THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2021

MODULE 2.05 – INDIA OPTION

ADVANCED INTERNATIONAL TAXATION (JURISDICTION)

TIME ALLOWED – 3¼ HOURS

This exam paper has **three** parts: **Part A**, **Part B** and **Part C**.

You need to answer **five** questions in total. You will **not** receive marks for any additional answers.

You must answer:

- **Both** questions in **Part A** (25 marks each)
- **One** question from **Part B** (20 marks)
- **Two** questions from **Part C** (15 marks each)

Further instructions

- All workings should be made to the nearest month and in Indian Rupees (INR), unless otherwise stated.
- As you are using the online method to complete your exam, you must provide appropriate line breaks between each question, and clearly indicate the start of each new question using the formatting tools available.
- Marks may be allocated for presentation.
- The time you spend answering questions should correspond broadly to the number of marks available for that question. You should therefore aim to spend approximately half of your time answering Part A, and the other half answering Parts B and C.
- There is no separate reading time, so you can start typing your answers as soon as the exam begins. However, we recommend that you set aside some time to thoroughly read each question and plan each of your answers.
- You should assume that all regulatory requirements, including those relating to foreign exchange, have been fulfilled in the facts provided in the questions.

For your information this paper includes:

Sections 164, 165, 165A, 166 and 166A of the Finance Act 2016, concerning the Equalisation Levy

Synthesised text of the India-France Double Tax Agreement

Synthesised text of the India-United Kingdom Double Tax Agreement

Article 5 of the India-United States Double Tax Agreement

PART A

You are required to answer BOTH questions from this Part.

1. I Co is a company that is tax resident in India. It is a member of F Group, which is headquartered in France. The ultimate parent company of F Group is F Co, also tax resident in France. F Co is engaged in the direct sale of goods in India, while I Co is engaged in provision of marketing support services exclusively to F Co.

   I Co's activities involve identifying customers; canvassing; marketing and promotion of F Co's goods in India; undertaking marketing research; co-ordinating; and liaising with F Co's customers in India.

   F Co's products are bespoke, with each product designed and tailor-made for a particular customer.

   I Co's role involves understanding customers' requirements; providing product design suggestions to customers; agreeing to delivery schedules for the products; and negotiating the price and other terms and conditions with F Co's customers in India.

   I Co has been provided with operational guidelines by F Co, and all of its activities are carried out in line with the documented operational guidelines. Before the contract price and other terms are finalised, I Co seeks the approval of F Co on the terms negotiated with end customers.

   As the price and terms of the contract are based on the guidelines given by F Co, no material modification to the contract is ordinarily made by F Co during the approval process. The contract is executed between F Co and Indian customers outside India.

   The agreement between F Co and I Co does not provide for I Co undertaking the negotiation of prices and contract terms with customers. Under the terms of the agreement, I Co is remunerated with a 10% commission for its marketing support activities.

   As per a transfer pricing analysis, which is conducted on basis of functions performed and risks assumed according to the inter-company agreement, the commission earned by I Co is benchmarked at an arm's length price.

   F Co's general counsel has approached you for legal advice on the following questions, concerning the Indian tax implications of the activities described. In each case you are required to provide your reasoning.

   1) Where contracts are signed outside India and on account of its negotiation of prices and other contract terms and conditions on behalf of F Co, can I Co be deemed to constitute an agency permanent establishment (PE) of F Co in India, under the combined provisions of the India Income Tax Act 1961 and the Multilateral Instrument-modified and effective double tax agreement between India and France? (9)

   2) Does the fact that I Co's activities in negotiating prices and other contract conditions are undertaken in accordance with F Co's documented operational guidelines mitigate the risk of agency PE? (8)

   3) As a blanket rule, should the fact that the remuneration paid to I Co is demonstrated to be at arm's length ensure that there is no additional attribution to profits of agency PE? (8)

   Total (25)

2. ABC India Pvt Ltd (ABC India) is a leading manufacturing company in India, based in Bengaluru. For business purposes, it requires certain software manufactured by XYZ Inc (XYZ), based in the United States.

XYZ's sales team, located in California, assists all clients in the purchase of software. Whenever XYZ's clients, including ABC India, require software licenses, they contact XYZ via email or telephone and place an order for the licenses, issuing a purchase order via email.

ABC India makes an annual payment to XYZ for the software provision. The software can be downloaded by ABC India from XYZ's website, and the code for the license is provided via telephone upon confirmation of payment.

Once the code has been accepted in the downloaded software, ABC India can make multiple copies of the software for its internal use in manufacturing. ABC India cannot sell or otherwise distribute the software externally.

You are required to answer the following questions for the management of ABC India and XYZ. You may ignore any changes made by the Finance Act 2021. You are required to provide your reasoning.

1) Is the sale of software by XYZ to ABC India taxable, under the domestic tax laws of India in combination with the double tax agreement between India and the US? Highlight the key, relevant principles of the recent judgment of the Supreme Court of India in the case of Engineering Analysis Centre of Excellence Private Limited vs. The Commissioner of Income Tax & Anr (Civil Appeal Nos. 8733-8734 of 2018). (9)

2) Is ABC India required to withhold taxes while making payment to XYZ? Does the ruling of the Supreme Court in the case of PILCOM vs. CIT have relevance to the current scenario? What options are available to XYZ and ABC India, in order to avoid withholding? (7)

3) Provide an overview of the Equalisation Levy. Do the provisions of the Equalisation Levy, as introduced by the Finance Act 2020, apply to the current scenario? (9)

Total (25)

PART B

You are required to answer ONE question from this Part.

3. U Ltd, based in the United States, is a multinational corporation which hires employees from around the world. Madhu, an Indian citizen on an employment visa in the US, has been hired by U Ltd.

Madhu had travelled to India in February 2020 for a holiday. However, he was unable to return to the US due to the Covid-19 pandemic. Madhu has since been unable to return to the US due to visa constraints, and expects to travel back to the US by the end of December 2021.

Madhu is a software engineer and is working on a specific software development project for US-based clients. He has been working from his home in India during this period.

You are required to analyse and answer the following questions, including your reasoning in each case:

1) Is there a risk of a fixed place permanent establishment (PE) being created in India for U Ltd, due to the presence of its employee in India? Can Madhu's home office be considered as a PE for U Ltd? (14)

2) Does the current scenario also create a service PE? If Madhu was instead providing software development services for clients in India, would your answer differ? (6)

Total (20)

4. F Co, incorporated in the United States, is a group holding company. F Co is a widely-held company and its shares are listed on the NASDAQ stock exchange in the US.

F Co administers a Long Term Incentive (Stock Option) Plan ('LTIP' or 'ESOP scheme') as a tool to incentivise and retain senior executives who are employed across various worldwide entities within the group, including I Co, a wholly-owned subsidiary in India.

Eligible I Co employees are entitled to participate in the ESOP scheme. Upon the fulfilment of prescribed conditions, the ESOP scheme entitles each qualifying I Co employee to acquire shares in F Co at a concessional price below the prevailing market rate. The earnings under the ESOP scheme accrue to such eligible employees by virtue of their employment relationship with I Co. It forms part of their taxable salary and is fully subject to tax in the employee's personal hands under the 'Salaries' category.

The corresponding ESOP expense, determined on a straight-line basis, is cross-charged by F Co to I Co. The cross-charge is based on a valuation report issued by an independent valuer of international repute. The valuation methodology is based on the Black-Scholes model.

You are required to advice I Co's general counsel on the following questions:

1) Will a cross-charge by F Co for I Co's eligible employees under the ESOP scheme be tax deductible in the hands of I Co, under Section 37 of the India Income Tax Act 1961 and relevant case law? Explain why (or why not). (10)

2) What are the transfer pricing compliance and reporting requirements in relation to the cross-charge in the hands of I Co, under Chapter X of the Act? Your answer should include comments on the benchmarking analysis, and the most appropriate method prescribed under Section 92C of the Act. (10)

Total (20)

PART C

You are required to answer TWO questions from this Part.

5. A Ltd is one of the leading construction groups functioning in Europe and Asia, with more than 50 years of international experience in a wide range of sectors, delivering complex and integrated projects. A Ltd is tax resident in France.

A Ltd was recently awarded a contract by the Regional Development Authority of Mumbai, alongside an Indian company, for development of certain infrastructure projects in Mumbai. A Ltd has similar projects running across more than 30 other countries.

A Ltd opened a project office in India for the contract, and formed an unincorporated joint venture with the Indian company to execute the contract.

Due to a restructuring at group level, A Ltd proposes to demerge its construction division on a going concern basis into its parent, B Ltd, which is also based in France.

As part of the demerger process the Indian assets, along with assets in the 30 other countries, will be transferred to B Ltd without any payment being received from B Ltd. The minority shareholders of A Ltd, who are also residents of France, will get shares in B Ltd under the demerger process. The shares held by B Ltd in A Ltd will be cancelled and no such shares will be issued.

You are required to guide the tax manager in relation to following questions, providing your reasoning in each case. You may assume that the demerger process in France is identical to that of India.

1) Is the proposed demerger of the construction division taxable, under India's domestic tax laws in combination with the double tax agreement between India and France, in the hands of either A Ltd, B Ltd, or the minority shareholders? (10)

2) Assuming that A Ltd was a partner in an Indian Limited Liability Partnership (LLP), will the transfer of such interest in the LLP to B Ltd under a demerger be taxable in the hands of A Ltd? (5)

Total (15)

6. Vector, a multinational corporation based in the United States, acquired a stake in 2010 in an Indian listed entity (V Ltd), which was engaged in manufacturing of automobile parts.

V Ltd had acquired the Robert Group in the United Kingdom in 2004 in pursuit of a strategic business opportunity. The acquisition was funded by a multi-tier special purpose vehicle (SPV) structure. The SPVs obtained funds from V Ltd and third party banks. V Ltd then provided an additional loan to the SPVs to pay the third party banks.

However, the Robert Group subsequently encountered severe business issues and faced considerable losses. V Ltd exited the Robert Group with negligible value. The loans issued by V Ltd to the SPVs are still outstanding as the SPVs were unable to repay the loan amount.

When V Ltd provided the loans to the SPVs, the agreement did not specify any interest to be charged or a repayment schedule. The agreement did not contain any dispute resolution mechanism, or any clause to enforce payments.

You are required to advise the newly appointed group tax manager on the following questions:

1) Can the transaction of V Ltd be delineated as an equity transaction? Can the OECD Transfer Pricing Guidelines be used in an Indian transfer pricing law context? Provide your reasoning. (11)

2) What are advance pricing agreements (APAs)? Is V Ltd eligible to apply for an APA in the current scenario? (4)

Total (15)

7. The provisions of Section 6(3) of the India Income Tax Act 1961 were amended to provide that a company is said to be resident in India in any previous year if:

- it is an Indian company; or
- its place of effective management (POEM) in that year is in India.

The Act defines a POEM as a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance, made. The amendment to Section 6(3) of the Act is effective from 1 April 2017, and will apply to assessment year 2017-18 and subsequent assessment years.

You are required to comment on the determination of a POEM in the following scenarios, including your reasoning in each case.

1) Happy Co is a manufacturing and distribution entity incorporated in the United Kingdom. It is a 100% subsidiary of Funny Co, an Indian multinational group. Happy Co has one manufacturing complex in London, and three warehouses across the UK. Happy Co purchases 80% of its raw materials from associated enterprises and the remaining 20% from local UK suppliers. All of Happy Co's employees are based in the UK. Happy Co's income for the last three years is categorised as follows:

- **30% from sales made to third parties in the UK.**
- **40% from sales made to third parties in Canada and the United States;**
- **25% from sales made to associated enterprises in Europe; and**
- **5% from interest.**

Can Happy Co be deemed to be engaged in active business outside India? (3)

2) Following the above scenario, Happy Co recorded losses for a number of years. In order to make Happy Co profitable, Funny Co changed the key management of Happy Co in 2017. The roles of managing director, finance controller, and head of sales have been entrusted to Indian employees of Funny Co. Happy Co's remaining 25 UK employees have continued in their roles. The annual payroll expenditure for all of the employees (in the UK and India) totals £2 million and has remained constant. Of this total, £1.05 million is shared between the managing director, finance controller and head of sales.

Can it still be said that Happy Co is engaged in active business outside India? (3)

3) In this scenario, Happy Co was acquired by Funny Co in 2016. Following the acquisition, Funny Co appointed its managing director, finance controller and head of sales as directors of Happy Co. All three individuals are resident in India, and there is no local director in the UK. During a compliance audit under UK law, it was recorded that, of six board meetings held in a year, one meeting took place in the United Arab Emirates, one in Switzerland, two in the UK and two in India.

Can the POEM of Happy Co be presumed to be in India? (3)

4) Will your answer to 3) change if three board meetings had taken place in India?

In addition, during the same year the three directors of Happy Co, in conjunction with Funny Co's management, negotiated a deal for Happy Co to acquire a new company in France. Various aspects of this deal, including the evaluation of options, a feasibility plan and funding of the acquisition, have all been conducted from India.

In order to further expand Happy Co's footprint, the three directors also decided that Happy Co should acquire new warehouses of varying sizes in various areas of the UK. The directors' actions were ratified in the three board meetings held in India. All other board meetings held during the year considered routine matters such as quarterly performance, approval of financials, and replacement of a housekeeping contractor. No other key decisions were taken by the board during the year. (3)

Continued

7. **Continuation**

5) Sunny Ltd, an Indian multinational corporation engaged in the solar power sector, had incorporated a United States subsidiary, Texas Inc, in 2016. Texas Inc is engaged in the setting up of solar plants and rooftop solar units, importing solar panels from India. Texas Inc caters only to the domestic US market and all of its income derives from this activity. All of Texas Inc's directors are based in the US.

As a newly joined tax manager at Sunny Ltd, you have spotted an internal document in which the leadership of Sunny Ltd has specifically stated that all contracts to be entered into by Texas Inc above $1 million are to be approved by Sunny Ltd before they are signed by Texas Inc's directors. On review of past documents, you have found that this practice has been followed since the incorporation of Texas Inc. Such contracts constitute more than 95% of Texas Inc's income.

Can the POEM of Texas Inc be presumed to be in India? You may presume that Texas Inc meets the active business outside India test. (3)

Total (15)

8. FastTrain plc, a company incorporated in the United Kingdom, has been awarded a contract by an Indian company, Super Speed Rail Corporation (SSRC), to supply 24 trains for high-speed rail corridors across India. The deliveries shall begin at the end of 2021 and continue until the end of 2024. The project includes the design, testing and manufacture of the trains, and their delivery to SSRC.

In order to ensure an effective communication channel with SSRC, FastTrain plc has been advised by its counsel in India to set up a project office in Chennai. FastTrain plc is also considering the appointment of one of its employees, Harry, as an authorised signatory of the project office.

FastTrain plc will perform all the activities of of designing, testing, and manufacturing in the UK at its facility in Manchester, before the trains are brought to India.

The head of tax at FastTrain plc has sought your advice on the specific Indian tax considerations that she has identified.

You are required to answer the following questions, including your reasoning in each case:

1) Does the project office create a permanent establishment in India? Will the income from FastTrain plc's offshore activities be attributable to the establishment of the project office, under the relevant Indian domestic tax law provisions in combination with the double tax agreement between India and the UK? (12)

2) Does the fact that Harry is a FastTrain plc employee and also an authorised signatory of the project office make any difference to your answer, considering the implications under the Multilateral Instrument? (3)

Total (15)

9. Health Ltd, a company resident in the United Kingdom, is engaged in providing insurance plans to individuals in the UK and Canada. In order to provide 24-hour support to its customers around the world, Health Ltd had appointed an Indian entity (Bangalore Ltd) to provide customer support services including the recording of claim details, provision of status updates, data entry, and processing claims once approved by Health Ltd.

Following feedback received from customers on the customer support service, Health Ltd has incorporated an additional entity in India (Health India). The role of Health India is to liaise with Bangalore Ltd and Health Ltd and ensure that service quality levels are maintained.

Health India and Health Ltd entered into a support service agreement, under which Health Ltd will remunerate Health India at a cost plus mark up. The role of Health India involves:

- Assistance in overseeing the service quality levels and ensuring that best practices are adhered to by Bangalore Ltd;
- Assistance in managing the partnership with Bangalore Ltd; and
- Liaising between Health Ltd and Bangalore Ltd and facilitating an efficient interface with Health Ltd.

In order to fulfil its role and functions as envisaged in the service agreement, Health India has asked Health Ltd to provide its staff with the requisite technical knowledge and experience of various processes and practices employed by Health Ltd, which can be deployed and sustained by Health India.

A secondment agreement was entered into between Health Ltd and Health India, under which certain managerial-level employees of Health Ltd were assigned to Health India for periods ranging from four to 24 months.

Health India has also entered into individual agreements with the seconded employees which reiterate the terms of its secondment agreement with Health Ltd. The key features of the secondment agreement are as follows:

- The secondees are required to function and act exclusively under the direction, control and supervision of Health India;
- Health Ltd is not responsible for the work of the secondees, and has no responsibility for their errors and omissions or for the work which they perform;
- All rules, regulations, policies and other practices established by Health India for its employees are to apply to the secondees. Health India is expected to bear all risks in respect of work performed by the secondees and to receive the full benefit of their output;
- The secondees continue to participate in Health Ltd's retirement and social security plans and other benefits, in accordance with its applicable policies; and
- The termination clause in the secondment agreement applies to the parties to the agreement and not secondees.

The secondees' salaries were directly paid in the UK by Health Ltd into their overseas bank accounts, and claimed as reimbursement from Health India on a cost-to-cost basis.

While reviewing the company's overseas operations, Health Ltd's management team has sought your advice on the Indian tax implications of the secondment arrangements between Health Ltd and Health India.

You are required to answer the following questions, including your reasoning in each case:

1) Can the services rendered by secondees to Health India constitute a Fee for Technical Services (FTS), and thus be taxable in the hands of Health Ltd, according to Section 9(1)(vii) of the India Income Tax Act 1961 in combination with Article 13(4) of the double tax agreement between India and the UK? (8)

2) Is there any permanent establishment exposure in the hands of Health Ltd? (7)

Total (15)

INCOME TAX DEPARTMENT
GOVERNMENT OF INDIA

EQUALISATION LEVY SECTIONS OF THE FINANCE ACT 2016

DEFINITIONS

164. In this Chapter, unless the context otherwise requires,—

(a) "Appellate Tribunal" means the Appellate Tribunal constituted under section 252 of the Income-tax Act;

(b) "Assessing Officer" means the Income-tax Officer or Assistant Commissioner of Income-tax or Deputy Commissioner of Income-tax or Joint Commissioner of Income-tax or Additional Commissioner of Income-tax who is authorised by the Board to exercise or perform all or any of the powers and functions conferred on, or assigned to, an Assessing Officer under this Chapter;

(c) "Board" means the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963 (54 of 1963);

[(ca) "e-commerce operator" means a non-resident who owns, operates or manages digital or electronic facility or platform for online sale of goods or online provision of services or both;

(cb) "e-commerce supply or services" means—

(i) online sale of goods owned by the e-commerce operator; or

(ii) online provision of services provided by the e-commerce operator; or

(iii) online sale of goods or provision of services or both, facilitated by the e-commerce operator; or

(iv) any combination of activities listed in clause (i), (ii) or clause (iii);]

(d) "equalisation levy" means the tax leviable on consideration received or receivable for any specified service [ore-commerce supply or services] under the provisions of this Chapter;

(e) "Income-tax Act" means the Income-tax Act, 1961 (43 of 1961);

(f) "online" means a facility or service or right or benefit or access that is obtained through the internet or any other form of digital or telecommunication network;

(g) "permanent establishment" includes a fixed place of business through which the business of the enterprise is wholly or partly carried on;

(h) "prescribed" means prescribed by rules made under this Chapter;

(i) "specified service" means online advertisement, any provision for digital advertising space or any other facility or service for the purpose of online advertisement and includes any other service as may be notified by the Central Government in this behalf;

(j) words and expressions used but not defined in this Chapter and defined in the Income-tax Act, or the rules made thereunder, shall have the meanings respectively assigned to them in that Act.

CHARGE OF EQUALISATION LEVY ON SPECIFIED SERVICES

165. (1) On and from the date of commencement of this Chapter, there shall be charged an equalisation levy at the rate of six per cent of the amount of consideration for any specified service received or receivable by a person, being a non-resident from—

(i) a person resident in India and carrying on business or profession; or

(ii) a non-resident having a permanent establishment in India.

(2) The equalisation levy under sub-section (1) shall not be charged, where—

(a) the non-resident providing the specified service has a permanent establishment in India and the specified service is effectively connected with such permanent establishment;

(b) the aggregate amount of consideration for specified service received or receivable in a previous year by the non-resident from a person resident in India and carrying on business or profession, or from a non-resident having a permanent establishment in India, does not exceed one lakh rupees; or

(c) where the payment for the specified service by the person resident in India, or the permanent establishment in India is not for the purposes of carrying out business or profession.

CHARGE OF EQUALISATION LEVY ON E-COMMERCE SUPPLY OF SERVICES

165A. (1) On and from the 1st day of April, 2020, there shall be charged an equalisation levy at the rate of two per cent. of the amount of consideration received or receivable by an e-commerce operator from e-commerce supply or services made or provided or facilitated by it—

(i) to a person resident in India; or

(ii) to a non-resident in the specified circumstances as referred to in sub-section (3); or

(iii) to a person who buys such goods or services or both using internet protocol address located in India.

(2) The equalisation levy under sub-section (1) shall not be charged—

(i) where the e-commerce operator making or providing or facilitating e-commerce supply or services has a permanent establishment in India and such e-commerce supply or services is effectively connected with such permanent establishment;

(ii) where the equalisation levy is leviable under section 165; or

(iii) sales, turnover or gross receipts, as the case may be, of the e-commerce operator from the e-commerce supply or services made or provided or facilitated as referred to in sub-section (1) is less than two crore rupees during the previous year.

(3) For the purposes of this section, "specified circumstances" mean—

(i) sale of advertisement, which targets a customer, who is resident in India or a customer who accesses the advertisement though internet protocol address located in India; and

(ii) sale of data, collected from a person who is resident in India or from a person who uses internet protocol address located in India.

COLLECTION AND RECOVERY OF EQUALISATION LEVY ON SPECIFIED SERVICES

166. (1) Every person, being a resident and carrying on business or profession or a non-resident having a permanent establishment in India (here in this Chapter referred to as assessee) shall deduct the [equalisation levy referred to in sub-section (1) of section 165] from the amount paid or payable to a non-resident in respect of the specified service at the rate specified in section 165, if the aggregate amount of consideration for specified service in a previous year exceeds one lakh rupees.

(2) The equalisation levy so deducted during any calendar month in accordance with the provisions of sub-section (1) shall be paid by every assessee to the credit of the Central Government by the seventh day of the month immediately following the said calendar month.

(3) Any assessee who fails to deduct the levy in accordance with the provisions of sub-section (1) shall, notwithstanding such failure, be liable to pay the levy to the credit of the Central Government in accordance with the provisions of sub-section (2).

COLLECTION AND RECOVERY OF EQUALISATION LEVY ON E-COMMERCE SUPPLY OR SERVICES

166A. The equalisation levy referred to in sub-section (1) of section 165A, shall be paid by every e-commerce operator to the credit of the Central Government for the quarter of the financial year ending with the date specified in column (2) of the Table below by the due date specified in the corresponding entry in column (3) of the said Table:

TABLE

Serial number	Date of ending of the quarter of financial year	Due date of the financial year
(1)	(2)	(3)
1.	30th June	7th July
2.	30th September	7th October
3.	31st December	7th January
4.	31st March	31st March

FRANCE

THE MULTILATERAL CONVENTION TO IMPLEMENT TAX TREATY RELATED MEASURES TO PREVENT BASE EROSION AND PROFIT SHIFTING (MLI) AND THE 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

This document was prepared by the Competent Authority of India, after consultation with the Competent authority of France, and represents their shared understanding of the modifications made to the Convention by the MLI.

General disclaimer on the Synthesised text document

This document presents the synthesised text for the application of the 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 signed on 29th September, 1992 (the "Convention"), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by the India and French Republic on 7th June, 2017 (the "MLI").

The document was prepared on the basis of the MLI position of India submitted to the Depositary upon ratification on 25th June, 2019 and of the MLI position of the French Republic submitted to the Depositary upon ratification on 26th September, 2018. These MLI positions are subject to modifications as provided in the MLI. Modifications made to MLI positions could modify the effects of the MLI on this Convention.

The authentic legal texts of the Convention and the MLI take precedence and remain the legal texts applicable.

The provisions of the MLI that are applicable with respect to the provisions of the Convention are included in boxes throughout the text of this document in the context of the relevant provisions of the Convention. The boxes containing the provisions of the MLI have generally been inserted in accordance with the ordering of the provisions of the Convention.

Changes to the text of the provisions of the MLI have been made to conform the terminology used in the MLI to the terminology used in the Convention (such as "Covered Tax Agreement" and "Convention", "Contracting Jurisdictions" and "Contracting States"), to ease the comprehension of the provisions of the MLI. The changes in terminology are intended to increase the readability of the document and are not intended to change the substance of the provisions of the MLI. Similarly, changes have been made to parts of provisions of the MLI that describe existing provisions of the Convention: descriptive language has been replaced by legal references of the existing provisions to ease the readability.

In all cases, references made to the provisions of the Convention or to the Convention must be understood as referring to the Convention as modified by the provisions of the MLI, provided such provisions of the MLI have taken effect.

Disclaimer on the entry into effect of the provisions of the MLI

The provisions of the MLI applicable to the Convention do not take effect on the same dates as the original provisions of the Convention. Each of provisions of the MLI could take effect on different dates, depending on the types of taxes involved (taxes withheld at source or other taxes levied) and on the choices made by India and the French Republic in their MLI positions.

Dates of the deposit of instruments of ratification: 25th June, 2019 for India and 26th September, 2018 for the French Republic.

Entry into force of the MLI: 1st October, 2019 for India and 1st January, 2019 for the French Republic.

Unless it is stated otherwise elsewhere in this document, the provisions of the MLI have effect with respect to the Convention:

- In India:

  (a) With respect to taxes withheld at source on amounts paid or credited to nonresidents, where the event giving rise to such taxes occurs on or after 1 April 2020; and

  (b) With respect to all other taxes levied by India, for taxes levied with respect to taxable periods beginning on or after 1 April 2020.

- In French Republic:

(a) With respect to taxes withheld at source on amounts paid or credited to nonresidents, where the event giving rise to such taxes occurs on or after the first day of the next calendar year that begins on 1 January 2020; and

(b) With respect to all other taxes levied by France, for taxes levied with respect to taxable periods beginning on or after the expiration of a period of six calendar months from 1 October 2019.

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;

The following paragraph 1 of Article 6 of the MLI is included in the preamble of this Convention:

ARTICLE 6 OF THE MLI
PURPOSE OF A COVERED TAX AGREEMENT

Intending to eliminate double taxation with respect to the taxes covered by [*this Convention*] without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in [*the Convention*] for the indirect benefit of residents of third jurisdictions),

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 (précompte) or advance payment with respect thereto;
      (ii) the corporation tax (l'impôt sur les sociétés') including any withholding tax, prepayment (précompte) and advance payment with respect thereto; and (iii) the wealth-tax (l'impot de solidarité 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. [MODIFIED by paragraph 4 of Article 13 of the MLI] [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 the enterprise;

(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 preparatory or auxiliary character.]

The following paragraph 4 of Article 13 of the MLI applies to paragraph 3 of Article 5 of this Convention:

[Paragraph 4 of Article 5 of the Convention] shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same *[Contracting State]* and:

a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of *[Article 5 of the Convention]*; or

b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,

provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.

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) [MODIFIED by paragraph 1 of Article 12 of the MLI] [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]

The following paragraph 1 of Article 12 of the MLI applies with respect to the subparagraph (a) of paragraph 5 of Article 5 of this Convention:

ARTICLE 12 OF THE MLI
ARTIFICIAL AVOIDANCE OF PERMANENT ESTABLISHMENT STATUS THROUGH COMMISSIONAIRE ARRANGEMENTS AND SIMILAR STRATEGIES

Notwithstanding *[Article 5 of the Convention]*, but subject to *[paragraph 6 of Article 5 of the Convention as modified by paragraph 2 of Article 12 of the MLI]*, where a person is acting in a *[Contracting State]* on behalf of an enterprise and, in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are:

a) in the name of the enterprise; or

b) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use; or

c) for the provision of services by that enterprise,

that enterprise shall be deemed to have a permanent establishment in that *[Contracting State]* in respect of any activities which that person undertakes for the enterprise unless these activities, if they were exercised by the enterprise through a fixed place of business of that enterprise situated in that *[Contracting State]*, would not cause

that fixed place of business to be deemed to constitute a permanent establishment under the definition of permanent establishment included in the provisions of *[Article 5 of the Convention]*.

(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. [MODIFIED by paragraph 2 of Article 12 of the MLI] [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 arm's length conditions.]

The following paragraph 2 of Article 12 of the MLI applies with respect to paragraph 6 of Article 5 of this Convention:

ARTICLE 12 OF THE MLI

ARTIFICIAL AVOIDANCE OF PERMANENT ESTABLISHMENT STATUS THROUGH COMMISSIONNAIRE ARRANGEMENTS AND SIMILAR STRATEGIES

[Paragraph 5 of Article 5 of the Convention as modified by Paragraph 1 of Article 12 of the MLI] shall not apply where the person acting in a *[Contracting State]* on behalf of an enterprise of the other *[Contracting State]* carries on business in the first-mentioned *[Contracting State]* as an independent agent and acts for the enterprise in the ordinary course of that business.

Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.

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.

The following paragraph 1 of Article 15 of the MLI applies to this Convention:

ARTICLE 15 OF THE MLI

DEFINITION OF A PERSON CLOSELY RELATED TO AN ENTERPRISE

For the purposes of the provisions of *[Article 5 of the Convention as modified paragraph 2 of Article 12 and paragraph 4 of Article 13 of the MLI]*, a person is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise.

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.

The following paragraph 1 of Article 17 of the MLI applies to this Convention:

ARTICLE 17 OF THE MLI
CORRESPONDING ADJUSTMENTS

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 *[Contracting 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 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 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.]

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 company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other Contracting State.

ARTICLE 12
INTEREST

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

[2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the recipient is the 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" 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 Exteriur, or the Compagnie Francaise d'Assurance pour le Commerce Exterieur (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 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 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 subdivision, 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.

[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. [MODIFIED by paragraph 4 of Article 9 of the MLI] [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.]

The following paragraph 4 of Article 9 of the MLI applies to paragraph 4 of Article 14 of this Convention:

ARTICLE 9 OF THE MLI

CAPITAL GAINS FROM ALIENATION OF SHARES OR INTERESTS OF ENTITIES DERIVING THEIR VALUE PRINCIPALLY FROM IMMOVABLE PROPERTY

For purposes of *[this Convention]*, gains derived by a resident of a *[Contracting State]* from the alienation of shares or comparable interests, such as interests in a partnership or trust, may be taxed in the other *[Contracting State]* if, at any time during the 365 days preceding the alienation, these shares or comparable interests derived more than 50 per cent of their value directly or indirectly from immovable property (real property) situated in that other *[Contracting State]*.

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 subdivision 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 money's 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)(viia) 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 subparagraphs (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 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 agreement concluded between the parties to this Convention.

The following paragraph 1 of Article 7 of the MLI applies and supersedes the provisions of this Convention:

ARTICLE 7 OF THE MLI
PREVENTION OF TREATY ABUSE
(Principal Purposes Test provision)

Notwithstanding any provisions of [the Convention], a benefit under *[the Convention]* shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of *[the 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.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed the present Convention.

DONE in duplicate at Paris on this twenty ninth day of September, one thousand nine hundred and ninety-two in the Hindi, French and English languages, all the texts being equally authentic.

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 India's 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 of 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)(ii), 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.

AMENDING NOTIFICATION NO. S.O. 650(E), DATED 10-7-2000

Whereas the Convention between the Republic of India and the French Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital came into force on the 1st day of August, 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 the said Convention.

And whereas the Central Government 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 1969) and section 44A of the Wealth-tax Act, 1957 (27 of 1957), had directed that all the provisions of the said Convention annexed to the notification of the Government of India in the Ministry of Finance (Department of Revenue) (Foreign Tax Department) No. G.S.R. 681(E), dated 7th September, 1994, shall be given effect to in the Union of India.

And whereas paragraph 7 of the Protocol dated 29th September, 1992, to the aforesaid Convention provides that if after the 1st day of September, 1989, under any Convention Agreement or Protocol concluded between India and a third State which is a member of the Organisation for Economic Co-operation and Development, India should limit 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, then, as from the date on which the Convention between India and France or the relevant India Convention, Agreement or Protocol enters into force, whichever enters into force later, 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;

And whereas in the Convention between India and Germany which entered into force on the 26th October, 1996, and the Convention between India and the United States of America which entered into force on the 18th December, 1990, which States are members of the Organisation for Economic Co-operation and Development, the Government of India has limited the taxation at source on dividends, interest, royalties, fees for technical services and payments for the use of equipment to a rate lower or a scope more restricted than that provided in the Convention between India and France on the said items of income; 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 the following modifications shall be made in the Convention notified by the said notification which are necessary for implementing the aforesaid Convention between India and France, namely:—

I. With effect from the 1st April, 1997, for the existing paragraph 2 of article 11 relating to "Dividends", the following paragraph shall be read:

"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."

II. With effect from the 1st April, 1995, for the existing paragraph 2 of article 12 relating to "Interest", the following paragraph shall be read:

"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 of the interest on loans made or guaranteed by a bank or other financial institution carrying on bona fide banking or financial business or an insurance company or by an enterprise which holds directly or indirectly at least 10 per cent of the capital of the company paying interest;

(b) 15 per cent of the gross amount of the interest in all other cases."

III. With effect from the 1st April, 1997, for paragraph 2 of article 12 relating to "Interest", referred to in paragraph II above, the following paragraph shall be read:

"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."

IV. With effect from the 1st April, 1995, for the existing paragraph 2 of article 13 relating to "Royalties and fees for technical services and payments for the use of equipment", the following paragraph shall be read:

"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—

(a) in the case of royalties and fees 20 per cent of the gross amount of such royalties or fees; and

(b) in the case of payments referred to in paragraph 5 of this article, 10 per cent of the gross amount of such payments."

V. With effect from the 1st April, 1997, for paragraph 2 of article 13 relating to "Royalties and fees for technical services and payments for the use of equipment", referred to in paragraph IV above, the following paragraph shall be read:

"2. However, such royalties and 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."

AMENDING NOTIFICATION NO. S.O. 2106(E), DATED 12-8-2009

WHEREAS the 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 had 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;

AND WHEREAS, the said Convention was notified by the Central Government under section 90 of the Income-tax Act, 1961 (43 of 1961) in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i) vide number G.S.R. 681(E), dated the 7th September, 1994 and amended by notification number S.O. 650(E), dated the 10th July, 2000.

AND WHEREAS sub-clause (iii) of clause (a) of paragraph 3 of article 12 of the said Convention provides for exemption of interest from tax in the Contracting State in which it arises provided it is derived and beneficially owned by any other institution as may be agreed from time to time between the competent authorities of the Contracting States;

AND WHEREAS both the Government of Republic of India and Government of the French Republic have now agreed to include Agence Francaise de Developpement in the list of institutions specified in clause (a) of paragraph 3 of article 12 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 the following amendment shall be made in the said notification, namely:

In the said notification, in the Annexure, in article 12 of the Convention, in paragraph 3, in clause (a), for sub-clause (ii), the following sub-clause shall be substituted, namely:

'(ii) the "Reserve Bank of India" in the case of India and the "Banque de France" and "Agence Francaise de Developpement" in the case of France; or'

This notification shall come into force from the date of its publication in the Official Gazette.

UK

SYNTHESISED TEXT OF THE MULTILATERAL CONVENTION TO IMPLEMENT TAX TREATY RELATED MEASURES TO PREVENT BASE EROSION AND PROFIT SHIFTING (MLI) AND THE AGREEMENT 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

General disclaimer on the Synthesised text document

This document presents the synthesised text for the application of the 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 signed on 25 January 1993 and the Protocol signed on 30 October 2012(together the "Convention"), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by the Republic of India and the United Kingdom on 7 June 2017 (the "MLI").

This document was prepared jointly by the competent authorities of the Republic of India and the United Kingdom and represents their shared understanding of the modifications made to the Convention by the MLI.

The document was prepared on the basis of the MLI position of the Republic of India submitted to the Depositary upon ratification on 25June 2019 and of the MLI position of the United Kingdom submitted to the Depositary upon ratification on 29 June 2018. These MLI positions are subject to modifications as provided in the MLI. Modifications made to MLI positions could modify the effects of the MLI on the Convention.

The authentic legal texts of the Convention and the MLI take precedence and remain the legal texts applicable.

The provisions of the MLI that are applicable with respect to the provisions of the Convention are included in boxes throughout the text of this document in the context of the relevant provisions of the Convention. The boxes containing the provisions of the MLI have generally been inserted in accordance with the ordering of the provisions of the Convention.

Changes to the text of the provisions of the MLI have been made to conform the terminology used in the MLI to the terminology used in the Convention (such as "Covered Tax Agreement" and "Convention", "Contracting Jurisdictions" and "Contracting States"), to ease the comprehension of the provisions of the MLI. The changes in terminology are intended to increase the readability of the document and are not intended to change the substance of the provisions of the MLI. Similarly, changes have been made to parts of provisions of the MLI that describe existing provisions of the Convention: descriptive language has been replaced by legal references of the existing provisions to ease the readability.

In all cases, references made to the provisions of the Convention or to the Convention must be understood as referring to the Convention as modified by the provisions of the MLI, provided such provisions of the MLI have taken effect.

Disclaimer on the entry into effect of the provisions of the MLI

The provisions of the MLI applicable to the Convention do not take effect on the same dates as the original provisions of the Convention. Each of provisions of the MLI could take effect on different dates, depending on the types of taxes involved (taxes withheld at source or other taxes levied) and on the choices made by the Republic of India and the United Kingdom in their MLI positions.

Dates of the deposit of instruments of ratification, acceptance or approval: 25 June 2019 for the Republic of India and 29 June 2018 for the United Kingdom.

Entry into force of the MLI: 1 October 2019 for the Republic of India and 1 October 2018 for the United Kingdom.

Unless it is stated otherwise elsewhere in this document, the provisions of the MLI have effect with respect to the Convention:

- In the Republic of India for taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 April 2020;
- In the United Kingdom for taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2020;
- In the Republic of India, for other taxes for taxable periods beginning on or after 1 April 2020; and
- In the United Kingdom, from 1 April 2020 for corporation tax and from 6 April 2020 for income tax and capital gains tax.

CONVENTION
BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF INDIA
AND
THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND FOR THE AVOIDANCEOF 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;

The following paragraph 1 of Article 6 of the MLI is included in the preamble of this Convention:

ARTICLE 6 OF THE MLI
PURPOSE OF A COVERED TAX AGREEMENT

Intending to eliminate double taxation with respect to the taxes covered by [*this Convention*] without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in [*the Convention*] for the indirect benefit of residents of third jurisdictions),

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, 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;

(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 subdivision or local authority thereof. In relation to the United Kingdom, the term "political subdivision" shall include Northern Ireland.

2. [Deleted]

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 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, 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) 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 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. [REPLACED by paragraph 1 of Article 4 of the MLI] [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].

The following paragraph 1 of Article 4 of the MLI replaces paragraph 3 of Article 4 of this Convention:

ARTICLE 4 OF THE MLI
DUAL RESIDENT ENTITIES

Where by reason of the provisions of [*this Convention*] a person other than an individual is a resident of both [*Contracting States*], the competent authorities of the [*Contracting States*] shall endeavour to determine by mutual agreement the [*Contracting State*] of which such person shall be deemed to be a resident for the purposes of [*this*

Convention], having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by [*this Convention*] except to the extent and in such manner as may be agreed upon by the competent authorities of the [*Contracting States*].

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) 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 storage 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 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;
   (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. [MODIFIED by paragraph 4 of Article 13 of the MLI] [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. 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 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.]

The following paragraph 4 of Article 13 of the MLI applies to paragraph 3 of Article 5 of this Convention:

ARTICLE 13 OF THE MLI – ARTIFICIAL AVOIDANCE OF PERMANENT ESTABLISHMENT STATUS THROUGH SPECIFICACTIVITY EXEMPTIONS

[*Paragraph 3 of Article 5 of this Convention*] shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same [*Contracting State*] and:

(a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of [*Article 5 of the Convention*]; or

(b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,

provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.

The following paragraph 1 of Article 15 of the MLI applies to provisions of this Convention:

ARTICLE 15 OF THE MLI

DEFINITION OF A PERSON CLOSELY RELATED TO AN ENTERPRISE

For the purposes of [*Article 5 of the Convention as modified by paragraph 4 of Article 13 of the MLI*], a person is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and 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 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 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, 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 the 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 company's 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 sub-paragraph (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 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) 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 purposes 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 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, 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 Co-operation 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, 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; 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 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.

8. 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.

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 charter 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 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 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 where those dividends are paid out of income (including gains) derived directly or indirectly from immovable property within the meaning of Article 6 by an investment vehicle which distributes most of this income annually and whose income from such immovable property is exempted from tax;

(b) 10 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. 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 any other item 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 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, 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. In such case the provisions of Article 7 (Business profits) or Article 15 (Independent personal services), as may be the case, 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 that other State.

6. No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.

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, 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 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 subdivision 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 and 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 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 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 subdivision, 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 to 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 States 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 Article, and fees for technical services within paragraph (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 subdivision 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 cinematograph films or work on films, 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; 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 to any person in consideration for the rendering of any technical or consultancy services (including the provisions 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 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 definitions 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 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 subdivision, 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 purpose 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

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 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 Articles 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 that 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 a 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

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 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 (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
GOVERNMENTAL 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 money's 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 practise 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 article 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 fora 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 within 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 resident's total production in that year which was actually sold in the Indian Domestic Tariff Area under Orders issued by the Chief Controller of Imports and Exports bearing Nos. 21/90-93, 22/90-93, 23/9093, 25/9093, 26/90-93, 27/90-93 dated 30th March 1990 and similar Orders from time to time published in the Official Gazette by the Central Government under power conferred to 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)(viia), 10(15)(iv), 33AB, 80HHD, 80I and 80IA;
   (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 subparagraph (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 not 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 fiscal 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 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.

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 [DELETED]

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 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 (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 that 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. [Modified by second sentence of paragraph 1 of Article 16 of the MLI] [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 following second sentence of paragraph 1 of Article 16 of the MLI applies and supersedes the provisions of this Convention:

ARTICLE 16 OF THE MLI
MUTUAL AGREEMENT PROCEDURE

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. [Modified by second sentence of paragraph 2 of Article 16 of the MLI] [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.]

The following second sentence of paragraph 2 of Article 16 of the MLI applies to this Convention:

ARTICLE 16 OF THE MLI

MUTUAL AGREEMENT PROCEDURE

Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of [*the Contracting States*].

3. [Modified by second sentence of paragraph 3 of Article 16 of the MLI] [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.]

The following second sentence of paragraph 3 of Article 16 of the MLI applies to this Convention:

ARTICLE 16 OF THE MLI

MUTUAL AGREEMENT PROCEDURE

[*The Contracting States*] 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 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 foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws of the Contracting States 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 this Convention. The exchange of information is not restricted by Articles 1 and 2 of this Convention.
2. Any information received under paragraph 1 of this Article 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, the determination of appeals in relation to, the taxes referred to in paragraph 1 of this Article, 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. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.
3. In no case shall the provisions of paragraphs 1 and 2 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.
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 of this Article 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 of this Article 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 28A

TAX EXAMINATION ABROAD

1. At the request of the competent authority of a Contracting State (the "requesting State"), the competent authority of the other Contracting State (the "requested State") may allow representatives of the competent authority of the requesting State to enter its territory to interview individuals and examine records with the prior written consent of the persons concerned. The competent authority of the requesting State shall notify the competent authority of the requested State of the time and place of the meeting with the individuals concerned.

2. At the request of the competent authority of the requesting State, the competent authority of the requested State may allow representatives of the competent authority of the requesting State to be present at the appropriate part of a tax examination in the territory of the requested State.
3. If the request referred to in paragraph 2 of this Article is acceded to, the competent authority of the requested State conducting the examination shall, as soon as possible, notify the competent authority of the requesting State about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the requested State for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the requested State conducting the examination.

ARTICLE 28B

ASSISTANCE IN THE COLLECTION OF TAXES

1. The Contracting States shall lend assistance to each other in the collection of revenue claims in respect of taxes covered by the Convention. 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 covered by this Convention, 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 are venue 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. When a Contracting State may, under its law, take interim measures of conservancy by freezing of assets before a revenue claim is raised against a person, the competent authority of the other Contracting State, if requested by the competent authority of the first mentioned State, shall take measures for freezing the assets of that person in that Contracting State in accordance with the provisions of its law.
6. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4shall 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.
7. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.
8. 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.
9. 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;
   (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."

[REPLACED by paragraph 1 of Article 7 of the MLI]

[ARTICLE 28C

LIMITATION OF BENEFITS

1. Benefits of this Convention shall not be available to a resident of a Contracting State, or with respect to any transaction undertaken by such a resident, if the main purpose or one of the main purposes of the creation or existence of such a resident or of the transaction undertaken by him, was to obtain benefits under this Convention.
2. Where by reason of this Article a resident of a Contracting State is denied the benefits of this Convention in the other Contracting State, the competent authority of that other Contracting State shall notify the competent authority of the first-mentioned Contracting State.]

The following paragraph 1 of Article 7 of the MLI replaces Article 28C of this Convention:

ARTICLE 7 OF THE MLI

PREVENTION OF TREATY ABUSE (PRINCIPAL PURPOSES TEST PROVISION)

Notwithstanding any provisions of [*this Convention*], a benefit under [*this Convention*] shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of [*this Convention*].

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 this Convention. This Convention shall enter 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 1st 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 States. 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 is 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 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.

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 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 arm's 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.