANCE OF DOUBLE
TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON
INCOME AND ON CAPITAL**

The Government of the Republic of India and the Government of the United Arab Emirates desiring to promote mutual economic relations by concluding an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital have agreed as follows :

ARTICLE 1 – *Personal scope* – This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2 – *Taxes covered* – 1. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital including taxes on gains from alienation of movable or immovable property as well as on capital appreciation.

2. The existing taxes to which the Agreement shall apply are :

(a) In United Arab Emirates :

- (i) income-tax ;
 - (ii) corporation tax ;
 - (iii) wealth-tax
- (hereinafter referred to as U.A.E. tax) ;

(b) In India :

- (i) the income-tax including any surcharge thereon ;
 - (ii) the surtax ; and
 - (iii) the wealth-tax
- (hereinafter referred to as Indian tax).

3. This Agreement shall also apply to any identical or substantially similar taxes on income or capital which are imposed at Federal or State level by either Contracting State in addition to, or in place of, the taxes referred to in paragraph 2 of this Article. The competent authorities of the Contracting State shall notify each other of any substantial changes which are made in their respective taxation laws.

ARTICLE 3 – *General definitions* – 1. In this Agreement, unless the context otherwise requires :

- (a) the term India means the territory of India and includes the territorial sea and air space above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdictions, according to the Indian law and in accordance with inter-national law ;

- (b) the term U.A.E. means the United Arab Emirates and when used in a geographical sense, means all the territory of the United Arab Emirates including its territorial sea in which the U.A.E. laws relating to taxation apply and any area beyond its territorial sea within which the United Arab Emirates has sovereign rights of exploration or the exploitation or resources of the seabed and its sub-soil and superjacent water resources in accordance with international law ;
- (c) the terms a Contracting State and the other Contracting State mean U.A.E. or India as the context requires ;
- (d) the term tax means Indian tax or U.A.E. tax as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Agreement applies or which represents a penalty imposed relating to those taxes ;
- (e) the term person includes an individual, a company, and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting State ;
- (f) the term company means any body corporate or any entity which is treated as a company or body corporate under the taxation laws in force in the respective Contracting States ;
- (g) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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 ;
- (h) the term national means :
 - (i) in the case of U.A.E. all individuals possessing the nationality of U.A.E. in accordance with U.A.E. laws and any legal person, partnership and other body corporate deriving its status as such from U.A.E. laws ;
 - (ii) in the case of India, any individual possessing the nationality of India and any legal person, partnership, or association deriving its status as such from the laws in force in India ;
- (i) the term international traffic means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State except when the ship or aircraft is operated solely between places in the other Contracting State ;

(j) the term competent authority means :

- (i) in the case of U.A.E., the Minister of Finance and Industry or his authorised representative ; and
- (ii) in the case of India, the Central Government or the Ministry of Finance (Department of Revenue) or their authorised representative.

2. As regards the application of the Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that State concerning the taxes to which the Agreement applies.

ARTICLE 4 – *Resident* – 1. For the purposes of this Agreement the term resident of a Contracting State means:

(a) in the case of India: any person who, under the laws of India, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. This term, however, does not include any person who is liable to tax in India in respect only of income from sources in India; and

(b) in the case of the United Arab Emirates: an individual who is present in the UAE for a period or periods totalling in the aggregate at least 183 days in the calendar year concerned, and a company which is incorporated in the UAE and which is managed and controlled wholly in UAE.

2. For the purposes of paragraph 1:

(a) The Republic of India, its political sub-divisions or local authority thereof shall be deemed to be resident of the Republic of India;

(b) The United Arab Emirates and its political sub-divisions or local Governments shall be deemed to be resident of the United Arab Emirates;

(c) Government institutions shall be deemed, according to affiliation, to be resident of the Republic of India or the United Arab Emirates. Any institution shall be deemed to be a Government institution which has been created by the Government of one of the Contracting States or of its political

sub-divisions or local authority/Governments, which are wholly owned and controlled directly or indirectly by the Government of the Contracting State or political sub-division or local authority/Governments which are recognized as such by mutual agreement of the competent authorities of the Contracting States.

(d) For the purposes of this article, Abu Dhabi Investment Authority is recognized as a resident of the United Arab Emirates.

3. Where by reason of the provisions of paragraph (1), an individual is a resident of both Contracting State, then his status shall be determined as follows :

(a) he shall be deemed to be resident of the State in which he has a permanent home available to him ; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests) ;

(b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;

(c) if he has an habitual abode in both States or in either of them, he shall be deemed to be a resident of the State of which he is a national ;

(d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

4. 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 State in which its place of effective management is situated.

ARTICLE 5 – *Permanent establishment* – 1. For the purposes of this Agreement, the term permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (a) a place of management ;
- (b) a branch ;
- (c) an office ;
- (d) a factory ;
- (e) a workshop ;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources ;
- (g) a farm or plantation ;
- (h) a building site or construction or assembly project or supervisory activities in connection therewith, but only where such site, project or activity continues for a period of more than 9 months ;
- (i) the furnishing of services including consultancy services by an enterprise of a Contracting State through employees or other personnel in the other Contracting State, provided that such activities continue for the same project or connected project for a period or periods aggregating more than 9 months within any twelve-month period.

3. Notwithstanding the preceding provisions of this Article, the term permanent establishment shall be deemed not to include :

- (a) the use of facilities solely for the purpose of storage, display or delivery 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, display or delivery ;
- (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 of collecting information, for the enterprise ;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character.

4. Notwithstanding the provisions of paragraphs (1) and (3), where a person – other than an agent of independent status to whom paragraph (5) applies – is acting on behalf of an enterprise and has, and habitually exercises in a Contracting State an authority to conclude contracts on behalf of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person 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 State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of independent status within the meaning of this paragraph.

ARTICLE 6 – *Income from immovable property* – 1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph (1) shall also 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, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph (3), 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.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business 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, in accordance with the provisions of and subject to the limitations of the tax laws of that State.

4. Insofar 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 methods of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by the permanent establishment of goods or merchandise for the enterprise.

6. For the purposes of 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 Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8 – *Shipping* – 1. Profits derived by an enterprise of a Contracting State from the operation by that enterprise of ships in international traffic shall be taxable only in that State.

2. For the purposes of this Article, profits from the operation of ships in international traffic shall mean profits derived by an enterprise described in paragraph (1) from the transportation by sea of passengers, mail, livestock or goods and shall include :

- (a) the charter or rental of ships incidental to such transportation ;
- (b) the rental of containers and related equipments used in connection with the operation of ships in international traffic ;
- (c) the gains derived from the alienation of ships, containers and related equipments owned and operated by the enterprise in international traffic.

3. For the purposes of this Article, interest on funds connected with the operation of ships in international traffic shall be regarded as profits derived from the operation of such ships and the provisions of Article 11 shall not apply in relation to such interest.

4. The provisions of paragraphs (1), (2) and (3) shall apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9 – *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 10 – *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 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 laws of that State, but if the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed 10 per cent.

3. The term dividends as used in this Article means income from shares of 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 14, 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 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 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 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 State.

ARTICLE 11 – *Interest* – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed :

- (a) 5 per cent of the gross amount of the interest if such interest is paid on a loan granted by a bank carrying on a *bona fide* banking business or by a similar financial institution ; and
- (b) 12.5 per cent of the gross amount of the interest in all other cases.

3. Notwithstanding the provisions of paragraph (2) interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by :

- (i) the Government, a political sub-division or a local authority of the other Contracting State ; or
- (ii) the Central Bank of the other Contracting State.

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 debtors 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) and (2) 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 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 14, 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 resident 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 such 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 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 the other provisions of this Agreement.

ARTICLE 12 – *Royalties* – 1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that 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 such royalties.

3. The term royalties as used in this Article means payment of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematography 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 do not include royalties or other payments in respect of the operation of mines or quarries or exploitation of petroleum or 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 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that 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 the other provisions of this Agreement.

ARTICLE 13 – *Capital gains* – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in paragraph (2) of Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such fixed base may be taxed in that other State.

3. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

ARTICLE 14 – *Independent personal services* – 1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State, except in the following circumstances when such income may also be taxed in the other Contracting State :

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in the relevant previous year or year of income, as the case may be; in that case only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

ARTICLE 15 – *Dependent personal services* – 1. Subject to the provisions of Articles 16, 17, 18, 19, 20 and 21, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the relevant previous year or year of income, as the case may be ; and
- (b) the remuneration is paid by, or on behalf on, an employer who is not a resident of the other State ; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State shall be taxable only in that State.

ARTICLE 16 – *Directors' fees* – Directors 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 may be taxed in that other State.

ARTICLE 17 – *Income earned by entertainers and athletes* – 1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer such as a 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 State.

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 an athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. Notwithstanding the provisions of paragraph (1), income derived by an entertainer or an athlete who is a resident of a Contracting State from his personal activities as such exercised in the other Contracting State, shall be taxable only in the first-mentioned Contracting State, if the activities in the other Contracting State are supported wholly or substantially from the public funds of the first-mentioned Contracting State, including any of its political sub-divisions or local authorities.

4. Notwithstanding the provisions of paragraph (2) and Articles 7, 14 and 15, where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such in a Contracting State accrues not to the entertainer or athlete himself but to another person, that income shall be taxable only in the other Contracting State, if that other person is supported wholly or substantially from the public funds of that other State, including any of its political sub-divisions or local authorities.

ARTICLE 18 – *Remuneration and pensions in respect of Government service* 1. (a) Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who :

(i) is a national of that State ; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of that other State.

3. The provisions of Articles 15, 16 and 17 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

ARTICLE 19 – *Non-Government pensions and annuities* – 1. Any pension, other than a pension referred to in Article 18, or any annuity derived by a resident of a Contracting State from sources within the other Contracting State may be taxed only in the first-mentioned Contracting State.

2. The term pension means a periodic payment made in consideration of past services or by way of compensation for injuries received in the course of performance of services.

3. 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 moneys worth.

ARTICLE 20 – *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 as a student at a recognised university, college, school or other educational institution in that other Contracting State or as a business or technical apprentice therein, for a period not exceeding six years from the date of his first arrival in that other Contracting State in connection with that visit, shall be exempt from tax in that other Contracting State on

(a) all remittances from the first-mentioned Contracting State for the purposes of his maintenance, education or training ; and

- (b) any remuneration (not exceeding 20,000 Indian rupees or its equivalent sum in U.A.E. currency per annum) for personal services rendered in that other Contracting State with a view to supplementing the resources available to him for such purposes.

2. An individual who is a resident of a Contracting State and who is temporarily present in the other Contracting State for the purpose of study, research or training solely as a recipient of a grant, allowance or award from the Government of either of the Contracting States or from a scientific, educational, religious or charitable organisation or under a technical assistance programme entered into by the Government of either of the Contracting States for a period not exceeding three years from the date of his first arrival in that other Contracting State in connection with that visit shall be exempt from tax in that other Contracting State on

- (a) the amount of such grant, allowance or award ;
- (b) all remittances from the first-mentioned Contracting State for the purposes of his maintenance, education or training ; and
- (c) any remuneration (not exceeding 20,000 Indian rupees or its equivalent sum in U.A.E. currency per annum) in respect of services in that other Contracting State if the services are performed in connection with his study, research, training or are incidental thereto.

3. An individual who is a resident of a Contracting State and who is temporarily present in the other Contracting State solely as an employee of, or under contract with an enterprise of the first-mentioned Contracting State solely for the purpose of acquiring technical, professional or business experience from a person other than such enterprise, for a period not exceeding twelve months from the date of his first arrival in that other Contracting State in connection with that visit shall be exempt from tax in that other Contracting State on

- (a) all remittances from the first-mentioned Contracting State for the purposes of his maintenance, education or training; and
- (b) any remuneration, so far as it is not in excess of 20,000 Indian rupees or its equivalent sum in U.A.E. currency per annum, for personal services rendered in

that other Contracting State, provided such services are in connection with the acquisition of such experience.

4. 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 solely for the purpose of training or study shall be exempt from tax in that other Contracting State in respect of remuneration received by him on account of such training or study.

(5) For the purposes of this Article and Article 21,

(a) (i) an individual shall be deemed to be a resident of India if he is resident in India in the previous year in which he visits UAE or in the immediately preceding previous year ;

(ii) an individual shall be deemed to be a resident of UAE if, immediately before visiting India, he is a resident of UAE ;

(b) the term recognised in relation to a university, college, school or other educational institution in a Contracting State shall, in the case of doubt, be determined by the competent authority of that State.

ARTICLE 21 – *Professors, teachers and researchers* – 1. An individual who is a resident of a Contracting State immediately before making a visit to the other Contracting State, and who, at the invitation of any university, college, school or other similar educational institution, which is recognised by the Government, a political sub-division or a local or statutory authority of that State, visits that other Contracting State for a period not exceeding two years solely for the purpose of teaching or research or both at such educational institution, shall be exempt from tax in that other Contracting State on his remuneration for such teaching or research.

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.

ARTICLE 22 – *Other income* – 1. Subject to the provisions of paragraph (2), items of income of a resident of a Contracting State, wherever arising, which are not expressly

dealt with in the foregoing articles of this Agreement, shall be taxable only in that Contracting State.

2. The provisions of paragraph (1) shall not apply to income, other than income from immovable property as defined in paragraph (2) of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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 income is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

ARTICLE 23 – *Capital* – 1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that State.

2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.

3. Capital represented by ships operated in international traffic and by movable property pertaining to the operation of such ships, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

ARTICLE 24 – *Income of Government and institutions* – 1. Notwithstanding the provisions of Article 13, the Government of one Contracting State shall be exempt from tax, including capital gains 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 political sub-divisions, the local authorities, the local administrations, and the local Governments ;
 - (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 U.A.E., means the Government of the United Arab Emirates, and shall include :
- (i) the political sub-divisions, the local authorities, the local administrations, and the local Governments ;
 - (ii) The Central Bank of the United Arab Emirates, Abu Dhabi Investment Authority and Abu Dhabi Fund for Economic Development ;
 - (iii) any such institution or body as may be agreed from time to time between the two Contracting States.

ARTICLE 25 – *Elimination of double taxation* – 1. The laws in force in either of the Contracting States shall continue to govern the taxation of income and capital in the respective Contracting States except where express provisions to the contrary are made in this Agreement.

2. Where a resident of India derives income or owns capital which, in accordance with the provisions of this Agreement, may be taxed in U.A.E., India shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in U.A.E. whether directly or by deduction; and as a deduction from the tax on the capital of that resident an amount equal to the capital tax paid in U.A.E. Such deduction in either case shall not, however, exceed that part of the income-tax or capital tax (as computed before the deduction is given) which is attributable, as the case may be, to the income or the capital which may be taxed in U.A.E. Further, when such resident is a company by which surtax is payable in India, the deduction in respect of income-tax paid in U.A.E. shall be allowed in the first instance from income-tax payable by the company in India and as to the balance, if any, from the surtax payable by it in India.

3. Subject to the laws of the U.A.E. where a resident of the U.A.E. derives income which in accordance with the provisions of this Agreement may be taxed in India, the U.A.E. shall allow as a deduction from the tax on income of that person an amount equal to the tax on income paid in India. Such deduction shall not, however, exceed that part of income-tax as computed before the deduction is given, which is attributable to the income which may be taxed in the U.A.E.

4. For the purpose of paragraph (3), the term tax paid in India shall be deemed to include the amount of Indian tax which would have been paid if the Indian tax had not been exempted or reduced in accordance with the special incentive measures under the provisions of the Income-tax Act, 1961, which are designed to promote economic development in India, effective on the date of signature of this Agreement, or which may be introduced in the future in modification of, or in addition to, the existing provisions for promoting economic development in India, and such other incentive measures which may be agreed upon from time to time by the Contracting States.

5. Where, in accordance with any provision of the Agreement, income derived or capital owned by a resident of a Contracting State is exempt from tax in that State, such State may, nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

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 Contracting State carrying on the same activities in the same circumstances or under the same conditions. This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which a company of the other Contracting State has in the first mentioned State at a rate of tax which is higher than

that imposed on the profits of a similar company of the first mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7.

3. The provisions of this Article shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

4. 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 in the same circumstances and under the same conditions.

5. In this Article, the term taxation means taxes which are the subject of this Agreement.

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 Agreement, 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. This case must be presented within two years of the date of receipt of notice of the action which gives rise to taxation not in accordance with the Agreement.

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 avoidance of taxation not in accordance with the Agreement. 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 the Agreement. When it seems advisable in order to reach agreement to have an oral exchange of opinion, such exchange may take place through a commission consisting of representatives of the competent authorities of the Contracting States. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of applying this Agreement.

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 the Agreement or for the prevention or detection of evasion of taxes which are the subject of this Agreement. 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, investigation or prosecution in respect of the taxes which are the subject of this Agreement, or to persons with respect to whom the information relates.

2. The exchange of information may also be on request with reference to particular cases.

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 or documents 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 or documents 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 29 – *Limitation of benefits* – An entity which is a resident of a Contracting State shall not be entitled to the benefits of this Agreement if the main purpose or one of the main purposes of the creation of such entity was to obtain the benefits of this Agreement that would not be otherwise available. The cases of legal entities not having *bona fide* business activities shall be covered by this Article.

ARTICLE 30 – *Diplomatic and consular activities* – Nothing in this Agreement 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 31 – *Entry into force* – 1. Each of the Contracting States shall notify to the other completion of the proceedings required by its law for the bringing into force of this Agreement. The Agreement shall enter into force on the date of the later of these notifications and shall thereupon have effect

(a) in the United Arab Emirates :

in respect of income derived on or after the 1st January next following the calendar year in which the Agreement enters into force and in respect of capital which is held at the expiry of the calendar year next following that in which the agreement enters into force or subsequent years ;

(b) in India :

in respect of income arising in any previous year beginning on or after 1st April next following the calendar year in which the Agreement enters into force and in respect of capital which is held at the expiry of any previous year beginning on or after 1st April next following the calendar year in which the Agreement enters into force.

ARTICLE 32 – *Termination* – This Agreement shall remain in force indefinitely, but either of the Contracting States may, on or before 30th June 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 Agreement shall cease to have effect

(a) in the United Arab Emirates :

in respect of income derived on or after 1st January next following the calendar year in which the notice of termination is given and in respect of capital which is held at the expiry of the calendar year next following that in which the notice of termination is given or subsequent years ;

(b) in India :

in respect of income arising in any previous year beginning on or after 1st April next following the calendar year in which the notice of termination is given and in respect of capital which is held at the expiry of any previous year beginning on or after 1st April next following the calendar year in which the notice of termination is given.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto, have signed this Agreement.

DONE in two originals at New Delhi on this Wednesday, 29th day of April, One Thousand Nine Hundred and Ninety-two corresponding to the 27th day of Shawwal 1412 H in the Hindi, Arabic and English languages, all texts being equally authentic. In case of divergence amongst the texts, the English text shall be the operative one.

PROTOCOL

At the signing today of the Agreement between the Government of the Republic of India and the Government of the United Arab Emirates for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income and on capital, the undersigned have agreed upon the following provisions which shall form an integral part of this Agreement :

- (i) Subject to the provisions of Article 5, nothing in this Agreement shall affect the right of the Government of the United Arab Emirates, its political sub-divisions, local authorities or local Governments to apply its own laws related to the taxation of income derived from the petroleum and natural resources; such activities will be taxed according to the laws of the United Arab Emirates ;

- (ii) Notwithstanding the provisions of Article 6 and Article 23, the residential property owned by a national of a Contracting State and occupied for self-residence in the other Contracting State shall be exempt in the other Contracting State from the taxes covered by this Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto, have signed this Protocol.

DONE in two originals at New Delhi on this Wednesday, 29th day of April, One Thousand Nine Hundred and Ninety-two corresponding to the 27th day of Shawwal 1412 H in the Hindi, Arabic and English languages, all texts being equally authentic. In case of divergence amongst the texts, the English text shall be the operative one.

JUDICIAL ANALYSIS

..Assessee is to be regarded as resident of India within meaning of para 1 of article 4 of DTA between India and UAE if he is liable to tax under Income-tax Act on income accrued or received in India – *Mohsinally Alimohammed Rafik v. CIT* [1995] [79 Taxman 75](#) (AAR – New Delhi).

· Under tax treaty between India and UAE income received/receivable in India by way of dividend is liable to tax in India at 15 per cent *Mohsinally Alimohammed Rafik v. CIT* [1995] 79 Taxman 75 (AAR – New Delhi).

..In terms of tax treaty between India and UAE, income received/receivable in India by way of interest on debentures/bonds/balance in capital account in partnership firm, is liable to tax in India at 12.5 per cent *Mohsinally Alimohammed Rafik v. CIT* [1995] 79 Taxman 75 (AAR – New Delhi).

..Though according to strict interpretation of article 4 of DTA only persons who are actually subjected to tax in UAE can be treated as resident of UAE to qualify for lower rate of tax in India, a liberal interpretation according to which persons who could be made liable to tax in UAE though not actually subjected to tax in UAE can be regarded as residents of UAE so as to be eligible for benefit of lower rate of tax in India, should

be adopted *Mohsinally Alimohammed Rafik v. CIT* [1995] 79 Taxman 75 (AAR – New Delhi).

..Where assessee was non-resident Indian national living and working in Dubai for past seventeen years with short visits to India and he had residential house property in India as well as in Dubai, though applicant could be regarded as resident of both India and UAE, in terms of article 4(2)(a), he was to be regarded as resident of Dubai, inasmuch as his centre of vital interests or his personal and economic ties were closer to Dubai than to India *Mohsinally Alimohammed Rafik v. CIT* [1995] 79 Taxman 75 (AAR – New Delhi).

..DTA between India and UAE came into force on 29-9-1993 and it followed that all income arising to the applicant on or after 1-4-1994 would be governed by the agreement, and therefore, the dates of acquisition of the assets which yielded the income, was irrelevant for purposes of applying agreement *Mohsinally Alimohammed Rafik v. CIT* [1995] 79 Taxman 75 (AAR – New Delhi).

..See also *Dr. Rajni Kant R. Bhatt v. CIT* [1996] 89 Taxman 82 (AAR – New Delhi).

Applicable rates of taxes under the Double Taxation Avoidance Agreement between India and the United Arab Emirates

1. It has been represented by some Non-Resident Indians in the United Arab Emirates (UAE) that the banks and the U.T.I. have been deducting tax at source on interest and dividend incomes at rates higher than those provided in the Double Taxation Avoidance Agreement between India and the United Arab Emirates. This has forced the Non-Resident Indians to seek remedy by way of refunds. It also appears that in each of such cases where refund was due and where decision on the applicability of the DTAA was involved, they had been advised to file a petition before the Authority for Advance Rulings.

2. The Board in its Circular No. 728, dated 30th October, 1995 (see Annex) have already clarified that in case of a remittance to a country with which a Double Taxation Avoidance Agreement is in force, tax should be deducted at the rates provided in the

Finance Act of the relevant year or at the rates provided in the DTAA, whichever is more beneficial to the assessee.

3. Once again it is clarified that in respect of payments to be made to the Non-Resident Indians at the UAE, tax at source must be deducted at the following rates :

(i) Dividends :

(a) 5% of the gross amount of the dividends if the beneficial owner is a company which owns at least 10% of the shares of the company paying the dividends.

(b) 15% of the gross amount of the dividends in all other cases.

(ii) Interest :

(a) 5% of the gross amount of the interest if such interest is paid on a loan granted by a bank carrying on a *bona fide* banking business or by a similar financial institution.

(b) 12% of the gross amount of the interest in all other cases.

(iii) Royalties :

10% of the gross amount.

4. It is essential that the above rates which are enshrined in the DTAA between India and the UAE are strictly adhered to so as to avoid unnecessary harassment of the taxpayers.

Circular : No. 734, dated 24-1-1996.

ANNEX

1. It has been represented to the Board that when making remittances of the nature of royalties and technical fees, tax is being deducted at source at the rates specified in the Finance Act of the relevant year, without taking into account the special rates for taxation of such income provided for under the Double Taxation Avoidance Agreement with the country concerned.

2. The expression rates in force has been defined in section 2(37A) of the Income-tax Act. Under sub-clause (iii) of section 2(37A), for the purposes of deduction of tax under section 195, the expression is to mean the rate or rates of income-tax specified

in this behalf in the Finance Act in the relevant year or the rates of tax specified in the Double Taxation Avoidance Agreement entered into by the Central Government whichever is applicable by virtue of the provisions of section 90 of the Income-tax Act, 1961.

3. It is hereby clarified that in view of the provisions of sub-section (2) of section 90 of the Act, in the case of a remittance to a country with which a Double Taxation Avoidance Agreement is in force, the tax should be deducted at the rate provided in the Finance Act of the relevant year or at the rate provided in the DTAA, whichever is more beneficial to the assessee.

Circular : No. 728, dated 30-10-1995.

Limited Agreements with respect to Income of Airlines/Merchant Shipping

Agreement for avoidance of double taxation of income from international air transport with UAE*

Whereas the annexed Agreement between the Government of the Republic of India and the Government of the United Arab Emirates for the avoidance of double taxation of income derived from international air transport will enter into force on 1-12-1989 on the notification by both the Contracting States to each other of the completion of the procedures required by their respective laws, as required by Article 6 of the said Agreement;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961) and section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964), the Central Government hereby directs that all the provisions of the said Agreement shall be given effect to in the Union of India.

Notification : GSR 969(E), dated 8-1-1989.

ANNEXURE

**AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE
GOVERNMENT OF THE UNITED ARAB EMIRATES FOR THE AVOIDANCE OF DOUBLE
TAXATION OF INCOME DERIVED FROM INTERNATIONAL AIR TRANSPORT**

The Government of the Republic of India and the Government of United Arab Emirates, desiring to conclude an Agreement for the avoidance of double taxation of income derived from international air transport, have agreed as follows :

ARTICLE 1 – *Taxes covered* – 1. The taxes to which this Agreement shall apply are :

- (a) In the case of the United Arab Emirates, the income-tax as imposed by the Federal Government of the United Arab Emirates (hereinafter referred to as United Arab Emirates Tax).
- (b) In the case of India :
 - (i) the income-tax including any surcharge thereon ; and
 - (ii) the surtax.(hereinafter referred to as Indian tax).

2. This agreement shall also apply to any identical or substantially similar taxes on income which are imposed at Federal or State level by either Contracting State in addition to, or in place of, the taxes referred to in paragraph 1 of this Article. The competent authorities of the Contracting States shall notify each other of any substantial changes which are made in their respective taxation laws.

ARTICLE 2 – *Definitions* – 1. For the purposes of this Agreement, unless the context otherwise requires :

- (a) The terms a Contracting State and the other Contracting State mean the United Arab Emirates or, India as the context requires ;
- (b) The term tax means United Arab Emirates tax on Indian tax as the context requires ;
- (c) The term enterprise of India means Air India and Indian Airlines and any other enterprises designated by the Government of India ;
- (d) The term enterprise of United Arab Emirates means Gulf Air and Emirates Airlines and any other enterprises designated by the Government of the United Arab Emirates ;

- (e) The term international traffic means any transport by an aircraft operated by an enterprise of a Contracting State, except when the aircraft is operated solely between places in the other Contracting State ;
- (f) The expression operation of aircraft means business of carriage by air of passengers, livestock, goods or mail carried on by the owners or lessees or charterers of aircraft including the sale of tickets for such transportation on behalf of other enterprises, the incidental lease of aircraft and any other activity directly connected with such transportation ;
- (g) The term competent authority means :
 - (i) in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or its authorised representative ;
 - (ii) in the case of United Arab Emirates, the Minister of Finance and Industry or his authorised representative.

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

ARTICLE 3 – *Avoidance of double taxation* – 1. Income which an enterprise of United Arab Emirates derives from the operation of aircraft in international traffic shall be exempted in India from Indian tax.

2. Income which an enterprise of India derives from the operation of aircraft in international traffic shall be exempted in United Arab Emirates from United Arab Emirates tax.

3. The provisions of paragraphs 1 and 2 shall also apply to income from the participation in a pool, a joint business or in international operating agency.

4. For the purpose of paragraphs 1 and 2, interest on funds directly connected with the operation of aircraft in international traffic shall be regarded as income from the operation of such aircraft.

5. Gains derived by an enterprise of a Contracting State from the alienation of aircraft owned and operated by the enterprise including gains from the alienation of spares and equipment used by the enterprise in the operation of such aircraft shall be taxable only in that State.

6. Salaries, wages and other remuneration in respect of an employment exercised aboard an aircraft operated in international traffic shall be taxable only in the Contracting State where the air transport enterprise is managed and controlled, provided that the employee concerned is not a resident in the other Contracting State in accordance with the tax laws of that other State.

ARTICLE 4 – *Residual provisions* – The laws in force in either of the Contracting States will continue to govern the assessment and taxation of income in the Contracting States except where express provision to the contrary is made in this Agreement.

ARTICLE 5 – *Mutual agreement procedure* – 1. 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 Agreement.

2. Consultation may be requested at any time by the competent authority of a Contracting State for the purpose of application or interpretation of the Article. Such consultation shall begin within 90 days from the date of receipt of any such request and decisions shall be by mutual consent.

ARTICLE 6 – *Entry into force* – 1. Each State shall notify to the other the completion of the procedure required by its law for the bringing into force of this Agreement. The Agreement shall enter into force the first day of the second month following the month in which the letter of these notifications has been given.

2. The provisions of this Agreement shall have effect in respect of income derived on or after the 1st day of January, 1971.

3. No action would be taken to reopen assessments in respect of the period prior to the 1st day of January, 1971.

4. In case a Contracting State collects taxes relating to the above-mentioned period, on income derived from the operation of aircraft by an enterprise of the other Contracting State, then such taxes shall be refunded together with interest if any, in accordance with the laws of the first-mentioned Contracting State.

ARTICLE 7 – *Termination* – This Agreement shall continue in effect indefinitely but either Contracting State may, on or before the thirtieth day of June in any calendar year after the year 1993, give notice of termination to the other Contracting State and in such event this Agreement shall cease to be effective :

- (a) in the United Arab Emirates in respect of any tax year commencing on or after the 1st day of January, of the second calendar year following the year in which the notice is given ;
- (b) in India in respect of any assessment year commencing on or after the 1st day of April of the second calendar year following the year in which the notice is given.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Agreement.

DONE at New Delhi this third day of March, one thousand nine hundred and eighty-nine in two originals in the Hindi, Arabic and English languages, all texts being equally authentic. In case of dispute as to interpretation and application of this Agreement, the English text shall prevail.

UAR (Egypt)

Agreement for avoidance of double taxation with United Arab Republic (Egypt)

Whereas the annexed Convention between the Government of India and the Government of the United Arab Republic for the avoidance of double taxation with respect to taxes on income has been ratified and the instruments of ratification exchanged, as required by article XXIX of the said Convention ;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), and section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in the Union of India.

Notification: No. GSR 2363, dated 30-9-1969.

TEXT OF ANNEXED CONVENTION, DATED 20-2-1969

The Government of India and the Government of the United Arab Republic, desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income have agreed as follows :

CHAPTER I – SCOPE OF THE CONVENTION

ARTICLE I – *Personal scope* – This Convention shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE II – *Taxes covered* – 1. This Convention shall apply to taxes on income imposed on behalf of each Contracting State or of its political sub-divisions or local authorities, where they have the authority, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income or on all elements of income including taxes on gains from the sale, exchange or transfer of movable or immovable property and taxes on the total amounts of wages or salaries paid by enterprises.

3. The existing taxes to which the Convention shall apply are, in particular

(a) In the case of India,

(1) the income-tax, including super-tax and the surcharge, imposed under the Income-tax Act, 1961 (43 of 1961), and

(2) the surtax imposed under the Companies (Profits) Surtax Act, 1964 (7 of 1964)

(hereinafter referred to as Indian tax) ;

(b) in the case of the United Arab Republic,

(1) tax on income derived from immovable property (including the land tax, the buildings tax and the ghaffir tax),

(2) tax on income from movable capital,

(3) tax on commercial and industrial profits,

(4) tax on wages, salaries, indemnities and pensions [as mentioned in Book III of Law (14 of 1939)],

(5) tax on profits from liberal professions and all other non-commercial professions,

(6) general income-tax,

(7) defence tax (imposed on income),

(8) national security tax (imposed on income), and

(9) supplementary taxes imposed as percentage of taxes mentioned above, (hereinafter referred to as United Arab Republic tax).

4. The Convention shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in the place of, the existing taxes.

5. At the end of each year, the competent authorities of the Contracting States shall notify to each other any significant changes which have been made in their respective taxation laws.

CHAPTER II – DEFINITIONS

ARTICLE III – *General definitions* – 1. In this Convention, unless the context otherwise requires,

- (a) the term India shall have the meaning assigned to it in article 1 of the Constitution of India ;
- (b) the term United Arab Republic means Egypt ;
- (c) the terms a Contracting State and the other Contracting State mean India or the United Arab Republic as the context requires ;
- (d) the term tax means Indian tax or United Arab Republic tax, as the context requires ;
- (e) the term person includes individuals, companies and all other entities which are treated as taxable units under the tax laws in force in either Contracting State ;
- (f) the term company for tax purposes means any entity which is treated as a company under the Indian tax law or any entity which is treated as a body corporate under the United Arab Republic tax law ;
- (g) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean, 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 ;
- (h) the term competent authority means in the case of India the Central Government in the Ministry of Finance (Department of Revenue and Insurance) and in the case of the United Arab Republic, the Minister of Treasury or his authorised representative.

2. In the application of the provisions of this 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 in force in that State relating to the taxes which are the subject of this Convention.

ARTICLE IV – *Fiscal Domicile* – 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 resident of that State for the purposes of taxation therein by reason of his domicile, residence, place of management or any other criterion applied under the tax laws of that State.

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 closest (centre of vital interests).
- (b) If the Contracting State in which he 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) 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 national.
- (d) If he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 V – *Permanent establishment* – 1. For the 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

- (a) a place of management ;
- (b) a branch ;
- (c) an office ;
- (d) a factory ;
- (e) a workshop or a warehouse ;

- (f) a mine, a quarry, an oil field or other place of extraction of natural resources ;
- (g) a permanent sales exhibition ;
- (h) a building site or construction or assembly project which exists for more than ninety days.

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

- (a) the use of facilities solely for the purpose 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 fixed place of business solely for the purpose of purchasing goods or merchandise or for collecting information, for the enterprise ; and
- (d) the maintenance of a fixed place of business solely for the purpose of advertising, or for scientific research, for the enterprise.

4. A person acting in one of the Contracting States for or on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment of that enterprise in the first-mentioned State if

- (i) he has and habitually exercises in that State general authority to negotiate and enter into contracts for or on behalf of the enterprise, unless the activities of the person are limited to the purchase of goods or merchandise for the enterprise, or
- (ii) he habitually maintains in the first-mentioned Contracting State a stock of goods or merchandise belonging to the enterprise from which the person regularly delivers goods or merchandise for or on behalf of the enterprise, or
- (iii) he habitually secures orders in the first-mentioned Contracting State exclusively or almost exclusively, for the enterprise itself or for the enterprise and other enterprises which are controlled by it or have a 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 of a genuinely independent status.

6. The fact that a company, which is a resident of one of the Contracting States, has a subsidiary company which either is a resident of the other Contracting State or carries on a trade or business in that other Contracting State (whether through a permanent establishment or otherwise) shall not, of itself, constitute that subsidiary company a permanent establishment of its parent company.

CHAPTER III – TAXATION OF INCOME

ARTICLE VI – *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 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships and aircraft shall not be regarded 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 professional services.

ARTICLE VII – *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 the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

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.

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.

4. Insofar 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 purpose of export to the enterprise of which it is the permanent establishment.

6. 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 the present article.

1ARTICLE VIII – *Air transport* – 1. Income derived from the operation of aircraft by an enterprise of one of the Contracting States shall not be taxed in the other Contracting State unless the aircraft is operated wholly or mainly between places within that other Contracting State.

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

ARTICLE IX – *Shipping* – Income derived from the operation of ships by an enterprise of one of the Contracting States shall not be taxed in the other Contracting State unless the ships are operated wholly or mainly between places within that other Contracting State.

ARTICLE X – *Associated enterprises* – 1. 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.

2. If the information available to the taxation authority concerned is inadequate to determine, for the purposes of paragraph (1) of this article, the profits which might be expected to accrue to an enterprise, nothing in that paragraph shall affect the application of the law of either Contracting State in relation to the liability of that enterprise to pay tax on an amount determined by the exercise of a discretion or the making of an estimate by taxation authority of that State :

Provided that such discretion shall be exercised or such estimate shall be made, so far as the information available to the taxation authority permits, in accordance with the principle stated in that paragraph :

Provided further that the amount so determined or the estimate so made may be amended or revised when adequate information is furnished to the taxation authority concerned.

ARTICLE XI – *Dividends* – 1. Dividends paid by a company which is a resident of India to a resident of the United Arab Republic may be taxed in India.

2. Dividends paid by a company which is a resident of the United Arab Republic to a resident of India may be taxed in the United Arab Republic. But such dividends shall only be subject to the tax on income derived from movable capital, the defence tax, the national security tax and the supplementary taxes (which taxes shall be deducted at the source). If paid to a natural person, the general income-tax levied on the net total income may also be imposed. Dividends paid shall be deducted from the amount of the distributing company's taxable income or profits subject to the tax chargeable in respect of its industrial and commercial profits if such dividends are distributed out of the taxable profits of the same taxable year but not distributed out of accumulated reserves or other assets.

3. Dividends paid by a company which is a resident of India whose activities lie solely or mainly in the United Arab Republic shall, in the United Arab Republic be treated as mentioned in paragraph (2) of this article when such dividends are distributed in the United Arab Republic.

4. Dividends paid by a company which is a resident of the United Arab Republic whose activities lie solely or mainly in India shall, in India, be treated as mentioned in paragraph (1) of this article when such dividends are distributed in India.

5. Dividends, deemed under article 11 of United Arab Republic Law 14 of 1939 to be paid out of the yearly profits of a permanent establishment maintained in the United Arab Republic by an Indian company whose activities extend to

countries other than the United Arab Republic shall, in the United Arab Republic, be treated as mentioned in paragraph (2) of this article.

The permanent establishment shall be considered to have distributed as dividends in the United Arab Republic within 60 days from the closing of its financial year, an amount equivalent to 90 per cent of its total net profits liable to tax on industrial and commercial profits without applying the provisions of article 36 of Law 14 of 1939, provided that the remaining 10 per cent of the net profits shall be set aside to form a special reserve which shall be entered in the local balance sheet submitted annually to the United Arab Republic tax authorities. Such amount shall only be subject to the tax on commercial and industrial profits.

All amounts deducted from the aforesaid 10 per cent set aside to form the special reserve for purposes other than the redemption of losses incurred in the trade or business carried on by that permanent establishment situated in the United Arab Republic shall be deemed to have been distributed in the United Arab Republic and shall be taxed accordingly.

6. The provisions of paragraphs (1) and (4) of this article, in the case of the United Arab Republic, shall not affect the application of article 4 of Law 14 of 1939, but the provisions of those paragraphs will be applied for the purpose of elimination of double taxation in accordance with provisions of paragraph (2) of article XXIV of this Convention.

ARTICLE XII – *Interest* – 1. Interest paid by a resident of India to a resident of the United Arab Republic may be taxed in India.

2. Interest paid by a resident of the United Arab Republic to a resident of India may be taxed in the United Arab Republic. But such Interest shall only be subject to the tax on income derived from movable capital, the defence tax, the national security tax and the supplementary taxes (which taxes shall be deducted at the source). If paid to a natural person, the general income-tax levied on the net total income may also be imposed.

3. The term interest as used in this article includes income from Government securities, bonds or debentures (exclusive of interest on debts secured by mortgages on real estate, in which case article VI shall apply) and whether or not carrying a right to participate in profits, and debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the State in which the income arises.

4. Interest shall be deemed to arise in a Contracting state when the payer is that 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 resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

5. The provisions of paragraph (1) of this article in the case of the United Arab Republic shall not affect the application of article 4 of Law 14 of 1939, but the provisions of that paragraph will be applied for the purpose of elimination of double taxation in accordance with provisions of paragraph (2) of article XXIV of this Convention.

ARTICLE XIII – *Royalties* – 1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in the first-mentioned State.

2. 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, 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 equipments or for information concerning industrial, commercial or scientific experience but does not include any royalty or other like amount in respect of the operation of mines, quarries or any other place of extraction of natural resources.

3. Rents and royalties arising in a Contracting State in respect of cinematographic films and paid to a resident of the other Contracting State shall be taxable only in the first-mentioned State according to the tax laws of that state.

4. The provisions of this article shall not apply where founders shares are issued in the United Arab Republic as a consideration for the rights mentioned in paragraph (2) of this article and taxed in accordance with the provisions of article 1 of Law 14 of 1939. In such event article XI of this Convention shall be applicable.

5. Royalty shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that State.

ARTICLE XIV – *Capital gains* – 1. Subject to the provisions of paragraph (3) gains from the sale, exchange or transfer of a capital asset being immovable property, as defined in paragraph (2) of article VI, or movable property shall be taxable only in the Contracting State in which such property is situated.

2. For the purpose of this article the situs of the shares of a company shall be deemed to be in the Contracting State where the company is incorporated.

3. Capital gains derived from the sale, exchange or transfer of a capital asset being a ship or aircraft shall be taxable only in the Contracting State in which such ship or aircraft is registered.

ARTICLE XV – *Independent personal services* – 1. Income derived by a resident of the United Arab Republic in respect of professional services rendered or other independent activities of a similar character performed in India may be taxed in India only if he is present in India for a period or periods exceeding in the aggregate 183 days during the relevant previous year, and only to the extent the income is attributable to such services or activities in India.

2. Income derived by a resident of India in respect of professional services rendered or other independent activities of a similar character performed in the United Arab Republic may be taxed in the United Arab Republic only if he is

present in the United Arab Republic for a period or periods exceeding in the aggregate 183 days during the relevant fiscal year, and only to the extent the income is attributable to such services or activities in the United Arab Republic.

3. The term professional services includes independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

ARTICLE XVI – *Dependent personal services* – 1. Subject to the provisions of articles XVII, XIX and XX, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph (1) remuneration derived by a resident of the United Arab Republic in respect of an employment exercised in India shall not be taxed in India, if

- (a) he is present in India for a period or periods not exceeding in the aggregate 183 days during the relevant previous year, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of India, and
- (c) the remuneration is subject to United Arab Republic tax, and
- (d) the remuneration is not deducted in computing profits of an enterprise chargeable to Indian tax.

3. Notwithstanding the provisions of paragraph (1) remuneration derived by a resident of India in respect of an employment exercised in the United Arab Republic shall not be taxed in the United Arab Republic, if

- (a) he is present in the United Arab Republic for a period or periods not exceeding in the aggregate 183 days during the relevant fiscal year, and
- (b) the remuneration is paid by, or on behalf of an employer who is not resident of the United Arab Republic, and
- (c) the remuneration is subject to Indian tax, and

(d) the remuneration is not deducted in computing profits of an enterprise chargeable to United Arab Republic tax.

4. Notwithstanding the preceding provisions of this article, remuneration in respect of an employment exercised aboard a ship or aircraft in international traffic, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

ARTICLE XVII – *Directors fees* – Directors 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 may be taxed in that other State.

ARTICLE XVIII – *Artistes and athletes* – 1. Notwithstanding anything contained in Articles XV and XVI, income derived by public entertainers such as theatre, motion picture, radio or television artistes and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

2. The provisions of paragraph (1) shall apply only if the personal activities are exercised in the Contracting State for a period or periods in the aggregate exceeding 15 days during the relevant previous year or as the case may be, fiscal year, and only in respect of the income attributable to the personal activities exercised in that State.

ARTICLE XIX – *Pensions* – Subject to the provisions of paragraph (1) of article XX, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

ARTICLE XX – *Governmental functions* – 1. 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.

2. The provisions of paragraph (1) of this article shall also apply to remuneration including pensions, paid by the Central Bank, the Post Railways, Telephone and Telegraph, Radio and Television Organisations of the United Arab Republic and by the Reserve Bank of India, Postal Administration, the Public Railway Authorities and the All India Radio Organisation of India.

3. The provisions of articles XVI, XVII and XIX shall apply to remuneration or pensions in respect of services rendered in connection with any trade or business other than those mentioned in paragraph (2) carried on by any of the legal entities mentioned in this article.

ARTICLE XXI – *Students* – An individual of one of the Contracting States, who 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 organisation,

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 XXII – *Professors, teachers and researchers* – A professor or a teacher from one of the Contracting States who receives remuneration for teaching or scientific research, during a period of temporary residence not exceeding two years at a university, college, technical school or other institution for higher education in the other Contracting State, shall not be taxed in that other Contracting State in respect of that remuneration.

ARTICLE XXIII – *Income not expressly mentioned* – The laws in force in either of the Contracting States will continue to govern assessment and taxation of

income in the respective Contracting States except where express provision to the contrary is made in this Convention.

CHAPTER IV – METHOD FOR ELIMINATION OF DOUBLE TAXATION

ARTICLE XXIV – *Exemption and credit methods* – 1. Where a person being a resident of a Contracting State derives income from the other Contracting State and that income, in accordance with the provisions of this Convention, shall be taxable only in that other Contracting State, or may be taxed in that other Contracting State, the first-mentioned State shall, subject to the provisions of paragraph (2) exempt such income from tax but may, in calculating tax on the remaining income of that person, apply the rate of tax which would have been applicable if the exempted income had not been so exempted.

2. Where a person being a resident of a Contracting State derives income from the other Contracting State and that income, in accordance with the provisions of articles XI and XII may be taxed in that other Contracting State, the first-mentioned State shall allow as a deduction from the tax, on the income of that person and amount equal to the tax paid in that other Contracting State. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is appropriate to the income derived from that other Contracting State.

CHAPTER V – SPECIAL PROVISIONS

ARTICLE XXV – *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 term nationals means :

- (a) all individuals possessing the nationality of a Contracting State ;
- (b) all legal persons, partnerships and associations deriving their status as such from the law in force in a Contracting State.

3. 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.

This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowance, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

4. 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 in the same circumstances and under the same conditions.

5. The provisions of this article shall not be construed as affecting the application in the United Arab Republic of the exemptions conferred in the United Arab Republic by articles 5 and 6 of Law 14 of 1939.

6. In this article the term taxation means taxes of every kind as specified in this Convention.

ARTICLE XXVI – *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 of 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. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through representatives of the competent authorities of the Contracting States.

ARTICLE XXVII – *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 and of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar 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, including judicial determination, or collection 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 XXVIII – *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.

CHAPTER VI – FINAL PROVISIONS

ARTICLE XXIX – *Entry into force* – 1. This Convention shall be ratified and the instruments of ratification shall be exchanged at New Delhi as soon as possible.

2. This Convention shall enter into force on the date of the exchange of the instruments of ratification and its provisions shall have effect

(a) in India,

- (i) in the case of income derived from operation of aircraft (referred to in article VIII), as respects such income derived during any previous year beginning on or after the first day of January, 1961 ;
- (ii) in the case of any other income, as respects income derived during any previous year beginning on or after the first day of January of the calendar year in which the exchange of the instruments of ratification takes place.

(b) in the United Arab Republic,

- (i) in the case of income from operation of aircraft (referred to in article VIII), as respects such income derived during any accounting period ending on or after the first day of January, 1961 ;
- (ii) in the case of any other income,
 - (1) as respects tax on income from movable capital and tax on wages, salaries, indemnities and pensions, which taxes are due on or after the date on which the exchange of the instruments of ratification takes place ;
 - (2) as respects tax on commercial and industrial profits for any accounting period ending on or after the date on which the exchange of the instruments of ratification takes place ;
 - (3) as respects tax on income derived from immovable property (including the land tax, the buildings tax and the ghaffir tax), tax

on profits from liberal professions and all other non-commercial professions and the general income-tax for the calendar year in which the exchange of the instruments of ratification takes place.

The rules in sub-paragraph (b) of this paragraph shall be correspondingly applicable respectively to the defence tax, national security tax and to the supplementary taxes.

ARTICLE XXX – *Termination* – Either of the Contracting States may terminate this Convention after a period of five years from the date on which the Convention enters into force by giving to the other Contracting State, through the diplomatic channels, written notice of termination, provided that such notice shall be given only on or before the thirtieth day of June in any calendar year, and in such event, this Convention shall cease to be effective

(a) in India,

as respects income derived during any previous year beginning on or after the first day of January of the calendar year next following that in which the notice is given ;

(b) in the United Arab Republic,

(1) as respects tax on income from movable capital and tax on wages, salaries, indemnities and pensions, which taxes are due on or after the first day of July in the calendar year next following that in which the notice is given ;

(2) as respects tax on commercial and industrial profits for any accounting period ending on or after the first day of July in the calendar year next following that in which the notice is given ;

(3) as respects tax on income derived from immovable property (including the land tax, the buildings tax and the ghaffir tax), tax on profits from liberal professions and all other non-commercial professions and the general income-tax for the calendar year next following that in which the notice is given.

The rules in sub-paragraph (b) of this paragraph shall be correspondingly applicable respectively to the defence tax, national security tax and to the supplementary taxes.

UGANDA

Agreement for Avoidance of Double Taxation and Prevention of Fiscal Evasion with Uganda

Whereas the annexed Convention between the Government of the Republic of India and the Government of Uganda for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, has come into force on the 27th August, 2004, on the notification by both the Contracting States to each other, under article 29 of the said Convention of the completion of the procedures required by their respective laws for bringing into force of the said Convention:

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in the Union of India.

Notification : *No. GSR 666(E), dated 12-10-2004.*

ANNEXURE

CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE REPUBLIC OF UGANDA FOR THE AVOIDANCE OF DOUBLE TAXATION AND FOR THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of India and the Government of the Republic of Uganda, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and with a view to promoting economic cooperation between the two countries, 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. This Convention shall apply to taxes on income imposed on behalf of a Contracting State or of its political sub-divisions or local authorities irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises.

3. The existing taxes to which the Convention shall apply are in particular :

- (a) In Uganda : the income-tax (hereinafter referred to as Ugandan tax).
- (b) In India : the income-tax, including any surcharge thereon (hereinafter referred to as Indian tax).

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes referred to in paragraph 3. The competent authorities of the Contracting States shall notify each other of significant changes which have been made in their respective taxation laws.

ARTICLE 3 : GENERAL DEFINITIONS – 1. For the purposes of this Convention, unless the context otherwise requires :

- (a) the term Uganda means the Republic of Uganda;
- (b) the term India means the territory of India and includes the territorial sea and air space above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law, including the UN Convention on the Law of the Sea;
- (c) the term person includes an individual, a company, a body of persons and any other entity which is defined as a person under the taxation laws in force in the respective Contracting States;
- (d) the term company means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (e) the term 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;

- (f) the term international traffic means any transport by a ship or aircraft operated by an enterprise which is a resident of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (g) the term competent authority means :
 - (i) In Uganda : The Minister for Finance or his authorised representative;
 - (ii) In India : The Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative;
- (h) the term national means :
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State.
- (i) the term fiscal year means :
 - (i) in the case of Uganda, the year of income as defined under section 3 of the Income-tax Act, 1997;
 - (ii) in the case of India, previous year as defined under section 3 of the Income-tax Act, 1961 (43 of 1961);
- (j) the term tax means Indian tax or Ugandan tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty imposed relating to those taxes;
- (k) the terms a Contracting State and the other Contracting State mean the Republic of Uganda or the Republic of India as the context requires.

2. As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

ARTICLE 4 : RESIDENT – 1. For the purposes of this Convention, the term resident of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of

management or any other criterion of a similar nature. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows :

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interest);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 State in which its place of effective management is situated. If the State in which its place of effective management is situated cannot be determined, then the competent authorities of the Contracting States shall settle the question by mutual agreement.

ARTICLE 5 : PERMANENT ESTABLISHMENT – 1. For the purposes of this Convention, the term permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (a) a place of management;
- (b) a branch;

- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) a sales outlet;
- (h) a warehouse in relation to a person providing storage facilities for others;
- (i) a farm, plantation or other place where agricultural forestry, plantation or related activities are carried on;
- (j) a building site or construction or assembly project or supervisory activities in connection therewith constitute a permanent establishment only if such site, project or activity lasts more than six months.

3. Notwithstanding the preceding provisions of this article, the term permanent establishment shall be deemed not to include :

- (a) the use of facilities solely for the purpose 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 of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character,
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

4. Notwithstanding the provisions of paragraphs 1 and 2, where a person other than an agent of an independent status to whom paragraph 6 applies – is

acting 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, in respect of any activities which that person undertakes for the enterprise, if such a person :

- (a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 3 which, if exercised through a fixed place of business would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
- (b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise, or
- (c) habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise itself or for the enterprise and other enterprises controlling, controlled by, or subject to the same control, as that enterprise.

5. Notwithstanding the preceding provisions of this article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risk situated therein through a person other than an agent of an independent status to whom paragraph 6 applies.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

7. 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 otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6 : INCOME FROM IMMOVABLE PROPERTY – 1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may also be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats, aircraft and motor vehicles shall not be regarded 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, the profits of the enterprise may also be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, 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.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes 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, in accordance with the provisions of and subject to the limitations of the tax laws of that State.

4. 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.

5. For the purposes 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.

6. 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 : SHIPPING AND TRANSPORT – 1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. Profits derived by a transportation enterprise referred to in paragraph 1 which is a resident of a Contracting State from the use, maintenance, or rental of containers (including trailers and other equipment for the transport of containers) used for the transport of or merchandise in international traffic shall be taxable only in that Contracting State unless the containers are used solely within the other Contracting State.

3. For the purposes of this Article, interest on funds connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft, and the provisions of article 11 shall not apply in relation to such interest.

4. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9 : ASSOCIATED ENTERPRISES – 1. 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.

2. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall, if necessary, consult each other.

ARTICLE 10 : **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 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 laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 10 per cent of the gross amount of the dividends. 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 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 a case the provisions of Article 7 or Article 14, 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 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 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 State, nor subject the companys undistributed profits to a tax on the companys undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11 : **INTEREST** – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by :

- (i) the Government, a political sub-division or a local authority of the other Contracting State; or
- (ii) the Central Bank of the other Contracting State; or any other bank, or governmental financial institutions/agencies that may be mutually agreed upon between the two contracting States.

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 debtors 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 and 2 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 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 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that 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 resident 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 such 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 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 the other provisions of this Convention.

ARTICLE 12 : ROYALTIES AND FEES FOR TECHNICAL SERVICES – 1. Royalties or fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

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

3. (a) 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 including cinematograph films, and films or tapes for television or radio broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or any industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

(b) The term fees for technical services means payment of any kind in consideration for the rendering of any managerial, technical or consultancy services including the provision of services by technical or other personnel but does not include payments for services mentioned in Articles 14 and 15 of this Convention.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services 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 or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties or fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying such royalties or fees for technical services, whether he is 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 or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the 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 or fees for technical services, 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 the other provisions of this Convention.

ARTICLE 13 : CAPITAL GAINS – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may also be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may also be taxed in that other State.

3. Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in that State.

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a contracting State may be taxed in that State.

5. Gains from the alienation of shares other than those mentioned in paragraph 4 in a company which is a resident of a Contracting State may be taxed in that State.

6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5, shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14 : 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 State except

in the following circumstances, when such income may also be taxed in the other Contracting State :

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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 State; or
- (b) if his stay in the other State is for a period or periods aggregating 183 days or more in any 12-month period commencing or ending in the fiscal year concerned; in that case only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

ARTICLE 15 : DEPENDENT PERSONAL SERVICES – 1. Subject to the provisions of Articles 16, 18 and 19, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first mentioned State, if :

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any 12-month period commencing or ending in the fiscal year concerned; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, by an enterprise of a Contracting State may be taxed in that State.

ARTICLE 16 : DIRECTORS FEES – Directors fees and other 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 may be taxed in that other State.

ARTICLE 17 : ARTISTES AND SPORTS-PERSONS – 1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sports-person, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sports-person in his capacity as such accrues not to the entertainer or sports-person himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sports-person are exercised.

ARTICLE 18 : PENSIONS – Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

ARTICLE 19 : GOVERNMENT SERVICE – 1. (a) Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who :

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

ARTICLE 20 : STUDENTS AND APPRENTICES – 1. A student or business apprentice who is or was a resident of a Contracting State immediately before visiting the other Contracting State and who is present in that other Contracting State solely for the purpose of his education or training shall be exempt from tax in that other State on payments made to him by persons residing outside that other State for the purpose of his maintenance, education or training.

2. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article for more than five consecutive years from the date of his first arrival in that other Contracting State.

ARTICLE 21 : PROFESSORS, TEACHERS AND RESEARCH SCHOLARS – 1. A professor or teacher who is or was a resident of the Contracting State immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college, school or other approved institution in that other Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival in that other 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 20, an individual shall be deemed to be a resident of a Contracting State if he is resident in that State in the fiscal year in which he visits the other Contracting State or in the immediately preceding fiscal year.

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

ARTICLE 22 : OTHER INCOME – 1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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 income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraph 1, if a resident of a Contracting State derives income from sources within the other Contracting State in the form of lotteries, crossword puzzles, races including horse races, card games and other games of any sort or gambling or betting of any form or nature whatsoever such income may be taxed in the other Contracting State.

ARTICLE 23 : ELIMINATION OF DOUBLE TAXATION – 1. The laws in force in either of the Contracting States will continue to govern the taxation of income in the respective Contracting States except where provisions to the contrary are made in this Convention.

2. In the case of Uganda double taxation shall be eliminated as follows:

Where a resident of Uganda derives income which, in accordance with the provisions of this Convention, may be taxed in India, Uganda shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in India. Such deduction shall not, however, exceed that part of the income-tax as computed before the deduction is given, which is attributable to the income which may be taxed in India.

3. In the case of India double taxation shall be eliminated as follows :

Where a resident of India derives income which, in accordance with the provisions of this Convention, may be taxed in Uganda, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in Uganda whether directly or by deduction at source. Such amount shall not, however exceed that part of the income-tax as computed before the deduction is given, which is attributable to the income which may be taxed in Uganda.

4. The tax payable in the Contracting State mentioned in paragraphs 2 and 3 of this Article shall be deemed to include the tax which would have been payable but for the tax incentives granted under the laws of the Contracting State and which are designed to promote economic development.

5. Income which, in accordance with the provisions of this Convention, is not to be subjected to tax in a Contracting State, may be taken into account for calculating the rate of tax to be imposed in that Contracting State.

ARTICLE 24 : NON-DISCRIMINATION – 1. 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. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

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. This provision shall not be construed as preventing a Contracting State from charging the profits in the case of India or chargeable income in the case of Uganda of a permanent establishment which a company of the other Contracting State has in the first-mentioned Contracting State at a rate of tax which is higher than that imposed on the profits or chargeable income respectively of a similar company of the first mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7 of this Convention.

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 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 the first-mentioned State are or may be subjected.

4. Except where the provisions of paragraph 1 of Article 9 or paragraph 7 of Article 11 or paragraph 6 of Article 12 apply, interest, royalties and other disbursement paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

ARTICLE 25 : MUTUAL AGREEMENT PROCEDURE – 1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting States of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

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 a satisfactory 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 which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law 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 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.

When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place.

ARTICLE 26 : EXCHANGE OF INFORMATION – The competent authorities of the Contracting States shall exchange such information (including documents), as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. 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 and administrative practice of that or of the other Contracting State;
- (b) to supply information or documents which is 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 27 : COLLECTION ASSISTANCE – 1. The Contracting States undertake to lend assistance to each other in the collection of taxes to which this Convention relates, together with interest, costs, and civil penalties relating to such taxes, referred to in this Article as a revenue claim.

2. Request for assistance by the competent authority of a Contracting State in the collection of a revenue claim shall include a certification by such authority that, under the laws of that State, the revenue claim has been finally determined. For the purposes of this Article, a revenue claim is finally determined when a Contracting State has the right under its internal law to collect the revenue claim and the taxpayer has no further rights to restrain collection.

3. Amount collected by the competent authority of a Contracting State pursuant to this Article shall be forwarded to the competent authority of the other Contracting State. However, the first-mentioned Contracting State shall be entitled to reimbursement of costs, if any, incurred in the course of rendering such assistance to the extent mutually agreed between the competent authorities of the two States.

4. Nothing in this Article shall be construed as imposing on either Contracting State the obligation to carry out administrative measures of a different nature from those used in the collection of its own taxes or those which would be contrary to its public policy.

ARTICLE 28 : DIPLOMATIC AGENTS AND CONSULAR OFFICERS – Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreement.

ARTICLE 29 : ENTRY INTO FORCE – 1. The Contracting States shall notify each other in writing, through diplomatic channels of the completion of the procedure required by the respective laws for the entry into force of this Convention.

2. This Convention shall enter into force thirty days, after the receipt of the letter of the notifications referred to in paragraph 1 of this Article.

3. The provisions of this Convention shall have effect :

- (a) in Uganda, in respect of income arising in any fiscal year beginning on or after the first day of July next following the calendar year in which the Convention enters into force, and
- (b) in India, in respect of income arising in any fiscal year beginning on or after the first day of April next following the calendar year in which the Convention enters into force.

ARTICLE 30 : TERMINATION – This Convention shall remain in force indefinitely until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year beginning after the expiration of five years from the date of entry into force of the Convention. In such event, the Convention shall cease to have effect :

- (a) in Uganda, in respect of income arising in any fiscal year on or after the first day of July next following the calendar year in which the notice of termination is given; and
- (b) in India, in respect of income arising in any fiscal year on or after the first day of April next following the calendar year in which the notice of termination is given.

UK**Agreement for avoidance of double taxation and prevention of fiscal evasion with United Kingdom of Great Britain and Northern Ireland**

Whereas the annexed Convention between the Government of the Republic of India and the Government of the United Kingdom of Great Britain and Northern Ireland for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains has entered into force on 26th October, 1993 on the notification by both the Contracting States to each other of the completion of the procedures required by their respective laws, as required by Article 30 of the said Convention;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in the Union of India.

Notification : No. GSR 91(E), dated 11-2-1994.

ANNEXURE

CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS

The Government of the Republic of India and the Government of the United Kingdom of Great Britain and Northern Ireland; Desiring to conclude a new Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains;

Have agreed as follows :

ARTICLE 1 – Scope of the Convention – 1. This Convention shall apply to persons who are residents of one or both of the Contracting States.

2. This Convention extends to the territory of each Contracting State, including its territorial sea, and to those areas of the exclusive economic zone or the continental shelf adjacent to the outer limit of the territorial sea of each State over which it has, in accordance with international law, sovereign rights for the purpose of exploration and exploitation of the natural resources of such areas, and references in this Convention to the Contracting State or to either of them shall be construed accordingly.

ARTICLE 2 – *Taxes covered* – 1. The taxes which are the subject of this Convention are :

(a) in the United Kingdom :

- (i) the income-tax;
 - (ii) the corporation tax;
 - (iii) the capital gains tax; and
 - (iv) the petroleum revenue tax;
- (hereinafter referred to as United Kingdom tax);

(b) in India;

the income-tax including any surcharge thereon;
(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 signature of this Convention in addition to, or in place of, the taxes of that Contracting State referred to in paragraph 1 of this Article. The competent authorities of the Contracting States shall notify each other of any substantial changes which are made in their respective taxation laws.

ARTICLE 3 – *General definitions* – 1. In this Convention, unless the context otherwise requires :

- (a) the term United Kingdom means Great Britain and Northern Ireland;
- (b) the term India means the Republic of India;
- (c) the term tax means United Kingdom tax or Indian tax, as the context requires but shall not include any amount which is payable in respect of any

default or omission in relation to the taxes to which this Convention applies or which represents a penalty imposed relating to those taxes;

- (d) the term fiscal year in relation to Indian tax means previous year as defined in the Income-tax Act, 1961 (43 of 1961) and in relation to United Kingdom tax means a year beginning with 6th April in one year and ending with 5th April in the following year;
- (e) the terms a Contracting State and the other Contracting State mean India or the United Kingdom, as the context requires;
- (f) the term person includes an individual, a company and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States, but, subject to paragraph 2 of this Article, does not include a partnership;
- (g) the term company means any body corporate or any entity which is treated as a company or body corporate for tax purposes;
- (h) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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 competent authority means, in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representative, and in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative;
- (j) 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;
- (k) the term Government means the Government of a Contracting State or a political sub-division or local authority thereof. In relation to the United Kingdom, the term political sub-division shall include Northern Ireland.

2. A partnership which is treated as a taxable unit under the Income-tax Act, 1961 (43 of 1961) of India shall be treated as a person for the purposes of this Convention.

3. 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 – *Fiscal domicile* – 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 of this Article 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 (centre of vital interests) ;
- (b) if the Contracting State in which he 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) if he has an habitual abode in both Contracting States or in either 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 of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 of this Article 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 means a fixed place of business through which the business of an 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) premises used as a sales outlet or for receiving or soliciting orders;
- (g) a warehouse in relation to a person providing store facilities for others;
- (h) a mine, an oil or gas well, quarry or other place of extraction of natural resources;
- (i) an installation or structure used for the exploration or exploitation of natural resources;
- (j) a building site or construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or supervisory activity continues for a period of more than six months, or where such project or supervisory activity, being incidental to the sale or machinery or equipment, continues for a period not exceeding six months and the charges payable for the project or supervisory activity exceed 10 per cent of the sale price of the machinery and equipment;
- (k) the furnishing of services including managerial services, other than those taxable under Article 13 (Royalties and fees for technical services), within a Contracting State by an enterprise through employees or other personnel, but only if:
 - (i) activities of that nature continue within that State for a period or periods aggregating more than 90 days within any twelve-month period; or
 - (ii) services are performed within that State for an enterprise within the meaning of paragraph 1 of Article 10 (Associated enterprises) and

continue for a period or periods aggregating more than 30 days within any twelve-month period:

Provided that for the purposes of this paragraph an enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it provides services or facilities in connection with, or supplies plant and machinery on hire used or to be used in, the prospecting for, or extraction or production of, mineral oils in that State.

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

- (a) the use of facilities solely for the purpose 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;
- (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information or for scientific research, being activities solely of a preparatory or auxiliary character in the trade of business of the enterprise. However, this provision shall not be applicable where the enterprise maintains any other fixed place of business in the other Contracting State for any purpose or purposes other than the purposes specified in this paragraph;
- (f) the maintenance of a fixed place of businesses solely for any combination of activities mentioned in sub-paragraphs (a) to (e) of the paragraph, provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

4. A person acting in a Contracting State for or on behalf of an enterprise of the other contracting State – other than an agent of an independent status to whom

paragraph (5) of this Article applies, shall be deemed to be a permanent establishment of that enterprise in the first mentioned State if:

- (a) he has, and habitually exercises in that State, an authority to negotiate and enter into 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 Contracting State a stock of goods or merchandise from which he 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 and the enterprises controlling, controlled by, or subject to the same common control, as that 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 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. However, if the activities of such an agent are carried out wholly or almost wholly for the enterprise (or for the enterprise and other enterprises which are controlled by it or have a controlling interest in it or are subject to same common control) he shall not be considered to be an agent of an independent status for the purposes of this paragraph.

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 otherwise), shall not of itself constitute either company a permanent establishment of the other.

7. For the purposes of this Article the term control, in relation to a company, means the ability to exercise control over the companys affairs by means of the direct or indirect holding of the greater part of the issued share capital or voting power in the company.

ARTICLE 6 – *Income from immovable property* – 1. Income from immovable property may be taxed in the Contracting State in which such property is situated.

2.(a) The term immovable property shall, subject to the provisions of subparagraph (b) of this paragraph, be defined in accordance with the law of the Contracting State in which the property in question is situated.

(b) The term immovable property shall in any case include property accessory in immovable property, livestock and equipment used in agriculture and forestry, rights, to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payment as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 of this Article 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 of this Article 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, the profits of the enterprise may be taxed in the other State but only so much of them as is directly or indirectly attributable to that permanent establishment.

2. Where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, the profits which that permanent establishment 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 shall be treated for the

purposes of paragraph 1 of this Article as being the profits directly attributable to that permanent establishment.

3. Where a permanent establishment takes an active part in negotiating, concluding or fulfilling contracts entered into by the enterprise, then, notwithstanding that other parts of the enterprise have also participated in those transactions, that proportion of profits of the enterprise arising out of those contracts which the contribution of the permanent establishment to those transactions bears to that of the enterprise as a whole shall be treated for the purpose of paragraph 1 of this Article as being the profits indirectly attributable to that permanent establishment.

4. Insofar as it has been customary in a Contracting State according to its law 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 paragraphs 1 and 2 of this Article shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be necessary; 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. Subject to paragraphs 6 and 7 of this Article, in the determination of the profits of a permanent establishment, there shall be allowed as deduction expenses which are incurred for the purposes of the business 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, which are allowed under the provisions of and subject to the limitations of the domestic law of the Contracting State in which the permanent establishment is situated.

6. Where the law of the Contracting State in which the permanent establishment is situated imposes a restriction on the amount of the executive and general administrative expenses which may be allowed, and the restriction is relaxed or overridden by any Convention between that Contracting State and a third State which is a member of the Organisation for Economic Cooperation and Development or a State in a comparable stage of development, and that

Convention enters into force, after the date of entry into force of this Convention, the competent authority of that Contracting State shall notify the competent authority of the other Contracting State of the terms of the relevant paragraph in the Convention with that third state immediately after the entry into force of that Convention and, if the competent authority of the other Contracting State so requests, the provisions of this Convention shall be amended by protocol to reflect such terms.

7. Paragraph 5 of this Article shall not apply to amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, to by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on monies lent to the permanent establishment; nor shall account be taken in the determination of the profits of a permanent establishment of amounts charged (otherwise than towards reimbursement of actual expenses) by the permanent establishment of the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or any way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on monies lent to be head office of the enterprise or any of its other offices.

8. No profits shall be attributed to permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

9. 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 from the operation of aircraft in international traffic by an enterprise of one of the Contracting States shall not be taxed in the other Contracting State.

2. The provisions of paragraph 1 of this Article shall likewise apply in respect of participation in pools of any kind by enterprises engaged in air transport.

3. For the purposes of this Article the term operation of aircraft shall include transportation by air of persons livestock, goods or mail, carried on by the owners or lessees or charterers of aircraft, including the sale of tickets for such transportation on behalf of other enterprises, the incidental lease of aircraft on a character basis and any other activity directly connected with such transportation.

4. Gains derived by an enterprise of a Contracting State from the alienation of aircraft owned and operated by the enterprise, the income from which is taxable only in that State, shall be taxed only in that State.

ARTICLE 9 – *Shipping* – 1. Income of an enterprise of a Contracting State from the operation of ships in international traffic shall be taxable only in that State.

2. The provisions of paragraph 1 of this Article shall not apply to income from journeys between places which are situated in a Contracting State.

3. For the purposes of this Article, income from the operation of ships includes income derived from the rental on a bareboat basis of ships if such rental income is incidental to the income described in paragraph 1 of this Article.

4. Notwithstanding the provisions of Article 7 (business profits) of this Convention, the provisions of paragraphs 1 and 2 of this Article shall likewise apply to income of an enterprise of a Contracting State from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise.

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

6. Gains derived by an enterprise of a contracting State from the alienation of ships or containers owned and operated by the enterprise shall be taxed only in that State if either the income from the operation of the alienated ships or

containers was taxed only in that State, or the ships or containers are situated outside the other Contracting State at the time of the alienation.

ARTICLE 10 – *Associated enterprises* – 1. 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 differs 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.

2. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall, if necessary, consult each other.

ARTICLE 11 – *Dividends* – 1. (a) A dividend paid by a company which is a resident of the United Kingdom to a resident of India may be taxed in India.

(b) Where under paragraph 2 of this Article, a resident of India is entitled to a tax credit in respect of that dividend, tax may also, be charged in the United Kingdom and according to the laws of the United Kingdom on the aggregate of

the amount or value of the dividend and the amount of the tax credit, at a rate not exceeding 15 per cent.

(c) Except as provided in sub-paragraph (b) of this paragraph, a dividend derived from a company which is a resident of the United Kingdom by a resident of India, who is the beneficial owner of that dividend, shall be exempt from any tax in the United Kingdom which is chargeable on dividends.

2. An individual who is a resident of India and who receives a dividend from a company which is a resident of the United Kingdom shall, provided he is the beneficial owner of the dividend, be entitled to the tax credit in respect of that dividend which an individual resident in the United Kingdom would have been entitled to had he received that dividend, and to the payment of any excess of that tax credit over his liability to United Kingdom tax.

3. A dividend paid by a company which is a resident of India to a resident of the United Kingdom may be taxed in the United Kingdom. The dividend may also be taxed in India but the Indian tax so charged shall not exceed 15 per cent of the gross amount of the dividend.

4. The preceding paragraphs of this Article shall not affect the taxation of the company in respect of the profits out of which the dividend is paid.

5. The provision of paragraphs 1 and 2 or, as the case may be, paragraph 3 of the Article shall not apply if the beneficial owner of the dividend, being a resident of a Contracting State, has, in the other Contracting State of which the company paying the dividend is a resident, a permanent establishment or fixed base with which the holding by virtue of which the dividend is paid is effectively connected. In such a case the provisions of Article 7 (Business profits) or Article 15 (Independent personal services) of this Convention, as the case may be, shall apply.

6. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other 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 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 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 consists wholly or partly of profits or income arising in that other State.

7. As used in this Article the term dividend means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights treated in the same manner as income from shares by the taxation law of the State of which the company making the distribution is a resident and any other item treated as a dividend or distribution under that law.

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 State.

2. However, such interest may also be taxed in the Contracting State in which it arises and accordingly to the law of that State, provided that where the resident of the other Contracting State is the beneficial owner of the interest the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2 of this Article:

- (a) where the interest is paid to a bank carrying on a *bona fide* banking business which is a resident of the other Contracting State and is the beneficial owner of the interest, the tax charged in the Contracting State in which the interest arises shall not exceed 10 percent of the gross amount of the interest;
- (b) where the interest is paid to the Government of one of the Contracting States or a political sub-division or local authority of that State or the Reserve Bank of India, it shall not be subject to tax by the State in which it arises.

4. Notwithstanding the provisions of Article 7 of this Convention and of paragraphs 2 and 3 of this Article :

- (a) interest arising in India which is paid to any beneficially owned by a resident of the United Kingdom shall be exempt from tax in India if it is

paid in respect of a loan made, guaranteed or insured, or any other debt-claim or credit guaranteed or insured by the United Kingdom Export Credits Guarantee Department; and

- (b) interest arising in the United Kingdom which is paid to and beneficially owned by a resident of India shall be exempt from tax in the United Kingdom if it is paid in respect of a loan made, guaranteed or insured, or any other debt-claim or credit guaranteed or insured by the Export Credits and Guarantee Corporation of India and/or Export-Import Bank of India.

5. 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 debtors 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 but, subject to the provisions of paragraph 9 of this Article, shall not include any item which is treated as a distribution under the provisions of Article 11 (Dividends) of this Convention.

6. The provisions of paragraphs 1, 2 and 3(a) of this Article 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 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 (Business profits) or Article 15 (Independent personal services) of this Convention, as the case may be shall apply.

7. Interest shall be deemed to arise in a Contracting State when the payer is that 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 resident 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 that permanent establishment or fixed base, then such interest shall be deemed to

arise in the Contracting State in which the permanent establishment or fixed base is situated.

8. Where, owing to a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest paid exceeds for whatever reason the amount which would have been paid in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

9. Any provision in the laws of either Contracting State relating only to interest paid a non-resident company shall not operate so as to require such interest paid to a company which is a resident of the other Contracting State to be treated as a distribution or dividend by the company paying such interest or to be left out of account as a deduction in computing the taxable profits of the company paying the interest. The preceding sentence shall not apply to interest paid to a company which is a resident of one of the Contracting State in which more than 50 per cent of the voting power is controlled, directly or indirectly, by a person or persons who are residents of the other Contracting State.

10. The relief from tax provided for in paragraph 2 of this Article shall not apply if the beneficial owner of the interest :

- (a) is exempt from tax on such income in the Contracting State of which he is a resident ; and
- (b) sells or makes a contract to sell the holding from which such interest is derived within three months of the date such beneficial owner acquired such holding.

11. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.

ARTICLE 13 – *Royalties and fees for technical services* – 1. Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and according to the law of that State; but if the beneficial owner of the royalties or fees for technical services is a resident of the other Contracting State, the tax so charged shall not exceed :

- (a) in the case of royalties within paragraph 3(a) of this Articles, and fees for technical services within paragraphs 4(a) and (c) of this Article,
 - (i) during the first five years for which this Convention has effect ;
 - (aa) 15 per cent of the gross amount of such royalties or fees for technical services when the payer of the royalties or fees for technical services is the Government of the first-mentioned Contracting State or a political sub-division of that State, and
 - (bb) 20 per cent of the gross amount of such royalties or fees for technical services in all other cases; and
 - (ii) during subsequent years, 15 per cent of the gross amount of such royalties or fees for technical services; and
- (b) in the case of royalties within paragraph 3(b) of this Article and fees for technical services defined in paragraph 4(b) of this Article, 10 per cent of the gross amount of such royalties and fees for technical services.

3. For the purposes of this Article, the term royalties means :

- (a) payments of any kind received as a consideration for the use of, or the right to use, any copyright of a literary, artistic or scientific work, including cinematography films or work on films, tape or other means of reproduction for use in connection with radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience; and
- (b) payments of any kind received as consideration for the use of, or the right to use, any industrial, commercial or scientific equipment, other than

income derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic.

4. For the purposes of paragraph 2 of this Article, and subject to paragraph 5, of this Article, the term fees for technical services means payments of any kind of any person in consideration for the rendering of any technical or consultancy services (including the provision of services of a technical or other personnel) which :

- (a) are ancillary and subsidiary to the application or enjoyment of the right, property or information for which a payment described in paragraph 3(a) of this article is received ; or
- (b) are ancillary and subsidiary to the enjoyment of the property for which a payment described in paragraph 3(b) of this Article is received ; or
- (c) make available technical knowledge, experience, skill know-how or processes, or consist of the development and transfer of a technical plan or technical design.

5. The definition of fees for technical services in paragraph 4 of this Article shall not include amounts paid :

- (a) for services that are ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of property, other than property described in paragraph 3(a) of this Article;
- (b) for services that are ancillary and subsidiary to the rental of ships, aircraft, containers or other equipment used in connection with the operation of ships, or aircraft in international traffic;
- (c) for teaching in or by educational institutions ;
- (d) for services for the private use of the individual or individuals making the payment ; or
- (e) to an employee of the person making the payments or to any individual or partnership for professional services as defined in Article 15 (Independent personal services) of this Convention.

6. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident

of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services 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, property or contract in respect of which the royalties or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 (Business profits) or Article 15 (Independent personal services) of this Convention, as the case may be, shall apply.

7. Royalties and fees for technical services shall be deemed to arise in a Contracting State where the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties or fees for technical services, 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 obligation to make payments was incurred and the payments are borne by that permanent establishment or fixed base then the royalties or fees for technical services shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

8. Where, owing to a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties or fees for technical services paid exceeds for whatever reason the amount which would have been paid in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

9. The provisions of this Article shall not apply if it was the main purposes or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the royalties or fees for technical services are paid to take advantage of this Article by means of that creation or assignment.

ARTICLE 14 – *Capital Gains* – 1. Except as provided in Article 8 (Air Transport) and 9 (Shipping) of this Convention, each Contracting State may tax capital gains in accordance with the provisions of its domestic law.

ARTICLE 15 – *Independent personal services* – 1. Income derived by an individual, whether in his own capacity or as a member of a partnership, who is a resident of a Contracting State in respect of professional services or other independent activities of a similar character may be taxed in that State. Such income may also be taxed in the other Contracting State if such services are performed in that other State and if :

- (a) he is present in that other State for a period or periods aggregating to 90 days in the relevant fiscal year ; or
- (b) he, or the partnership, has a fixed base regularly available to him, or it, in that other State for the purpose of performing his activities ;

but in each case only so much of the income as is attributable to those services.

2. For the purposes of paragraph 1 of this Article an individual who is a member of a partnership shall be regarded as being present in the other State during days on which, although he is not present, another individual member of the partnership is so present and performs professional services or other independent activities of a similar character in that State.

3. The term professional services includes 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 Article 17 (Directors fees), 18 (Artistes and athletes), 19 (Governmental remuneration and pensions), 20 (Pensions and annuities), 21 (Students and trainees) and 22 (Teachers) of this Convention, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1 of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall not be taxed in that other State if :

- (a) he is present in the other State for a period or periods not exceeding in the aggregate 183 days during the relevant fiscal year;
- (b) the remuneration is paid by, or on behalf of, an employer who is not resident of that other State; and
- (c) the remuneration is not deductible in computing the profits of an enterprise chargeable to tax in that other State.

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft in international traffic may be taxed in the Contracting State of which the person deriving the profits from the operation of the ship or aircraft is a resident.

ARTICLE 17 – *Directors fees* – 1. Directors 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 may be taxed in that other State.

ARTICLE 18 – *Artistes and athletes* – 1. Notwithstanding the provisions of Articles 15 (Independent personal services) and 16 (Dependent personal services) of this Convention, income derived by entertainers (such as stage, motion picture, radio or television artistes and musicians) or athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

2. Where income arising from personal activities are such exercised in a Contracting State by an entertainer or athlete accrues not to that entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7 (Business profits), 15 (Independent personal services) and 16 (Dependent personal services) of this convention be taxed in that Contracting State.

3. The provisions of paragraphs 1 and 2 of this Article shall not apply if the visit to a Contracting State of the entertainer or the athlete is directly or indirectly supported, wholly or substantially, from the public funds of the other Contracting State, including a political sub-division or local authority of that other State.

ARTICLE 19 – *Government remuneration and pensions* – 1. Remuneration, other than a pension, paid by the Government of a Contracting State to any individual who is a national of that State in respect of services rendered in the discharge of governmental functions in the other Contracting State shall be exempt from tax in that other Contracting State.

2. Any pension paid by the Government of a Contracting State to any individual in respect of services rendered to that Government shall be taxable only in that Contracting State.

3. The provisions of this Article shall not apply to remuneration or pensions in respect of services rendered in connection with any trade or business.

ARTICLE 20 – *Pensions and annuities* – 1. Any pension, other than a pension referred to in Article 19(2) of this Convention, or annuity paid to a resident of a Contracting State shall be taxable only in that State.

2. The term pension means a periodic payment made in consideration of past employment or by way of compensation for injuries received in the course of performance of employment or any payments made under the social security legislation of either Contracting State.

3. 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 moneys worth.

ARTICLE 21 – *Students and trainees* – 1. An individual who is a resident of a Contracting State or was a resident of that State immediately before visiting the

other Contracting State and who is temporarily present in that other State for the primary purpose of :

- (a) studying at a University or other accredited or recognised educational institution in that other Contracting State ; or
- (b) securing training required to qualify him to practice a profession or a professional speciality ; or
- (c) studying or doing research as a recipient of a grant, allowance, or award from a governmental, religious, charitable, scientific, literary or educational organisation;

shall not be subject to tax by that other Contracting State in respect of :

- (i) gifts from abroad for the purposes of his maintenance, education, study, research or training ;
- (ii) the grant, allowance or award ; and
- (iii) income, from personal services rendered in that other Contracting State (other than any rendered by an articled clerk or other person undergoing professional training to the person or partnership to whom he is articled or who is providing the training) not exceeding the sum of 750 pounds sterling or its equivalent in Indian currency during any fiscal year.

2. The exemptions under paragraph 1 of this Article shall only extend for such period of time as may be reasonably or customarily required for the purpose of the visit, but in no event shall any individual have the benefit of paragraph 1 of this Article for more than 5 years.

3. An individual who is a resident of a Contracting State or was a resident of that State immediately before visiting the other Contracting State and who is temporarily present in that other State for a period not exceeding 12 months as an employee of, or under contract with, a resident of the first-mentioned Contracting State, for the primary purpose of :

- (a) acquiring technical, professional or business experience from a person other than that resident of the first-mentioned Contracting State ; or
- (b) studying at a University or other accredited or recognised institution in that other Contracting State;

shall not be subject to tax by that other Contracting State on his income from personal services performed in the other Contracting State for that period in an amount not exceeding 1,500 pounds sterling or its equivalent in Indian currency.

4. An individual who is a resident of a Contracting State or was a resident of that State immediately before visiting the other Contracting State and who is temporarily present in that other State for a period not exceeding 12 months as a participant in a programme sponsored by the Government of the other Contracting State, for the primary purpose of training, research or study, shall not be subject to tax by that other Contracting State in respect of payments made by the Government of the first-mentioned Contracting State for the purposes of his maintenance, training, research, or study.

ARTICLE 22 – *Teachers* – 1. An individual who visits a Contracting State for a period not exceeding two years for the purpose of teaching or engaging in research at a University, college or other recognised educational institution in that State, and who was immediately before that visit a resident of the other Contracting State, shall be exempted from tax by the first-mentioned Contracting State on any remuneration for such teaching or research for a period not exceeding two years from the date he first visits that State for such purpose.

2. This Article shall only apply to income from research if such research is undertaken by the individual in the public interest and not primarily for the benefit of some other private person or persons.

ARTICLE 23 – *Other income* – 1. Subject to the provisions of paragraph 2 of this Article, items of income beneficially owned by a resident of a Contracting State, wherever arising, other than income paid out of trusts or the estates of deceased persons in the course of administration, which are not dealt with in the foregoing Articles of this Convention, shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in

the other Contracting State 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 income is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 15 of this Convention, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, items of income of a resident of a Contracting State not dealt with in the foregoing articles of this Convention, and arising in the other Contracting State may be taxed in that other State.

ARTICLE 24 – *Elimination of double taxation* – 1. Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom (which shall not affect the general principle hereof):

- (a) Indian tax payable under the laws of India and in accordance with the provisions of this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within India (excluding, in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits, income or chargeable gains by reference to which the Indian tax is computed.
- (b) In the case of a dividend paid by a company which is a resident of India to a company which is a resident of the United Kingdom and which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividend, the credit shall take into account in [addition to any Indian tax for which credit may be allowed under the provisions of sub-paragraph (a) of this paragraph] the Indian tax payable by the company in respect of the profits out of which such dividend is paid.

2. Subject to the provisions of the law of India regarding the allowance as a credit against Indian tax of tax paid in a territory outside India (which shall not affect the general principle hereof), the amount of the United Kingdom tax paid, under the laws of the United Kingdom and in accordance with the provisions of

this Convention, whether directly or by deduction, by a resident of India, in respect of income from sources within the United Kingdom which has been subjected to tax both in India and the United Kingdom shall be allowed as a credit against the Indian tax payable in respect of such income but in an amount not exceeding that proportion of Indian tax which such income bears to the entire income chargeable to Indian tax.

For the purposes of the credit referred to in this paragraph, where the resident of India is a company, by which surtax is payable, the credit to be allowed against Indian tax shall be allowed in the first instance against the income-tax payable by the company in India and, as to the balance, if any, against the surtax payable by it in India.

3. Subject to paragraph 5 of this Article, for the purposes of paragraph 1 of this Article the term Indian tax payable shall be deemed to include :

- (a) any amount which would have been payable as Indian tax but for a deduction allowed in computing the taxable income or an exemption or reduction of tax granted for that year in question under the provisions of the Income-tax Act, 1961 (43 of 1961) referred to in paragraph 4(a) or (b) of this Article;
- (b) that proportion of any amount which would have been payable as Indian tax by a resident of India but for a deduction allowed in computing the taxable income or an exemption or reduction granted for the year in question under the provisions of the Income-tax Act, 1961 (43 of 1961) referred to in paragraph 4(c) of this Article which corresponds to the proportion of that residents total production in that year which was actually sold in the Indian Domestic Tariff Area under order issued by the Chief Controller of Import and Export being Nos. 21/90-93, 22/90-93, 23/90-23, 25/90-23, 26/90-23, 27/90-93, dated 30-3-1990 and similar Orders from time to time published in the Official Gazette by the Central Government under power conferred on it by section 3 of the Import and Export (Control) Act, 1947 (18 of 1947).

4. The provisions referred to in this paragraph are :

- (a) sections 10(4), 10(4B), 10(6)(vii), 10(15)(iv), 33AB, 80HHD, 80-I and 80-IA;

- (b) any other provision which may subsequently be enacted granting an exemption or reduction from tax which is agreed by the competent authorities of the Contracting States to be of a substantially similar character to a provision referred to in sub-paragraph (a) of this paragraph, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character;
- (c) sections 10A and 10B.

5. Relief from United Kingdom tax shall to be given by virtue of this paragraph 3 of this Article in respect of income from any source if the income relates to a period starting more than 10 fiscally years after the deduction in computing taxable income or exemption from, or reduction of, Indian tax is first granted to the resident of the United Kingdom or to the resident of India, as the case may be, in respect of that source.

6. Income which in accordance with provisions of this Convention is not to be subjected to tax in a Contracting State may be taken into account for calculating the rate of tax to be imposed in that Contracting State on other income.

7. For the purposes of paragraphs 1 and 2 of this Article profits, income and chargeable gains, owned by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with the provisions of this Convention shall be deemed to arise from sources in that other Contracting State.

ARTICLE 25 – *Partnerships* – 1. Where, under any provision of this Convention, a partnership is entitled, as resident of India, to exemption from tax in the United Kingdom on any income or capital gains, that provision shall not be construed as restricting the right of the United Kingdom to tax any member of the partnership who is a resident of the United Kingdom on his share of the income and capital gains of the partnership; but any such income or gains shall be treated for the purposes of Article 24 of this Convention as income or gains from sources in India.

2. Nothing in Article 11 of this Convention shall entitle a partnership which is a resident of India to a tax credit in respect of dividends paid to the partnership by a company which is a resident of the United Kingdom; but any member of the partnership who is a resident of India shall be regarded as entitled to the tax credit to which he would have entitled under that Article, if his share of those dividends has been paid to him by the company which is a resident of the United Kingdom.

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 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 favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities in the same circumstances or under the same conditions. This provisions shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which an enterprise of the other Contracting State has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar enterprise of the first-mentioned Contracting State, nor as being in conflict with the provisions of paragraph 4 of Article 7 of this Convention.

3. Nothing contained in this Article shall be construed as obliging a Contracting State to grant to individuals not resident in the State any personal allowances, reliefs and reductions for taxation purposes which are by law available only to individuals who are so resident.

4. 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.

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 State 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 States, 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 State shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention.

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

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 of the domestic laws of the Contracting States concerning taxes covered by this Convention, insofar as the taxation thereunder is not contrary to this convention, in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Article 1 of this Convention. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State. However, if the information is originally

regarded as secret in the transmitting State it shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes which are the subject of this Convention. Such persons or authorities shall use the information only for such purposes but may disclose the information in public court proceedings or in judicial decisions. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchanges of information shall be made, including, where appropriate, exchanges of information regarding tax avoidance.

2. In no case shall the provisions of paragraph 1 of this Article be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to supply information which is 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 – *Diplomatic and consular officials* – 1. 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.

2. Notwithstanding the provisions of paragraph 1 of article 4 (Fiscal domicile) of this Convention, an individual who is a member of the diplomatic, consular or permanent mission of a Contracting State which is situated in the other Contracting State and who is subject to tax in that other State only if he derives income from sources therein, shall not be deemed to be a resident of that other State for the purposes of this Convention.

ARTICLE 30 – *Entry into force* – 1. Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of the Convention. This Convention shall entire into force on the date of the later of these notifications and shall thereupon have effect :

(a) in the United Kingdom :

- (i) in respect of income-tax and capital gains tax, for any year of assessment beginning on or after 6th April in the calendar year next following that in which the later of the notifications is given;
- (ii) in respect of corporation tax, for any financial year beginning on or after 1 April in the calendar year next following that in which the later of the notifications is given;
- (iii) in respect of petroleum revenue tax, for any chargeable period beginning on or after 1st January in the calendar year next following that in which the later of the notifications is given;

(b) in India, in respect of income arising in any fiscal year beginning on or after the first day of April next following the calendar year in which the later of the notifications is given.

2. Subject to the provisions of paragraph 3 of this Article, the Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains signed in New Delhi on 16th April, 1981 (hereinafter referred to as the 1981 Convention) shall terminate and cease to be effective from the date upon which this Convention has effect in respect of the taxes to which this Convention applies in accordance with the provisions of paragraph 1 of this Article.

3. Where any provisions of the 1981 Convention would have afforded any greater relief from tax than is due under this Convention, any such provision as aforesaid shall continue to have effect ;

- (a) in the United Kingdom, for any year of assessment or financial year; and
- (b) in India, for any fiscal year;

beginning, in either case, before the entry into force of this Convention.

ARTICLE 31 - *Termination* - This Convention shall remain in force until terminated by one of the Contracting State. Either Contracting State may terminate the Convention, through the diplomatic channel, by giving notice of termination at least six months before the end of any calendar year beginning after the expiration of ten years from the date of entry into force of the Convention. In such event, the Convention shall cease to have effect;

(a) in the United Kingdom ;

(i) in respect of income-tax and capital gains tax, for any year of assessment beginning on or after 6th April in the calendar year next following that in which the notice is given;

(ii) in respect of corporation tax, for any financial year beginning on or after 1st April in the calendar year next following that in which the notice is given;

(iii) in respect of petroleum revenue tax, for any chargeable period beginning on or after 1st January in the calendar year next following that in which the notice is given;

(b) in India, in respect of income arising in any fiscal year beginning on or after the first day of April next following the calendar year in which the notice given.

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

Done on this 25th day of January, 1993, in New Delhi on two original copies each in the Hindi and English languages, both text being equally authentic. In case of divergence between the two texts, the English text shall be the operative one.

*For the Government of
the Republic of India:*

*For the Government of the
United Kingdom of Great
Britain and Northern
Ireland:*

BRITISH HIGH COMMISSION

NEW DELHI, JANUARY 25, 1993

Your Excellency :

I have the honour to refer to the Convention between the Government of the United Kingdom of Great Britain and Northern Ireland 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 and capital gains which has been signed today and to propose on behalf of the Government of the United Kingdom of Great Britain and Northern Ireland :

- (a) that, in applying sub-paragraph (j) of paragraph 2 of Article 5, for the purpose of determining whether a building site or construction installation or assembly project or supervisory activity in connection therewith has continued for a period of more than six months, the Contracting States shall :
 - (i) take no account of time previously spent by employees of the enterprise on other sites or projects which have no connection with the site or project in question ;
 - (ii) apply for more than six months test separately to each site or project which has no connection with any other site or project and to each group of connected sites or projects; and
 - (iii) regard a building site as a single site, even if several contracts have been entered into for the work being done, provided that it forms a coherent whole commercially and geographically;
- (b) that, in applying paragraph 3 of Article 7, for the purpose of determining whether a permanent establishment has taken an active part in negotiating, concluding or fulfilling contracts entered into by the enterprise, the Contracting States shall take into considerations all relevant circumstances and, in particular, the fact that a contract or order relating to the purchase or provision of goods or services was negotiated or placed with the head office of the enterprise, rather than with the permanent establishment, shall not preclude them from determining that the permanent establishment did take an active part in negotiating, concluding or fulfilling that contract;

(c) that, in applying paragraph 1 of Article 8, for the purpose of determining the profits of an enterprise which are derived from the operation of aircraft in international traffic, the Contracting States shall treat interest from the investment or deposit of receipt arising directly from the operation of aircraft in international traffic as being included in those profits, but shall not treat interest derived from the reinvestment of such interest as being so included.

If the foregoing proposal is acceptable to the Government of the Republic of India I have the honour to suggest that the present Note and Your Excellency's reply to that effect should be regarded as constituting an agreement between the two Governments in this matter.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

*His Excellency Mr. S. Ramamurti,
Chairman,
Central Board of Direct Taxes,
Ministry of Finance,
Government of India,
New Delhi*

(Nicholas Fenn)
High Commissioner

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

CENTRAL BOARD OF DIRECT TAXES

NEW DELHI, JANUARY 25, 1993

Your Excellency :

I have the honour to acknowledge receipt of Your Excellencys Note of today which reads as follows :

I have the honour to refer to the Convention between the Government of the United Kingdom of Great Britain and Northern Ireland 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 and capital gains which has been signed today and to propose on behalf of the Government of the United Kingdom of Great Britain and Northern Ireland :

- (a) that, in applying sub-paragraph (j) of paragraph 2 of Article 5, for the purpose of determining whether a building site or construction, installation or assembly project or supervisory activity in connection therewith has continued for a period of more than six months, the Contracting States shall :
 - (i) take no account of time previously spent by employees of the enterprise on other sites or projects which have no connection with the site or project in question;
 - (ii) apply more than six months test separately to each site or project which has no connection with any other site or project and to each group of connected sites or projects; and
 - (iii) regard a building site as a single site, even if several contracts have been entered into for the work being done, provided that it forms a coherent whole commercially and geographically;
- (b) that, in applying paragraph 3 of Article 7, for the purpose of determining whether a permanent establishment has taken an active part in negotiating, concluding or fulfilling contracts entered into by the enterprise, the Contracting States shall take into consideration all relevant circumstances and, in particular, the fact that a contract or order relating to the purchase or provision of goods or services was negotiated or placed with the head office of the enterprise, rather than with the permanent establishment, shall not preclude them from determining that the permanent establishment did take an active part in negotiating, concluding or fulfilling that contract;

(c) that, in applying paragraph 1 of Article 8, for the purpose of determining the profits of an enterprise which are derived from the operation of aircraft in international traffic, the Contracting States shall treat interest derived from the investment or deposit of receipts arising directly from the operation of aircraft in international traffic as being included in those profits, but shall not treat interest derived from the reinvestment of such interest as being so included.

If the foregoing proposal is acceptable to the Government of the Republic of India have the honour to suggest that the present Note and Your Excellency's reply to that effect should be regarded as constituting an agreement between the two Governments in this matter.

In reply, I have the honour to state that the Government of the Republic of India accepts the proposal made therein and agrees that Your Excellency's Note and the present reply shall constitute an agreement between the Government of the Republic of India and the Government of the United Kingdom of Great Britain and Northern Ireland in this matter.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

(S. Ramamurti)

Chairman

Central Board of Direct Taxes

India.

His Excellency

Sir Nicholas Fenn, KCMG

British High Commission

in India,

New Delhi

Indo-US Double Taxation Avoidance Convention (DTAC) – Suspension of Collection during Mutual Agreement Procedure

Article 27 of the Indo-USA DTAC provides for Mutual Agreement Procedure (MAP) for avoidance of double taxation. Paragraph 4 of article 27 authorises the competent authorities to develop appropriate bilateral procedures, conditions, methods and techniques for implementation of MAP provided for in the article. Accordingly, with a view to avoid the unintended hardship to the taxpayers, as well as for the efficient management of collection of revenue, the Competent Authorities of India and USA had entered into a Memorandum of Understanding (MoU) regarding suspension of collection during the pendency of MAP.

2. This MoU was brought to the notice of field formation *vide* Instruction No. 2/2003, dated 28-4-2003 (F.No. 500/56/99-FTD) wherein it was stated that the collection of outstanding taxes in the case of a taxpayer, who is a resident of USA and whose request under MAP is under consideration of the Competent Authorities, shall be kept in abeyance subject to furnishing of a bank guarantee of an amount equal to the amount of tax under dispute and interest accruing thereon as per the provisions of the Income-tax Act.

3. Now references have been received for extending the applicability of MoU to Indian resident entities in cases where Mutual Agreement Procedure has been invoked by the US resident. In order to avoid hardship to Indian resident taxpayers especially in cases involving transfer pricing, where the Indian resident entity is liable to pay taxes on such income which may have been charged to tax in the hands of the associated entity in USA, it has been decided to extend the applicability of the MoU to such Indian resident entities during the course of the pendency of the MAP invoked by a resident of USA.

4. On receipt of a formal request for suspension of collection of outstanding tax in terms of the MoU from a taxpayer being, a resident of USA or an Indian resident entity, in a case where MAP has been invoked through US Competent Authority and the same has been admitted by the Indian Competent Authority, the Assessing Officers are required to keep the enforcement of collection of outstanding taxes in abeyance in respect of such taxpayers

- (i) after obtaining a confirmation regarding pendency of MAP from the Foreign Tax and Tax Research Division of the Central Board of Direct Taxes and
- (ii) on receipt of a bank guarantee in the model draft format annexed to the MoU for an amount calculated in accordance with the manner indicated therein.

5. All the other conditions of MoU as enumerated in Instruction No. 2 of 2003, dated 28-4-2003 shall remain the same.

6. These instructions are issued under section 119 of the Income-tax Act and the same may be brought to the notice of all the officers in your charge.

Instruction : No. 10/2007, dated 23-10-2007

JUDICIAL ANALYSIS

- In accordance with article 9(1) of the Agreement for Avoidance of Double Taxation between India and U.K., entire shipping income of U.K. company which is resident of U.K. is exempt from tax in India with effect from 1-4-1992 *Arabian Express Line Ltd. of United Kingdom v. Union of India* [1994] 120 CTR (Guj.) 377.

- In order that a payment may be treated as royalty for the purposes of article XIII of the Agreement for Avoidance of Double Taxation between India and the U.K. the person who is the owner of such patents, designs or models, plans, secret formula or process, etc., retains the property in them and permits the use or allows the right to use such patents, designs or models, plans, secret formula, etc. *CIT v. Davy Ashmore India Ltd.* [1991] 190 ITR 626 (Cal.).

- Renewal of deposit with HDFC after date of coming into force of the Convention, amounted to fresh deposits and rate of tax at 15 per cent would be applicable *CIT v. Borhat Tea Co. Ltd.* [1993] 203 ITR 987 (Cal.).

- Permanent establishment denotes some place of fixed nature with permanency, and it does not include in its ambit a moving vessel which operates near a fixed place and which does not belong to the assessee *Dy. CIT v. Subsea Offshore Ltd.* [1998] 66 ITD 298 (Mum.-Trib.).

· Where Double Taxation Avoidance Agreement between Government of India and Government of U.K. came into force with effect from 23-11-1981 and assessee not resident who had made deposits in India prior to that date, renewed certain deposits after 23-11-1981, deposit so renewed were to be interpreted as loans first created within meaning of aforesaid agreement and interest on such deposits could be charged at rate of 15 per cent only *Borhat Tea Co. Ltd. v. ITO* [1990] 33 ITD 9 (Cal.) (SMC).

Ukraine

Agreement for Avoidance of Double Taxation and Prevention of Fiscal Evasion with Ukraine

Whereas the annexed Convention between the Government of Republic of India and the Government of Ukraine for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital shall, enter into force, on the 31st October, 2001, on the date of the later of notifications by each of the Contracting States to each other, of the completion of the procedures required under their respective laws, as required by Article 30 of the said Convention;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in the Union of India.

Notification : *GSR 24(E), dated 11-1-2002.*

ANNEXURE

CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF UKRAINE FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Government of the Republic of India and the Government of Ukraine desiring to conclude a Convention for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income and on capital and confirming their aspiration for the development and strengthening of bilateral relations 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. This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital including taxes on gains from the alienation of movable or immovable property and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which this Convention shall apply are in particular :

(a) In Ukraine :

- (i) the profits tax of enterprise;
- (ii) the individual income-tax;
- (iii) tax on property of enterprises;
- (iv) tax on immovable property of citizens
(hereinafter referred to as Ukrainian tax)

(b) In India :

- (i) the income-tax, including any surcharge thereon;
- (ii) the wealth-tax
(hereinafter referred to as Indian tax).

4. This Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which are made in their respective taxation laws.

ARTICLE 3 : *General definitions* – 1. For the purpose of this Convention, unless the context otherwise requires :

- (a) the term Ukraine means the territory of Ukraine, its continental shelf and its exclusive economic (maritime) zone, including any territory outside the territorial sea of Ukraine which, according to international law, is specified

or may be specified, in line with the Ukrainian law, as the territory within which the rights of Ukraine relating to seabed and natural resources are effective;

- (b) the term India means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdictions, according to the Indian law and in accordance with international law/U.N. Convention on the law of the sea;
- (c) the terms a Contracting State and the other Contracting State mean Ukraine or India as the context requires;
- (d) the term tax means Ukrainian or Indian tax, as the context requires, but shall not include any amount which is payable in relation to the taxes to which this Convention applies or which represents a penalty imposed relating to those taxes;
- (e) the term person includes an individual, a company and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting State;
- (f) the term company means any body corporate or any entity which is treated as a body corporate for tax purposes under the taxation laws in force in the respective Contracting States;
- (g) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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;
- (h) the term competent authority means in the case of Ukraine – The State Tax Administration of Ukraine or its authorised representative; and in the case of India – The Ministry of Finance (Department of Revenue) or its authorised representative;
- (i) the term national means :
 - (a) any individual possessing the citizenship of a Contracting State;
 - (b) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;

- (j) the term international traffic means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (k) the term fiscal year means :
 - (i) in the case of Ukraine, calendar year from 1st of January to 31st of December of the year under review;
 - (ii) in the case of India, the previous year as defined under section 3 of the Income-tax Act, 1961.

2. As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

ARTICLE 4 : *Resident* – 1. For the purposes of this Convention, the term resident of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of registration or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources or capital situated in the Contracting State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows :

- (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 State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in other 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 State of which he is a national;
- (d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 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 means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) a warehouse in relation to a person providing storage facilities for others;
- (h) a premises or warehouse used as a sales outlet or for receiving or soliciting orders;
- (i) an installation or structure used for the exploration or exploitation of natural resources;
- (j) a building site or construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or activities (together with other such sites, projects or activities, if any) continue for a period of more than six months.

3. An enterprise shall be deemed to have a permanent establishment in a State and to carry on business through that permanent establishment if it provides

services or facilities in connection with or supplies plant and machinery on hire used or to be used in, the prospecting for, extraction or production of mineral oils or in connection with such extraction or production of mineral oils in the State.

4. Notwithstanding the preceding provisions of this Article, the term permanent establishment shall be deemed not to include :

- (a) the use of facilities solely for the purpose of storage, display or unloading 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 fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- (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;

However, the provisions of sub-paragraphs (a) to (e) shall not be applicable where the enterprise maintains any other fixed place of business in the other Contracting State for any purposes other than the purposes specified in the said sub-paragraphs.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person being a resident of a Contracting State – other than, an agent of an independent status to whom paragraph 6 applies, is acting 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 that State an authority to conclude contracts on behalf of the enterprise, unless the activities of such person are limited to the purchase of goods or merchandise for the enterprise;

- (b) he has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise;
- (c) he habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise itself or for the enterprise and other enterprises controlling, controlled by, or subject to the same common control, as that enterprise; or
- (d) in so acting, he manufactures or processes in that State for the enterprise goods or merchandise belonging to the enterprise.

6. 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 State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise itself or on behalf of the enterprise and other enterprises controlling, controlled by, or subject to the same common control, as that of the enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

7. 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 otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6 : *Income from immovable property* – 1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall also 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, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable directly or indirectly to that permanent establishment.

The words directly or indirectly mean, for the purposes of this Article, that where a permanent establishment takes an active part in negotiating, concluding or fulfilling contracts entered into by the enterprise, then notwithstanding that other parts of the enterprise have also participated in those transactions, there shall be attributed to the permanent establishment that proportion of profits of the enterprise arising out of those contracts as the contribution of the permanent establishment to those transactions bears to that of the enterprise as a whole.

2. Subject to the provisions of paragraph 3, 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.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business 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 in accordance with the provisions of and subject to the limitations of the tax laws of that State.

4. Insofar 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 the 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 contained 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 purposes 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 : *Shipping and air transport* – 1. Profits derived by an enterprise of a Contracting State from operation of aircraft or ships in international traffic shall be taxable only in that State.

2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency engaged in the operation of aircraft or ships.

3. For the purposes of this Article, interest on amounts connected with the operation of aircraft or ships in international traffic shall be regarded as profits derived from the operation of such aircraft or ships; and the provisions of Article 11 (Interest) shall not apply in relations to such interest.

4. For the purposes of this Article, profits from the operation of aircraft or ships in international traffic shall mean profits derived by an enterprise from transportation by air or sea respectively of passengers, mail, livestock, goods or cargoes of every description carried on by the owners or lessees or charterers of aircraft or ships. This will also include profit from :

- (a) the sale of tickets for such transportation on behalf of other enterprises;
- (b) the rental on a bareboat ship or aircraft;
- (c) the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) in connection with the transport of goods or merchandises in international traffic.

ARTICLE 9 : *Associated enterprises* – 1. 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 10 : *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 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 laws of that 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 (other than a partnership) which holds directly at least 25 per cent of the share capital of the company paying the dividends;
- (b) 15 per cent of the 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 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 14, 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 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 State or so far 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 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 State.

ARTICLE 11 : *Interest* – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. 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 debtors 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.

4. The provisions of paragraphs 1 and 2 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 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 14, as the case may be, shall apply.

5. Interest shall be deemed to arise in a Contracting State when the payer is that 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 resident 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 such interest shall be deemed to arise in the 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 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 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 the other provisions of this Convention.

7. The provisions of this Article shall not apply if its main purpose or one of the main purposes of any persons concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.

8. Notwithstanding the provisions of paragraph 2,

- (a) interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by :
 - the Government, a political sub-division or a local authority of the other Contracting State; or
 - the Central Bank of the other Contracting State;
- (b) interest arising in a Contracting State shall be exempt from tax in that Contracting State if it is derived and beneficially owned by any person [other than a person referred to in sub-paragraph (a)] who is a resident of the other Contracting State provided that the transaction giving rise to the debt-claim has been approved in this regard by the Government of the first-mentioned Contracting State.

ARTICLE 12 : *Royalties and fees for technical services* – 1. Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

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

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 including 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.

4. The term fees for technical services as used in this Article means payment of any amount to any person other than payments to an employee of a person making payments, in consideration for the services of a managerial, technical or consultative nature including, the provision of services of technical or other personnel.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services 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, property or contract in respect of which the royalties or fees for technical-services are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Royalties and fees for technical services shall be deemed to arise in a Contracting State when the payer is the State itself, political sub-division, a local authority or a resident of that State. Where, however, the person paying royalties or fees for technical services, 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 or fees for

technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the 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 royalties or fees for technical services paid exceeds the amount which would have been paid 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 the other provisions of this Convention.

8. The provisions of this Article shall not apply if it is the main purposes or one of the main purposes of person concerned with the creation or transfer of the rights or rendering of services in respect of which the royalties or fees are paid to take advantage of this Article by means of that creation or assignment.

ARTICLE 13 : *Capital gains* – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property, referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic by an enterprise of a Contracting State or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that Contracting State.

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly of immovable property and of an interest in a partnership assets of which consist principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from the alienation of shares of a company and an interest in a partnership other than those mentioned in paragraph 4, may be taxed in the Contracting State of which the company or partnership is resident.

6. Gains from the alienation of any property other than that mentioned in paragraphs 1, 2, 3, 4 and 5, shall be taxable only in the Contracting State of which the alienator is a resident provided that those gains are subject to tax in that Contracting State.

ARTICLE 14 : *Independent personal services* – 1. Income derived by an individual who is a resident of a Contracting State from the performance of professional services or other independent activities of a similar character shall be taxable only in that State except in the following circumstances when such income may also be taxed in the other Contracting State :

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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 State;
- (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in the relevant fiscal year, only so much of the income as is derived from his activities performed in that other State may be taxed in that other 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 15 : *Dependent personal services* – 1. Subject to the provisions of Articles 16, 18, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if :

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, or aboard a boat engaged in inland waterways transport, may be taxed in the Contracting State of which the enterprise operating the ship or aircraft is a resident.

ARTICLE 16 : *Directors fees* – Directors fees and other 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 may be taxed in that other State.

ARTICLE 17 : *Artistes and sportspersons* – 1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from the personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or

sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. Notwithstanding provisions of the paragraphs 1 and 2, income mentioned in this Article, will be exempt from taxation in the State in which the activity of actor or sportsperson is financed from the public funds of this and other State, or if such activity is carried out according to the agreement on cultural cooperation concluded between the Contracting States.

4. Notwithstanding the provisions of paragraph 2 and Articles 7, 14 and 15, where income in respect of personal activities exercised by an actor or sportsperson in his capacity as such in a Contracting State accrues not to the actor or sportsperson himself but to another person, that income shall be taxable only in the other Contracting State, if that other person is supported wholly or substantially from the public funds of that other State, including any of its political sub-divisions or local authorities.

ARTICLE 18 : *Remuneration and pensions in respect of Government service – 1.*

(a) Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who :

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. The provisions of Articles 15 and 16 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or political sub-division or local authority thereof.

ARTICLE 19 : *Non-Government pensions and annuities* – 1. Any pension, other than a pension referred to in Article 19, or any annuity derived by a resident of a Contracting State from sources within the other Contracting State may be taxed only in the first mentioned Contracting State.

2. The term pension means a periodic payment made in consideration of past services or by way of compensation for injuries received in the course of performance of services.

3. The term annuity means a stated sum payable periodically at stated time 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 moneys worth.

ARTICLE 20 : *Payments received by students and apprentices* – 1. A student or business apprentice who is or was a resident of a Contracting State immediately before visiting the other Contracting State and who is present in that other Contracting State solely for the purpose of his education or training shall be exempt from tax in that other State on :

- (a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training; and
- (b) remuneration from employment in that other State in an amount not exceeding US \$ 500 or its equivalent amount in Ukrainian and Indian currency during any fiscal year, as the case may be, provided that such employment is directly related to his studies or is undertaken for the purpose of his maintenance.

2. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article for more than five consecutive years from the date of his first arrival in that other Contracting State.

ARTICLE 21 : *Payments received by professors, teachers and research scholars* – 1. A professor or teacher who is or was a resident of the Contracting State

immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college, school or other approved institution in that other Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival in that other 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 20, an individual shall be deemed to be a resident of a Contracting State if he is resident in that State in the fiscal year in which he visits the other Contracting State or in the immediately preceding fiscal year.

4. For the 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.

ARTICLE 22 : *Other income* – 1. Subject to the provisions of paragraph 2, items of income of a resident of a Contracting State, wherever arising, which are not expressly dealt with in the foregoing Articles of this Convention shall be taxable only in that Contracting State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income being a resident of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right of property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such a case the provisions of Article 7 or Article 15, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt within the foregoing articles of this

Convention, and arising in the other Contracting State may also be taxed in that other Contracting State.

ARTICLE 23 : *Capital* – 1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Capital represented by movable property, forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to the fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services may be taxed in that other State.

3. Capital represented by ships, aircraft or motor vehicle operated in international traffic and by movable property pertaining to the operation of such ships, aircraft or motor vehicles, shall be taxable only in the Contracting State of which the enterprise owning such property is a resident.

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

ARTICLE 24 : *Avoidance of double taxation* – 1. The laws in force in either of the Contracting States will continue to govern the taxation of income and capital in the respective Contracting States except where provisions to the contrary are made in this Convention.

2. Where a resident of India derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Ukraine, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in Ukraine, whether directly or by deduction; and as a deduction from the tax on the capital of that resident an amount equal to the capital tax paid in Ukraine. Such deduction in either case shall not, however, exceed that part of income-tax or tax on capital (as paid before the deduction is given), which is attributable to the income or the capital which may be taxed in Ukraine.

3. Taking into account the Ukrainian law on exemption from tax paid outside Ukraine (not being contrary to the provisions of this Article), the Indian tax paid pursuant to the Indian law and this Convention either directly or by deduction from profit, income, or capital, would be allowed as credit against Ukrainian tax in respect of profit, income, or capital imposed under Ukrainian law. In any such case, the credit shall not exceed that part of Ukrainian tax (as was determined before the deduction) which pertains to the profit, income, or capital which may be taxed in India.

4. The tax payable in the Contracting State mentioned in paragraphs 2 and 3 of this Article shall be deemed to include the tax which would have been payable but for the tax incentives granted under the laws of the Contracting State and which are designed to promote economic development.

5. Income which in accordance with the provisions of this Convention, is not to be subjected to tax in a Contracting State may be taken into account for calculating the rate of tax to be imposed in that Contracting State.

ARTICLE 25 : *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. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

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 enterprise of that other State carrying on the same activities in the same circumstances. This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which an enterprise of the other Contracting State has in the first mentioned Contracting State at rate higher than that imposed on the profits of a similar enterprise of the first mentioned State, nor as being in conflict with the provisions of paragraph 3 of Article 7 of this Agreement.

3. Nothing contained in this Article shall be construed as obliging a Contracting State to grant to persons not resident in that State any personal allowances, reliefs, reductions and deductions for taxation purposes which are by law available only to persons who are so resident.

4. 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 in the same circumstances.

5. In this Article, the term taxation means taxes which are the subject of this Convention.

ARTICLE 26 : *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 State of which he is a resident. The case must be presented within three years from the date of receipt of the first notice of the action resulting in taxation not in accordance with the provisions of the Convention.

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 a satisfactory 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. Any agreement reached shall be implemented notwithstanding any time limits in the national laws of the Contracting State.

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.

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 27 : *Exchange of information* – 1. The competent authorities of the Contracting States shall exchange such information (including documents) as is necessary for carrying out the provisions of the Convention or of the domestic laws of the Contracting States, concerning taxes covered by the Convention, insofar as the taxation thereunder is not contrary to the Convention, in particular for the prevention of fraud or evasion of such taxes. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State. However, if the information is originally regarded as secret in the transmitting State, it shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Convention. Such persons or authorities shall use the information only for such purposes but may disclose the information in public court proceedings or in judicial decisions. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchange of information shall be made, including, where appropriate, exchange of information regarding tax avoidance.

2. The exchange of information or documents shall be either on a routine basis or on request with reference to particular cases or both.

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 and administrative practice of that or of the other Contracting State;
- (b) to supply information or documents 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 or documents 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 28 : *Assistance in collection* – 1. The Contracting States undertake to lend assistance and support to each other, in the collection of taxes to which this Convention relates, in the cases where the taxes are definitely due according to the laws of the 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 State in accordance with the laws applicable to the enforcement and collection of its taxes.

3. In the case of Indian tax, the request will be sent by the Central Board of Direct Taxes, Department of Revenue to the State Tax Administration of Ukraine 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 Ukrainian tax, the request will be sent by the State Tax Administration of Ukraine to the Central Board of Direct Taxes, Department of Revenue, in India and will be accompanied by such certificate as is required by the laws of Ukraine 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 such assistance to the extent mutually agreed between the competent authorities of the two Contracting States.

ARTICLE 29 : *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 agreements.

ARTICLE 30 : *Entry into force* – Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Convention. This Convention shall enter into force on the date of the later of these notifications and shall thereupon have effect :

- (a) in India, in respect of income arising in any previous year beginning on or after the first day of April next following the calendar year in which the Convention enters into force and in respect of capital which is held at the expiry of the previous year following that in which the Convention enters into force or subsequent years.
- (b) in Ukraine:
 - (i) in respect of taxes on dividends, interest or royalties for any payments effected on the 60th or after 60 days following the day of the Conventions coming into force;
 - (ii) in respect of the taxes on profits of enterprises and tax on property of enterprises and tax on immovable property of citizens for any taxable period starting on January 1 of the calendar year following the year of the Conventions coming into force;
 - (iii) in respect of the income-tax imposed on the citizens for any payments effected on the 60th or after 60 days following the day of the Conventions coming into force.

ARTICLE 31 : *Termination* – This Convention shall remain in force indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years

from the date of its entry into force, give the other Contracting State through diplomatic channels, written notice of termination and, in such event, this Convention shall cease to have effect:

- (a) in India, in respect of income arising in any previous year beginning on or after the 1st day of April next following the calendar year in which the notice is given and in respect of capital which is held at the expiry of any fiscal year beginning on or after 1st April next following the calendar year in which the notice of termination is given.
- (b) in Ukraine:
 - (i) in respect of the taxes on dividends, interest or royalties for any payments effected 60th day or after 60 days following the day on which notice of termination is given;
 - (ii) in respect of the taxes on profits of enterprises and tax on property of enterprises and tax on immovable property of citizens for any taxable period starting on 1st January of the calendar year following the year in which notice of termination is given;
 - (iii) in respect of the income-tax imposed on the citizens for any payments effected on the 60th or after the 60th day following the day on which notice of termination is given.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed the present Convention.

DONE in duplicate at KYIV on this April 7th day of one thousand nine hundred and ninety-nine in the Hindi, Ukrainian and English languages, all the texts being equally authentic. In case of divergence between any of the two texts, the English text shall be the operative one.

USA

Agreement for avoidance of double taxation of income with USA

Whereas the annexed Convention between the Government of the United States of America 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 has entered into force on the 18th December, 1990 after the notification by both the Contracting States to each other of the completion of the procedures required under their laws for bringing into force of the said Convention in accordance with paragraph 1 of Article 30 of the said Convention ;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961) and section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in the Union of India.

Further in exercise of the powers conferred by section 44A(b) of the Wealth-tax Act, 1957 (27 of 1957) and section 44(b) of the Gift-tax Act, 1958 (18 of 1958), the Central Government also directs that the provisions of Article 28 of the said Convention shall be given effect to in the Union of India.

Notification: No. GSR 990(E), dated 20-12-1990.

ANNEXURE

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA 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 United States of America and the Government of the Republic of India, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows :

ARTICLE 1 – General Scope – 1. This Convention shall apply to persons who are residents of one or both of the Contracting States, except as otherwise provided in the Convention.

2. The Convention shall not restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded:

- (a) by the laws of either Contracting State ; or
- (b) by any other agreement between the Contracting States.

3. Notwithstanding any provision of the Convention except paragraph 4, a Contracting State may tax its residents [as determined under Article 4 (Residence)], and by reason of citizenship may tax its citizens, as if the Convention had not come into effect. For this purpose, the term citizen shall include a former citizen whose loss of citizenship had as one of its principal purposes the avoidance of tax, but only for a period of 10 years following such loss.

4. The provisions of paragraph 3 shall not affect

- (a) the benefits conferred by a Contracting State under paragraph 2 of Article 9 (Associated Enterprises), under paragraphs 2 and 6 of Article 20 (Private Pensions, Annuities, Alimony, and Child Support), and under Articles 25 (Relief from Double Taxation), 26 (Non-Discrimination), and 27 (Mutual Agreement Procedure) ; and
- (b) the benefits conferred by a Contracting State under Articles 19 (Remuneration and Pensions in respect of Government Service), 21 (Payment received by Students and Apprentices), 22 (Payments received by Professors, Teachers and Research Scholars) and 29 (Diplomatic Agents and Consular Officers), upon individuals who are neither citizens of, nor have immigrant status in, that State.

ARTICLE 2 – *Taxes covered* – 1. The existing taxes to which this Convention shall apply are :

- (a) in the United States, the Federal income taxes imposed by the Internal Revenue Code (but excluding the accumulated earnings tax, the personal holding company tax, and social security taxes), and the exercise taxes imposed on insurance premiums paid to foreign insurers and with respect to private foundations (hereinafter referred to as United States Tax); provided, however, the Convention shall apply to the exercise taxes imposed on insurance premiums paid to foreign insurers only to the extent that the risks covered by such premiums are not

reinsured with a person not entitled to exemption from such taxes under this or any other Convention which applies to these taxes ; and

(b) in India :

(i) the income-tax including any surcharge thereon, but excluding income-tax on undistributed income of companies, imposed under the Income-tax Act ; and

(ii) the surtax

(hereinafter referred to as Indian tax).

Taxes referred to in (a) and (b) above shall not include any amount payable in respect of any default or omission in relation to the above taxes or which represent a penalty imposed relating to those taxes.

2. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws and of any official published material concerning the application of the Convention.

ARTICLE 3 – *General definitions* – 1. In this Convention, unless the context otherwise requires:

- (a) the term India means the territory of India and includes the territorial sea and air space above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdictions, according to the Indian law and in accordance with inter-national law ;
- (b) the term United States, when used in a geographical sense means all the territory of the United States of America, including its territorial sea, in which the laws relating to United States tax are in force, and all the area beyond its territorial sea, including the sea bed and subsoil thereof, over which the United States has jurisdiction in accordance with international law and in which the laws relating to United States tax are in force ;
- (c) the terms a Contracting State and the other Contracting State mean India or the United States as the context requires ;

- (d) the term tax means Indian tax or United States tax, as the context requires ;
- (e) the term person includes an individual, an estate, a trust, a partnership, a company, any other body of persons, or other taxable entity ;
- (f) the term company means any body corporate or any entity which is treated as a company or body corporate for tax purposes ;
- (g) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean 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 ;
- (h) the term competent authority means, in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative, and in the case of the United States, the Secretary of the Treasury or his delegate ;
- (i) the term national means any individual possessing the nationality or citizenship of a Contracting State ;
- (j) 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 within the other Contracting State ;
- (k) the term taxable year in relation to Indian tax means previous year as defined in the Income-tax Act, 1961.

2. As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires or the competent authorities agree to a common meaning pursuant to the provisions of Article 27 (Mutual Agreement Procedure), have the meaning which it has under the laws of that State concerning the taxes to which the Convention applies.

ARTICLE 4 – *Residence* – 1. For the purposes of this Convention, the term resident of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, citizenship, place of management, place of incorporation, or any other criterion of a similar nature, provided, however, that

- (a) this term does not include any person who is liable to tax in that State in respect only of income from sources in that State; and
- (b) in the case of income derived or paid by a partnership, estate, or trust, this term applies only to the extent that the income derived by such partnership, estate, or trust is subject to tax in that State as the income of a resident, either in its hands or in the hands of its partners or beneficiaries.

(2) Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his status shall be determined as follows :

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests) ;
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode ;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where, by reason of paragraph 1, a company is a resident of both Contracting States, such company shall be considered to be outside the scope of this Convention except for purposes of paragraph 2 of Article 10 (Dividends), Article 26 (Non-Discrimination), Article 27 (Mutual Agreement Procedure), Article 28 (Exchange of Information and Administrative Assistance) and Article 30 (Entry into Force).

4. Where, by reason of the provisions of paragraph 1, a person other than an individual or a company is a resident of both Contracting States, the competent authorities of the Contracting States shall settle the question by mutual agreement and determine the mode of application of the Convention to such person.

ARTICLE 5 – *Permanent establishment* – 1. For the purposes of this Convention, the term permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (a) a place of management ;
- (b) a branch ;
- (c) an office ;
- (d) a factory ;
- (e) a workshop ;
- (f) a mine, an oil or gas well, a quarry, or any other place of extraction of natural resources ;
- (g) a warehouse, in relation to a person providing storage facilities for others ;
- (h) a farm, plantation or other place where agriculture, forestry, plantation or related activities are carried on ;
- (i) a store or premises used as a sales outlet ;
- (j) an installation or structure used for the exploration or exploitation of natural resources, but only if so used for a period of more than 120 days in any twelve-month period ;
- (k) a building site or construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or activities (together with other such sites, projects or activities, if any) continue for a period of more than 120 days in any twelve-month period ;
- (l) the furnishing of services, other than included services as defined in Article 12 (Royalties and Fees for Included Services), within a Contracting State by an enterprise through employees or other personnel, but only if:
 - (i) activities of that nature continue within that State for a period or periods aggregating more than 90 days within any twelve-month period ; or
 - (ii) the services are performed within that State for a related enterprise [within the meaning of paragraph 1 of Article 9 (Associated Enterprises)].

3. Notwithstanding the preceding provisions of this Article, the term permanent establishment shall be deemed not to include any one or more of the following :

- (a) the use of facilities solely for the purpose of storage, display, or occasional delivery 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, display, or occasional delivery ;
- (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 of collecting information, for the enterprise ;
- (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 other activities which have a preparatory or auxiliary character, for the enterprise.

4. Notwithstanding the provisions of paragraphs 1 and 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 an authority to conclude on behalf of the enterprise, unless his activities are limited to those mentioned in paragraph 3 which, if exercised through a fixed place of business, would not make that fixed place of business a permanent establishment under the provisions of that paragraph ;
- (b) he has no such authority but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise, and some additional activities conducted in the State on behalf of the enterprise have contributed to the sale of the goods or merchandise ; or
- (c) he habitually secures orders in the first-mentioned State, wholly or almost wholly 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 State through a broker, general commission agent, or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise and the transactions between the agent and the enterprise are not made under arms length conditions, he shall not be considered an agent of independent status within the meaning of this paragraph.

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 otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6 – *Income from immovable property (real property)* – 1. Income derived by a resident of a Contracting State from immovable property (real property), including income from agriculture or forestry, situated in the other Contracting State may be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the law of the Contracting State in which the property in question is situated.

3. The provisions of paragraph 1 shall also 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, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to (a) that permanent establishment ;

(b) sales in the other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment ; or (c) other business activities carried on in the other State of the same or similar kind as those effected through that permanent establishment.

2. Subject to the provisions of paragraph 3, 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 independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly at arms length with the enterprise of which it is a permanent establishment and other enterprises controlling, controlled by or subject to the same common control as that enterprise. In any case where the correct amount of profits attributable to a permanent establishment is incapable of determination or the determination thereof presents exceptional difficulties, the profits attributable to the permanent establishment may be estimated on a reasonable basis. The estimate adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment, including a reasonable allocation of executive and general administrative expenses, research and development expenses, interest, and other expenses incurred for the purposes of the enterprise as a whole (or the part thereof which includes the permanent establishment), whether incurred in the State in which the permanent establishment is situated or elsewhere, in accordance with the provisions of and subject to the limitations of the taxation laws of that State. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges for specific services performed or for management, or, except in the case of a banking enterprises, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in

the determination of the profits of a permanent establishment, for amounts charged (otherwise than toward reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. 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.

5. For the purposes of this Convention, the profits to be attributed to the permanent establishment as provided in paragraph 1(a) of this Article shall include only the profits derived from the assets and activities of the permanent establishment and shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

6. Where profits include items of income which are dealt with separately in other Articles of the Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

7. For the purposes of the Convention, the term business profits means income derived from any trade or business including income from the furnishing of services other than included services as defined in Article 12 (Royalties and Fees for Included Services) and including income from the rental of tangible personal property other than property described in paragraph 3(b) of Article 12 (Royalties and Fees for Included Services).

ARTICLE 8 – *Shipping and air transport* – 1. Profits derived by an enterprise of a Contracting State from the operation by that enterprise of ships or aircraft in international traffic shall be taxable only in that State.

2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall mean profits derived by an enterprise described in paragraph

1 from the transportation by sea or air respectively of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of ships or aircraft including

- (a) the sale of tickets for such transportation on behalf of other enterprises;
- (b) other activity directly connected with such transportation ; and
- (c) the rental of ships or aircraft incidental to any activity directly connected with such transportation.

3. Profits of an enterprise of a Contracting State described in paragraph 1 from the use, maintenance, or rental of containers (including trailers, barges, and related equipment for the transport of containers) used in connection with the operation of ships or aircraft in international traffic shall be taxable only in that State.

4. The provisions of paragraphs 1 and 3 shall also apply to profits from participation in a pool, a joint business, or an international operating agency.

5. For the purposes of this Article, interest on funds connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft, and the provisions of Article 11 (Interest) shall not apply in relation to such interest.

6. Gains derived by an enterprise of a Contracting State described in paragraph 1 from the alienation of ships, aircraft or containers owned and operated by the enterprise, the income from which is taxable only in that State, shall be taxed only in that State.

ARTICLE 9 – *Associated enterprises* – 1. 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, but for those conditions

would have accrued to one of the enterprises, but by reason of those conditions have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State, and taxes accordingly, profits on which an enterprise of the other Contracting State has been charged to tax in that other State, and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall, if necessary, consult each other.

ARTICLE 10 – *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 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 laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed :

- (a) 15 per cent of the gross amount of the dividends if the beneficial owner is a company which owns at least 10 per cent of the voting stock of the company paying the dividends.
- (b) 25 per cent of the gross amount of the dividends in all other cases.

Sub-paragraph (b) and not sub-paragraph (a) shall apply in the case of dividends paid by a United States person which is a Regulated Investment Company. Sub-paragraph (a) shall not apply to dividends paid by a United States person which is a Real Estate Investment Trust, and sub-paragraph (b) shall only apply if the dividend is beneficially owned by an individual holding a less than 10 per cent interest in the Real Estate Investment Trust. 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 or other rights, not being debt-claims, participating in profits, income from other corporate rights which are subjected to the same taxation treatment as income from shares by the taxation laws of the State of which the company making the distribution is a resident ; and income from arrangements, including debt obligations, carrying the right to participate in profits, to the extent so characterised under the laws of the Contracting State in which the income arises.

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 dividends are attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 15 (Independent Personal Services), 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 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 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 State, nor subject the companys undistributed profits to a tax on the companys undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11 – *Interest* – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed :

- (a) 10 per cent of the gross amount of the interest if such interest is paid on a loan granted by a bank carrying on a *bona fide* banking business or by a similar financial institution (including an insurance company) ; and
- (b) 15 per cent of the gross amount of the interest in all other cases.

3. Notwithstanding the provisions of paragraph 2 of this Article, interest arising in a Contracting State :

- (a) and derived and beneficially owned by the Government of the other Contracting State, a political sub-division or local authority thereof, the Reserve Bank of India, or the Federal Reserve Bank of the United States, as the case may be, and such other institutions of either Contracting State as the competent authorities may agree pursuant to Article 27 (Mutual Agreement Procedure) ;
- (b) with respect to loans or credits extended or endorsed
 - (i) by the Export Import Bank of the United States, when India is the first-mentioned Contracting State ; and
 - (ii) by the EXIM Bank of India, when the United States is the first-mentioned Contracting State ; and
- (c) to the extent approved by the Government of that State, and derived and beneficially owned by any person, other than a person referred to in subparagraphs (a) and (b), who is a resident of the other Contracting State, provided that the transaction giving rise to the debt-claim has been approved in this behalf by the Government of the first-mentioned Contracting State ;

shall be exempt from tax in the first-mentioned Contracting State.

4. The term interest as used in this Convention 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 debtors profits, and in particular, income from Government securities, and income from bonds or debentures, including premiums or prizes attaching to such securities, bonds, or debentures. Penalty charges for late payment shall not be regarded as interest for the purposes of the Convention. However, the term interest does not include income dealt with in Article 10 (Dividends).

5. The provisions of paragraphs 2 and 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 State independent personal services from a fixed base situated therein, and the interest is attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 15 (Independent Personal Services), as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself or a political sub-division, local authority, or resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base, and such interest is borne by such permanent establishment or fixed base, then such 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 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 the other provisions of the Convention.

ARTICLE 12 – *Royalties and fees for included services* – 1. Royalties and fees for included services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties and fees for included services may also be taxed in the Contracting State in which they arise and according to the laws of that State; but if the beneficial owner of the royalties or fees for included services is a resident of the other Contracting State, the tax so charged shall not exceed :

- (a) in the case of royalties referred to in sub-paragraph (a) of paragraph 3 and fees for included services as defined in this Article [other than services described in sub-paragraph (b) of this paragraph] :
 - (i) during the first five taxable years for which this Convention has effect,
 - (a) 15 per cent of the gross amount of the royalties or fees for included services as defined in this Article, where the payer of the royalties or fees is the Government of that Contracting State, a political sub-division or a public sector company ; and
 - (b) 20 per cent of the gross amount of the royalties or fees for included services in all other cases ; and
 - (ii) during the subsequent years, 15 per cent of the gross amount of royalties or fees for included services ; and
- (b) in the case of royalties referred to in sub-paragraph (b) of paragraph 3 and fees for included services as defined in this Article that are ancillary and subsidiary to the enjoyment of the property for which payment is received under paragraph 3(b) of this Article, 10 per cent of the gross amount of the royalties or fees for included services.

3. The term royalties as used in this Article means :

- (a) payments of any kind received as a consideration for the use of, or the right to use, any copyright or a literary, artistic, or scientific work, including cinematograph films or work on film, tape or other means of reproduction for use in connection with radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience, including gains derived from the alienation of any such right or property which are contingent on the productivity, use, or disposition thereof ; and
- (b) payments of any kind received as consideration for the use of, or the right to use, any industrial, commercial, or scientific equipment, other than payments derived by an enterprise described in paragraph 1 of Article 8 (Shipping and Air Transport) from activities described in paragraph 2(c) or 3 of Article 8.

4. For purposes of this Article, fees for included services means payments of any kind to any person in consideration for the rendering of any technical or consultancy services (including through the provision of services of technical or other personnel) if such services :

- (a) are ancillary and subsidiary to the application or enjoyment of the right, property or information for which a payment described in paragraph 3 is received ; or
- (b) make available technical knowledge, experience, skill, know-how, or processes, or consist of the development and transfer of a technical plan or technical design.

5. Notwithstanding paragraph 4, fees for included services does not include amounts paid :

- (a) for services that are ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of property other than a sale described in paragraph 3(a) ;
- (b) for services that are ancillary and subsidiary to the rental of ships, aircraft, containers or other equipment used in connection with the operation of ships or aircraft in international traffic ;
- (c) for teaching in or by educational institutions ;
- (d) for services for the personal use of the individual or individuals making the payments ; or
- (e) to an employee of the person making the payments or to any individual or firm of individuals (other than a company) for professional services as defined in Article 15 (Independent Personal Services).

6. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for included services, being a resident of a Contracting State, carries on business in the other Contracting State, in which the royalties or fees for included services arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the royalties or fees for included services are attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 15 (Independent Personal Services), as the case may be shall apply.

7. (a) Royalties and fees for included services shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority, or a resident of that State. Where, however, the person paying the royalties or fees for included services, 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 or fees for included services was incurred, and such royalties or fees for included services are borne by such permanent establishment or fixed base, then such royalties or fees for included services shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

(b) Where under sub-paragraph (a) royalties or fees for included services do not arise in one of the Contracting States, and the royalties relate to the use of, or the right to use, the right or property, or the fees for included services relate to services performed, in one of the Contracting States, the royalties or fees for included services shall be deemed to arise in that Contracting State.

8. 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 or fees for included services paid exceeds the amount which would have been paid 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 the other provisions of the Convention.

ARTICLE 13 – *Gains* – Except as provided in Article 8 (Shipping and Air Transport) of this Convention, each Contracting State may tax capital gains in accordance with the provisions of its domestic law.

ARTICLE 14 – *Permanent establishment tax* – 1. A company which is a resident of India may be subject in the United States to a tax in addition to the tax allowable under the other provisions of this Convention.

(a) Such tax, however, may be imposed only on :

(i) the portion of the business profits of the company subject to tax in the United States which represents the dividend equivalent amount ; and

- (i) the excess, if any, of interest deductible in the United States in computing the profits of the company that are subject to tax in the United States and either attributable to a permanent establishment in the United States or subject to tax in the United States under Article 6 [Income from Immovable Property (Real Property)], Article 12 (Royalties and Fees for Included Services) as fees for included services, or Article 13 (Gains) of this Convention over the interest paid by or from the permanent establishment or trade or business in the United States.
- (b) For purpose of this Article, business profits means profits that are effectively connected (or treated as effectively connected) with the conduct of a trade or a business within the United States and are either attributable to a permanent establishment in the United States or subject to tax in the United States under Article 6 [Income from Immovable Property (Real Property)], Article 12 (Royalties and Fees for Included Services) as fees for included services or Article 13 (Gains) of this Convention.
- (c) The tax referred to in sub-paragraph (a) shall not be imposed at a rate exceeding :
 - (i) the rate specified in paragraph 2(a) of Article 10 (Dividends) for the tax described in sub-paragraph (a)(i) ; and
 - (ii) the rate specified in paragraph 2(a) or (b) (whichever is appropriate) or Article 11 (Interest) for the tax described in sub-paragraph (a)(ii).

2. A company which is a resident of the United States may be subject to tax in India at a rate higher than that applicable to the domestic companies. The difference in the tax rate shall not, however, exceed the existing difference of 15 percentage points.

3. In the case of a banking company which is a resident of the United States, the interest paid by the permanent establishment of such a company in India to the head office may be subject in India to a tax in addition to the tax imposable under the other provisions of this Convention at a rate which shall not exceed the rate specified in paragraph 2(a) of Article 11 (Interest).

ARTICLE 15 – *Independent personal services* – 1. Income derived by a person who is an individual or firm of individuals (other than a company) who is a resident of a

Contracting State from the performance in the other Contracting State of professional services or other independent activities of a similar character shall be taxable only in the first-mentioned State except in the following circumstances when such income may also be taxed in the other Contracting State :

- (a) if such person has a fixed base regularly available to him in the other Contracting State for the purpose 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 State; or
- (b) if the persons stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 90 days in the relevant taxable year.

2. The term professional services includes 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 (Directors Fees), 18 (Income Earned by Entertainers and Athletes), 19 (Remuneration and Pensions in respect of Government Service), 20 (Private Pensions, Annuities, Alimony and Child Support), 21 (Payments received by Students and Apprentices) and 22 (Payments received by Professors, Teachers and Research Scholars), 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State, if :

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the relevant taxable year ;
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State ; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base or a trade or business which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operating in international traffic by an enterprise of a Contracting State may be taxed in that State.

ARTICLE 17 – *Directors fees* – Directors 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 may be taxed in that other State.

ARTICLE 18 – *Income earned by entertainers and athletes* – 1. Notwithstanding the provisions of Articles 15 (Independent Personal Services) and 16 (Dependent Personal Services), income derived by a resident of a Contracting State as an entertainer, such as a 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 State, except where the amount of the net income derived by such entertainer or athlete from such activities (after deduction of all expenses incurred by him in connection with his visit and performance) does not exceed one thousand five hundred United States dollars (\$ 1,500) or its equivalent in Indian rupees for the taxable year concerned.

2. Where income in respect of activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete but to another person, that income of that other person may, notwithstanding the provisions of Articles 7 (Business Profits), 15 (Independent Personal Services) and 16 (Dependent Personal Services), be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised unless the entertainer, athlete, or other person establishes that neither the entertainer or athlete nor persons related thereto participate directly or indirectly in the profits of that other person in any manner, including the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions, or other distributions.

3. Income referred to in the preceding paragraphs of this Article derived by a resident of a Contracting State in respect of activities exercised in the other Contracting State shall not be taxed in that other State if the visit of the entertainers or athletes to that

other State is supported wholly or substantially from the public funds of the Government of the first-mentioned Contracting State, or of a political sub-division or local authority thereof.

4. The competent authorities of the Contracting States may, by mutual agreement, increase the dollar amounts referred to in paragraph 1 to reflect economic or monetary developments.

ARTICLE 19 – *Remuneration and pensions in respect of Government service* – 1. (a) Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who :

(i) is a national of that State ; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 16 (Dependent Personal Services), 17 (Directors Fees), 18 (Income Earned by Entertainers and Athletes) and 20 (Private Pensions, Annuities, Alimony and Child Support) shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

ARTICLE 20 – *Private pensions, annuities, alimony and child support* – 1. Any pension, other than a pension referred to in Article 19 (Remuneration and Pensions in respect of

Government Service), or any annuity derived by a resident of a Contracting State from sources within the other Contracting State may be taxed only in the first-mentioned Contracting State.

2. Notwithstanding paragraph 1, and subject to the provisions of Article 19 (Remuneration and Pensions in Respect of Government Service), social security benefits and other public pensions paid by a Contracting State to a resident of the other Contracting State or a citizen of the United States shall be taxable only in the first-mentioned State.

3. The term pension means a periodic payment made in consideration of past services or by way of compensation for injuries received in the course of performance of services.

4. The term annuity means stated sums payable periodically at stated times during life or during a specified or ascertainable number of years, under an obligation to make the payments in return for adequate and full consideration in money or moneys worth (but not for services rendered).

5. Alimony paid to a resident of a Contracting State shall be taxable only in that State. The term alimony as used in this paragraph means periodic payments made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support, which payments are taxable to the recipient under the laws of the State of which he is a resident.

6. Periodic payments for the support of a minor child made pursuant to a written separation agreement or a decree of divorce, separate maintenance or compulsory support, paid by a resident of a Contracting State to a resident of the other Contracting State, shall be taxable only in the first-mentioned State.

ARTICLE 21 – *Payments received by students and apprentices* – 1. A student or business apprentice who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State and who is present in that other State principally for the purpose of his education or training shall be exempt

from tax in that other State, on payments which arise outside that other State for the purposes of his maintenance, education or training.

2. In respect of grants, scholarships and remuneration from employment not covered by paragraph 1, a student or business apprentice described in paragraph 1 shall, in addition, be entitled during such education or training to the same exemptions, reliefs or reductions in respect of taxes available to residents of the State which he is visiting.

3. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken.

4. For the purposes of this Article, an individual shall be deemed to be a resident of a Contracting State if he is resident in that Contracting State in the taxable year in which he visits the other Contracting State or in the immediately preceding taxable year.

ARTICLE 22 – Payments received by professors, teachers and research scholars – 1. An individual who visits a Contracting State for a period not exceeding two years for the purpose of teaching or engaging in research at a university, college or other recognised educational institution in that State, and who was immediately before that visit a resident of the other Contracting State, shall be exempted from tax by the first-mentioned Contracting State on any remuneration for such teaching or research for a period not exceeding two years from the date he first visits that State for such purpose.

2. This Article shall apply to income from research only if such research is undertaken by the individual in the public interest and not primarily for the benefit of some other private person or persons.

ARTICLE 23 – Other income – 1. Subject to the provisions of paragraph 2, items of income of a resident of a Contracting State, wherever arising, which are not expressly dealt with in the foregoing Articles of this Convention shall be taxable only in that Contracting State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6 [Income from Immovable

Property (Real Property)], if the beneficial owner of the income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the income is attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 15 (Independent Personal Services), as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing articles of this Convention and arising in the other Contracting State may also be taxed in that other State.

ARTICLE 24 – *Limitation on benefits* – 1. A person (other than an individual) which is a resident of a Contracting State and derives income from the other Contracting State shall be entitled under this Convention to relief from taxation in that other Contracting State only if :

- (a) more than 50 per cent of the beneficial interest in such person (or in the case of a company, more than 50 per cent of the number of shares of each class of the company's shares) is owned, directly or indirectly, by one or more individual residents of one of the Contracting States, one of the Contracting States or its political sub-divisions or local authorities, or other individuals subject to tax in either Contracting State on their worldwide incomes, or citizens of the United States ; and
- (b) the income of such person is not used in substantial part, directly or indirectly, to meet liabilities (including liabilities for interest or royalties) to persons who are not resident of one of the Contracting States, one of the Contracting States or its political sub-divisions or local authorities, or citizens of the United States.

2. The provisions of paragraph 1 shall not apply if the income derived from the other Contracting State is derived in connection with, or is incidental to, the active conduct by such person of a trade or business in the first-mentioned State (other than the business of making or managing investments, unless these activities are banking or insurance activities carried on by a bank or insurance company).

3. The provisions of paragraph 1 shall not apply if the person deriving the income is a company which is a resident of a Contracting State in whose principal class of shares there is substantial and regular trading on a recognized stock exchange. For purposes of the preceding sentence, the term recognized stock exchange means :

- (a) in the case of United States, the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the Securities and Exchange Commission as a national securities exchange for purposes of the Securities Act of 1934 ;
- (b) in the case of India, any stock exchange which is recognized by the Central Government under the Securities Contracts Regulation Act, 1956 ; and
- (c) any other stock exchange agreed upon by the competent authorities of the Contracting States.

4. A person that is not entitled to the benefits of this Convention pursuant to the provisions of the preceding paragraphs of this Article may, nevertheless, be granted the benefits of the Convention if the competent authority of the State in which the income in question arises so determines.

ARTICLE 25 – *Relief from double taxation* – 1. In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), the United States shall allow to a resident or citizen of the United States as a credit against the United States tax on income

- (a) the income-tax paid to India by or on behalf of such citizen or resident ; and
- (b) in the case of a United States company owning at least 10 per cent of the voting stock of a company which is a resident of India and from which the United States company receives dividends, the income-tax paid to India by or on behalf of the distributing company with respect to the profits out of which the dividends are paid.

For the purposes of this paragraph, the taxes referred to in paragraphs 1(b) and 2 of Article 2 (Taxes Covered) shall be considered as income taxes.

2. (a) Where a resident of India derives income which, in accordance with the provisions of this Convention, may be taxed in the United States, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in the United States, whether directly or by deduction. Such deduction shall not, however, exceed that part of the income-tax (as computed before the deduction is given) which is attributable to the income which may be taxed in the United States.

(b) Further, where such resident is a company by which a surtax is payable in India, the deduction in respect of income-tax paid in the United States shall be allowed in the first instance from income-tax payable by the company in India and as to the balance, if any, from surtax payable by it in India.

3. For the purposes of allowing relief from double taxation pursuant to this article, income shall be deemed to arise as follows :

- (a) income derived by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Convention [other than solely by reason of citizenship in accordance with paragraph 3 of article 1 (General Scope)] shall be deemed to arise in that other State ;
- (b) income derived by a resident of a Contracting State which may not be taxed in the other Contracting State in accordance with the Convention shall be deemed to arise in the first-mentioned State.

Notwithstanding the preceding sentence, the determination of the source of income for purposes of this article shall be subject to such source rules in the domestic laws of the Contracting States as apply for the purpose of limiting the foreign tax credit. The preceding sentence shall not apply with respect to income dealt with in article 12 (Royalties and Fees for Included Services). The rules of this paragraph shall not apply in determining credits against United States tax for foreign taxes other than the taxes referred to in paragraphs 1(b) and 2 of article 2 (Taxes Covered).

ARTICLE 26 – *Non-discrimination* – 1. 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 that other State in the same circumstances are or may

be subjected. This provision shall apply to persons who are not residents of one or both of the Contracting States.

2. Except where the provisions of paragraph 3 of article 7 (Business Profits) apply, 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. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of article 9 (Associated Enterprises), paragraph 7 of article 11 (Interest), or paragraph 8 of article 12 (Royalties and Fees for Included Services) apply, interest, royalties, and other disbursements paid by a resident of a Contracting State to a resident of the other Contracting State shall, for the purposes of determining the taxable profits of the first-mentioned resident, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

4. 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 State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. Nothing in this article shall be construed as preventing either Contracting State from imposing the taxes described in Article 14 (Permanent Establishment Tax) or the limitations described in paragraph 3 of Article 7 (Business profits).

ARTICLE 27 – *Mutual agreement procedure* – 1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the

remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or national. This case must be presented within three years of the date of receipt of notice of the action which gives rise to taxation not in accordance with the Convention.

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 a satisfactory 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 which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits or other procedural limitations in the domestic law 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 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. The competent authorities, through consultations, shall develop appropriate bilateral procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article. In addition, a competent authority may devise appropriate unilateral procedures, conditions, methods and techniques to facilitate the above-mentioned bilateral actions and the implementation of the mutual agreement procedure.

ARTICLE 28 – *Exchange of information and administrative assistance* – 1. The competent authorities of the Contracting State shall exchange such information (including documents) as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention, in particular, for the prevention of fraud or evasion, of such taxes. The exchange of information is not restricted by Article 1 (General Scope). Any information received by a Contracting State shall be treated as secret in the same manner as information

obtained under the domestic laws of that State. However, if the information is originally regarded as secret in the transmitting State, it shall be disclosed only to persons or authorities (including Courts and administrative bodies) involved in the assessment, collection, or administration of, the enforcement or prosecution in respect of or the determination of appeals in relation to, the taxes which are the subject of the Convention. Such persons or authorities shall use the information only for such purposes, but may disclose the information in public Court proceedings or in judicial decisions. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchange of information shall be made, including, where appropriate, exchange of information regarding tax avoidance.

2. The exchange of information or documents shall be either on a routine basis or on request with reference to particular cases, or otherwise. The competent authorities of the Contracting States shall agree from time to time on the list of information or documents 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 and administrative practice of that or of the other Contracting State;
- (b) to supply information which is 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).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall obtain the information to which the request relates in the same manner and in the same form as if the tax of the first-mentioned State were the tax of that other State and were being imposed by that other State. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under this Article in the form

of depositions of witnesses and authenticated copies of unedited original documents (including books, papers, statements, records accounts and writings), to the same extent such depositions and documents can be obtained under the laws and administrative practices of that other State with respect to its own taxes.

5. For the purposes of this Article, the Convention shall apply, notwithstanding the provisions of Article 2 (Taxes Covered) :

- (a) in the United States, to all taxes imposed under Title 26 of the United States Code; and
- (b) in India, to the income-tax, the wealth-tax and the gift-tax.

ARTICLE 29 – *Diplomatic agents and consular officers* – Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular offices under the general rules of international law or under the provisions of special agreements.

ARTICLE 30 – *Entry into force* – 1. Each Contracting State shall notify the other Contracting State in writing, through diplomatic channels, upon the completion of their respective legal procedures to bring this Convention into force.

2. The Convention shall enter into force on the date of the letter of such notifications and its provisions shall have effect :

- (a) in the United States
 - (i) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of January next following the date on which the Convention enters into force;
 - (ii) in respect of other taxes, for taxable periods beginning on or after the first day of January next following the date on which the Convention enters into force; and
- (b) in India, in respect of income arising in any taxable year beginning on or after the first day of April next following the calendar year in which the Convention enters into force.

ARTICLE 31 – *Termination* – This Convention shall remain in force indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of the entry into force of the Convention, give the other Contracting State through diplomatic channels, written notice of termination and, in such event, this Convention shall cease to have effect :

(a) in the United States

(i) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of January next following the calendar year in which the notice of termination is given; and

(ii) in respect of other taxes, for taxable periods beginning on or after the first day of January next following the calendar year in which the notice of termination is given; and

(b) in India, in respect of income arising in any taxable year beginning on or after the first day of April next following the calendar year in which the notice of termination is given.

In witness whereof, the undersigned, being duly authorised by their respective Governments, have signed this Convention.

Done at New Delhi in duplicate, this 12th day of September, 1989, in the English and Hindi languages, both texts being equally authentic. In case of divergence between the two texts, the English text shall be the operative one.

*For the Government of
the Republic of India :*

Sd/-

N.K. Sengupta

Secretary to the

Government of India

*For the Government of the
United States of America :*

Sd/-

John R. Hubbard

Ambassador

PROTOCOL

At the signing today of the Convention between the United States of America and the Republic of India for the Avoidance of Double Taxation and the prevention of Fiscal Evasion with respect to Taxes on Income, the undersigned have agreed upon the following provisions, which shall form an integral part of the Convention :

I. AD ARTICLE 5 – It is understood that where an enterprise of a Contracting State has a permanent establishment in the other Contracting State in accordance with the provisions of paragraph 2(j), 2(k) or 2(l) of Article 5 (Permanent Establishment), and the time period referred to in that paragraph extends over two taxable years, a permanent establishment shall not be deemed to exist in a year, if any, in which the use, site, project or activity, as the case may be, continues for a period or periods aggregating less than 30 days in that taxable year. A permanent establishment will exist in the other taxable year, and the enterprise will be subject to tax in that other Contracting State in accordance with the provisions of Article 7 (Business Profits), but only on income arising during that other taxable year.

II. AD ARTICLE 7 – Where the law of the Contracting State in which a permanent establishment is situated imposes, in accordance with the provisions of paragraph 3 of Article 7 (Business Profits), a restriction on the amount of executive and general administrative expenses which may be allowed as a deduction in determining the profits of such permanent establishment, it is understood that in making such a determination of profits the deduction in respect of such executive and general administrative expenses in no case shall be less than that allowable under the Indian Income-tax Act as on the date of signature of this Convention.

III. AD ARTICLES 7, 10, 11, 12, 15 and 23 – It is understood that for the implementation of paragraphs 1 and 2 of Article 7 (Business Profits), paragraph 4 of Article 10 (Dividends), paragraph 5 of Article 11 (Interest), paragraph 6 of Article 12 (Royalties and Fees for Included Services), paragraph 1 of Article 15 (Independent Personal Services), and paragraph 2 of Article 23 (Other Income), any income attributable to a permanent establishment or fixed base during its existence is taxable in the Contracting State in which such permanent establishment or fixed base is

situated even if the payments are deferred until such permanent establishment or fixed base has ceased to exist.

IV. AD ARTICLE 12 – It is understood that fees for included services, as defined in paragraph 4 of Article 12 (Royalties and Fees for Included Services) will, in accordance with United States law, be subject to income-tax in the United States based on net income and, when earned by a company, will also be subject to the taxes described in paragraph 1 of Article 14 (Permanent Establishment Tax). The total of these taxes which may be imposed on such fees, however, may not exceed the amount computed by multiplying the gross fee by the appropriate tax rate specified in sub-paragraph (a) or (b) whichever is applicable or paragraph 2 of Article 12.

V. AD ARTICLE 14 – It is understood that references in paragraph 1 of Article 14 (Permanent Establishment tax) to profits that are subject to tax in the United States under Article 6 [Income from Immovable Property (Real Property)], under Article 12 (Royalties and Fees for Included Services), as fees for included services as defined in that Article, or under Article 13 (Gains) of this Convention, are intended to refer only to cases in which the profits in question are subject to United States tax based on net income (*i.e.*, by virtue of being effectively connected, or being treated as effectively connected, with the conduct of a trade or business in the United States). Any income which is subject to tax under those Articles based on gross income is not subject to tax under Article 14.

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

DONE at New Delhi in duplicate, this 12th day of September, 1989, in the English and Hindi languages, both texts equally authentic. In case of divergence between the two texts, the English text shall be the operative one.

For the Government of
the Republic of India :

Sd/-

N.K. Sengupta

For the Government of the
United States of America :

Sd/-

John R. Hubbard

*Secretary to the
Government of India*

Ambassador

*Embassy of United States of America
New Delhi, September 12, 1989.*

Excellency :

I have the honour to refer to the Convention between the Government of the United States of America 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 which was signed today (hereinafter referred to as the Convention) and to confirm, on behalf of the Government of the United States of America, the following understandings reached between the two Governments :

Both sides agree that a tax sparing credit shall not be provided in Article 25 (Relief from Double Taxation) of the convention at this time. However, the Convention shall be promptly amended to incorporate a tax sparing credit provision if the United States hereafter amends its laws concerning the provision of tax sparing credits, or the United States reaches agreement on the provision of a tax sparing credit with any other country.

Both sides also agree that, for purposes of paragraph 4(c) of Article 5 (Permanent Establishment) of the Convention, a person shall be considered to habitually secure orders in a Contracting State, wholly or almost for an enterprise, only if :

1. such person frequently accepts orders for goods or merchandise on behalf of the enterprise;
2. substantially all of such persons sales related activities in the Contracting State consist of activities for the enterprise;
3. such person habitually represents to persons offering to buy goods or merchandise that acceptance of an order by such person constitutes the agreement of the enterprise

to supply goods or merchandise under the terms and conditions specified in the order;
and

4. The enterprise takes actions that give purchasers the basis for a reasonable belief that such person has authority to bind the enterprise.

I have the honour to request Your Excellency to confirm the foregoing understandings of Yours Excellencys Government.

Accept, Excellency, the renewed assurances of my highest consideration.

His Excellency

Dr. N.K. Sengupta,

Secretary (Revenue),

Ministry of Finance,

New Delhi.

Secretary, Government of India

Ministry of Finance (Department of Revenue)

New Delhi, September 12, 1989.

Excellency :

Sd/-

John R. Hubbard

Ambassador

I have the honour to acknowledge receipt of Your Excellencys Note of todays date, which reads as follows :

I have the honour to refer to the Convention between the Government of the United States of America 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 which was signed today (hereinafter referred to as the Convention) and to confirm, on behalf of the Government of the United States of America, the following understandings reached between the two Governments :

Both sides agree that a tax sparing credit shall not be provided in Article 25 (Relief from Double Taxation) of the Convention at his time. However, the Convention shall be promptly amended to incorporate a tax sparing credit provision if the

United States hereafter amends its laws concerning the provision of tax sparing credits, or the United States reaches agreement on the provision of a tax sparing credit with any other country.

Both sides also agree that, for purposes of paragraph 4(c) of Article 5 (Permanent Establishment) of the convention, a person shall be considered to habitually secure orders in a Contracting State, wholly or almost wholly for an enterprise, only if :

1. such person frequently accepts orders for goods or merchandise on behalf of the enterprise ;
2. substantially all of such persons sales related activities in the Contracting State consist of activities for the enterprise ;
3. such person habitually represents to persons offering to buy goods or merchandise that acceptance of an order by such person constitutes the agreement of the enterprise to supply goods or merchandise under the terms and conditions specified in the order; and
4. the enterprise takes actions that give purchasers the basis for a reasonable belief that such person has authority to bind the enterprise.

I have the honour to confirm the understandings contained in Your Excellencys Note, on behalf of the Government of the Republic of India.

Accept, Excellency, the renewed assurances of my highest consideration.

His Excellency

Dr. John R. Hubbard

Ambassador of the

United States of America

New Delhi.

Embassy of the United States of America

Sd/-

N.K. Sengupta

New Delhi, September 12, 1989.

Excellency :

I have the honour to refer to the Convention signed today between the United States of America and the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on Income and to inform you on behalf of the United States of America of the following :

During the course of the negotiations leading to conclusion of the Convention signed today, the negotiators developed and agreed upon a memorandum of understanding intended to give guidance both to the taxpayers and the tax authorities of our two countries in interpreting aspects of Article 12 (Royalties and Fees for Included Services) relating to the scope of included services. This memorandum of understanding represents the current views of the United States Government with respect to these aspects of Article 12, and it is my Governments understanding that it also represents the current views of the Indian Government. It is also my Governments view that as our Government gain experience in administering the Convention, and particularly Article 12, the competent authorities may develop and publish amendments to the memorandum of understanding and further understandings and interpretations of the Convention.

If this position meets with the approval of the Government of the Republic of India, this letter and your reply thereto will indicate that our Governments share a common view of the purpose of the memorandum of understanding relating to Article 12 of the Convention.

Accept, Excellency, the renewed assurances of my highest consideration.

His Excellency

*Dr. N.K. Sengupta,
Secretary (Revenue),
Ministry of Finance,
New Delhi.*

Sd/-

*John R. Hubbard
Ambassador*

Government of India, Ministry of Finance

(Department of Revenue)

New Delhi, September 12, 1989.

Excellency :

I have the honour to acknowledge receipt of Your Excellencys Note of todays date, which reads as follows :

I have the honour to refer to the Convention signed today between the United States of America and the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and to inform on behalf of the United States of America of the following :

During the course of the negotiations leading to conclusion of the Convention signed today, the negotiators developed and agreed upon a memorandum of understanding intended to give guidance both to the taxpayers and the tax authorities of our two countries in interpreting aspects of Article 12 (Royalties and Fees for Included Services) relating to the scope of included services. The memorandum of understanding represents the current views of the United States Government with respect to these aspects of Article 12, and it is my Governments understanding that it also represents the current views of the Indian Government. It is also my Governments view that as our Governments gain experience in administering the Convention, and particularly Article 12, the competent authorities may develop and publish amendments to the memorandum of understanding and further understandings and interpretations of the Convention.

If this position meets with the approval of the Government of the Republic of India, this letter and your reply thereto will indicate that our Governments share a common view of the purpose of the memorandum of understanding relating to Article 12 of the Convention.

I have the honour to confirm the understanding contained in Your Excellencys Note, on behalf of the Government of the Republic of India.

Accept, Excellency, the renewed assurances of my highest consideration.

His Excellency
Dr. John R. Hubbard
Ambassador of the
United States of America
New Delhi.

Sd/-
Dr. N.K. Sengupta,

May 15, 1989

U.S. – INDIA TAX TREATY

Memorandum of understanding concerning fees for included services in Article 12

Paragraph 4 (in general)

This memorandum describes in some detail the category of services defined in paragraph 4 of Article 12 (Royalties and Fees for Included Services). It also provides examples of services intended to be covered within the definition of included services and those intended to be excluded, either because they do not satisfy the tests of paragraph 4, or because, notwithstanding the fact that they meet the tests of paragraph 4, they are dealt with under paragraph 5. The examples in either case are not intended as an exhaustive list but rather as illustrating a few typical cases. For case of understanding, the example in this memorandum described U.S. persons providing services to Indian persons, but the rules of Article 12 are reciprocal in application.

Article 12 includes only certain technical and consultancy services. But technical services, we mean in this context services requiring expertise in a technology. By consultancy services, we mean in this context advisory services. The categories of technical and consultancy services are to some extent overlapping because a consultancy service could also be a technical service. However, the category of consultancy services also includes an advisory service, whether or not expertise in a technology is required to perform it.

Under paragraph 4, technical and consultancy services are considered included services only to the following extent: (7) as described in paragraph 4(a), if they are

ancillary and subsidiary to the application or enjoyment of a right, property or information for which a royalty payment is made; or (2) as described in paragraph 4(b), if they make available technical knowledge, experience, skill, know-how, or processes, or consist of the development and transfer of a technical plan or technical design. Thus, under paragraph 4(b), consultancy services which are not of a technical nature cannot be included services.

Paragraph 4(a)

Paragraph 4(a) of Article 12 refers to technical or consultancy services that are ancillary and subsidiary to the application or enjoyment of any right, property, or information for which a payment described in paragraph 3(a) or (b) is received. Thus, paragraph 4(a) includes a technical and consultancy services that are ancillary and subsidiary to the application or enjoyment of an intangible for which a royalty is received under a licence or sale as described in paragraph 3(a), as well as those ancillary and subsidiary to the application or enjoyment of industrial, commercial, or scientific equipment for which a royalty is received under a lease as described in paragraph 3(b).

It is understood that, in order for a service fee to be considered ancillary and subsidiary to the application or enjoyment of some right, property, or information for which a payment described in paragraph 3(a) or (b) is received, the service must be related to the application or enjoyment of the right, property, or information. In addition, the clearly predominant purpose of the arrangement under which the payment of the service fee and such other payments are made must be the application or enjoyment of the right, property, or information described in paragraph 3. The question of whether the service is related to the application or enjoyment of right, property, or information described in paragraph 3 and whether the clearly predominant purpose of the arrangement is such application or enjoyment must be determined by reference to the facts and circumstances of each case. Factors which may be relevant to such determination (although not necessarily controlling) include :

7. The extent to which the services in question facilitate the effective application or enjoyment of the right, property, or information described in paragraph 3 ;

2. The extent to which such services are customarily provided in the ordinary course of business arrangements involving royalties described in paragraph 3 ;

3. Whether the amount paid for the services (or which would be paid by parties operating at arms length) is an insubstantial portion of the combined payments for the services and the right, property, or information described in paragraph 3 ;

4. Whether the payment made for the services and the royalty described in paragraph 3 are made under a single contract (or a set of related contracts) ; and

5. Whether the person performing the services is the same person as, or a related person to, the person receiving the royalties described in paragraph 3 [for this purpose, persons are considered related if their relationship is described in Article 9 (Associated Enterprises) or if the person providing the service is doing so in connection with an overall arrangement which includes the payer and recipient of the royalties].

To the extent that services are not considered ancillary and subsidiary to the application or enjoyment of some right, property, or information for which a royalty payment under paragraph 3 is made, such services shall be considered included services only to the extent that they are described in paragraph 4(b).

Example 1

Facts :

A U.S. manufacturer grants rights to an Indian company to use manufacturing processes in which the transferor has exclusive rights by virtue of process, patents or the protection otherwise extended by law to the owner of a process. As part of the contractual arrangement, the U.S. manufacturer agrees to provide certain consultancy services to the Indian company in order to improve the effectiveness of the latter's use of the processes. Such services include, for example, the provision of information and advice on sources of supply for materials needed in the manufacturing process, and on the development of sales and service literature for the manufactured product. The payment allocable to such services do not form a substantial part of the total

consideration payable under the contractual arrangement. Are the payments for these services fees for included services ?

Analysis :

The payments are fees for included services. The services described in this example are ancillary and subsidiary to the use of manufacturing process protected by law as described in paragraph 3(a) of Article 12 because the services are related to the application or enjoyment of the intangible and the granting of the right to use the intangible as the clearly predominant purpose of the arrangement. Because the services are ancillary and subsidiary to the use of the manufacturing process, the fees for these services are considered for included services under paragraph 4(a) of Article 12, regardless of whether the services are described in paragraph 4(b).

Example 2

Facts :

An Indian manufacturing company produces a product that must be manufactured under sterile conditions using machinery that must be kept completely free of bacterial or other harmful deposits. A U.S. company has developed a special cleaning process for removing such deposits from that type of machinery. The U.S. company enters in to a contract with the Indian company under which the former will clean the latter's machinery on a regular basis. As part of the arrangement, the U.S. company leases to the Indian company a piece of equipment which allows the Indian company to measure the level of bacterial deposits on its machinery in order for it to know when cleaning is required. Are the payments for the services fees for included services ?

Analysis :

In this example, the provision of cleaning services by the U.S. company and the rental of the monitoring equipment are related to each other. However, the clearly predominant purpose of the arrangement is the provision of cleaning services. Thus, although the cleaning services might be considered technical services, they are not

ancillary and subsidiary to the rental of the monitoring equipment. Accordingly, the cleaning services are not included services within the meaning of paragraph 4(a).

Paragraph 4(b)

Paragraph 4(b) of Article 12 refers to technical or consultancy services that make available to the person acquiring the services, technical knowledge, experience, skill, know-how, or processes, or consist of the development and transfer of a technical plant or technical design to such person. (For this purpose, the person acquiring the service shall be deemed to include an agent, nominee, or transferee of such person). This category is narrower than the category described in paragraph 4(a) because it excludes any service that does not make technology available to the person acquiring the service. Generally speaking, technology will be considered made available when the person acquiring the service is enabled to apply the technology. The fact that the provision of the service may require technical input by the person providing the service does not *per se* mean that technical knowledge, skills, etc., are made available to the person purchasing the service, within the meaning of paragraph 4(b). Similarly, the use of a product which embodies technology shall not *per se* be considered to make the technology available.

Typical categories of services that generally involve either the development and transfer of technical plants or technical designs, or making technology available as described in paragraph 4(b), include :

1. Engineering services (including the sub-categories of bio-engineering and aeronautical, agricultural, ceramics, chemical, civil, electrical, mechanical, metallurgical, and industrial engineering) ;
2. Architectural services ; and
3. Computer software development.

Under paragraph 4(b), technical and consultancy services could make technology available in a variety of settings, activities and industries. Such services may, for examples, relate to any of the following areas :

1. Bio-technical services ;
2. Food processing ;
3. Environmental and ecological services ;
4. Communication through satellite or otherwise ;
5. Energy conservation ;
6. Exploration or exploitation of mineral oil or natural gas ;
7. Geological surveys ;
8. Scientific services ; and
9. Technical training.

The following examples indicate the scope of the conditions in paragraph 4(b) :

Example 3

Facts :

A U.S. manufacturer has experience in the use of a process for manufacturing wallboard for interior walls of houses which is more durable than the standard products of its type. An Indian builder wishes to produce this product for its own use. It rents a plant and contracts with the U.S. company to send experts to India to show engineers in the Indian company how to produce the extra-strong wallboard. The U.S. contractors work with the technicians in the Indian firm for a few months. Are the payments to the U.S. firm considered to be payments for included services ?

Analysis :

The payments would be fees for included services. The services are of a technical or consultancy nature; in the example, they have elements of both types of services. The

services make available to the Indian company technical knowledge, skill and processes.

Example 4

Facts :

A U.S. manufacturer operates a wallboard fabrication plant outside India. An Indian builder hires the U.S. company to produce wallboard at that plant for a fee. The Indian company provides the raw materials, and the U.S. manufacturer fabricates the wallboard in its plant, using advanced technology. Are the fees in this example payments for included services ?

Analysis :

The fees would not be for included services. Although the U.S. company is clearly performing a technical service, no technical knowledge, skill, etc., are made available to the Indian company, nor is there any development and transfer of a technical plant or design. The U.S. company is merely performing a contract manufacturing service.

Example 5

Facts :

An Indian firm owns inventory control software for use in its chain of retail outlets throughout India. It expands its sales operation by employing a team of travelling salesmen to travel around the countryside selling the companys wares. The company wants to modify its software to permit the salesmen to assess the companys central computers for information on what products are available in inventory and when they can be delivered. The Indian firm hires a U.S. computer programming firm to modify its software for this purpose. Are the fees which the Indian firm pays treated as fees for included services ?

Analysis :

The fees are for included services. The U.S. company clearly performs a technical service for the Indian company, and it transfers to the Indian company the technical plan (*i.e.*, the computer programme) which it has developed.

Example 6

Facts :

An Indian vegetable oil manufacturing company wants to produce a cholesterol-free oil from a plant which produces oil normally containing cholesterol. An American company has developed a process for refining the cholesterol out of the oil. The Indian company contracts with the U.S. company to modify the formulas which it uses so as to eliminate the cholesterol, and to train the employees of the Indian company in applying the new formulas. Are the fees paid by the Indian company for included services ?

Analysis :

The fees are for included services. The services are technical, and the technical knowledge is made available to the Indian company.

Example 7

Facts :

The Indian vegetable oil manufacturing firm has mastered the science of producing cholesterol-free oil and wishes to market the product world wide. It hires an American marketing consulting firm to do a computer simulation of the world market for such oil and to advise it on marketing strategies. Are the fees paid to the U.S. company for included services ?

Analysis :

The fees would not be for included services. The American company is providing a consultancy service which involves the use of substantial technical skill and expertise. It is not, however, making available to the Indian company any technical experience, knowledge or skill, etc., nor is it transferring a technical plan or design. What is

transferred to the Indian company through the service contract is commercial information. The fact that technical skills were required by the performer of the service in order to perform the commercial information service does not make the service a technical service within the meaning of paragraph 4(b).

Paragraph 5

Paragraph 5 of Article 12 describes several categories of services which are not intended to be treated as included services even if they satisfy the tests of paragraph 4. Set forth below are examples of cases where fees would be included under paragraph 4, but are excluded because of the conditions of paragraph 5.

Example 8

Facts :

An Indian company purchases a computer from a U.S. computer manufacturer. As part of the purchase agreement, the manufacturer agrees to assist the Indian company in setting up the computer and installing the operating system, and to ensure that the staff of the Indian company is able to operate the computer. Also, as part of the purchase agreement, the seller agrees to provide, for a period of ten years, any updates to the operating system and any training necessary to apply the update. Both of these service elements to the contract would qualify under paragraph 4(b) as an included service. Would either or both be excluded from the category of included services, under paragraph 5(a), because they are ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of the computer ?

Analysis :

The installation assistance and initial training are ancillary and subsidiary to the sale of the computer, and they are also inextricably and essentially linked to the sale. The computer would be of little value to the Indian purchaser without these services, which are most readily and usefully provided by the seller. The fees for installation assistance and initial training, therefore/are not fees for included services, since these services are not the predominant purpose of the arrangement.

The services of updating the operating system and providing associated necessary training may well be ancillary and subsidiary to the sale of the computer, but they are not inextricably and essentially linked to the sale. Without the upgrades, the computer will continue to operate as it did when purchased, and will continue to accomplish the same functions. Acquiring the updates cannot, therefore, be said to be inextricably and essentially linked to the sale of the computer.

Example 9

Facts :

An Indian hospital purchases an X-ray machine from a U.S. manufacturer. As part of the purchase agreement, the manufacturer agrees to instal the machine, to perform an initial inspection of the machine in India, to train hospital staff in the use of the machine, and to service the machine periodically during the usual warranty period (2 years). Under an optional service contract purchased by the hospital, the manufacturer also agrees to perform certain other services throughout the life of the machine, including periodic inspections and repair services, advising the hospital about developments in X-ray film or techniques which could improve the effectiveness of the machine, and training hospital staff in the application of those new developments. The cost of the initial installation, inspection, training and warranty service is relatively minor as compared with the cost of the X-ray machine. Is any of the services described here ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of the X-ray machine ?

Analysis :

The initial installation, inspection, and training services in India and the periodic service during the warranty period are ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of the X-ray machine because the usefulness of the machine to the hospital depends on the service, the manufacturer has full responsibility during this period and this cost of the services is a relatively minor component of the contract. Therefore, under paragraph 5(a) these fees are not fees for

included services, regardless of whether they otherwise would fall within paragraph 4(b).

Neither the post-warranty period inspection and repair services, nor the advisory and training services relating to new developments are inextricably and essentially linked to the initial purchase of the X-ray machine. Accordingly, fees for these services may be treated as fees for included services if they meet the tests of paragraph 4(b).

Example 10

Facts :

An Indian automobile manufacturer decides to expand into the manufacturer of helicopters. It sends a group of engineers from its design staff to a course of study conducted by the Massachusetts Institutes of Technology (MIT) for two years to study aeronautical engineering. The Indian firms pays tuition fees to MIT on behalf of the firms employees. Is the tuition fee a fee for an included service within the meaning of Article 12 ?

Analysis :

The tuition fee is clearly intended to acquire a technical service for the firm. However, the fee paid is for teaching by an educational institution, and is, therefore, under paragraph 5(c), not an included service. It is irrelevant for this purpose whether MIT conducts the course on its campus or at some other location.

Example 11

Facts :

As in Example 10, the automobile manufacturer wishes to expand into the manufacturer of helicopters. It approaches an Indian university about establishing a course of study in aeronautical engineering. The university contracts with a U.S. helicopter manufacturer to send an engineer to be a visiting professor of aeronautical

engineering on its faculty for a year. Are the amounts paid by the university for these teaching services fees for included services ?

Analysis :

The fees are for teaching in an educational institution. As such, pursuant to paragraph 5(c), they are not fees for included services.

Example 12

Facts :

An Indian wishes to install a computerized system in his home to control lighting, heating and air-conditioning, a stereo sound system and a burglar and fire alarm system. He hires an American electrical engineering firm to design the necessary wiring system, adapt standard software, and provide instructions for installations. Are the fees paid to the American firm by the Indian individual fees for included services ?

Analysis :

The services in respect of which the fees are paid are of the type which would generally be treated as fees for included services under paragraph 4(b). However, because the services are for the personal use of the individual making the payment, under paragraph 5(d) the payments would not be fees for included services.

Indo-US Double Taxation Avoidance Convention (DTAC) – Suspension of Collection during Mutual Agreement Procedure

Article 27 of the Indo-USA DTAC provides for Mutual Agreement Procedure (MAP) for avoidance of double taxation. Paragraph 4 of article 27 authorises the competent authorities to develop appropriate bilateral procedures, conditions, methods and techniques for implementation of MAP provided for in the article. Accordingly, with a view to avoid the unintended hardship to the taxpayers, as well as for the efficient management of collection of revenue, the Competent Authorities of India and USA had

entered into a Memorandum of Understanding (MoU) regarding suspension of collection during the pendency of MAP.

2. This MoU was brought to the notice of field formation *vide* Instruction No. 2/2003, dated 28-4-2003 (F. No. 500/56/99-FTD) wherein it was stated that the collection of outstanding taxes in the case of a taxpayer, who is a resident of USA and whose request under MAP is under consideration of the Competent Authorities, shall be kept in abeyance subject to furnishing of a bank guarantee of an amount equal to the amount of tax under dispute and interest accruing thereon as per the provisions of the Income-tax Act.

3. Now references have been received for extending the applicability of MoU to Indian resident entities in cases where Mutual Agreement Procedure has been invoked by the US resident. In order to avoid hardship to Indian resident taxpayers especially in cases involving transfer pricing, where the Indian resident entity is liable to pay taxes on such income which may have been charged to tax in the hands of the associated entity in USA, it has been decided to extend the applicability of the MoU to such Indian resident entities during the course of the pendency of the MAP invoked by a resident of USA.

4. On receipt of a formal request for suspension of collection of outstanding tax in terms of the MoU from a taxpayer being, a resident of USA or an Indian resident entity, in a case where MAP has been invoked through US Competent Authority and the same has been admitted by the Indian Competent Authority, the Assessing Officers are required to keep the enforcement of collection of outstanding taxes in abeyance in respect of such taxpayers

(i) after obtaining a confirmation regarding pendency of MAP from the Foreign Tax and Tax Research Division of the Central Board of Direct Taxes and

(ii) on receipt of a bank guarantee in the model draft format annexed to the MoU for an amount calculated in accordance with the manner indicated therein.

5. All the other conditions of MoU as enumerated in Instruction No. 2 of 2003, dated 28-4-2003 shall remain the same.

6. These instructions are issued under section 119 of the Income-tax Act and the same may be brought to the notice of all the officers in your charge.

Instruction : *No. 10/2007, dated 23-10-2007.*

JUDICIAL ANALYSIS

See ITO v. Pan American World Airways [1990] 35 ITD 206 (Delhi-Trib.).

Uzbekistan

Agreement for avoidance of double taxation and prevention of fiscal evasion with Uzbekistan

Whereas the annexed Agreement between the Government of the Republic of India and the Government of the Republic of Uzbekistan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital has entered into force on the 25th January, 1994, on the notification by both the Contracting States to each other of the completion of the procedures required under their laws for the bringing into force of the said Agreement in accordance with Article 30 of the said Agreement.

Now, therefore, in exercise of powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961) and section 44A of the Wealth-tax Act, 1957 (27 of 1957), the Central Government hereby directs that all the provisions of the said Agreement shall be given effect to in the Union of India.

Notification : No. SO 790(E), dated 13-11-1996.

ANNEXURE

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE REPUBLIC OF UZBEKISTAN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Government of the Republic of India and the Government of the Republic of Uzbekistan, desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital :

Have agreed as follows :

ARTICLE 1 : *Personal scope* – This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2 : *Taxes covered* – 1. The taxes to which this Agreement shall apply are :

(a) in Uzbekistan :

- (i) the taxes on profit;
- (ii) the wealth-tax;
- (iii) the income-tax on legal persons as well as individuals;
(hereinafter referred to as Uzbekistan tax)

(b) in India :

- (i) the income-tax including any surcharge thereon;
- (ii) the wealth-tax;
(hereinafter referred to as Indian tax)

2. The present Agreement shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of the present Agreement 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.

ARTICLE 3 : *General definitions* – 1. In this Agreement, unless the context otherwise requires :

- (a) the term India means the territory of India and includes the territorial sea and air space above it, and other maritime zones in which India has sovereign rights, other rights and jurisdictions, according to the Indian law and in accordance with International Law;
- (b) the term Uzbekistan means in geographical sense land, territorial waters, and other zones in which Uzbekistan has sovereign rights, and jurisdictions, according to the International law and tax law of the Republic of Uzbekistan;
- (c) the terms Contracting State and the other Contracting State means Uzbekistan or India as the context requires;

- (d) the term company means any body corporate or any entity which is treated as a company or body corporate under the taxation laws in force in the respective Contracting States;
- (e) the term competent authority means in the case of Uzbekistan, Central State Taxation Board; and in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorized representative;
- (f) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean respectively an enterprise carried on by a resident of Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (g) the term fiscal year means :
 - (i) in the case of Uzbekistan, calendar year from 1st of January to 31st December of the year under review;
 - (ii) in the case of India, previous year as defined under section 3 of the Income-tax Act, 1961;
- (h) the term international traffic means any transport by a ship, aircraft or motor vehicles operated by an enterprise of a Contracting State except when the ship, aircraft or motor or vehicle is operated solely between places in the other Contracting State;
- (i) the term national means, any individual possessing the nationality of a Contracting State and any legal person, partnership or association deriving its status from the laws in force in the Contracting State;
- (j) the term person includes an individual, a company, a body of person and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States;
- (k) the term tax means Indian tax or Uzbekistan tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Agreement applies or which represents a penalty imposed relating to those taxes.

2. As regards the application of the Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the

meaning which it has under the law of that State concerning the taxes of which the Agreement applies.

ARTICLE 4 : *Resident* – 1. For the purposes of this Agreement the term resident of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.

2. Where the reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his status shall be determined as follows :

- (a) he shall be deemed to be a resident of that State in which he has a permanent home available to him; if he has a permanent home available to him in both States; he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State, in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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

ARTICLE 5 : *Permanent establishment* – 1. For the purposes of this Agreement, the term permanent establishment means a fixed place of business, through which the business of the enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) mine, an oil or gas well, quarry or any other place of extraction of natural resources;
- (g) a building site or a construction or an assembly project or supervisory activities in connection therewith, but only where such site, project or activity continues for a period of more than twelve months.

3. Notwithstanding the preceding provisions of this Article, the term permanent establishment shall be deemed not to include :

- (a) the use of facilities solely for the purpose of storage, display or delivery 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, display or delivery;
- (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 of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on for the enterprise, any other activity of a preparatory or auxiliary character.

4. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of independent status to whom paragraph 5 applies is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts on behalf of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned

in paragraph 3 of this Article, which if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in 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, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

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 : *Income from immovable property* – 1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources, Ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall also 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, the profits of an enterprise may also be taxed in the other State but only so much of them as is attributable directly or indirectly to that permanent establishment.

The words directly or indirectly mean, for the purposes of this Article, that where a permanent establishment takes an active part in negotiating, concluding or fulfilling contracts entered not by the enterprise, then notwithstanding that other parts of the enterprise have also participated in those transactions, there shall be attributed to the permanent establishment that proportion of profits of the enterprise arising out of those contracts as the contribution of the permanent establishment to those transactions bears to that of the enterprise as a whole.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were 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.

3. In determining the profits of a permanent establishment, there shall be allowed as deduction expenses which are incurred for the purposes of the business of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or else where in accordance with the provisions of and subject to the limitations of the tax law of that State.

4. Insofar 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 contained 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 purposes 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 Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8 : *Shipping air and motor transport* – 1. Profits derived by an enterprise of a Contracting State derived from operation of aircraft or motor vehicles in international traffic shall be taxable in that State.

2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

3. For the purposes of this Article, interest on funds connection with the operation of aircraft or motor vehicles in international traffic shall be regarded a profits derived from the operation of such aircraft or motor vehicles, and the provisions of Article 11 shall not apply in relation to such interest.

4. The term operation of aircraft shall mean business of transportation by air of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of aircraft, including the sale of tickets for such transportation on

behalf of other enterprises, the incidental lease of aircraft and any other activity directly connected with such transpiration.

5. Profits derived by an enterprise from operation of ships shall be taxable in the Contracting State in accordance with their domestic laws.

ARTICLE 9 : *Associated enterprises* – 1. 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 10 : 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 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 laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 15 per cent of gross amount of the dividends.

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 or from other rights, not being debt-claims participating in profits as well as the income from other corporate rights, which is subjected to the same taxation

treatment as income from shares by the laws of 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 thereon, 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 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 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 State, not subject the companys undistributed profits to a tax on the companys undistributed profits, even if the dividends paid or the undistributed profits consist wholly or profits or income arising in such other State.

ARTICLE 11 : *Interest* – 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State, may be taxed in that other 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 beneficial owner of the interest the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2,

(a) interest arising in a Contracting State shall be exempt from tax in that State, provided it is derived and beneficially owned by :

(i) he Government, a political sub-division or a local authority of the other Contract-ing State ; or

- (i) the Central Bank of the other Contracting State.
- (b) interest arising in a Contracting State shall be exempt from tax in that Contracting State to the extent approved by the Government of that State if it is derived and beneficially owned by any person other than a person referred to in sub-paragraph (a) who is a resident of the other Contracting State provided that the transaction giving rise to the debt-claim has been approved in this regard by the Government of the first-mentioned Contracting State.

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 debtors 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 and 2 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 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 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 resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness in which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such 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 payer and the beneficial owner or between both of them and some other person, the amount of 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 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 the other provisions of this Agreement.

ARTICLE 12 : *Royalties* – 1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 15 per cent of 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, including 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.

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 a 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 State itself, a political sub-division, a local authority or a resident of that

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 State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between payer and the beneficial owner or between both of them and some other person, the amount of 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 payment shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 13 : *Technical fees* – 1. Technical fees arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such technical fees may also be taxed in the Contracting State in which they arise, and according to the laws of that State; but if the recipient is the beneficial owner of the technical fees, the tax so charged shall not exceed 15 per cent of the gross amount of the technical fees.

3. The term technical fees as used in this Article means payments of any kind to any person other than to an employee of the person making the payments, in consideration for any services of a technical, managerial or consultancy nature.

4. The provisions of paragraphs 1 and 2 shall not apply, if the beneficial owner of the technical fees being a resident of a Contracting State carries on business in the other Contracting State in which the technical fees arise through a permanent establishment situated therein, or performs in that other State independent personal services and the technical fees are effectively connected

with such permanent establishment or such services. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. Technical fees shall be deemed to arise in a Contracting State when the payee is that State itself, a political sub-division, a local authority or a statutory body thereof, or a resident of that State. Where, however, the person paying the technical fees whether he is a resident of a Contracting State or not, has in a resident of a Contracting State a permanent establishment or a fixed base in connection with which the obligation to pay the technical fees was incurred and such technical fees are borne by that permanent establishment or fixed base then such technical fees shall be deemed to arise in the Contracting State in which permanent establishment 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 persons the amount of the technical fees paid, exceeds for whatever reasons, 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 payment shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 14 : *Capital gains* – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property, referred to in Article 6 and situated in the other Contracting State may be taxed in that other Contracting State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment, which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purposes of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State of which the alienator is a resident.

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from the alienation of shares, other than those mentioned in paragraph 4, in a company which is a resident of a Contracting State may be taxed in that State.

6. Gains from the alienation of any property, other than that mentioned in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 15 : *Independent personal services* – 1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State except in the following circumstances when such income may also be taxed in the other Contracting State :

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose 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) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in the relevant fiscal year; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other 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, accountants and other such professions.

ARTICLE 16 : *Dependent personal services* – 1. Subject to the provisions of Articles 17, 18, 19, 20, 21 and 22, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 2, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State, if :

- (a) the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in the relevant fiscal year; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting State ; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other Contracting State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State shall be taxable only in that State.

ARTICLE 17 : *Directors fees* – Directors 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, may be taxed in that other State.

ARTICLE 18 : *Income earned by entertainers and sportspersons* – 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 a sportsperson, from the personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or sportsperson in his capacity as such accrues not to the entertainer or sportsperson 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 sportsperson are exercised.

3. Notwithstanding the provisions of paragraph 1, income derived by an entertainer or a sportsperson who is a resident of a Contracting State from his personal activities as such exercised in the other Contracting State shall be taxable only in the first-mentioned Contracting State, if the activities in the other Contracting State are supported wholly or substantially from the public funds of the first-mentioned Contracting State, including any of its political sub-divisions or local authorities.

4. Notwithstanding the provisions of paragraph 2 and Articles 7, 15 and 16 where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such in Contracting State accrues not to the entertainer or sportsperson himself but to another person, that income shall be taxable only in the other Contracting State, if that other person is supported wholly or substantially from the public funds of that other State, including any of its political sub-divisions or local authorities.

ARTICLE 19 : *Remuneration and pensions in respect of Government service – 1.*

(a) Remuneration, other than a pension, paid by a Contracting State or a political sub-division, or a local authority thereof an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who :

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or 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 shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of and a national of that other State.

3. The provisions of Articles 16, 17 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof. Income shall be taxable only in the other Contracting State, if that other person is supported wholly or substantially from the public funds of that other State, including any of its political sub-divisions or local authorities.

ARTICLE 20 : *Non-Government pensions and annuities* – 1. Any pension, other than a pension referred to in Article 19, or any annuity derived by a resident of a Contracting State from sources within the other Contracting State may be taxed only in the first-mentioned Contracting State.

2. The term pension means a periodic payment made in consideration of past services or by way of compensation for injuries received in the course of performance of services.

3. 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 moneys worth.

ARTICLE 21 : *Payment received by students and apprentices* – 1. A student or business apprentice who is or was a resident of a Contracting State immediately before visiting the other Contracting State and who is present in the Contracting State solely for the purpose of his education or training shall be exempt from tax in that State on :

(a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training; and

(b) remuneration from employment in that other State, in an amount not exceeding US \$ 700 or its equivalent amount during any fiscal year,

as that case may be, provided that such employment is directly related to his studies or is undertaken for the purpose of his maintenance.

2. The benefits of this Article shall extend only for such period of time as may be reasonable customarily required to complete the education or training undertake, but in no event shall any individual have the benefits of this Article for more than three consecutive years from the date of his first arrival in that other Contracting State.

ARTICLE 22 : Payments received by professors, teachers and research scholars –

1. A professor or teacher is or was a resident of the Contracting State immediately visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college, school or other approved institution in that other Contracting State shall be exempted from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival in that other 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 State or in the immediately preceding fiscal year.

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

ARTICLE 23 : Other income – 1. Subject to the provisions of paragraph 2, items of income of a resident of a Contracting State, wherever arising, which are not expressly dealt with in the foregoing articles of this Agreement, shall be taxable only in that Contracting State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income being a resident of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right of property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such a case the provisions of Article 7 or Article 15, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing article of this Agreement and arising in the other Contracting State may also be taxed in that other Contracting State.

ARTICLE 24 : *Capital* – 1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Capital represented by movable property, forming part of the business property of a permanent establishment, which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services may be taxed in that other State.

3. Capital represented by ships, aircraft or motor vehicle operated in international traffic and by movable property pertaining to the operation of such ships, aircraft or motor vehicles, shall be taxable only in the Contracting State of which the enterprise owning such property is a resident.

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

ARTICLE 25 : *Avoidance of double taxation* – 1. The laws in force in either of the Contracting State will continue to govern the taxation of income in the

respective Contracting State except where provisions to the contrary are made in this Agreement.

2. Where a resident of India derives income or owns capital which, in accordance with the provisions of this Agreement, may be taxed in Uzbekistan, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in Uzbekistan, whether directly or by deduction; and as a deduction from the tax on the capital of that resident an amount equal to the capital tax paid in Uzbekistan. Such deduction in either case shall not, however, exceed that part of income-tax or tax on capital (as paid before the deduction is given), which is attributable to the income or the capital which may be taxed in Uzbekistan.

3. In the case of Uzbekistan the double taxation shall be avoided by a method which is identical to that mentioned in paragraph 2.

4. The tax payable in the Contracting State mentioned in paragraphs 2 and 3 of this Article shall be deemed to include the tax which would have been payable but for the tax incentives granted under the laws of the Contracting State and which are designed to promote economic development.

5. Income which, in accordance with the provisions of this Agreement, is not to be subject to tax in a Contracting State, may be taken into account for calculating the rate of tax to be imposed in that Contracting State.

ARTICLE 26 : *Non-discrimination* – 1. The national of 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 national 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 an enterprise of the other State carrying on the same activities in the same circumstances. This provision shall not be construed as preventing a Contracting State from charging the

profits of a permanent establishment which an enterprise of the other Contracting State has in the first-mentioned Contracting State at a rate higher than that imposed on the profits of a similar enterprise of the first-mentioned State, nor as being in conflict with the provisions of paragraph 3 of Article 7 of this Agreement.

3. Nothing contained in this Article shall be construed as obliging a Contracting State to grant to persons not resident in that State any personal allowances, reliefs, reductions and deductions for taxation purposes which are by law available only to persons who are so resident.

4. 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 in the same circumstances.

5. In this Article, the term taxation means taxes which are the subject of the Agreement.

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 the agreement, he may notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the State of which he is a resident. The case must be presented within three years from the date of receipt of the first notice of the action resulting in taxation not in accordance with the provisions of this Agreement.

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 a satisfactory solution, to resolve the case by mutual agreement with the competent authority of other Contracting State, with a view to the avoidance of taxation not in accordance

with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the national laws of the Contracting State.

3. The competent authorities of the Contracting State shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

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. 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 State.

ARTICLE 28 : *Exchange of information* – 1. The competent authorities of the Contracting State shall exchange such information (including documents) as is necessary for carrying out the provisions of the Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement, in particular for the prevention of fraud or evasion of such taxes. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State. However, if the information is originally regarded as secret in the transmitting State, it shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings in judicial decisions. The competent authorities shall through consultation, develop appropriate conditions, methods and techniques concerning the matter in respect of which such exchange of information shall be made, including, which appropriate, exchange of information regarding tax avoidance.

2. The exchange of information or documents shall be either on a routine basis or on request with reference to particular cases or both. The competent authorities for the Contracting States shall agree from time to time on the list of the information or documents 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 and the administrative practice of that or of the other Contracting State;
- (b) to supply information or documents 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 : *Diplomatic and consular activities* – Nothing in this Agreement 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 30 : *Entry into force* – Each of the Contracting State shall notify to the other the completion of the procedures required by its law for the bringing into force of this Agreement. This Agreement shall enter into force on the date of the later of these notifications and shall thereupon have effect :

- (a) In India : in respect of income arising in any previous year beginning on or after the 1st April, 1993, and in respect of capital which is held at the expiry of any previous year beginning on or after 1st April, 1993;
- (b) In Uzbekistan : in respect of income arising in any year of income beginning on or after the 1st January, 1993, and in respect of capital which is held at the expiry of any year of income beginning on or after 1st January, 1993 ;

ARTICLE 31 : *Termination* – This Agreement shall remain in force indefinitely but either of the Contracting States may, on or before 30th June in any calendar

year beginning after the expiration of a period of five years from the date of its entry into force, give the other Contracting State through Diplomatic Channels, written notice of termination and, in such event, this Agreement shall cease to have effect :

- (a) In India : in respect of income arising in any previous year beginning on or after the 1st April next following the calendar year in which the notice is given and in respect of capital which is held at the expiry of any previous year beginning on or after 1st April next following the calendar year in which the notice of termination is given;
- (b) In Uzbekistan : in respect of income arising in any year of income beginning on or after the 1st January next following the calendar year in which the notice is given and in respect of capital which is held at the expiry of any year of income next following the calendar year in which the notice of termination is given.

IN WITNESS THEREOF the undersigned, being duly authorized thereto, have signed the present Agreement.

DONE at New Delhi in duplicate this 29th day of July, One thousand nine hundred and ninety-three in Hindi, Uzbek and English languages, all the texts being equally Authentic. In case of divergence between any of the texts, the English text shall be the operative one.

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Vietnam

Agreement for avoidance of double taxation and prevention of fiscal evasion with Vietnam

Whereas the annexed Agreement between the Government of the Republic of India and the Government of the Socialist Republic of Vietnam for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income has come into force on the 2nd day of February, 1995, after the notification by both the Contracting States to each other of the completion of the procedures required under their laws for bringing into force of the said Agreement in accordance with Article 29 of the said Agreement;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Agreement shall be given effect to in the Union of India.

Notification : *No. GSR 369(E), dated 28-4-1995, as amended by Notification No. 9860 [F.No. 503/7/91-FTD], dated 12-9-1995*

ANNEXURE

AGREEMENT BETWEEN THE REPUBLIC OF INDIA AND THE SOCIALIST REPUBLIC OF VIETNAM FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of India and the Government of the Socialist Republic of Vietnam, desiring to conclude an Agreement for the Avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows :

ARTICLE 1 : *Personal scope* – This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2 : *Taxes covered 1.* – This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its political sub-divisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises.

3. The existing taxes to which the Agreement shall apply are :

(a) in India :

the income-tax on including any surcharge thereon;
(hereinafter referred to as Indian tax);

(b) in Vietnam :

(i) the personal income-tax;
(ii) the profit tax; and
(iii) the profit remittance tax;
(hereinafter referred to as Vietnamese tax).

4. The Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other, of substantial changes, which have made in their respective taxation laws.

ARTICLE 3 : *General definitions* – 1. In this Agreement, unless the context otherwise requires,

(a) the term India means the territory of India and includes the territorial sea and air space above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdictions, according to the Indian law and in accordance with international law or the U.N. Convention on the law of the Sea;

(b) the term Vietnam means the Socialist Republic of Vietnam; when used in a geographical sense, it means all its national territory, including its territorial sea and any area beyond and adjacent to its territorial sea, within which Vietnam, by Vietnamese legislation and in accordance with international law, has sovereign rights of exploration for and exploitation of

natural resources of the sea-bed and its sub-soil and superjacent watermass;

- (c) the terms a Contracting State and the other Contracting State mean India or Vietnam as the context requires;
- (d) the term company means any body corporate or any entity which is treated as company or body corporate under the taxation law in force in the respective Contracting State;
- (e) the term competent authority means :
 - (i) in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorized representative; and
 - (ii) in the case of Vietnam, the Ministry of Finance or his authorized representative ;
- (f) 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 ;
- (g) the term fiscal year means :
 - (i) in the case of India, previous year as defined under section 3 of the Income-tax Act, 1961; and
 - (ii) in case of Vietnam, the accounting year comprising of a twelve-month period;
- (h) 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 the places in the other Contracting State;
- (i) the term national means any individual, possessing the nationality of a Contracting State and any legal person, partnership or association deriving its status from the laws in force in the Contracting State;
- (j) the term person includes an individual, a company, a body of person and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting State;
- (k) the term tax means Indian tax or Vietnamese tax, as the context requires, but shall not include any amount which is payable in respect of any default

or omission in relation to the taxes to which this Agreement applies or which represents a penalty imposed relating to those taxes.

2. As regards the application of the Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Agreement applies.

ARTICLE 4 : *Resident* – 1. For the purpose of this Agreement, the term resident of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of registration 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 the Contracting States, then his status shall be determined as follows :

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interest cannot be determined, or if he has no permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State he is a national;
- (d) if he is notional of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 State, in which its place of effective management is situated.

ARTICLE 5 : *Permanent establishment* – 1. For the purposes of this Agreement, the term permanent establishment means a fixed place of business through which the business of the enterprise is wholly or partly carried on.

2. The term permanent establishment includes especially :

- (a) place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) a warehouse, in relation to a person providing storage facilities for others; and
- (h) a building site or construction or assembly project or supervisory activities in connection therewith; but only where such site, project or activity continues for a period of more than six months.

3. Notwithstanding the preceding provisions of this Article, the term permanent establishment shall be deemed not to include :

- (a) the use of facilities solely for the purpose of storage, display or occasional delivery of goods or merchandise belonging to the enterprise ;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprises solely for the purpose of storage, display or occasional delivery;
- (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 of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character.

4. Notwithstanding the provisions of paragraphs 1 and 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 Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person ;

- (a) has and habitually in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 3 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
- (b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.

5. The 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 State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

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 otherwise) shall not, of itself, constitute either company a permanent establishment of the other.

ARTICLE 6 : *Income from the immovable property – 1.* – Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term immovable property shall have the meaning which it has under the 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources, Ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall also 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, the profits of the enterprise may also be taxed in the other State but only so much of them as is attributed directly or indirectly to that permanent establishment.

The words directly or indirectly mean for the purposes of this Article, that where a permanent establishment takes an active part in negotiating concluding or fulfilling contracts entered into by the enterprise, then notwithstanding that other parts of the enterprise have also participated in those transactions, there shall be attributed to the permanent establishment that proportion of profits of the enterprise arising out of those contracts as the contribution of the permanent establishment to those transactions bears to that of the enterprise as a whole.

2. Subject to the provisions of paragraph 3, 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.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business 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 in accordance with the provisions of and subject to the limitations of the tax laws of that State.

4. Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person in cases where information is not available to the competent authority of that State in order to determine the profits to be attributed to a permanent establishment, provided that law shall be applied consistently with the principles of this Article.

5. Insofar 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 of its various parts, nothing in paragraph 2 shall preclude the 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 contained in this Article.

6. 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.

7. For the purposes 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.

8. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8 : *Shipping and air transport* – 1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include :

- (a) income from the lease of ships or aircraft; and
- (b) profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers).

Where such lease or such use, maintenance or rental, as the case, may be, is incidental to the operation of ships or aircraft in international traffic.

3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

4. For the purposes of this Article, interest on funds connected with the operation of ships or aircraft in international traffic earmarked for the purpose of payments of all kinds of wages and maintenance of ships or aircraft and their crew shall be regarded as income or profits derived from the operation of such ships or aircraft and the provisions of Article 11 shall not apply in relation to such interest.

ARTICLE 9 : *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 the reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

ARTICLE 10 – *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 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 laws of that State, but if the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

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 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 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 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 State.

ARTICLE 11 : *interest*– 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 beneficial owner of such interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2,

(a) interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by :

(i) the Government, a political sub-division or a local authority of the other Contracting State; or

(ii) the Central Bank of the other Contracting State;

(b) interest arising in a Contracting State shall be exempt from tax in that Contracting State to the extent approved by the Government of that State if it is derived and beneficially owned by any person [other than a person referred to in sub-paragraph (a)] who is a resident of the other Contracting State provided that the transaction giving rise to the debt-claim has been approved in this regard by the Government of the first-mentioned Contracting State.

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 debtors 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 and 2 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 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 in 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 resident 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 such interest shall be deemed to arise in the 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 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 the other provisions of this Agreement.

ARTICLE 12 : *Royalties* – 1. Royalties in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that 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 including 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.

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 and 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 State itself, a political sub-division, a local authority or a resident of that 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 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 of 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 the other provisions of this Agreement.

ARTICLE 13 : *Technical fees* – 1. Technical fees arising in a Contracting State which are derived by a resident of the other Contracting State may be taxed in that other State.

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

3. The term technical fees as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a technical, managerial or consultancy nature.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the technical fees, being a resident of a Contracting State carries on business in the other Contracting State in which the technical fees arise through a permanent establishment situated therein, or performs in that other State independent personal services, and the technical fees are effectively connected with such permanent establishment or such services. In such case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. Technical fees shall be deemed to arise in a Contracting State when the payer is that State itself, as political sub-division, a local authority or a statutory body thereof, or a resident of that State. Where, however, the person paying the technical fees, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the technical fees was incurred, and such technical fees are borne by that permanent establishment, then such technical fees shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where, by reason of a special relationship between the payer and the recipient or between both of them and some other person, the amount of the

technical fees paid, exceeds for whatever reason, 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 law of each Contracting State due regard being had to the other provisions of this Agreement.

ARTICLE 14 : *Capital gains* – 1. Gains derived by a resident of a Contracting State from the alienation of immovable property, referred to in Article 6, and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.

4. Gains from the alienation of share of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from the alienation of shares other than those mentioned in paragraph 4 in a company which is a resident of a Contracting State may be taxed in that State.

6. Gains from the alienation of any property other than that mentioned in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 15 : *Independent personal services* – 1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State except in the following circumstances when such income may also be taxed in the other Contracting State.

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing these 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) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in the relevant fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

2. The term professional services includes 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, 18, 19, 20, 21 and 22, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the relevant fiscal year; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provision of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State shall be taxable only in that State.

ARTICLE 17 : *Directors fees* – Directors 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 may be taxed in that other State.

ARTICLE 18 : *Income earned by entertainers 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 a theatre, motion picture, radio or television artistes, 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 State.

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. Notwithstanding the provisions of paragraph 1, income derived by an entertainer or an athlete who is a resident of a Contracting State from his personal activities as such exercised in the other Contracting State, shall be taxable only in the first-mentioned Contracting State, if the activities in the other Contracting State are supported wholly or substantially from the public funds of the first-mentioned Contracting State, including any of its political sub-divisions or local authorities.

4. Notwithstanding the provisions of paragraph 2 and Articles 7, 15 and 16, where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such in a Contracting State accrues not to the entertainer or athlete himself but to another person, that income shall be taxable only in the other Contracting State, if that other person is supported

wholly or substantially from the public funds of the other State, including any of its political sub-division or local authorities.

ARTICLE 19 : *Remuneration and pensions in respect of Government service* – 1.

(a) Remuneration, other than pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who :

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of that other State.

3. The provisions of Articles 16, 17 and 20 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

ARTICLE 20 : *Non-Government pensions and annuities* – 1. Any pension, other than a pension referred to in Article 19, or any annuity derived by a resident of a Contracting State from sources within the other Contracting State shall be taxed only in the first-mentioned Contracting State.

2. The term pension means a periodic payment made in consideration of past services or by way of compensation for injuries received in the course of performance of services.

3. The term annuity means a stated sum payable periodically at stated times during life or during specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in moneys worth.

ARTICLE 21 : *Payments received by students and apprentices – 1.* A student or business apprentice who is or was resident of one of the Contracting States immediately before visiting the other Contracting State and who is present in that other State solely for the purpose of his education or training, shall be exempt from tax in that other State on:

- (a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training; and
- (b) remuneration from employment in that other State, in an amount not exceeding US \$ 2,000 or its equivalent in respective currencies during any fiscal year, as the case may be, provided that such employment is directly related to his studies or is undertaken for the purpose of his maintenance.

2. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article for more than five consecutive years from the date of his first arrival in that other Contracting State.

ARTICLE 22 : *Payments received by professors, teachers and research scholars – 1.* A professor or teacher who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college, school or other approved institution in that other Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival in that other 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 paragraph 1, approved institution means an institution which has been approved in this regard by the competent authority of the concerned Contracting State.

ARTICLE 23 : *Other income* – 1. Subject to the provisions of paragraph 2, items of income of a resident of a Contracting State, wherever arising, which are not expressly dealt with in the foregoing Articles of this Agreement, shall be taxable only in that Contracting State.

2. The provisions of paragraph 1 shall not apply to the income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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 income 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.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Agreement and arising in other Contracting State may also be taxed in that other State.

ARTICLE 24 : *Avoidance of double taxation* – 1. The laws in force in either of the Contracting States will continue to govern the taxation of income in the respective Contracting States except where provisions to the contrary are made in this Agreement.

2. Where a resident of a Contracting State derives income which, in accordance with the provision of this Agreement, may be taxed in the other Contracting State, the first-mentioned Contracting State shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in the other Contracting State whether, directly or by deduction. Such deduction shall not, however, exceed that part of the income-tax (as computed before the

deduction is given) in the first-mentioned Contracting State which is attributable to the income which may be taxed in the other Contracting State.

3. The tax paid in the other Contracting State mentioned in paragraph 2 of this Article shall be deemed to include the tax which would have been payable but for the tax incentives granted under the laws of that Contracting State and which are designed to promote economic development.

ARTICLE 25 : *Non-discrimination* – 1. 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 in the same circumstances. This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which an enterprise of the other Contracting State has in the first-mentioned State at a rate higher than that imposed on the profits of a similar enterprise of the first-mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7 of this Agreement.

3. Nothing contained in this Article shall be construed as obliging a Contracting State to grant to persons not resident in that State any personal allowances, reliefs, reductions and deductions for taxation purposes which are by law available only to persons who are so resident.

4. 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 in the same circumstances.

5. The provisions of paragraphs 2 and 4 of this Article shall not apply to the Vietnamese profit remittance tax, which in any case shall not exceed 10 per cent of the gross amount of profits remitted, and the Vietnamese taxation in respect of agricultural production activities.

6. In this Article, the term taxation means taxes which are the subject of this Agreement.

ARTICLE 26 : *Mutual agreement procedure* – 1. Where a resident of a Contracting State considers that actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this agreement, 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. This case must be presented within three years of the date of receipt of notice of the action which gives rise to taxation not in accordance with the Agreement.

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 a satisfactory 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 Agreement. 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 the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the agreement.

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. 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 representative of the competent authorities of the Contracting State.

ARTICLE 27 : *Exchange of information* – 1. The competent authorities of the Contracting States shall exchange such information (including documents) as is necessary for carrying out the provisions of the Agreement or of the domestic laws of the Contracting States concerning taxes covered by the agreement, insofar as the taxation thereunder is not contrary to the Agreement, in particular for the prevention of fraud or evasion of such taxes. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of the State. However, if the information is originally regarded as secret in the transmitting State, it shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Agreement. Such persons or authorities shall use the information only for such purposes but may disclose the information in public court proceedings or in judicial decisions. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchange of information shall be made, including, where appropriate, exchange of information regarding tax avoidance.

2. The exchange of information or documents 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 the information or documents 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 or documents 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 or documents 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 28 : *Diplomatic agents and consular officers* – Nothing in this Agreement shall affect the fiscal privileges of diplomatic or consular officers under the general rules of international law or under the provisions of special agreements.

ARTICLE 29 : *Entry into force* – Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Agreement. This Agreement shall enter into force on the date of the latter of these notifications and shall thereupon have effect :

- (a) in India, in respect of income arising in any previous year beginning on or after the first day of April next following the calendar year in which the latter of the notifications is given;
- (b) in Vietnam :
 - (i) in respect of taxes withheld at source, in relation to taxable amount paid on or after 1st January following the calendar year in which the agreement enters into force ;
 - (ii) in respect of other Vietnamese taxes, in relation to income, profits or gains arising in the calendar year following the calendar year in which the Agreement enters into force, and in subsequent calendar years.

ARTICLE 30 : *Termination* – This Agreement shall remain in force indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give the other Contracting State through diplomatic channels, written notice of termination and, in such event, this Agreement shall cease to have effect :

- (a) in India, in respect of income arising in any previous year beginning on or after the first day of April next following the calendar year in which the notice is given ;
- (b) in Vietnam :
- (i) in respect of taxes withheld as source, in relation to taxable amount paid on or after 1st January following the calendar year in which the notice of termination is given ;
 - (ii) in respect of other Vietnamese taxes, in relation to income, profits or gains arising in the calendar year following the calendar year in which the notice of termination is given, and in subsequent calendar years.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed the present Agreement.

DONE in duplicate at Hanoi this 7th day of September, one thousand nine hundred and ninety-four in Hindi, Vietnamese and English languages. In case of divergence of interpretation, the English text shall prevail.

For the Government of
the Republic of India

*For the Government of
the Socialist Republic
of Vietnam*

Sd/-

Sd/-

Zambia

Agreement for avoidance of double taxation and prevention of fiscal evasion with Zambia

Whereas the Government of the Republic of India and the Government of the Republic of Zambia have concluded a Convention as set out in the Annexure hereto, for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income ;

And whereas all the requirements have been completed in India and Zambia as are necessary to give the said Convention the force of law in India and Zambia respectively, as required by paragraph (1) of article 29 of the said Convention ;

And whereas the diplomatic notes to this effect have been exchanged between the said two Governments, as required by paragraph (2) of article 20 of the said Convention ;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961) and section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in the Union of India.

Notification : No. GSR 39(E), dated 18-1-1984.

TEXT OF ANNEXED CONVENTION, DATED 5-6-1981

The Government of the Republic of India and the Government of the Republic of Zambia desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows :

CHAPTER I – 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 taxes to which this Convention shall apply are :

- (a) in the case of India,
 - (i) the income-tax including any surcharge thereon imposed under the Income-tax Act, 1961 (43 of 1961); and
 - (ii) the surtax imposed under the Companies (Profits) Surtax Act, 1964 (7 of 1964)
 (hereinafter referred to as Indian tax);
- (b) in the case of Zambia,
 - (i) the income-tax;
 - (ii) the mineral tax; and
 - (iii) the personal levy
 (hereinafter referred to as Zambian tax)

2. The Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of the present Convention in addition to, or in place of, the taxes referred to in paragraph (1) of this article.

3. At the end of each year, the competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws which are the subject of this Convention and furnish copies of relevant enactments and regulations.

CHAPTER II – DEFINITIONS

ARTICLES 3 – *General definitions* –1. In this Convention, unless the context otherwise requires :

- (a) the terms a Contracting State and the other contracting State mean India or Zambia, as the context requires ;
- (b) the term tax means Indian tax or Zambian tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty imposed relating to those taxes ;

- (c) the term person includes individuals, companies and all other entries which are treated as taxable units under the taxation laws in force in the respective Contracting States ;
- (d) the term company means any body corporate or any entity which is treated as a company under the taxation laws in force in the respective Contracting States ;
- (e) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean, respectively, an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of other Contracting State ;
- (f) the term competent authority means in the case of India, the Central Government in the Ministry of Finance (Department of Revenue); and in the case of Zambia, the Commissioner of Taxes or his authorised representative;
- (g) the term nationals means :
 - (i) in respect of India :
all individuals possessing the nationality of India and all legal persons, partnerships and associations deriving their status from the law in force in India ;
 - (ii) in respect of Zambia :
all individuals possessing the nationality of Zambia and all legal persons, partnerships and associations deriving their status as such from the law in force in Zambia.

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

ARTICLE 4 – *Fiscal domicile* – 1. For the purposes of this Convention, the term resident of a Contracting State means any person who, under the laws of that State, is liable to taxation thereon by reason of his domicile, residence, place of management or any other criterion of similar nature.

2. Where by reason of the provisions of paragraph (1), an individual is a resident of both Contracting States, then his residential status for the purposes of this Convention 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 (hereinafter referred to as his centre of vital interests) ;
- (b) If the Contracting State in which he has his centre of vital interests cannot be determined, or if he does not have 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 national ;
- (d) If he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph (1), a person other than an individual is a resident of both the 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 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

- (a) a place of management;
- (b) a branch ;
- (c) an office ;
- (d) a factory ;
- (e) a workshop ;

- (f) a mine, a quarry, an oil-field or other place of extraction of natural resources ;
- (g) a farm, plantation or other place where agricultural, forestry plantation or related activities are carried on ;
- (h) a building site or construction or assembly project or supervisory activities in connection therewith, where such site, project or supervisory activity continues for a period of more than 9 months;
- (i) a warehouse or other facilities for the maintenance of a stock of goods or mechanised belonging to the enterprise from which orders are fulfilled.

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

- (a) the use of facilities solely for the purpose 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 ;
- (e) the maintenance of a fixed place of business solely for the purpose of advertising for the supply of information or for scientific research being activities solely of a preparatory or auxiliary character in the trade or business of the enterprise.

4. A person acting in a Contracting State for or on behalf of an enterprise of the other Contracting State – other than an agent of an independent status to whom the provisions of paragraph (6) apply – shall be deemed to be a permanent establishment of that enterprise in the first-mentioned State if

- (i) he has, and habitually exercises in that State, an 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

(ii) he has no such authority but he habitually maintains in the first-mentioned Contracting State a stock of goods or merchandise belonging to that enterprise from which he regularly fulfils orders on behalf of the enterprise.

5. An insurance enterprise of a Contracting State shall, except in regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through an employee or through a representative who is not an agent of independent status within the meaning of paragraph (6).

6. 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. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he would not be considered an agent of an independent status within the meaning of this paragraph.

7. 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 for either company a permanent establishment of the other.

8. 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 theatre, motion picture, radio or television artistes and musicians) or athletes in that other Contracting State unless the enterprise is directly or indirectly supported wholly or substantially, from the public funds of the Government of the first-mentioned Contracting State in connection with the provision of such services.

CHAPTER III – TAXATION OF INCOME

ARTICLE 6 – *Income from immovable property* – 1. Income from immovable property may be taxed 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 of the Contracting State in which the property is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, oil wells, quarries and other places of extraction of natural resources. Ships, boats and aircraft shall not be regarded 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 professional services.

ARTICLE 7 – *Business profits* – 1. The profits of an enterprise of a Contracting State shall be taxable only in that Contracting 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, the profits of the enterprise may be taxed in the other Contracting State but only so much of them as is attributable to that permanent establishment.

2. If an enterprise of a Contracting State, which has a permanent establishment in the other Contracting State, sells goods or merchandise of the same or similar kind as those sold by the permanent establishment or renders services of the same or similar kind as those rendered by the permanent establishment, the profits of such activities may be attributed to the permanent establishment

unless the enterprise proves that such sales or services are not attributable to the activity of the permanent establishment.

3. 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 or the ascertainment thereof presents exceptional difficulties, the profits attributable to the permanent establishment may be estimated on a reasonable basis.

4. Insofar 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 (3) 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. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business 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.

6. 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 purpose of export to the enterprise of which it is the permanent establishment.

7. For the purposes 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.

8. The term business profits means income derived by an enterprise from the carrying on of trade or business; but does not include income in the form of rents, royalties (including rents or royalties in respect of cinematographic films or video tapes for television), fees for technical services, management charges, or remuneration or fees for providing services of technical or other personnel, interest, dividends, capital gains, remuneration for labour or personal (including professional) services or income from the operation of ships or aircraft.

ARTICLE 8 – *Air transport* – 1. Profits derived by an enterprise of a Contracting State for the operation of 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 paragraph (1) of this article shall also apply to a share of profits from the operation of aircraft in international traffic derived by an enterprise of a Contracting State through participation in a pooled service, in a joint air transport operation or in an international operating agency.

3. For the purpose of paragraph (1) interest on funds connected with the operation of aircraft in international traffic shall be regarded as income from the operation of such aircraft, and the provisions of article 11 shall not apply in relation to such interest.

ARTICLE 9 – *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 10 – *Dividends* – 1. Dividends paid by a company which is resident of a Contracting State to a resident of the other Contracting State may be taxed in that other 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 law of that State, but the tax so charged shall not exceed :

- (a) 5 per cent of the gross amount of the dividends if the recipient is a company which owns at least 25 per cent of the shares of the company paying the dividends during the period of six months immediately preceding the date of payment of the dividends ;
- (b) 15 per cent of the gross amount of the dividends in all other cases.

3. The term dividends as used in this article means income from shares *or* other rights, not being debt-claims, participating in profits, as well as income from other corporate rights assimilated to income from shares or any other item which is deemed to be a dividend or distribution of a company by the taxation law of the Contracting State of which the company making the distribution is a resident.

4. The provisions of paragraphs (1) and (2) shall not apply if the recipient of the dividends, being a resident of a Contracting State, has in the other Contracting State, of which the company paying the dividends is a resident, a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a case, the provisions of article 7 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 State may not impose any tax on the dividends paid by the company to persons who are not residents of

that other State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid on the undistributed profits consist wholly or partly of profits or income arising in that other State.

ARTICLE 11 – *Interest* – 1. Interest arising in a Contracting State paid to a resident of the other Contracting State may be taxed in that State.

2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the law of that State, but the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph (2) interest arising in a Contracting State and paid to the Government of the other Contracting State or local authority thereof, the Central Bank of that other Contracting State, or and agency wholly owned by that Government or local authority shall be exempt from tax of the first-mentioned Contracting State. The competent authorities of the Contracting State may determine by mutual agreement any other governmental institution to which this paragraph shall apply.

4. The term interest as used in this article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and other debt-claims of every kind as well as other income assimilated to income from money lent by the taxation law of the Contracting State in which the income arises.

5. The provisions of paragraphs (1) and (2) shall not apply if the recipient of the interest, being a resident of a Contracting State has in the other Contracting State in which the interest arises a permanent establishment with which the debt-claim from which the interest arises is effectively connected. In such a case, the provisions of article 7 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, local authority or a resident of that State. Where, however, the person paying the interest whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which

the interest is paid was incurred, and such interest is borne by that permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

7. Where, owing to special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, 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 recipient in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 12 – *Royalties* – 1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the law of that State, but 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 (including cinematograph films and films or tapes 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.

4. The provisions of paragraphs (1) and (2) shall not apply if the recipient of the royalties, being a resident of a Contracting State, has in the other Contracting State in which the royalties arise, a permanent establishment with which the right or property giving rise to the royalties is effectively connected. In such a case, the provisions of article 7 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, local authority or a

resident of that 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 in connection with which the liability to pay the royalties was incurred, and such royalties are borne of such permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where, owing to special relationship between the payer and the recipient or between both of them and some other person, the amount of royalties paid, having regard to the use, right or information for which it is paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 13 – *Capital gains* – 1. Gains from the alienation of immovable property, as defined in paragraph (2) of article 6, may be taxed in the Contracting State in which such property is situated.

2. Gains from the alienation of movable property forming part of business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in that other State.

3. Notwithstanding the provisions of paragraph (2), gains derived by an enterprise of a Contracting State from the alienation of ships and aircraft which it operates in international traffic and movable property pertaining to the operation of such ships and aircraft shall be taxable only in that State.

4. Gains derived by a resident of a Contracting State from the alienation of any property other than those mentioned in paragraphs (1), (2) and (3) shall be taxable only in that State.

5. The term alienation means the sale, exchange, transfer or relinquishment of the property or the extinguishment of any rights therein or the compulsory acquisition thereof under any law in force in the respective Contracting States.

ARTICLE 14 – *Management and consultancy fees* – 1. Management and consultancy fees arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such fees may be taxed in the Contracting State in which they arise, and according to the law of the State, but the tax so charged shall not exceed 10 per cent of the gross amount of the fees.

3. The term management and consultancy fees as used in this article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a managerial, technical or consultancy nature.

4. The provisions of paragraphs (1) and (2) shall not apply if the recipient of the management and consultancy fees, being a resident of a Contracting State, has in the other Contracting State in which the fees arise a permanent establishment with which the services giving rise to the fees are effectively connected. In such a case, the provisions of article 7 shall apply.

5. Management and consultancy fees 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 fees, whether he is a resident of that State or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the fees was incurred and such fees are borne by such permanent establishment, then such fees shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where, owing to special relationship between the payer and the recipient or between both of them and some other person, the amount of the management and consultancy fees paid, having regard to the services for which it is paid exceeds the amount which would have been agreed upon by the payer and the

recipient in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 15 – *Independent personal services* – 1. Subject to the provisions of article 16, income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless

- (a) he has a fixed base regularly available to him in the other Contracting State for the purposes of performing his activities, in which case so much of the income may be taxed in that other State as is attributable to that fixed base ; or
- (b) he is present in the other Contracting State for the purpose of performing his activities for a period or periods exceeding in the aggregate 183 days in the relevant previous year in the case of India and in the relevant charge year in the case of Zamia and in which case so much of the income may be taxed in that other State as is attributable to the activities performed in that other State ;
- (c) his remuneration for his services or activities in the other Contracting State derived from residents of that Contracting State exceeds K 10,000 or its equivalent in Indian currency in the taxable year (not including travel expenses directly related to the services or activities in the other Contracting State), notwithstanding that his stay in that State is for a period or periods amounting to less than 183 days during the taxable year.

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

ARTICLE 16 – *Dependent personal services* – 1. Subject to the provisions of articles 17, 18, 19, 20, 21 and 22, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised,

such representation as is derived therefrom may be taxed 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 exercised in the other Contracting State shall be taxable only in the first-mentioned Contracting State if

- (a) the recipient is present in the other Contracting State for a period not exceeding in the aggregate 183 days in the fiscal year concerned ; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting State ; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other Contracting State.

3. Notwithstanding the provisions of paragraphs (1) and (2), remuneration in respect of employment exercised aboard a ship or aircraft in international traffic may be taxed only in the Contracting State in which the place of effective management of the enterprise is situated.

ARTICLE 17 – *Directors fees* – Directors 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 may be taxed in that other Contracting State.

ARTICLE 18 – *Artistes and athletes* – 1. Notwithstanding the provisions of articles 15 and 16, income derived by public entertainers (such as theatre, motion picture, radio or television artistes and musicians) or athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised :

Provided that such income shall not be taxed in the said Contracting State if the visit of the public entertainers or athletes to that State is supported, wholly or substantially, from the public funds of the Government of the other Contracting State.

2. For the purposes of this article, the term Government includes a State Government, a political sub-division, or a local or statutory authority of either Contracting State.

ARTICLE 19 – *Governmental functions* – 1. Remuneration paid by or out of funds created by a Contracting State, a political sub-division or a local authority thereof, to a citizen of that State in respect of an employment shall be taxable only in that State.

2. Any pension paid by or out of funds created by a Contracting State a political sub-division, or a local authority thereof, to any individual may be taxed in that Contracting State.

3. The provisions of paragraph (1) of this article shall not apply to payments in respect of services rendered in connection with any business carried on by the Government or either of the Contracting States for the purposes of profit.

4. For the purposes of this article, the term Government shall include any State Government or local authority of either Contracting State and in particular the Reserve Bank of India and the Bank of Zambia.

ARTICLE 20 – *Non-Government pensions and annuities* – 1. Any pension (other than a pension referred to in Article 19) or annuity derived by a resident of a Contracting State from sources within the other Contracting State may be taxed only in the first-mentioned Contracting State.

2. The term pension means a periodic payment made in consideration of services rendered in the past or by way of compensation for injuries received in the course of performance of services.

3. The term annuity means a stated sum payable periodically at stated times, during the 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 moneys worth.

ARTICLE 21 – *Research personnel, students and business apprentices* – 1.(a) An individual who is a resident of one of the Contracting States at the time he

becomes temporarily present in the other Contracting State for the primary purpose of

- (i) studying at a university or other recognised educational institution in that other Contracting State, or
- (ii) securing training required to qualify him to practise a profession or professional speciality, or
- (iii) studying or doing research as a recipient of a grant, allowance, or award from a governmental, religious, charitable, scientific, literary, or educational organisation.

shall be exempt from tax by that other Contracting State with respect to amounts described in sub-paragraph (b) for a period not exceeding 5 taxable years from the date of his arrival in that other Contracting State.

(a) The amounts referred to in sub-paragraph (a) are :

- (i) gifts abroad for the purpose of his maintenance, educational study, research, or training ;
- (ii) the grant, allowance, or award ; and
- (iii) income from personal services performed in that other Contracting State in an amount not in excess of 1,500 Zambian Kwacha or its equivalent Indian Rupees for any taxable year.

2. An individual who is a resident of one of the Contracting States and who is temporarily present in that other Contracting State as an employee of, or under contract with, a resident of the first-mentioned Contracting State, for the primary purpose of

- (a) acquiring technical, professional, or business experience from a person other than that resident of the first-mentioned Contracting State or other than a person, related to such resident, or
- (b) studying at a university or other recognised educational institution in that other Contracting State, shall be exempt from tax in that other Contracting State for a period not exceeding 1 year with respect to his income from personal services in an aggregate amount not in excess of 2,500 Zambian Kwacha or its equivalent Indian Rupees.

3. An individual who is a resident of one of the Contracting States and who is temporarily present in that other Contracting State for a period not exceeding 1 year, as a participant in a programme sponsored by the Government of that other Contracting State, for the primary purpose of training, research, or study, shall be exempt from tax in that other Contracting State with respect to his income from personal services in respect of such training, research, or study performed in that other Contracting State in an aggregate amount not in excess of 3,5000 Zambian Kwacha or its equivalent Indian Rupees.

ARTICLE 22 – *Professors and teachers* – 1. A professor or teacher who is, or was immediately before visiting a Contracting State, a resident of the other Contracting State and who is present in the first-mentioned State for a period not exceeding two years for the purpose of carrying out advanced study or research or for teaching at a university, college, school or other educational institution shall be exempt from tax in the first-mentioned State in respect of any remuneration which he receives for such work, provided that such remuneration is derived by him from outside that 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 the charge year, as the case may be, in which the visits the other Contracting State or in the immediately preceding previous year or the charge year.

ARTICLE 23 – *Income not expressly mentioned* – Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing articles of this Convention shall be taxable only in that State except that if such income arises in the other Contracting State, it may also be taxed in that other State.

CHAPTER IV – METHOD FOR ELIMINATION OF DOUBLE TAXATION

ARTICLE 24 – *Avoidance of double taxation* – 1. The laws in force in either of the Contracting States will continue to govern the taxation of income in the

respective Contracting States except where provisions to the contrary are made in this Convention.

2. (a) The amount of Zambian tax payable, under the laws of Zambia and in accordance with the provisions of this Convention, whether directly or by deduction, by a resident of India, in respect of income from sources within Zambia which has been subjected to tax both in India and Zambia, shall be allowed as a credit against the Indian tax payable in respect of such income provided that such credit shall not exceed the Indian tax (as computed before allowing any such credit) which is appropriate to the income derived from sources within Zambia; 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 balance, if any, against surtax payable by it, in India;

(b) For the purpose of the credit referred to in sub-paragraph (a) above, the term Zambian tax payable shall be deemed to include any amount which would have been payable as Zambian tax for any year but for any provisions granting an exemption or reduction of tax which the competent authorities of the Contracting States agree to be for the purpose of economic development.

3. (a) The amount of Indian tax payable, under the laws of India and in accordance with the provisions of this Convention, whether directly or by deduction, by a resident of Zambia in respect of income from sources within India which has been subjected to tax both in India and Zambia shall be allowed as a credit against Zambian tax payable in respect of such income provided that such credit shall not exceed the Zambian tax (as computed before allowing any such credit), which is appropriate to the income derived from sources within India.

(b) For the purposes of the credit referred to in sub-paragraph (a) above, the term Indian tax payable shall be deemed to include any amount by which Indian tax has been reduced by the special incentive measures set forth in the following sections of the Income-tax Act, 1961 :

- (i) Section 10(4) – relating to exemption from tax on interest payable to a non-resident on any security notified by the Government of India ;
- (ii) Section 10(4A) – relating to exemption from tax on interest payable to a non-resident on moneys in a Non-resident (External) Account ;
- (iii) Section 10(15)(iv) – relating to exemption from tax of (a) a non-resident in respect of moneys lent by him to the Government or local authority in India; (b) an approved foreign financial institution in respect of interest on moneys lent by it to an industrial undertaking in India under a loan agreement; and (c) a non-resident in respect of interest on moneys lent or credit facilities allowed by him to an industrial undertaking in India for the purchase outside India of raw materials or capital plant and machinery or for industrial development in India ;
- (iv) Section 32A – relating to investment allowance in respect of ships, aircraft, machinery or plant ;
- (v) Section 33A – relating to development allowance for planting or replanting of tea bushes ;
- (vi) Section 35C – relating to the agricultural development allowance ;
- (vii) Section 54E – relating to capital gains ;
- (viii) Section 80CC – relating to deduction in respect of investment in certain new shares ;
- (ix) Section 80HH – relating to deduction in respect of profits and gains from newly established industrial undertakings or hotel business in backward areas ;
- (x) Section 80J – relating to deduction in respect of profits and gains from eligible industrial undertakings or ships or hotels ;
- (xi) Section 80K – relating to deduction in respect of dividends attributable to profits and gains from eligible industrial undertakings or ships or hotels ;
- (xii) any other provisions which may subsequently be enacted granting an exemption or reduction of tax which the competent authorities of the Contracting States agree to be for the purposes of economic development.

4. Income which, in accordance with the provisions of this Convention is not be subjected to tax in a Contracting State, may be taken into account for calculating the rate of tax to be imposed in that Contracting State.

CHAPTER V – SPECIAL PROVISIONS

ARTICLES 25 – *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 in the same circumstances.

3. Nothing contained in this article shall be construed as obliging a contracting State to grant to persons not resident in that State any personal allowances, reliefs and reductions for taxation purposes which are by law available only to persons who are so resident.

4. 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 more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned state are or may be subjected in the same circumstances.

5. In this article, the term taxation means taxes which are the subject of this Convention.

ARTICLE 26 – *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. This case must be presented within three years of the date of receipt of notice of the action which gives rise to taxation not in accordance with the Convention.

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

4. The component 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. 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.

ARTICLE 27 – *Exchange of information* – 1. The competent authorities of the Contracting States shall exchange such information or document as is necessary for carrying out the provisions of this Convention or for the prevention or evasion of taxes which are the subject of this Convention. Any information or document so exchanged shall be treated as secret but may be disclosed to persons (including a court or other authorities) concerned with the assessment, collection, enforcement, investigation or prosecution in respect of the taxes which are the subject of this Convention, or to persons with respect to whom the information or document relates.

2. The exchange of information or documents shall be either on a routine basis or on request with reference to particular cases. The competent authorities of the Contracting States shall agree from time to time on the list of the information or documents 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 or documents 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 or documents 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 28 – *Diplomatic and consular activities* – 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.

CHAPTER VI – FINAL PROVISIONS

ARTICLE 29 – *Entry into force* – 1. This Convention shall come into force on the date when the list of all such things shall have been done in India and Zambia as are necessary to give the Convention the force of law in India and Zambia respectively.

2. The Contracting States shall notify each other of the completion of the requirements mentioned in paragraph (1) of this article. The exchange of diplomatic notes certifying that this requirement has been completed shall take place at Lusaka.

3. Upon the exchange of such diplomatic notes, this Convention shall have effect

- (a) in India, in respect of income assessable for any assessment year commencing on or after the 1st day of April, 1979.

(b) in Zambia, in respect of income arising for any charge year commencing on or after the 1st day of April, 1979.

ARTICLE 30 – *Termination* – This Convention shall continue in effect indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give the other Contracting State through diplomatic channels, written notice of termination, and in such event this Convention shall cease to be effective

(a) in Zambia, in respect of income assessable for the assessment year commencing on the 1st day of April in the second calendar year next following the calendar year in which the notice is given and subsequent years;

(b) in India, in respect of income arising for the year of income next following the calendar year in which the notice of termination is given, and subsequent years.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed the present Convention.

DONE in duplicate at Lusaka this 5th day of June, 1981, in the English language.

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Afghanistan

Limited Agreements with respect to Income of Airlines/Merchant Shipping

Agreement for avoidance of double taxation of income of enterprises operating aircraft with Afghanistan

Whereas the Government of India and the Government of Afghanistan have concluded an Agreement through exchange of letters as set out in the Annexure hereto, for the avoidance of double taxation of income of enterprises operating aircraft;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), and section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964), the Central Government hereby directs that all the provisions of the said Agreement shall be given effect to in the Union of India.

Notification : No. GSR 514(E), dated 30-9-1975.

*TEXT OF LETTERS OF AMBASSADOR OF INDIA, KABUL, SEPTEMBER 14, 1975
DULY CONFIRMED BY PRESIDENT – CIVIL AVIATION & TOURISM AUTHORITY OF
AFGHANISTAN GOVERNMENT*

Excellency,

I have the honour to refer to the Agreement dated 26th January, 1952, between the Government of India and the Government of Afghanistan relating to air services and to the discussions between the representatives of our two Governments on the reciprocal exemption of the airlines of India and Afghanistan from payment of the income-tax and to confirm on behalf of the Government of India the following understandings reached between our two Governments :

1. Income derived from the operation of aircraft by the airlines of India shall be exempt from the Afghanistan tax.
2. Income derived from the operation of aircraft by the airlines of Afghanistan shall be exempt from the Indian tax.

3. The exemption provided for in paragraphs (1) and (2) above shall also apply in respect of participation in pools of any kind regarding air transport by the airlines of India or Afghanistan; the exemption shall not, however, apply to income from operation of aircraft in internal traffic in India or Afghanistan.

4. The exemption provided for in paragraphs (1), (2) and (3) above shall have the effect in relation to the income derived from the operation of aircraft on or after the 26th day of January, 1952, on which date the Agreement relating to air services was signed between India and Afghanistan.

In case any tax on income relatable to the aforesaid period has been recovered by either Government as of the date of this Agreement, the same shall be refunded by the Government on an application to be made in this behalf within twelve months of the said date by the airlines of India or the airlines of Afghanistan, as the case may be.

5. It is understood that

- (a) the term Indian tax means the income-tax and surtax imposed under the tax laws of India;
- (b) the term Afghanistan tax means the income-tax and the business transactions tax imposed by the income-tax law of Afghanistan;
- (c) the terms Indian tax and Afghanistan tax shall also include any identical or substantially similar taxes which are imposed hereafter by India or Afghanistan respectively in addition to or in place of the existing taxes;
- (d) the term airlines of India or airlines of Afghanistan means
 - (i) airlines designated by the Government of India or the Government of Afghanistan, as the case may be, in pursuance of the Agreement dated 26th January, 1952 (as amended or revised from time to time) between the two Governments relating to air services; or
 - (ii) airlines which are authorised by the Government of India or the Government of Afghanistan, as the case may be, by a general or special arrangement between the two Governments to operate chartered flights between or beyond their territories;

- (e) the term internal traffic shall mean traffic which originates and terminates within India or within Afghanistan, as the case may be;
- (f) the term operation of aircraft means a business of transportation by air of persons, livestock, goods or mail, carried on by the owners or lessors or charterers of aircraft, including the sale of tickets for such transportation on behalf of other enterprises and any other activity directly connected with such transportation.

I have the honour also to propose that this letter and Your Excellency's letter of reply confirming the foregoing understandings shall be regarded as constituting an Agreement between the two Governments for the avoidance of double taxation of income of enterprises operating aircraft, which shall enter into force on the date of Your Excellency's reply and shall remain in force indefinitely, unless either of the Governments gives notice to the other Government of its intention to terminate this Agreement on or before the thirtieth day of June in any calendar year after the year 1980. In the event of such a notice, this Agreement shall cease to be effective :

- (a) in India, in respect of income assessable for the assessment year commencing on the 1st day of April in the second calendar year following the calendar year in which the notice is given and the subsequent assessment years; and
- (b) in Afghanistan, in respect of income assessable for the taxable year commencing on the 1st day of Hamal, corresponding to the 21st day of March, in the second calendar year following the calendar year in which the notice is given and the subsequent taxable years.

Czechoslovakia

Limited Agreements with respect to Income of Airlines/Merchant Shipping

Agreement for avoidance of double taxation of income derived from freight earnings with Czechoslovakia

Whereas the annexed Agreement between the Government of the Czechoslovak Socialist Republic and the Government of the Republic of India on co-operation in shipping has been concluded;

And whereas article 12 of the said Agreement provides for the avoidance of double taxation in respect of taxes on income derived from the freight earnings of Czechoslovak vessels on the basis of reciprocity;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), and section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964), the Central Government hereby directs that the provisions of the said article of the said Agreement shall be given effect to in the Union of India.

Notification : No. GSR 286(E), dated 3-6-1980.

TEXT OF ANNEXED AGREEMENT, DATED 3-11-1978

The Government of the Czechoslovak Socialist Republic and the Government of the Republic of India, desirous of developing and strengthening maritime relations and shipping services between the two countries;

Referring to the Trade and Payments between both countries dated December 4, 1974;

Taking into consideration the recommendations of the Czechoslovak-Indian Committee for Economic, Trade and Technical Co-operation;

Taking into account the geographical position of the Czechoslovak Socialist Republic, which being a land-locked country has to make use of the seaports of third countries, have agreed as follows :

ARTICLE 1 – 7. The co-operation between the two countries in the field of maritime navigation shall be based on the principles of sovereign equality, national interests and mutual advantage and assistance.

2. The provisions of the Agreement shall be applicable to bilateral shipping between the two Contracting Parties.

ARTICLE 2 – 7. In accordance with Article 1 of this Agreement, both parties agree to contribute to the participation of their vessels in the carriage of cargo between the two countries in order to assist the promotion of bilateral trade.

2. The Parties will contribute to the development of shipping services between the ports nominated by Czechoslovakia and the ports of India, and develop mutual contacts among their organisations responsible for shipping activities.

ARTICLE 3 – 7. The term vessel of the Contracting Party shall mean any merchant vessel sailing under the flag of that Party or time chartered by the respective shipping organisations of either Party, in accordance with its laws.

2. This term would exclude warships and fishing vessels of both the Parties.

3. The term member of the crew of a merchant vessel shall mean any person actually employed for duties on board during voyage in the service of a vessel included in the crew list.

4. Ports nominated by Czechoslovakia according to article 2 are ports nominated by the concerned Czechoslovak organisations.

ARTICLE 4 – 7. The Contracting Parties agree to take due note of the geographical position of the Czechoslovak Socialist Republic and the capacity of the Czechoslovak fleet, as well as the necessity resulting therefrom to utilize the transport of goods by vessels of third countries, especially those *via* whose seaports the goods are transhipped and whose ships maintain maritime service between their own ports and ports in India in co-operation with Indian liner companies.

2. In recognition of the above-mentioned position both Parties agree to reserve a reasonable share of their national cargo to third flag vessels especially those through whose ports national cargoes get transported.

3. The Contracting Parties further agree that the shipping organisations of the two sides have the right to participate equally in the carriage of national cargoes moving between the two countries, consistent with reservation made under para (2) above.

ARTICLE 5 – 1. The parties entrust Czechofracht, Praha on behalf of Czechoslovak side and the Shipping Corporation of India Ltd., Bombay, on behalf of Indian side with the task to co-ordinate the activities resulting from this Agreement.

2. Each national shipping line shall operate and administer its vessels assigned to this service independently and shall assume full responsibility for financial results of such operations as well as for claims which might arise due to the operation of the vessels.

3. Each Party may, if necessary, nominate any other organisation in place of the above by notifying to the other Party.

ARTICLE 6 – Each Party will avoid competition with the fleet of the other in its trade with third countries and desist from such activities as would prejudice the growth and utilisation of the merchant fleet of the other Party.

ARTICLE 7 – Each Party may establish a representation for its shipping companies in the territory of the other Party in accordance with the laws of that country.

ARTICLE 8 – 1. Vessels of either country with or without cargoes therein, will, while entering, staying in or leaving the ports of the other country, enjoys the most-favoured facilities granted by their laws, rules and regulations to ships under third countries flags. This principle shall not, however, apply to ships engaged in coastal navigations.

2. The Parties shall endeavour to take effective measures aiming at conveyance of assistance to vessels in their ports concerning particularly delivery of bunkers, spare parts, catering etc., repairs and docking, simple formalities of vessels despatch and enrolment of crews.

ARTICLE 9 – All ship documents including those relating to nationality, registration, tonnage and survey issued or recognised by one Party shall be recognised by the other Party.

ARTICLE 10 – If a vessel of one of the Parties suffers shipwreck, runs aground, is cast ashore or suffers any other accident, the vessel, the cargo, the crew and the passengers shall receive in the territory of the other Party the same assistance which is accorded to its national vessels, cargo, crew and passengers. This will be subject to the respective laws and the international obligations of each of the Parties.

ARTICLE 11 – All payments relating to sea transport between the two countries shall be effected in accordance with the provisions of the payments agreement in force between the two countries.

ARTICLE 12 – No Indian income-tax shall be levied or collected by Indian authorities on freight-earnings of Czechoslovak vessels on the basis of reciprocity.

ARTICLE 13 – All differences between the Contracting Parties concerning the implementation of this Agreement shall be settled by negotiation.

ARTICLE 14 – 1. All matters concerning the operation of shipping services between both countries will be discussed between the authorised organisations of both countries, who for this purpose will conclude agreements for specified periods.

2. Such agreements shall particularly deal with matters such as frequency of services, nomination of loading and discharging ports, freight rates, and other details relating to shipping services.

ARTICLE 15 – The present Agreement will come into force on the date of the exchange of notes confirming that it has been approved in accordance with the constitutional requirements of both Parties and will remain valid for a period of five years. After the expiry of this period the Agreement will be automatically renewed always for one year unless notified to the contrary by one of the Parties by giving notice six months prior to the expiry of the period of validity.

Ethiopia

Limited Agreements with respect to Income of Airlines/Merchant Shipping

Agreement for avoidance of double taxation of income of enterprises operating aircraft with Ethiopia

Whereas the Government of India and the Provisional Military Government of Socialist Ethiopia have concluded an Agreement, as set out in the Annexure hereto, for the avoidance of double taxation of income of enterprises operating aircraft;

And whereas all the requirements have been completed in Ethiopia and India as are necessary to give the said Agreement the force of law in Ethiopia and India respectively, as required by paragraph (1) of article 3 of the said Agreement;

And whereas the letters to this effect have been exchanged between the said two Governments, as required by paragraph (1) of article 3 of the said Agreement;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), and section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964), the Central Government hereby directs that all the provisions of the said Agreement shall be given effect to in the Union of India.

Notification : No. GSR 8(E), dated 4-1-1978 as corrected by Notification No. GSR 159(E), dated 2-3-1978.

TEXT OF ANNEXED AGREEMENT, DATED 25-11-1976¹

The Government of India and the Government of Ethiopia desiring to conclude an Agreement for the avoidance of double taxation of income of enterprises operating aircraft chargeable to tax in the said countries in accordance with their respective laws, have agreed as follows :

ARTICLE 1 – 1. In this Agreement, unless the context otherwise requires,

- (a) the term Ethiopia means the territory of Ethiopia and the various islands forming part of Ethiopia, and includes the territorial sea and any other marine areas adjacent thereto, including their sea bed and sub-soil, over the resources of which

Ethiopia has, or may hereinafter have, sovereign rights in accordance with international law;

- (b) the term India means the territory of India and includes the territorial sea and any other marine areas adjacent thereto, including their sea bed and sub-soil, over the resources of which India has, or may hereinafter have sovereign rights in accordance with international law;
- (c) the terms a Contracting State and the other Contracting State mean Ethiopia or India, as the context requires;
- (d) the term enterprise of a Contracting State means
 - (i) an airline designated by the Government of that State in pursuance of the Agreement dated 3rd August, 1967 (as amended or revised from time to time) between the Government of India and the Government of Ethiopia relating to air services; or
 - (ii) an airline which is authorised by the Government of that State by a general or special arrangement between the two Contracting States to operate chartered flights between or beyond their territories;
- (e) the term international traffic means any transport by an aircraft operated by an enterprise of a Contracting State, except when the aircraft is operated solely between places in the other Contracting State; and
- (f) the expression operation of aircraft means a business of transportation by air of persons, livestock, goods or mail, carried on by the owners or lessees or charterers of aircraft, including the sale of tickets for such transportation on behalf of other enterprises and any other activity directly connected with such transportation.

2. In the application of the provisions of this Agreement by one of the Contracting States, any term used but not defined herein shall, unless the context otherwise requires, have the meaning which it has under the laws in force in that State relating to the taxes which are the subject of this Agreement.

ARTICLE 2 – 1. Under this Agreement income derived by an enterprise of a Contracting State from the operation of aircraft an international traffic shall, on the principle of reciprocity, be exempt from tax in the other Contracting State.

2. Paragraph (1) shall also apply in respect of participations in a pool, a joint venture or in any other similar arrangement regarding air transport.

3. For the purpose of paragraph (1), interest on funds directly connected with the operation of aircraft shall be regarded as income from the operation of such aircraft.

4. For the purpose of this article, the term tax shall mean income taxes, and any other taxes, dues and levies on income which are imposed or may hereafter be imposed on behalf of each Contracting State or of its political sub-divisions or local authorities, irrespective of the manner in which they are imposed.

ARTICLE 3 – 1. This Agreement shall be proved in accordance with the laws and practice in force in each of the Contracting States. It shall enter into force on the date of the exchange of letters certifying that the proper procedure was fulfilled in each Contracting State. The exchange of letters shall take place at Addis Ababa as soon as possible.

2. This Agreement shall have effect

(a) in Ethiopia, in respect of income derived from the operation of aircraft in international traffic after 1st July, 1966.

(b) in India, in respect of income derived from the operation of aircraft in international traffic after 1st July, 1966.

ARTICLE 4 – This Agreement shall continue in effect indefinitely but may be terminated by either of the Contracting States with a written notice of six months. In such event, the Agreement shall cease to be effective in respect of income derived from operation of aircraft in international traffic after the 1st day of January next following the date on which the said period of six months expires.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed the present Agreement.

DONE in duplicate at New Delhi this 25th day of November, 1976, in the Amharic, English and Hindi languages, all the texts being equally authentic, except that in the case of divergence of interpretation the English text shall prevail.

IRAN

Limited Agreements with respect to Income of Airlines/Merchant Shipping

Agreement for avoidance of double taxation of income of enterprises operating aircraft with Iran

Whereas the Government of India and the Imperial Government of Iran have conducted an Agreement through exchange of Notes as set out in the Annexure hereto, for the avoidance of double taxation of income of enterprises operating aircraft.

Now, therefore, in exercise of the powers conferred by section 90 of Income-tax Act, 1961 (43 of 1961), and section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964), the Central Government hereby directs that all the provisions of the said Agreement shall be given effect to in the Union of India.

Notification : No. GSR 284(E), dated 28-5-1973.

ANNEX – TEXT OF NOTES, DATED 29-3-1973

**AGREED TRANSLATION OF NOTE NO. 127/18, DATED THE 29TH MARCH, 1973
RECEIVED FROM THE IMPERIAL GOVERNMENT OF IRAN BY THE GOVERNMENT OF
INDIA**

The Imperial Ministry of Foreign Affairs presents its compliments to the Embassy of India and with reference to the discussions and corresponding notes exchanged regarding the reciprocal exemption of Indian and Iranian airlines from payment of income-tax has the honour to state :

According to the Direct Tax Law of 19th March, 1967, foreign air companies may be exempted from payment of income-tax on a reciprocal basis; and in fact considering that no income-tax has been collected from Iranian air companies in India, the Iranian Government has to this date refrained from collecting income-tax from Indian air companies.

Thus, as the provision of reciprocity prescribed in the Direct Tax Law has been in fact established, as long as the said provision is observed by the Indian

Government, Indian air companies will be, as before, exempted from the payment of tax derived from the transportation of goods and passengers.

It is, therefore, proposed that should the above be agreed to, this Note and the Embassys reply regarding the application and observance of reciprocity by the Government of India may be considered as a temporary agreement between the two parties in respect of exemption from payment of income-tax by the air companies of both parties.

NOTE NO. TEH/COM/203/6/70, DATED 1-4-1973, ISSUED BY THE GOVERNMENT OF INDIA TO THE IMPERIAL GOVERNMENT OF IRAN IN REPLY :

The Embassy of India presents its compliments to the Imperial Ministry of Foreign Affairs and in regard to the question of reciprocal exemption of Indian and Iranian airlines from payment of income-tax has the honour to refer to their Note No. 127/18, dated 29-3-1973, which reads as follows :

The Imperial Ministry of Foreign Affairs presents its compliments to the Embassy of India and with reference to the discussions and corresponding notes exchanged regarding the reciprocal exemption of Indian and Iranian airlines from payment of income-tax has the honour to state :

According to the Direct Tax Law of 19th March, 1967, foreign air companies may be exempted from payment of income-tax on a reciprocal basis, and in fact considering that no income-tax has been collected from Iranian air companies in India, the Iranian Government has to this date refrained from collecting income-tax from Indian air companies.

Thus, as the provisions of reciprocity prescribed in the Direct Tax Law has been in fact established, as long as the said provision is observed by the Indian Government, Indian air companies will be as before, exempted from the payment of tax derived from the transportation of goods and passengers.

It is, therefore, proposed that should the above be agreed to, this note and the Embassys reply regarding the application and observance of reciprocity by the Government of India may be considered as a temporary agreement between the

two parties in respect of exemption from payment of income-tax by the air companies of both parties.

With reference to this proposal, the Embassy of India has the honour to inform the Imperial Ministry of Foreign Affairs that the Government of India accepts the terms of the foregoing text and considers that that Note and this Note will constitute an Agreement between the two Governments for the avoidance of double taxation of income of enterprises operating aircraft, which shall enter into force on this date, pending the conclusion of a general agreement for the avoidance of double taxation of income from various sources including civil aviation.

In accord with the purpose of the notes now exchanged, the Embassy of India has the honour to stress the fact that acceptance by the Government of India is based on the understanding that the exemption in respect of income derived from operation of aircraft in international traffic by Indian airline companies and Iranian airline companies, shall be on the basis of reciprocity and shall apply from the beginning of operation of these airlines in Iran and India respectively and that in any case any tax on the aforesaid income has been recovered by either Government as of the date of this Agreement, the same shall be refunded by that Government.

The Embassy of India avails itself of this opportunity to renew to the Imperial Ministry of Foreign Affairs the assurances of its highest consideration.

Lebanon

Limited Agreements with respect to Income of Airlines/Merchant Shipping

Agreement for avoidance of double taxation of income of enterprises operating aircraft with Lebanon

Whereas the annexed Agreement between the Government of India and the Government of the Republic of Lebanon for the avoidance of double taxation of income of enterprises operating aircraft has been ratified and the instruments of ratification exchanged, as required by article V of the said Agreement;

Now, therefore, in exercise of the powers conferred by section 90 of Income-tax Act, 1961 (43 of 1961), and section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964), the Central Government hereby directs that all the provisions of the said Agreement shall be given effect to in the Union of India.

Notification : Nos. GSR 1552 and 1553, dated 28-6-1969.

TEXT OF ANNEXED AGREEMENT, DATED 22-2-1968¹

Whereas the Government of India and the Government of the Republic of Lebanon desire to conclude an Agreement for the avoidance of double taxation of income of enterprises operating aircraft chargeable to tax in the said countries in accordance with their respective laws.

Now, therefore, the said two Governments do hereby agree as follows :

ARTICLE I – 1. The taxes to which this Agreement shall apply are :

(a) in the case of India,

(i) the income-tax including any surcharge on income-tax imposed under the Income-tax Act, 1961 (43 of 1961), as amended; and

(ii) the surtax imposed under the Companies (Profits) Surtax Act, 1964 (7 of 1964), as amended

(hereinafter referred to as Indian tax);

(b) in the case of the Republic of Lebanon, the income-tax including any additional tax on income-tax prescribed under the income-tax law issued by the Legislative Decree No. 144, dated June 12, 1959, as amended (hereinafter referred to as Lebanese tax).

2. This Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of taxes the existing taxes.

ARTICLE II – 7. In this Agreement, unless the context otherwise requires :

- (a) the term India shall have the meaning assigned to it in Article 1 of the Constitution of India;
- (b) the term the Republic of Lebanon shall have the meaning assigned to it in the Lebanese Constitution;
- (c) the terms a Contracting State and the other Contracting State mean India or the Republic of Lebanon, as the context requires;
- (d) the term tax means Indian tax or Lebanese tax as the context requires;
- (e) the term enterprise of a Contracting State means
 - (i) an airline designated by the Government of that State in pursuance of the Agreement dated September 19, 1964, as may be amended or revised from time to time, between the Government of India and the Government of the Republic of Lebanon relating to air services, or
 - (ii) an airline which is authorised by the Government of that State by a general or special arrangement between the two Contracting States to operate charter flights between or beyond their territories.

2. In the application of the provisions of this Agreement by one of the Contracting States, any term used but not defined herein shall, unless the context otherwise requires have the meaning which it has under the laws in force in that State relating to the taxes to which this Agreement applies.

ARTICLE III – 1. Income derived from the operation of aircraft in international traffic by an enterprise of one of the Contracting States shall be exempt from tax in the other Contracting State.

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

ARTICLE IV – The laws in force in either of the Contracting States will continue to govern the assessment and taxation of income in the Contracting States except where express provision to the contrary is made in this Agreement.

ARTICLE V – 1. This Agreement shall be ratified and the instruments of ratification shall be exchanged at Beirut as soon as possible.

2. This Agreement shall enter into force on the date of the exchange of the instruments of ratification and its provisions shall have effect :

- (a) in India, in respect of income assessable for any year of assessment commencing on or after the 1st day of April, 1962;
- (b) in Lebanon, in respect of income assessable for any year of assessment commencing on or after the 1st day of April, 1962.

ARTICLE VI – This Agreement shall continue in effect indefinitely but either of the Contracting States may, on or before the 30th day of June in any calendar year after the year 1970, give notice of termination to the other Contracting State and in such event this Agreement shall cease to be effective :

- (a) in India, in respect of income assessable for any year of assessment commencing on or after the 1st day of April in the calendar year next following that year in which the notice is given;
- (b) in Lebanon, in respect of income assessable for any year of assessment commencing on or after the 1st day of April in the calendar year next following that year in which the notice is given.

Pakistan

Limited Agreements with respect to Income of Airlines/Merchant Shipping

Agreement for avoidance of double taxation of income from international air transport with Pakistan

Whereas the annexed Agreement between the Republic of India and the Islamic Republic of Pakistan for the avoidance of double taxation of income derived from international air transport has entered into force on the 1st day of August, 1989 on the notification by both the Contracting States to each other on completion of the procedures required by their respective laws, as required by Article 5 of the said Agreement;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), and section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964), the Central Government hereby directs that all the provisions of the said Agreement shall be given effect to in the Union of India.

Notification : No. GSR 792(E), dated 29-8-1989.

ANNEXURE

AGREEMENT BETWEEN THE REPUBLIC OF INDIA AND THE ISLAMIC REPUBLIC OF PAKISTAN FOR THE AVOIDANCE OF DOUBLE TAXATION OF INCOME DERIVED FROM INTERNATIONAL AIR TRANSPORT

The Government of the Republic of India and the Government of the Islamic Republic of Pakistan desiring to conclude an agreement for the avoidance of double taxation of income derived from international air transport have agreed as follows :

ARTICLE 1 – Taxes covered – 1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State of its political sub-divisions or local authorities irrespective of the manner in which they are levied.

2. The existing taxes to which this Agreement shall apply are :

(a) in the case of Pakistan :

- (i) the income-tax ;
- (ii) the super tax ; and
- (iii) the surcharge ;
- (hereinafter referred to as Pakistan tax)
- (b) in the case of India :
 - (i) the income-tax including surcharge thereon ; and
 - (ii) the surtax ;
 - (hereinafter referred to as Indian tax).

3. This Agreement shall also apply to any identical or substantial similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the taxes referred to in paragraph 2 of this Article. The competent, authority of a Contracting State shall, as soon as possible or at least at the end of each year, notify the other of any substantive changes which are made in its taxation law.

ARTICLE 2 – *Definitions* – 1. In this Agreement, unless the context otherwise requires :

- (a) the terms a Contracting State and the other Contracting State mean Pakistan or India, as the context requires;
- (b) the term tax means Pakistan tax, or Indian tax as the context requires;
- (c) the term enterprise of a Contracting State means :
 - (i) an airline designated by the Government of that State in pursuance of the Agreement between the Government of the Islamic Republic of Pakistan and the Government of the Republic of India relating to air services dated 16th July, 1976 (as amended or revised from time to time); or
 - (ii) an airline which is authorised by the Government of that State by a general or special arrangement between the two Contracting States to operate chartered flights between or beyond their territories;
- (d) the term international traffic means any transport by an aircraft operated by an enterprise of a Contracting State, except when the aircraft is operated solely between places in the other Contracting State;

(e) the term competent authority means:

(i) in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative ; and

(ii) in the case of Pakistan, the Central Board of Revenue or their authorised representative.

2. As regards the application of the Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Agreement applies.

ARTICLE 3 – *Avoidance of double taxation* – 1. Profits derived by an enterprise of a Contracting State from the operation of aircraft in international traffic shall be exempt from tax in the other Contracting State.

2. The provisions of paragraph 1 shall also apply to the profits from the participation in a pool, a joint business or an international operating agency.

3. For the purposes of paragraph 1, interest on funds connected with the operation of aircraft in international traffic shall be regarded as profits derived from the operation of such aircraft.

ARTICLE 4 – *Residual provisions* – The laws in force in either of the Contracting States will continue to govern the assessment and taxation of income in the Contracting States except where an express provision to the contrary is made in this Agreement.

ARTICLE 5 – *Entry into force* – Each Contracting State shall notify to the other the completion of the procedure required by its law for the bringing into force of this Agreement. The Agreement shall enter into force on the first day of the second month following the month in which the later of these notifications has been given and shall have effect in respect of income derived on or after the 1st day of July, 1986.

ARTICLE 6 – *Termination* – 1. This Agreement shall continue in effect indefinitely but either Contracting State may, on or before the thirtieth day of

June in any calendar year beginning not earlier than the expiry of a period of five years from the date of its entry into force, give notice of termination to the other Contracting State and in such event this Agreement shall cease to be effective :

- (a) in Pakistan, in respect of any assessment year on or after the 1st day of July of the second calendar year following the year in which the notice is given ;
- (b) in India, in respect of any assessment year commencing on or after the 1st day of April of the second calendar year following the year in which the notice is given.

2. In case a comprehensive agreement for the avoidance of double taxation with respect to taxes on income, including, *inter alia*, income derived from International Air Transport is concluded between the Contracting States, then notwithstanding anything to the contrary in paragraph 1, this Agreement shall cease to have effect from the date on which such comprehensive Agreement enters into force.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Agreement.

DONE at Islamabad on this thirty-first day of December, one thousand nine hundred and eighty-eight in two originals, each in the Hindi and English languages, both texts being equally authentic. In case of divergence between the two texts, the English text shall be operative one.

Peoples Democratic Republic of Yemen

Limited Agreements with respect to Income of Airlines/Merchant Shipping

Agreement for avoidance of double taxation of income derived from international air transport with Peoples Democratic Republic of Yemen

Whereas the annexed Agreement between the Government of the Republic of India and the Government of the Peoples Democratic Republic of Yemen for the avoidance of double taxation of income derived from international air transport has entered into force on 5-8-1988, the date of signature thereon by the Contracting States, as required by Article 5 of the said Agreement ;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961) and section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964), the Central Government hereby directs that all the provisions of the said Agreement shall be given effect to in the Union of India.

Notification : No. GSR 857(E), dated 12-8-1988.

TEXT OF ANNEXED AGREEMENT, DATED 5-8-1988

The Government of the Republic of India and the Government of the Peoples Democratic Republic of Yemen desiring to conclude an agreement for the avoidance of double taxation of income derived from international air transport have agreed as follows :

ARTICLE 1 – Taxes covered – 1. The existing taxes to which this Agreement shall apply are :

- (a) in the case of Peoples Democratic Republic of Yemen, the income-tax including surcharge thereon (hereinafter referred to as Yemeni 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 Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to or in place of the taxes referred to in paragraph 1 of this Article. The competent authorities of the Contracting States shall notify each other of any substantial change which are made in their respective taxation laws.

ARTICLE 2 – *Definitions* – 1. In this Agreement, unless the context otherwise requires :

- (a) the terms a Contracting State and the other Contracting State mean Peoples Democratic Republic of Yemen or India, as the context requires ;
- (b) the term tax means Yemeni tax or Indian tax as the context requires ;
- (c) the term enterprise of a Contracting State means airlines designated by each Contracting State ;
- (d) the term international air traffic means any transport by an aircraft operated by an enterprise of a Contracting State, except when the aircraft is operated solely between places in the other Contracting State ;
- (e) the term operation of aircraft means the transportation by air of passengers, livestock, goods or mail carried on by the owners or lessees or charterers of aircraft, including the sale of tickets for such transportation, the incidental lease of aircraft including on a charter basis and any other activity directly connected with such transportation ;
- (f) the term competent authority means :
 - (i) in the case of the Peoples Democratic Republic of Yemen, the Ministry of Finance or its authorised representative ;
 - (ii) in the case of India, the Central Government in the Department of Revenue or its authorised representative.

2. In the application of the provisions of this Agreement by one of the Contracting States, any term used but not defined herein shall, unless the context otherwise requires, have the meaning which it has under the laws in force in that State relating to taxes which are the subject of this Agreement.

ARTICLE 3 – *Avoidance of double taxation* – 1. Income derived by an enterprise of a Contracting State from the operation of aircraft in international traffic shall be exempted from tax in the other Contracting State.

2. The provisions of paragraph (1) shall also apply to income from the participation in a pool, a joint airline business or an international operating agency.

3. For the purpose of paragraphs 1 and 2, interest on funds connected with the operation of aircraft in international air traffic shall be regarded as income derived from the operation of such aircraft.

ARTICLE 4 – *Mutual agreement procedure* – 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 Agreement.

ARTICLE 5 – *Entry into force* – Each of the Contracting States shall notify to the other the completion of procedures required by its laws for the bringing into force of this Agreement. The Agreement shall enter into force on the date of signature thereon by the Contracting States, and shall thereupon have effect in respect of income arising in any fiscal year commencing on or after the 1st day of January, 1983.

ARTICLE 6 – *Termination* – This Agreement shall continue in effect indefinitely but either Contracting State may, on or before the thirtieth day of June in any calendar year after the year 1993, give notice of termination to the other Contracting State and in such event this Agreement shall cease to be effective in respect of income arising in any fiscal year commencing on or after the 1st day of January next following the calendar year in which the notice is given.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed the present Agreement.

DONE at New Delhi this fifth day of August, one thousand nine hundred and eighty-eight in two originals in the Hindi, Arabic and English languages, all

texts being equally authentic. In the case of divergence amongst the three texts, the English text shall be the operative one.

Russian Federation

Limited Agreements with respect to Income of Airlines/Merchant Shipping

Agreement for avoidance of double taxation of income derived from carriage of cargo with Russian Federation*

NOTIFICATION 1

Whereas the annexed Agreement between the Government of India and the Russian Federation on merchant shipping has been concluded ;

And whereas Article XV of the said Agreement provides for the avoidance of double taxation in respect of taxes on income derived from the carriage of cargo ;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), and section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964), the Central Government hereby directs that the provisions of the said Article of the said Agreement shall be given effect to in the Union of India.

Notification : *No. GSR 943(E), dated 23-12-1976 as modified by GSR 419(E), dated 31-5-1984, dated GSR 952(E), dated 30-12-1992.*

TEXT OF ANNEXED AGREEMENT, DATED 19-7-1976

The Government of the Republic of India and the Government of the Russian Federation, being guided by the provisions of the Treaty of Peace, Friendship and Co-operation between the Republic of India and the Russian Federation, dated 9th August, 1971, proceedings from the common aspiration for all possible expansion and deepening of mutually beneficial economic and trade co-operation between the two countries as envisaged in the Agreement on the further Development of Economic and Trade Co-operation dated 29th November, 1973, and desirous of developing merchant shipping of the two countries, have agreed as follows :

ARTICLE 1 – For the purposes of this Agreement,

(1) the term vessel of the Contracting Party shall mean any merchant vessel plying under the national flag of the Party in accordance with its legislation. This

definition excludes warships and fishing vessels from the sphere of application of this Agreement;

- (2) the term member of the crew shall mean the master and any other person actually employed for duties on board during a voyage in the working or service of a vessel and included in the crew list.

ARTICLE 2 – The Contracting Parties shall grant all possible assistance to the vessels of the two countries and shall refrain from taking any action which might cause harm to the development of merchant shipping.

ARTICLE 3 – The Contracting Parties shall continue their efforts to maintain and develop effective working relationships the authorities responsible for maritime affairs in their countries. In particular, the Contracting Parties agree to carry on mutual consultations and reciprocal exchange of information between these authorities and to encourage the development of contacts between their respective shipping organisations or enterprises.

ARTICLE 4 – 1. The Contracting Parties agree to promote the participation of their vessels in the carriage of all commercial cargoes between the ports of the two countries on the principles of parity in cargo liftings and freight earnings and equality in all other respects. In the calculations of parity, the shipments to and from all ports situated in the territory of the Contracting Parties shall be taken into account.

2. In case the shipping companies of one of the Contracting Parties are not able to undertake the carriage in accordance with the provisions of paragraph (1), such carriage will be offered to the vessels of the other Contracting Party. If the required tonnage is not available with the other Contracting Party, the shipping companies of the first-mentioned Contracting Party may use chartered vessels from third countries for the carriage of the share of cargo of the Contracting Party.

ARTICLE 5 – The Contracting Parties shall respect the right of each party to utilise its merchant fleet to the maximum in entering into its trades with third countries. They further agree that the national shipping companies of one party will co-operate with

national shipping companies of the other party in the field of the most efficient employment of their merchant vessels.

ARTICLE 6 – Each Contracting Party shall grant to other Contracting Party and its vessels the most-favoured nation treatment in all matters concerning merchant shipping unless otherwise provided for in this Agreement.

ARTICLE 7 – 1. Each Contracting Party shall afford to vessels of the other Contracting Party the same treatment as it affords to its own vessels engaged in international trade in respect of free access to ports, use of ports for loading and unloading of cargoes and for embarking and disembarking passengers, payment of tonnage and other ports dues and taxes, use of services intended for navigation and normal commercial operations.

2. The provisions of paragraph (1) of this article

- (a) shall not apply to ports not open to the entry of foreign vessels;
- (b) shall not apply to the activities reserved by each of the Contracting Parties for its organisations or enterprises, including, in particular, national cabotage and ocean fishing;
- (c) shall not oblige a Contracting Party to extend to vessels of the other Contracting Party exemptions from compulsory pilotage requirements granted to its own vessels;
- (d) shall not apply to the regulations concerning entry and stay of foreigners.

ARTICLE 8 – The Contracting Parties shall adopt, within the limits of their law and port regulations, all appropriate measures to facilitate and expedite maritime traffic, to prevent delays to vessels, and to expedite and simplify as much as possible the carrying out of customs and other formalities applicable in ports.

ARTICLE 9 – 1. The documents relating to registration of vessels, certificates of tonnage and survey and other ships documents issued or recognised by one of the Contracting Parties shall be recognised by the other party.

2. The vessels of each of the Contracting Parties holding legally issued certificates of tonnage shall not be subjected to re-measurement in the ports of the other party and the net tonnage of the vessels noted in the certificates shall be taken as the basis for calculation of the tonnage dues.

ARTICLE 10 – Each of the Contracting Parties shall recognise the seamen's identity documents issued by the competent authorities of the other Contracting Party.

These identity documents are :

- for seamen of the Russian Federation vessels : A Russian Federation Seamen's passport;
- for seamen of the Indian vessels : an Indian Seamen's Continuous Discharge Certificate.

ARTICLE 11 – Holders of the seamen's identity documents specified in Article 10 of this Agreement shall be permitted in the case of members of the crew of the vessel of the Contracting Party which issued the seamen's identity documents to land or temporary shore leave without visa during stay of the vessel in port of the other Contracting Party, provided that the master had submitted the crew list to the competent authorities in accordance with the regulations in force in that port.

While landing and returning to the vessel the said persons shall be subject to frontier and customs control in force in that port.

ARTICLE 12 – 1. Holders of the seamen's identity documents specified in Article 10 of this Agreement shall be permitted to enter by any means of transport the territory of the other Contracting Party or to pass through its territory in transit on the way to their vessel or while going to another vessel, or on the way to their home country, or for travelling for any other reason which will be approved by the authorities of the other Contracting Party.

2. In all the cases specified in paragraph (1) of this article the seaman must have the appropriate visa of the other Contracting Party which shall be granted by the competent authorities within the shortest possible time.

3. If the holder of the seaman's identity document specified in Article 10 of this Agreement is not a citizen of either country, the visa specified in this Article for entry into or transit passage through the territory of the other Contracting Party, shall be granted provided that return to the territory of the Contracting Party, which had issued the seaman's identity document, is guaranteed to the holder of such document.

ARTICLE 13 – 1. Subject to the provisions of articles 10 to 12 of this Agreement, the regulations in respect of the entry, stay and departure of foreigners retain their force in the territories of the Contracting Parties.

2. Each of the Contracting Parties reserves the right to deny entry into its territory to any seaman whom it considers undesirable. In that event the competent diplomatic or consular official of the Contracting Party whose seaman has been denied entry shall be informed of the decision.

ARTICLE 14 – The judicial authorities of a Contracting Party shall not entertain proceedings arising out of a contract of services as a member of the crew of a vessel of the other Contracting Party without the consent of the competent diplomatic or consular official of the flag country of the vessel except in cases when the contract of service was concluded within the territory of the former Contracting Party.

ARTICLE 15 – 1. Shipping companies established in the territory of one Contracting Party shall not be charged by the other Contracting Party any tax on the income derived from the carriage of cargo from the ports of the latter to the ports of the former.

2. Each Contracting Party may levy tax on income derived by the shipping companies established in the territory of the other Contracting Party from the carriage of cargo from its ports to the ports of third countries provided that the tax leviable on such income shall be reduced by an amount equivalent to two-thirds thereof.

ARTICLE 16 – 1. If a vessel of one of the Contracting Parties suffers shipwreck, runs aground, is cast ashore or suffers any other accident within the national limits of the other Contracting Party, the vessel, the crew, the passengers and the cargo shall

receive, in the territory of the latter Party, the same assistance which is accorded by that Party to its national vessel, crew, passengers and cargo.

2. No customs duty shall be levied by one Contracting Party against a shipwrecked vessel, its cargo or stores of the other Contracting Party unless they are delivered for use in the territory of the first-mentioned Party.

3. Nothing in the provisions of this Article shall prevent the application of the laws and regulations of the Contracting Parties and their international obligations.

ARTICLE 17 – 1. For the purposes of evaluating, supervising and reviewing the overall working of this Agreement and resolving any outstanding issues, the Contracting Parties agree to set up an Inter-governmental Joint Committee on shipping which will meet periodically. The Parties will nominate their representatives to the Joint Committee.

2. The Indo-Russian Federation Shipping Service Secretariat (called as SOVIND SHIP), Bombay, managed by the Shipping Corporation of India Ltd., Bombay and JUZHFLLOT, Moscow, will attend to matters of normal day-to-day shipping operations between the two countries.

Each Party may, if necessary, nominate any other organisation in place of the above by notifying to the other party.

ARTICLE 18 – All the previous arrangements and protocols between the two Parties relating to merchant shipping will continue to remain in force so far as they are not inconsistent with the provisions of this Agreement.

ARTICLE 19 – Each of the Contracting Parties shall notify the other Party about completion of necessary procedures for this Agreement to enter into force. The Agreement shall enter into force after thirty days from the date of the last notification.

This Agreement shall remain in force for a period of five years and thereafter be automatically extended for one year period at a time unless either of the Contracting Parties expresses its desire to re-negotiate the Agreement or any of its provisions by

giving a written notice to the other Contracting Party to that effect six months prior to the expiry of any of the above-mentioned periods.

IN WITNESS WHEREOF, the undersigned, duly empowered by their respective Governments, have signed this Agreement.

DONE at New Delhi on this day of 19th July, 1976 in two original copies each in Hindi, Russian and English languages, all texts being equally authentic.

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NOTIFICATION 2

Whereas the Government of India and the Russian Federation have concluded an Agreement through exchange of letters as set out in the Annexure hereto, for the modification of the Agreement entered into by the said Government, for the avoidance of double taxation in respect of taxes on income derived from the carriage of cargo ;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), and section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964), the Central Government hereby directs that the provisions of the said Agreement shall be given effect to in the Union of India.

Notification : No. GSR 419(E), dated 31-5-1984.

ANNEXURE

TEXT OF LETTER DATED 12-4-1983 FROM SECRETARY TO THE GOVERNMENT OF INDIA, MINISTRY OF SHIPPING AND TRANSPORT DULY CONFIRMED BY DEPUTY MINISTER, SOVIET MINISTRY OF MERCHANT MARINE, GOVERNMENT OF RUSSIAN FEDERATION VIDE LETTER DATED 12-4-1983

The delegation of the Government of the Democratic Republic of India and the Government of the Russian Federation met at New Delhi on April 4, 1983 and had detailed discussions about the operation of two lighter carriers Tibor Szemuely and Yulius Fuchik¹ owned by the Russian Federation but on time-charter to the Interlighter International Shipping Company with headquarters at Budapest which is a joint venture

company of the Governments of Russian Federation, Czechoslovakia, Bulgaria and Hungary. The ships fly the flag of the Russian Federation. Under the inter-governmental Agreement between the owner countries, the Interlighter International Shipping Company can use only the Russian Federation vessels.

In view of the special circumstances of the case and taking note of the growing Indo-Russian Federation co-operation in industry and commerce including shipping, the two delegations agreed that the operation of the above-named lighter-carriers owned by the Russian Federation and flying the Russian Federation flag is covered by the Indo-Russian Federation Shipping Agreement of 1976. It was further agreed :

(1) the cargoes handled by the Interlighter from and to India will be subject to the existing bilateral shipping agreements between the countries of origin and destination wherever they exist between India and the co-owners of the Interlighter and, in the absence of such agreements, the cargoes will not attract any special concessions ;

2. (a) disbursements and port dues shall be paid in Indian rupees to the extent the ship is carrying cargo from and to rupee payment countries;

(b) disbursements and port dues shall be paid in free foreign exchange for cargoes carried from and to the non-rupee payment countries.

In case circumstances change, the parties may by mutual consent review this agreement.

Kindly confirm that the above correctly sets out the agreement reached between us in this regard.

Assuring you of my highest consideration.

Switzerland

Limited Agreements with respect to Income of Airlines/Merchant Shipping

Agreement for avoidance of double taxation of income of enterprises operating aircraft with Switzerland*

In exercise of the powers conferred by section 49A of the Indian Income-tax Act, 1922 (11 of 1922), the Central Government hereby directs that all provisions of the annexed Agreement for the avoidance of double taxation of income of enterprises operating aircraft which has been concluded between the Government of India and the Swiss Federal Council shall be given effect to in the Union of India.

Notification : No. GSR 761, dated 29-8-1958.

TEXT OF ANNEXED AGREEMENT, DATED 28-8-1958

Whereas the Government of India and the Swiss Federal Council desire to conclude an Agreement for avoidance of double taxation of income of enterprises operating aircraft chargeable in the countries in accordance with their respective laws ;

Now, therefore, the said two Governments do hereby agree as follows :

ARTICLE I – The taxes which are the subject of the present Agreement are :

- (a) in India, the taxes imposed by the Indian Income-tax Act, 1922 (11 of 1922) hereinafter referred to as Indian tax;
- (b) in Switzerland, the federal, cantonal and communal taxes on income and profits, hereinafter referred to as Swiss tax.

ARTICLE II – For the purpose of this Agreement, the expression

- (a) the business of air transport means the business of transporting by air persons, livestock, goods or mail carried on by the owner or hirer or charterer of aircraft;
- (b) Indian enterprises means the Government of India, individuals resident in India and not resident in Switzerland and corporations, partnerships, Hindu undivided families or associations of persons constituted under the laws of and managed

and controlled in India, including such corporations in which the Government of India have a share ;

- (c) Swiss enterprises means the Swiss Confederation or any canton thereof, individuals resident in Switzerland and not resident in India and corporations or partnership constituted under the laws of and managed and controlled in Switzerland, including such corporations in which the Swiss Confederation or any canton thereof has a share ;
- (d) the term India shall have the same meaning assigned to it in Article 1 of the Constitution of India ;
- (e) the term Switzerland means the Swiss Confederation ;
- (f) the term Federal Decree of 1st October, 1952, means the Federal Decree authorising the Swiss Federal Council to exchange declarations of reciprocity with respect to taxes of enterprises operating ships or aircraft, of 1st October, 1952 ;
- (g) the term internal traffic shall mean traffic which originates and terminates within Switzerland or within India, respectively.

ARTICLE III – 1. All income derived from the business of air transport by Swiss enterprises engaged in such business shall be exempt from Indian tax. This clause shall not, however, apply to income arising as a result of internal traffic in India.

2. By virtue of the Federal Decree of 1st October, 1952, all income derived from the business of air transport by Indian enterprises engaged in such business shall be exempt from Swiss tax. This clause shall not, however, apply to income arising as a result of internal traffic in Switzerland.

3. The exemption provided for in paragraphs (1) and (2) above shall also apply to Indian or Swiss enterprises participating in a pooled service, in a joint air transport operating organisation or in an international operating agency.

ARTICLE IV – This Agreement shall come into force on the date on which the last of all such things shall have been done in India and Switzerland as are necessary to give the Agreement the force of law in India and Switzerland respectively and shall thereupon have effect

- (a) in India for any year of assessment beginning on or after 1st April, 1958;
- (b) in Switzerland for any taxable year beginning on or after 1st January, 1957.

ARTICLE V – This Agreement shall continue in effect for an indefinite period of time but either of the contracting Governments may, on or before 30th September in any calendar year, give to the other contracting Government written notice of termination and in such event the Agreement shall cease to have effect

- (a) in India, for any year of assessment beginning on or after 1st April immediately following ;
- (b) in Switzerland, for any taxable year beginning on or after the 1st January immediately following.

Yemen Arab Republic

Limited Agreements with respect to Income of Airlines/Merchant Shipping

Agreement for avoidance of double taxation of income derived from international air transport with Yemen Arab Republic

Whereas the annexed Agreement between the Government of the Republic of India and the Government of Yemen Arab Republic for the avoidance of double taxation of income derived from international air transport has entered into force on 13th day of December, 1986, the date of the signature thereon by the Contracting States, as required by Article 5 of the said Agreement ;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961) and section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964), the Central Government hereby directs that all the provisions of the said Agreement shall be given effect to in the Union of India.

Notification : No. GSR 2(E), dated 1-1-1987.

TEXT OF ANNEXED AGREEMENT, DATED 30-12-1986

The Government of the Republic of India and the Government of Yemen Arab Republic desiring to conclude an agreement for the avoidance of double taxation of income derived from international air transport. Have agreed as follows :

ARTICLE 1 – Taxes covered – 1. The existing taxes to which this Agreement shall apply are :

- (a) in the case of Yemen Arab Republic, the income-tax including surcharge thereon imposed under the Law No. 11-1973 (hereinafter referred to as Yemeni tax);
- (b) in the case of India :
 - (i) the income-tax including any surcharge thereon imposed under the Income-tax Act, 1961 (43 of 1961) ;
 - (ii) the surtax imposed under the Companies (Profits) Surtax Act, 1964 (7 of 1964) (hereinafter referred to as Indian tax).

2. This agreement shall also apply to any identical or substantial similar taxes which are imposed after the date of signature of this Agreement in addition to or in place of the taxes referred to in paragraph (1) of this article. The competent authorities of the Contracting States shall notify each other of any substantial change which are made in their respective taxation laws.

ARTICLE 2 – *Definitions* – 1. In this Agreement, unless the context otherwise requires :

- (a) the terms a Contracting State and the other Contracting State mean Yemen Arab Republic or India, as the context requires ;
- (b) the term tax means Yemeni tax or Indian tax as the context requires ;
- (c) the term enterprise of a Contracting State means an airline designated by each Contracting State ;
- (d) the term international air traffic means any transport by an aircraft operated by an enterprise of a Contracting State, except when the aircraft is operated solely between places in the other Contracting State ;
- (e) the expression operation of aircraft means the business of carrying by air of passengers, livestock, goods or mail carried on by the owners or lessees or charterers of aircraft, including the sale of tickets for such transportation on behalf of other enterprises, the incidental lease of aircraft and any other activity directly connected with such transportation.

2. In the application of the provisions of this Agreement by one of the Contracting States, any term used but not defined herein shall, unless the context otherwise requires, have the meaning which it has under the laws in force in that State relating to taxes which are the subject of this Agreement.

ARTICLE 3 – *Avoidance of double taxation* – 1. Profits derived by an enterprise of a Contracting State from the operation of aircraft in international traffic shall be exempted from tax in the other Contracting State.

2. The provisions of paragraph (1) shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

3. For the purpose of paragraphs (1) and (2), interest on funds connected with the operation of aircraft in international air traffic shall be regarded as profits derived from the operation of such aircraft.

ARTICLE 4 – *Residual provisions* – The laws in force in either of the Contracting States will continue to govern the assessment and taxation of income in the Contracting States except where express provision to the contrary is made in this agreement.

ARTICLE 5 – *Entry into force* – Each State shall notify to the other the completion of the procedures required by its law for the bringing into force of this agreement. The agreement shall enter into force on the date of the signature thereon by the Contracting States. It shall, however, apply in relation to the income of the enterprise of each Contracting State from the date of commencement of the operation of that enterprise in the other Contracting State.

ARTICLE 6 – *Termination* – This agreement shall continue in effect indefinitely but either Contracting State may, on or before the thirtieth day of June in any calendar year after the year 1991, give notice of termination to the other Contracting State and in such event this agreement shall cease to be effective

- (a) in Yemen Arab Republic, in respect of any year of tax commencing on or after the 1st day of January of the second calendar year following the year in which the notice is given ;
- (b) in India, in respect of any assessment year commencing on or after the 1st day of April of the second calendar year following the year in which the notice is given.

OTHER AGREEMENTS

African National Congress Mission

Agreement with African National Congress Mission – Exemption from income-tax on salaries and employments paid by the mission to their representative other than Indian nationals

Whereas an Agreement was reached between the Government of India and the African National Congress Mission to the following effect, namely :

Representatives of the African National Congress Mission, other than Indian nationals, shall be exempted from income-tax on the salaries and emoluments paid to them by the African National Congress Mission in India;

And whereas the aforesaid Agreement provided that it shall be deemed to have come into force with effect from 14th of November, 1967;

And whereas in pursuance of the aforesaid Agreement it is necessary to accord to the representatives of the African National Congress Mission, other than Indian nationals, privileges and immunities set out in clause (b) of section 18 of Article V of the Schedule to the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947);

Now, therefore, in exercise of the powers conferred by section 3 of the said Act, the Central Government hereby declares that the above referred provisions of Article V of the Schedule to the said Act apply, mutatis mutandis, to the representatives of the African National Congress Mission, other than Indian nationals, with effect from 14th of November, 1967.

Notification: No. 40, dated 29-10-1979.

Income-tax (Double Taxation Relief) (Aden) Rules, 1953

Income-tax (Double Taxation Relief) (Aden) Rules, 1953 – Present position thereunder

1. In exercise of the powers available under section 49A of the 1922 Act, the Government of India had issued a Notification dated 24-3-1953 called the Income-tax (Double Taxation Relief) (Aden) Rules, 1953 providing for grant of relief in respect of income on which tax has been paid both in India and in Aden. These Rules being consistent with the corresponding provisions of the 1961 Act, continued to be operative by virtue of the provisions contained in section 297(2)(k).

2. The Government of the Peoples Democratic Republic of Yemen (formerly Aden) has, however, stated that the Agreement on the basis of which the above Rules were applicable is no longer binding on it after November 30, 1967, the date of attainment of independence by it. Thus, *there is no subsisting agreement between India and Aden for the avoidance of double taxation of income after November 30, 1967.*

3. The cases of Indian residents will, therefore, be covered by the provisions for grant of unilateral relief under section 91 of the 1961 Act. This will be applicable in respect of the assessment years commencing from the assessment year immediately following the financial year in which Aden attained independence. Thus, the provision for unilateral relief will become applicable in the case of income in the Peoples Democratic Republic of Yemen for and from the assessment year 1968-69.

Circular: No. 171 [F.No. 11(26)/69-FTD-1], dated 8-7-1975.

Income-tax (Double Taxation Relief) (Dominions) Rules, 1956

Income-tax (Double Taxation Relief) (Dominions) Rules, 1956 providing for grant of double taxation relief with certain dominions – Present position thereunder

CLARIFICATION 1

7. In exercise of the powers available under section 49A of the 1922 Act, the Government of India had issued a Notification dated 23-6-1956 called the Income-tax (Double Taxation Relief) (Dominions) Rules, 1956 [*Annex*], providing for grant of relief in respect of income on which tax has been paid both in India and in any of the following Dominions:

1. Kenya	6. Nigeria
2. Tanganyika	7. Sierra Leone
3. Uganda	8. Gambia
4. Zanzibar	9. Mauritius
5. Gold Coast	

These rules being consistent with the corresponding provisions of the 1961 Act continued to be operative by virtue of the provisions contained in section 297(2)(k).

2. The following countries have, however, stated that the agreements on the basis of which the said rules were applicable are no longer binding on them after the date of their attainment of independence as shown against each:

1. Uganda	9-10-1962	3. Kenya	12-12-1963
2. Gambia	18-2-1965	4. Tanzania	9-12-1961
(Tanganyika & Zanzibar)			

Thus, there is no subsisting agreement, between India and the above-named four countries for the avoidance of double taxation of income after the dates shown above. The cases of Indian residents will, therefore, be covered by the provision for grant of unilateral relief under section 91. This will be applicable

in respect of the assessment years commencing from the assessment year immediately following the financial year in which a particular country attained independence. Thus, *the provision for unilateral relief will become applicable in case of income in these countries for and from the assessment year as indicated below:*

Assessment year

1. Uganda	1963–64
2. Gambia	1965–66
3. Kenya	1964–65
4. Tanzania (Tanganyika & Zanzibar)	1962–63

3. The Government of Sierra Leone has informed that it has no objection in principle to continue the arrangements with India as contained in the Income-tax (Double Taxation Relief)(Dominions) Rules, 1956. Hence, *the said rules will continue to remain in force in relation to Sierra Leone.*

4. *The position in respect of the remaining countries, viz., Gold Coast, Nigeria and Mauritius is being ascertained.*

Circular : No. 116 [F. No. 145/32-FTD], dated 10-7-1973.

ANNEX – TEXT OF INCOME-TAX (DOUBLE TAXATION RELIEF) (DOMINIONS) RULES, 1956

In exercise of the powers conferred by section 49A of the Indian Income-tax Act, 1922 (11 of 1922), and in supersession of the Notification of the Government of India in the late Finance Department (Central Revenues), No. 1, dated the 4th January, 1941, the Central Government makes the following rules for the granting of relief in respect of income on which tax has been paid both in the taxable territories and in certain of Her Majestys Dominions, namely:

1. (1) These rules may be called the Income-tax (Double Taxation Relief) (Dominions) Rules, 1956.

(2) They extend to the taxable territories as defined in section 2(14A) of the Indian Income-tax Act, 1922 (11 of 1922).

2. In these rules unless the context otherwise requires,

- (a) Dominion means any of the territories specified in the first column of the Schedule annexed to these rules;
- (b) Dominion income-tax means tax charged for any year in accordance with the provisions of the Dominion enactment specified in the second column of the said Schedule;
- (c) Dominion rate of tax has the meaning assigned to it in the section of the respective Dominion enactment specified in the third column of the said Schedule;
- (d) the expression Indian income-tax means income-tax and super tax charged in accordance with the provisions of the Indian Income-tax Act, 1922 (11 of 1922);
- (e) the expression Indian rate of tax means the amount of Indian income-tax exclusive of super tax after deduction of any relief due to a claimant under the other provisions of the Indian Income-tax Act, 1922 (11 of 1922), but before deduction of any relief due to him under these rules, divided by his total income after deducting therefrom any income (including income from a share in an unregistered firm) exempted from tax by or under the provisions of the said Act, added to the amount of Indian super tax before deduction of any relief due to the claimant under these rules divided by his total income.

3. If any person who has paid by deduction under section 18 of the Indian Income-tax Act, 1922 (11 of 1922), or otherwise Indian income-tax for any year on any part of his income proves to the satisfaction of the Income-tax Officer that he has paid by deduction or otherwise Dominion income-tax for that year in respect of the same part of his income, he shall be entitled to a refund of a sum calculated on that part of his income or a rate to be determined as follows :

- (i) if he is resident in the taxable territories the rate at which refund is to be given shall be

- (a) the Dominion rate of tax, when that rate does not exceed half of the Indian rate of tax; and
- (b) half the Indian rate of tax, in any other case;
- (ii) if he is not resident in the taxable territories the rate at which refund is to be given shall be
 - (a) half of the Dominion rate of tax when that rate does not exceed the Indian rate of tax; and
 - (b) in any other case, the amount by which the Indian rate of tax exceeds half of the Dominion rate of tax:

Provided that in no case shall the rate at which such refund is calculated exceeds half the Indian rate of tax appropriate to the income of the person entitled to relief or be greater than the excess of the lower of the Indian and the Dominion rate of tax over the rate at which relief is given in the Dominion.

4. (1) The application for refund of income-tax under these rules shall be made as follows:

- (i) if the applicant is resident in the taxable territories, to the Income-tax Officer of the district in which the applicant is chargeable directly to income-tax, or if he is not chargeable directly, to the Income-tax Officer of the district in which he ordinarily resides;
- (ii) if the applicant is resident outside the taxable territories, to the Income-tax Officer appointed by the Central Board of Revenue.

(2) Such application may be presented by the applicant in person or by a duly authorised agent or may be sent by post, and shall as far as circumstances permit, be in Form I appended to these rules.

5. No claim to any refund of Indian income-tax or super tax under these rules shall be allowed unless it is made within four years from the last day of the financial year commencing next after the expiry of the previous year in which the income arose, accrued or was received or was deemed to have arisen, accrued or been received or was brought into the taxable territories.

6. An applicant for refund under these rules may appeal to the Appellate Assistant Commissioner of Income-tax from any order of the Income-tax Officer disallowing the claim for refund either wholly or in part.

7. The appeal shall be presented within thirty days of the date on which the order of the Income-tax Officer was communicated to the applicant and shall, as far as circumstances permit, be in Form II appended to these rules.

CLARIFICATION 2

1. Attention is invited to paragraph (4) of Boards Circular No. 116, dated 10-7-1973 [*Clarification 1*] on the above subject.

2. The position in respect of *Ghana (formerly Gold Coast), Nigeria and Mauritius* has since been ascertained. The Governments of these three countries *have stated that after the date of attainment of independence by them, they do not consider that any agreement on the question of avoidance of double taxation of income subsists between them and the Government of India.* Ghana and Mauritius attained independence on March 6, 1957 and March 12, 1968, respectively, while Nigeria became independent on October 1, 1960. There is, thus, no subsisting agreement between India and these three countries for the avoidance of double taxation of income after the dates indicated above. The cases of Indian residents will, therefore, be covered by the provision for grant of unilateral relief under section 91. This will be applicable in respect of the assessment years commencing from the assessment year immediately following the financial year in which a particular country attained independence. Accordingly, *the provision for unilateral relief will become applicable in the case of income in these countries for and from the assessment year as indicated below.*

Assessment year

1. Ghana	1957-58
2. Nigeria	1961-62
3. Maruitius	1968-69

Circular: No. 172 [F.No. 501/21/73-FTD], dated 8-7-1975.

