THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2024

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 in Indian Rupees (INR), unless otherwise stated. Any monetary calculations should be made to the nearest whole Rupee. Any necessary time apportionments in your calculations should be made to the nearest whole month.
- 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:

Agreement between India and Mauritius for the Avoidance of Double Taxation

Agreement between India and the Netherlands for the Avoidance of Double Taxation (selected extracts)

Agreement between India and Singapore for the Avoidance of Double Taxation (selected extracts)

Agreement between India and Slovenia for the Avoidance of Double Taxation (selected extracts)

Agreement between India and the United Arab Emirates for the Avoidance of Double Taxation

Agreement between India and the United Kingdom for the Avoidance of Double Taxation (selected extracts)

Agreement between India and the United States for the Avoidance of Double Taxation (selected extracts)

PART A

You are required to answer BOTH questions from this Part.

1. Walnut plc, a company incorporated under the laws of the United Kingdom, is engaged in the manufacture of chemical compounds which are used in various industries. It has an existing wholly owned subsidiary in Mauritius (Mauritius Co). Mauritius Co has a wholly owned subsidiary in India (Walnut India).

   Mauritius Co was incorporated in 2019 and does not have any employees. Its operations are wholly managed by professional consultants in Mauritius. All decisions made by the board of Mauritius Co are pre-approved by Walnut plc. The operation of bank accounts is undertaken by Walnut plc from the UK. Mauritius Co has a tax residency certificate issued by the Mauritius tax authority.

   Walnut India has an existing loan from Mauritius Co, which was utilised in September 2022 for working capital purposes.

   Walnut plc has started a new global product line of plastics, which will have usage across industries. As part of the strategy, Walnut plc's management has decided that they will also manufacture this product in India under Walnut India.

   The management of Walnut plc intends to evaluate the funding options available for the operation of this new product line. The total funding requirement is INR 600 million, of which Walnut India can use its internal accruals to a total of INR 300 million. The management of Walnut plc intends to evaluate the tax implications of debt funding for the remaining INR 300 million to Walnut India. Mauritius Co also has a significant cash balance and can provide an additional loan to Walnut India for the INR 300 million balance.

   For this purpose, the management has provided the consolidated financial projections of Walnut India from its existing and proposed operations as follows:

	Financial year ending 31 March 2025 (INR)	Financial year ending 31 March 2026 (INR)	Financial year ending 31 March 2027 (INR)
Income	600 million	900 million	1,400 million
Interest cost	80 million	70 million	60 million
Earnings before interest, tax, depreciation and amortisation	40 million	110 million	240 million

   Walnut India will utilise its internal accruals to purchase land, and the loans will be used for the purchase of capital assets such as plant and machinery for the new manufacturing facility. The management estimates that the new manufacturing facility will commence production from December 2025.

   You are required to answer the following questions:

   1) To what extent will Mauritius Co be eligible to claim benefits under the India-Mauritius double tax agreement? (10)

   2) Based on your answer to (1), what rate of withholding tax will apply to the interest paid on the existing loan by Walnut India to Mauritius Co? What will be the withholding tax rate for interest paid on the proposed new loan of INR 300 million to Walnut India from Mauritius Co? (6)

   3) What are the tax compliance obligations to be undertaken by Mauritius Co in India? What will be the compliance obligations if Walnut plc provides a loan to Walnut India? (3)

   4) What will be the tax treatment of interest paid by Walnut India for the financial years ending 31 March 2025 and 31 March 2026? Determine the monetary impact of any tax adjustment. (6)

   Total (25)

2. HeavyStar plc (HS plc), a company incorporated under the laws of the United Kingdom, is engaged in developing cutting-edge solutions for telecommunications companies. Its products are used by telecoms companies in North America and Europe.

In 2021, as a part of growth strategy for emerging markets including India, the management of HS plc decided to establish a liaison office (HS LO) in India; this was set up directly under HS plc.

HS LO began operations with only one employee and grew to nine employees by the end of 2022. The job profiles of the nine individuals are as follows:

Designation	No. of employees	Job description
India country manager	1	Promotion of HS Plc. products; developing relationship with customers; sales promotion and marketing; pursuing opportunities in India; developing and executing sales strategy for India; developing and expanding the team in India to serve local customers; reporting on Indian trends and offering assessment to global management.
Sales and marketing	5	Executing a sales and marketing strategy developed by the India country manager; discovering and tracking opportunities; following up on opportunities; meeting existing and potential customers; overseeing preparation and response to Request For Proposal (RFP); assisting in marketing initiatives; maintaining a high level of knowledge of HS plc products; preparing sales forecasts and managing the sales pipeline.
Sales engineer	3	Defining product requirements based on customer requirements; developing and maintaining strong relationships with customers; conducting product demonstrations; responding to RFP; preparing tenders and submissions; working with the technical team for a smooth transition from pre-sales to post sales.

HS plc has recently onboarded a new tax consultant for India and, as part of the engagement, HS plc has requested a tax health-check of its Indian operations. As part of the health-check, the following additional facts have emerged:

- The aforementioned individuals were appointed as independent consultants by HS Plc, with its human resources director signing the consultant contract on behalf of HS Plc. The contract contained the following aspects:
    - Payment of a 1% sales commission to the India country manager and a 0.25% sales commission to all other individuals.
    - Individuals will receive laptops from HS plc and their leave will be approved by HS plc.
    - Individuals will be entitled to an employee stock option plan upon completion of four years of association with HS plc.
    - Individuals are required to raise a monthly invoice for consulting fees to HS plc. which will be paid directly by HS plc.
- The individuals' social media profiles mention that they are working with HS plc.
- The India team identifies new customers, and concludes pricing and other key aspects such as specifications, payment and delivery terms with the customers locally, based on the range provided by HS plc.
- Office premises are leased by HS plc and rent payment is made directly by HS plc to the landlord.
- The audited financial statements of HS LO did not contain any salary cost, rent or general administrative expense costs.

Continued

2. Continuation

You are required to answer the following questions raised by HS plc, providing detailed analysis:

1) To what extent can HS plc be viewed as having a permanent establishment (PE) in India? What judicial precedents may apply on this issue? (10)

2) If a PE does exist in India, how can HS plc mitigate any PE risks? Outline the necessary modifications that HS plc would need to undertake in its business operations, from a tax perspective, and consider any transfer pricing implications and compliance issues. (10)

3) In the event that HS plc creates a PE in India, what are the necessary compliance actions to be undertaken by HS plc for the financial year ending 31 March 2024? (5)

Total (25)

PART B

You are required to answer ONE question from this Part.

3. Farma India Pvt Ltd (Farma India) has been manufacturing generic medicines in India since the 1980s. It has two in-house manufacturing facilities, and also appoints contract manufacturers (CMOs) from time to time to meet increasing demand for its medicines.

During the 2023-24 financial year (FY 2023-24), Farma India decided to expand internationally, starting with target markets in the Middle East and Africa. Farma India chose the United Arab Emirates as its hub for distribution in the Middle East and North Africa (MENA) region, and selected Kenya as the location of a step-down subsidiary for expanding its sales in the East Africa region. Accordingly, Farma India incorporated Farma Dubai LLC (Farma Dubai) and Farma Kenya Pvt Ltd (Farma Kenya) as its subsidiaries in the UAE and Kenya respectively.

FY 2023-24 will be the first year of operations for Farma Dubai and Farma Kenya. The nine-month consolidated turnover for the group in FY 2023-24 has already reached INR 10 billion.

The following facts apply to Farma Dubai and Farma Kenya in FY 2023-24:

Farma Dubai

- Sells medicines in MENA countries as a distributor of Farma India. It is estimated to contribute 10% to the group's topline for FY 2023-24.
- Has a board comprising three members (one local director and two Indian directors from Farma India.
- Has not been able, until now, to appoint a full-time chief executive officer (CEO) or a head of marketing, both of which are crucial for the company's growth.
- In the meantime, the CEO and head of marketing of Farma India act as the de-facto decision makers for Farma Dubai. Both individuals primarily reside in India and travel to the UAE regularly. In addition, a manager and five administrative staff have been recruited to Farma Dubai. For FY 2023-24, the remuneration of the CEO and head of marketing will be approximately four times the combined compensation of the remaining staff members.
- Though the board meets regularly at the company premises to check on the company's progress, Farma Dubai has delegated powers to make key commercial and management decision to the CEO and head of marketing.

Farma Kenya

- Sells medicines in East Africa as a regional distributor of Farma India. It is estimated to contribute 15% to the group's topline for FY 2023-24.
- Has local management in full capacity. It has appointed an independent CEO, head of marketing and head of operations. However, its accounting records are prepared and maintained in India by Farma India.
- Has a board consisting of two local persons and one common board member from Farma India.
- All strategic decisions are taken by the local management, whereas the board of directors meets regularly to review the company's progress.

Farma India's management team has appointed you to study any tax risks that may arise from this structure.

Continued

3. Continuation

You are required to answer the following questions, including reasoned analysis in support of your conclusions:

1) To what extent does the Place of Effective Management (POEM) of either Farma Dubai or Farma Kenya exist in India? (11)

2) In the event that either subsidiary has a POEM in India:

a) What is the applicable rate of tax on their income, under the provisions of the Income-tax Act 1961? Would the subsidiary qualify for treaty relief in India, against any taxes paid in their country of incorporation? (3)

b) For any payments made by the subsidiary to a local person in their home country, will they need to abide by the provisions of section 195 of the Income-tax Act 1961? (3)

c) If such company makes losses during FY 2023-24, for how many years will they be able to carry forward their losses? (3)

Total (20)

4. Mr Smart, a finance professional, moved to the United Arab Emirates together with his spouse and child and took up employment at the beginning of May 2022. His pay package in UAE amounted to INR 15 million.

Mr Smart sold his residential property in India in April 2022, resulting in capital gains of INR 25 million, and then used the available post-tax sales proceeds to purchase a residential property in the UAE. You may assume that he is not liable to tax in UAE, though he has obtained a tax residency certificate from the Federal Tax Authority of the UAE upon completion of the necessary 183 days.

Between May 2022 and March 2023, Mr Smart stayed primarily in the UAE except during December 2022 when he visited India.

Mr Smart had invested in mutual fund schemes in previous years when he still resided in India. In November 2022 he liquidated a large portion of his mutual fund investments, earning capital gains of INR 7 million. In December 2022, during his visit to India, Mr Smart sold all of his remaining mutual fund investments for INR 2 million. From the sale proceeds, he has purchased a lifetime club membership at an exclusive club in Dubai.

Mr Smart also conducts derivatives trading on Indian stock markets in his free time. For this, he obtains advice from a fellow professional trader in the UAE to whom he pays consultancy fees on a regular basis. During the 2022-23 financial year, Mr Smart earned income of INR 10 million from this activity and paid consultancy fees of INR 1 million.

After living in the UAE for one year, Mr Smart's child was unable to adjust to the school environment and the family moved back to India in June 2023. After returning to India, Mr Smart ceased his derivatives trading.

Mr Smart has sought your services in managing his tax affairs.

You are required to answer the following questions, including reasoning in support of each of your answers:

1) How will his residential status for the 2022-23 financial year be determined, according to the provisions of the Income-tax Act 1961 as well as the India-UAE double tax agreement (DTA)? (8)

2) If Mr Smart is to qualify as a UAE resident for the 2022-23 financial year under the DTA:

a) What is the liability to taxation of the capital gains earned from the sale of mutual fund investments? Does India, as the source country, have the right to tax such capital gains under the DTA, and would Mr Smart's geographic location at the time of sale matter under Article 13? (4)

b) What is the liability to taxation of the derivatives income? Does India have the right to tax such derivatives income under the DTA as the source country? (3)

(c) Can the Indian Revenue Department invoke the General Anti-Avoidance Rules upon Mr Smart's return to India? (5)

Total (20)

PART C

You are required to answer TWO questions from this Part.

5. ENSOGO Pvt Ltd (ESG India) is an environmental, social and governance (ESG) consultancy company in India which provides ESG consultancy services to Indian companies listed on the Bombay Stock Exchange.

ESG India has incorporated wholly owned subsidiaries (WOSs) in southeast Asia. The WOSs include ENSOGO Pte Ltd (ESG SG) in Singapore and ENSOGO Sdn Bhd (ESG MY) in Malaysia, and are responsible for sourcing business from companies incorporated in their respective countries. Both ESG MY and ESG SG leverage the group's brand and source business in their own name. However, they outsource the resulting work to ESG India for fulfilment.

For services provided by ESG India to ESG SG and ESG MY, the WOSs are able to pay ESG India only after their clients have paid their own dues. This results in a substantial build-up of outstanding dues from each WOS to ESG India.

During its assessment, the transfer pricing officer (TPO) proposes to make additions on this count by computing imputed interest as an average cost of total funds applied to the outstanding balance beyond a 90-day credit period. However the assessee claims that, even after making a working capital adjustment, its operational net profit margins from export transactions is higher than its comparables.

ESG India has injected additional share capital into ESG MY and ESG SG. However, it has not disclosed these transactions as international transactions for the purposes of Form 3CEB.

ESG India has provided a working capital loan to ESG MY at international benchmark rate plus 300 basis points,, whereas it has availed overdraft limits from an Indian bank at an annual interest rate of 13%. It has borne the differential economic cost to support its WOS in initial stages. During the assessment, the TPO proposes to adopt the 13% interest rate as the arm's length basis and make necessary additions.

ESG India has also issued a corporate guarantee on behalf of ESG SG, for ESG SG's local borrowing; ESG India has not charged any guarantee fees to ESG SG as it has not incurred any cost.

For any ESG report involving similar efforts between clients, ESG India charges ESG MY 10% over and above the amount charged to its Indian clients. Meanwhile ESG India charges ESG SG 20% over and above the amount charged to its Indian clients. ESG India has adopted an internal transactional net margin method to benchmark its controlled transactions; the TPO alleges that ESG India has undercharged ESG MY as against ESG SG.

ESG India's management team have asked you to conduct a transfer pricing risk assessment for presentation to the company's board.

You are required to answer the following questions, including reasoning in support of each of your answers:

1) Can interest on overdue receivables constitute a separate 'international transaction' under Indian transfer pricing regulations? Is the TPO justified in making the proposed additions? (6)

2) Is the assessee's position with regard to disclosure of the share capital injection correct? If not, what might the possible consequences be? (3)

3) What interest rate on currency should be adopted for benchmarking the interest transaction? (3)

4) Can the TPO consider the transactions carried out with ESG SG as comparable to the transactions carried out with ESG MY? (3)

Total (15)

6. Confidence Fund VIII Mauritius (Confidence Fund) invests in various startups around the world. Confidence Fund invested in an Indian fintech startup in October 2023 in the interim finance round. The details of its investment are as follows:

Instrument type	Compulsorily Convertible Preference Shares (CCPSs)
No. purchased	50,000
Net Asset Value (NAV) at the time of investment	INR 150 per CCPS
Discounted Cash Flow (DCF) value at the time of investment	INR 450 per CCPS

Thereafter, Confidence Fund sold all 50,000 CCPSs to another fund in Mauritius during the Series F round in March 2024. The NAV at the time of sale was INR 250 per CCPS.

Details regarding the forex transactions are as follows:

Subject currency involved	USD
Average telegraphic transfer rate at the time of purchase	INR 81
Average telegraphic transfer rate at the time of sale	INR 83
Telegraphic transfer buying rate at the time of sale	INR 84

The cost inflation index for the 2023-24 financial year is 348.

Confidence Fund has asked you to determine its tax liability for the 2023-24 financial year.

You are required to answer the following questions, explaining your answers in detail:

1) What are the tax implications at the time of investment by Confidence Fund, both for Confidence Fund and for the startup company? (6)

2) What are the tax implications at the time of the CCPS sale by Confidence Fund? (6)

3) During the course of the assessment proceedings for Confidence Fund, can the Assessing Officer apply the beneficial ownership test for capital gains? (3)

Total (15)

7. Cross Shipping Pte Ltd (Cross SG) is a shipping company which owns and operates its own cargo ships. Its shipping routes run between southeast Asia, south Asia and Europe. In India, its ships dock mainly at ports in Chennai and Navi Mumbai. It also operates domestic routes in India between Chennai and Navi Mumbai.

During the 2023-24 financial year, Cross SG operated nine voyages for outbound cargo from India, one voyage for inbound shipment to India and two shipments exclusively between Chennai and Navi Mumbai. It earned INR 150 million from outbound cargo, INR 30 million from the inbound shipment and INR 5 million from the domestic shipments.

During the 2023-24 financial year, Cross SG has entered into slot charter arrangements with other shipping companies.It earned INR 2.5 million as income from slot chartering.

During the assessment proceedings, the Assessing Officer alleges that freight receipts have not been remitted back to Singapore but to a third country and therefore benefits of Article 8 would be denied to Cross SG in lieu of Article 24 (Limitation of Relief). Cross SG however, furnishes a clarification from IRAS that shipping income is taxable in Singapore on accrual basis and not on receipt basis.

Cross SG has sought your advice regarding its Indian tax computation.

You are required to answer the following questions, explaining your answers in detail:

1) What is the tax liability for Cross SG, under the India-Singapore double tax agreement? (10)

2) Is the position taken by the Assessing Officer sustainable, in your view? (5)

Total (15)

8. Rocket Inc. is a company incorporated in the United States and is engaged in building satellites for various space agencies and private players. Rocket Inc. has a wholly owned subsidiary in India (Rocket India), which caters to the Indian market.

As per the group mandate, the local entity in each territory enters into contract with local customers. Rocket India manufactures 80% of its satellite components in India and imports the remaining 20% before assembling the satellite. The imported hardware components include standard software embedded in the hardware.

Rocket Inc. is also engaged in providing customisable software solutions to end customers for various other purposes, such as the operation of control centres and satellite tracking. Rocket Inc. does not retain intellectual property (IP) in such customised software and transfers the IP, along with designs, to the end customers.

In addition, Rocket India provides research and development support to Rocket Inc., for which Rocket India bills INR 50 million to Rocket Inc. At present, no withholding taxes are being applied on payments made by Rocket India to Rocket Inc. or on payments made by Rocket Inc. to Rocket India.

A new head of tax has joined Rocket Inc., and has sought your tax advice on behalf of the company. She has confirmed that Rocket Inc. does not have any permanent establishment in India and is eligible to claim double tax agreement (DTA) benefits.

You are required to answer the following questions, including reasoning in support of your answers:

1) To what extent is withholding tax applicable on Rocket India's importation of standard embedded software from Rocket Inc., under the India-US DTA? (6)

2) To what extent is withholding tax applicable on the importation of customised software by end customers from Rocket Inc., under the India-US DTA? (6)

3) Will the Indian withholding tax provisions be applicable if the payments and receipts between Rocket Inc. and Rocket India are offset? (3)

Total (15)

9. Power plc is a company incorporated under the laws of the United Kingdom. It is engaged in the business of cold storage solutions, and has a wholly owned subsidiary in the Netherlands (Power NL).

Power NL is the group's intermediary holding company and holds a 100% stake in an Indian company (Power India). Power NL has also invested in a joint venture in India (JV India), in which it holds a 25% stake.

Power India has consistently made a profit over the last five years. The group's management is contemplating the repatriation of profits from Power India in order to meet funding requirements in other territories.

Power India's tax manager has advised the company's chief financial officer to apply the applicable withholding tax rate under the India-Slovenia double tax agreement (DTA) to dividends distributed by Power India to Power NL, as the India Netherlands DTA contains a most favoured nation clause for dividend income.

Country	Double tax agreement (DTA) signed	DTA entered into force	Date notified	OECD member
Slovenia	13 Jan 2003	17 February 2005	31 May 2005	21 July 2010

Country	Protocol signed	Effective date of amendment protocol	Date notified	OECD member
Netherlands	13 August 1999	1 April 1997	30 August 1999	13 November 1961

You are required to advise Power plc on the following questions:

1) What will be the withholding tax rate on dividends distributed by Power India to Power NL? Can Power India apply withholding tax rate of 5% under the India-Slovenia DTA? (8)

2) What will be the tax implications in India if Power NL transfers its JV India shares to Power India? (4)

3) What will be the tax implications in India if Power India buys back its ownership from Power NL? (3)

Total (15)

AGREEMENT FOR AVOIDABLE OF DOUBLE TAXATION AND PREVENTION OF FISCAL EVASION WITH MAURITIUS

Whereas the annexed Convention between the Government of the Republic of India and the Government of Mauritius for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains and for the encouragement of mutual trade and investment has come into force on the notification by both the Contracting States to each other on completion of the procedures required by their respective laws, as required by Article 28 of the said Convention ;

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

NOTIFICATION : NO. GSR 920(E), DATED 6-12-1983 – AS AMENDED BY NOTIFICATION NO.S.O. 2680(E) (NO.68/2016 (F.NO.500/3/2012-FTD-II)), DATED 10-8-2016

ANNEXURE

The Government of the Republic of India and the Government of Mauritius, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains and for the encouragement of mutual trade and investment: have agreed as follows :

CHAPTER I
SCOPE OF THE CONVENTION

ARTICLE 1
PERSONAL SCOPE

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

ARTICLE 2
TAXES COVERED

1. The existing taxes to which this Convention shall apply are :
   (a) in the case of India,—
      (i) the income-tax including any surcharge thereon imposed under the Income-tax Act, 1961 (43of 1961) ;
      (ii) the surtax imposed under the Companies (Profits) Surtax Act, 1964 (7 of 1964) ;
      (hereinafter referred to as "Indian tax") ;
   (b) in the case of Mauritius, the income-tax (hereinafter referred to as "Mauritius tax").
2. This Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of the present Convention in addition to, or in place of, the existing taxes referred to in paragraph (1) of this article.
3. The competent authorities of the Contracting States shall notify to each other any significant changes which are made in their respective taxation laws.

CHAPTER II
DEFINITIONS

ARTICLE 3
GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires:
   (a) the term "India" means the territory of India and includes the territorial sea and air space above it as well as any other maritime zone referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (Act No. 80 of 1976), in which India has certain rights and to the extent that these rights can be exercised therein as if such maritime zone is a part of the territory of India ;
   (b) the term "Mauritius" means all the territories, including all the islands, which in accordance with the laws of Mauritius, constitute the State of Mauritius and includes,

(i) the territorial sea of Mauritius ; and

(ii) any area outside the territorial sea of Mauritius which in accordance with international law has been or may hereafter be designated, under the laws of Mauritius concerning the Continental Shelf, as an area within which the rights of Mauritius with respect to the sea bed and sub-soil and their natural resources may be exercised ;

(c) the terms "a Contracting State" and "the other Contracting State" mean India or Mauritius as the context requires ;

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

(e) the term "person" includes an individual, a company and any other entity, corporate or non-corporate, which is treated as a taxable unit under the taxation laws in force in the respective Contracting States;

(f) the term "company" means any body corporate or any entity which is treated as a company or a body corporate under the taxation laws in force in the respective Contracting States ;

(g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an industrial, mining, commercial, plantation or agricultural enterprise or similar undertaking carried on by a resident of a Contracting State and an industrial, mining, commercial, plantation or agricultural enterprise or similar undertaking carried on by a resident of the other Contracting State ;

(h) the term "competent authority" means in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative; and in the case of Mauritius, the Commissioner of Income-tax or his authorised representative ;

(i) the term "national" means any individual possessing the nationality of a Contracting State and any local person, partnership or association deriving its status from the laws in force in the Contracting State ;

(j) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated by the enterprise solely between places in the other Contracting State.

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

ARTICLE 4
RESIDENTS

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of similar nature. The terms "resident of India" and "resident of Mauritius" shall be construed accordingly.

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

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

(b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode ;

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

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

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

ARTICLE 5
PERMANENT ESTABLISHMENT

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

2. The term "permanent establishment" shall include—

(a) a place of management ;

(b) a branch ;

(c) an office ;

(d) a factory ;

(e) a workshop ;

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

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

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

(i) a building site or construction or assembly project or supervisory activities in connection therewith, where such site, project or supervisory activity continues for a period of more than nine months.

[(j) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or connected project) for a period or periods aggregating more than 90 days within any 12 month period.]

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

(a) the use of facilities solely for the purpose of storage or display of merchandise belonging to the enterprise ;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display ;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise ;

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

(e) the maintenance of a fixed place of business solely—

(i) for the purpose of advertising,

(ii) for the supply of information,

(iii) for scientific research, or

(iv) for similar activities,

which have a preparatory or auxiliary character for the enterprise.

4. Notwithstanding the provisions of paragraphs (1) and (2) of this article, a person acting in a Contracting State for or on behalf of an enterprise of the other Contracting State [other than an agent of an independent status to whom the provisions of paragraph (5) apply] shall be deemed to be a permanent establishment of that enterprise in the first-mentioned State if :

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

(ii) he habitually maintains in that first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly fulfils orders on behalf of the enterprise.

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

6. The fact that a company, which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other Contracting State (whether through a permanent establishment or otherwise) shall not, of itself, constitute either company a permanent establishment of the other.

CHAPTER III
TAXATION OF INCOME

ARTICLE 6
INCOME FROM IMMOVABLE PROPERTY

1. Income from immovable property may be taxed in the Contracting State in which such property is situated.
2. The term "immovable property" shall be defined in accordance with the law and usage of the Contracting State in which the property is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, oil-wells, quarries and other places of extraction of natural resources, ships, boats and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph (1) shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraphs (1) and (3) shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

ARTICLE 7
BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph (3) of this article, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment. Where the correct amount of profits attributable to a permanent establishment cannot be readily determined or the determination thereof presents exceptional difficulties, the profits attributable to the permanent establishment may be estimated on a reasonable basis.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.
4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
5. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
6. Where profits include items of income which are dealt with separately in other articles of this Convention, then the provisions of those articles shall not be affected by the provisions of this article.

ARTICLE 8
SHIPPING AND AIR TRANSPORT

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated or, if there is no such home harbour, in the Contracting State of which the operator of the ship is resident.
3. The provisions of paragraph (1) of this article shall also apply to profits from the participation in a pool, a joint business or an international operating agency.
4. For the purposes of paragraph (1), interest on funds connected with the operation of ships or aircraft in international traffic shall be regarded as profits from the operation of such ships or aircraft, and the provisions of Article 11 shall not apply in relation to such interest.
5. The term "operation of ships or aircraft" shall mean business of transportation of persons, mail, livestock or goods, carried on by the owners or lessees or charterers of the ships or aircraft, including the sale of tickets for such transportation on behalf of other enterprises, the incidental lease of ships or aircraft and any other activity directly connected with such transportation.

ARTICLE 9
ASSOCIATED ENTERPRISES

Where

(a) an enterprise of a Contracting State participates, directly or indirectly, in the management, control or capital of an enterprise of the other Contracting State, or

(b) the same persons participate, directly or indirectly, in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

ARTICLE 10
DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed—

   (a) five per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 10 per cent of the capital of the company paying the dividends ;

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

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

3. Notwithstanding the provisions of paragraph (2), dividends paid by a company which is a resident of Mauritius to a resident of India may be taxed in Mauritius and according to the laws of Mauritius, as long as dividends paid by companies which are residents of Mauritius are allowed as deductible expenses for determining their taxable profits. However, the tax charged shall not exceed the rate of the Mauritius tax on profit of the company paying the dividends.

4. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the company making the distribution is a resident.

5. The provisions of paragraphs (1), (2) and (3) shall not apply if the beneficial owner of the dividends, being a resident of the Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein or performs in that other State independent personal services from a fixed base situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of article 7 or article 14, as the case may be, shall apply.

6. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11
INTEREST

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

[2. However, subject to provisions of paragraphs 3, 3A and 4 of this Article, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 7.5 per cent of the gross amount of the interest;]

3. Interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by :

   (a) the Government or a local authority of the other Contracting State ;

   (b) any agency or entity created or organised by the Government of the other Contracting State ; or

[3A. Interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by any bank resident of the other Contracting State carrying on bona fide banking business. However, this exemption shall apply only if such interest arises from debt-claims existing on or before 31st March, 2017.]

4. Interest arising in a Contracting State shall be exempt from tax in that Contracting State to the extent approved by the Government of that State if it is derived and beneficially owned by any person [other than a person referred to in paragraph (3)] who is a resident of the other Contracting State provided that the transaction giving rise to the debt-claim has been approved in this regard by the Government of the first-mentioned Contracting State.

5. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the 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.

6. The provisions of paragraphs (1), (2), (3) and (4) shall not apply if the recipient of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of article 7or article 14, as the case may be, shall apply.

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

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

ARTICLE 12
ROYALTIES

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

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the law of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films, and films or tapes for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs (1) and (2) shall not apply if the recipient of the royalties, being a resident of a Contracting State carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of article 7 or article14, as the case may be, shall apply.

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

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

[ARTICLE 12A

FEES FOR TECHNICAL SERVICES

1. Fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

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

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

4. The provisions of paragraph 1 and 2 shall not apply if the beneficial owner of the fees for technical services being a resident of a Contracting State, carries on business in the other Contracting State in which the fees for technical services arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

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

ARTICLE 13

CAPITAL GAINS

1. Gains from the alienation of immovable property, as defined in paragraph (2) of article 6, may be taxed in the Contracting State in which such property is situated.

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

3. Notwithstanding the provisions of paragraph (2) of this article, gains from the alienation of ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

[3A. Gains from the alienation of shares acquired on or after 1st April 2017 in a company which is resident of a Contracting State may be taxed in that State.

3B. However, the tax rate on the gains referred to in paragraph 3A of this Article and arising during the period beginning on 1st April, 2017 and ending on 31st March, 2019 shall not exceed 50% of the tax rate applicable on such gains in the State of residence of the company whose shares are being alienated;]

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

5. For the purposes of this article, the term "alienation" means the sale, exchange, transfer, or relinquishment of the property or the extinguishment of any rights therein or the compulsory acquisition thereof under any law in force in the respective Contracting States.

ARTICLE 14

INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless he has a fixed base regularly available

to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other Contracting State but only so much of it as is attributable to that fixed base.

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

ARTICLE 15
DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of articles 16, 17, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Contracting State.
2. Notwithstanding the provisions of paragraph (1) of this article, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first mentioned State, if—
   (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183days in the relevant "previous year" or "year of income", and
   (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
   (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.
3. Notwithstanding the preceding provisions of this article, remuneration in respect of an employment exercised aboard a ship or aircraft in international traffic, may be taxed only in the Contracting State in which the place of effective management of the enterprise is situated.

ARTICLE 16
DIRECTORS' FEES

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other Contracting State.

ARTICLE 17
ARTISTES AND ATHLETES

1. Notwithstanding the provisions of articles 14 and 15, income derived by public entertainers such as theatre, motion picture, radio or television artistes and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.
2. Where income is derived from personal activities exercised by an entertainer or an athlete in his capacity as such, and accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of articles 7, 14 and 15, be taxed in the State in which the activities of the entertainer or athlete are exercised.
3. Notwithstanding the provisions of paragraph (1) of this article, income derived by an entertainer or an athlete who is a resident of a Contracting State from his personal activities as such exercised in the other Contracting State, shall be taxable only in the first-mentioned Contracting State, if those activities in the other Contracting State, are supported wholly or substantially from the public funds of the first-mentioned Contracting State, including any of its political sub-divisions or local authorities.
4. Notwithstanding the provisions of paragraph (2) of this article and articles 7, 14 and 15, where income is derived from personal activities exercised by an entertainer or an athlete in his capacity as such in a Contracting State and accrues not to the entertainer or athlete himself but to another person, that income shall be taxable only in the Contracting State, if that other person is supported wholly or substantially from the public funds of that other Contracting State, including any of its political sub-divisions or local authorities.

ARTICLE 18
GOVERNMENTAL FUNCTIONS

1. Remuneration, other than pension, paid by the Government of a Contracting State, to an individual who is a national of that State in respect of services rendered to that State shall be taxable only in that State.
2. Any pension paid by the Government of a Contracting State to an individual who is a national of that State, shall be taxable only in that Contracting State.

3. The provisions of paragraphs (1) and (2) of this article shall not apply to remuneration and pensions in respect of services rendered in connection with any business carried on by the Government of either of the Contracting States for the purpose of profit.
4. The provisions of paragraph (1) of this article shall likewise apply in respect of remuneration paid under a development assistance programme of a Contracting State, out of funds supplied by that State, to a specialist or volunteer seconded to the other Contracting State with the consent of that other State.
5. For the purposes of this article, the term "Government" shall include any State Government or local or statutory authority of either Contracting State and, in particular, the Reserve Bank of India and the Bank of Mauritius.

ARTICLE 19
NON-GOVERNMENT PENSIONS AND ANNUITIES

1. Any pension, other than a pension referred to in article 18, or any annuity derived by a resident of a Contracting State from sources within the other Contracting State shall be taxed only in the first-mentioned Contracting State.
2. The term "pension" means a periodic payment made in consideration of past services or by way of compensation for injuries received in the course of performance of services.
3. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

ARTICLE 20
STUDENTS AND APPRENTICES

1. A student or business apprentice who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State and who is present in that other Contracting State solely for the purpose of his education or training, shall be exempt from tax in that other Contracting State on—
   (a) payments made to him from sources outside that other Contracting State for the purposes of his maintenance, education or training, and
   (b) remuneration from employment in that other Contracting State, in an amount not exceeding Rs.15,000 in Indian currency or its equivalent in Mauritius rupees at the parity rate of exchange during any "previous year" or "year of income", as the case may be, provided that such employment is directly related to his studies or is undertaken for the purpose of his maintenance.
2. The benefits of this article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this article for more than five consecutive years from the date of his first arrival in that other Contracting State.

ARTICLE 21
PROFESSORS, TEACHERS AND RESEARCH SCHOLARS

1. A professor, teacher and research scholar who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State at the invitation of that other Contracting State or of a university, college, school or other approved institution in that other Contracting State for the purpose of teaching or engaging in research, or both, at the university, college, school or other approved institution, shall be exempt from tax in that other Contracting State on any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival in that other Contracting State.
2. This article shall not apply to income from research if the research is undertaken primarily for the private benefit of a specific person or persons.
3. For the purposes of this article and article 20 an individual shall be deemed to be resident of a Contracting State if he is a resident in that Contracting State in the "previous year" or the "year of income", as the case maybe, in which he visits the other Contracting State or in the immediately preceding "previous year" or the "year of income".
4. For the purpose of paragraph (1), "approved institution" means an institution which has been approved in this regard by the competent authority of the concerned Contracting State.

ARTICLE 22
OTHER INCOME

1. Subject to the provisions of paragraph (2) of this article, items of income of a resident of a Contracting State, wherever arising, which are not expressly dealt with in the foregoing articles of this Convention, shall be taxable only in that Contracting State.

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

[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 Convention and arising in the other Contracting State may also be taxed in that other State.]

CHAPTER IV
METHODS FOR ELIMINATION OF DOUBLE TAXATION

ARTICLE 23
ELIMINATION OF DOUBLE TAXATION

1. The laws in force in either of the Contracting States shall continue to govern the taxation of income in the respective Contracting States except where provisions to the contrary are made in this Convention.

2. (a) The amount of Mauritius tax payable, under the laws of Mauritius and in accordance with the provisions of this Convention, whether directly or by deduction, by a resident of India, in respect of profits or income arising in Mauritius, which has been subjected to tax both in India and in Mauritius, shall be allowed as a credit against the Indian tax payable in respect of such profits or income provided that such credit shall not exceed the Indian tax (as computed before allowing any such credit) which is appropriate to the profits or income arising in Mauritius. Further, where such resident is a company by which surtax is payable in India, the credit aforesaid shall be allowed in the first instance against income-tax payable by the company in India and as to the balance, if any, against surtax payable by it in India.

   (b) In the case of a dividend paid by a company which is a resident of Mauritius to a company which is a resident of India and which owns at least 10 per cent of the shares of the company paying the dividend, the credit shall take into account [in addition to any Mauritius tax for which credit may be allowed under the provisions of sub-paragraph (a) of this paragraph] the Mauritius tax payable by the company in respect of the profits out of which such dividend is paid.

3. For the purposes of the credit referred to in paragraph (2) the term "Mauritius tax payable" shall be deemed to include any amount which would have been payable as Mauritius tax for any year but for an exemption or reduction of tax granted for that year or any part thereof under :

   (i) sections 33, 34, 34A and 34B of the Mauritius Income-tax Act, 1974 (41 of 1974) ;

   (ii) any other provision which may subsequently be made granting an exemption or reduction of tax which the competent authorities of the Contracting States agree to be for the purposes of economic development.

4. (a) The amount of Indian tax payable under the laws of India and in accordance with the provisions of this Convention, whether directly or by deduction, by a resident of Mauritius, in respect of profits or income arising in India, which has been subjected to tax both in India and Mauritius shall be allowed as a credit against Mauritius tax payable in respect of such profits or income provided that such credit shall not exceed the Mauritius tax (as computed before allowing any such credit) is appropriate to the profits or income arising in India.

   (b) In the case of a dividend paid by a company which is a resident of India to a company which is a resident of Mauritius and which owns at least 10 per cent of the shares of the company paying the dividend, the credit shall take into account [in addition to any Indian tax for which credit may be allowed under the provisions of sub-paragraph (a) of this paragraph] the Indian tax payable by the company in respect of the profits out of which such dividend is paid.

5. For the purposes of the credit referred to in paragraph (4), the term "Indian tax payable" shall be deemed to include any amount by which tax has been reduced by the special incentive measures under—

   (i) section 10(4), 10(4A), 10(6)(viia), 10(15)(iv), 10(28), 10A, 32A, 33A, 35B, 54E, 80HH, 80HHA, 80-I or 80L of the Income-tax Act, 1961 (43 of 1961);

   (ii) any other provision which may subsequently be enacted granting a reduction of tax which the competent authorities of the Contracting States agree to be for the purposes of economic development.

6. Where under this Convention a resident of a Contracting State is exempt from tax in that Contracting State in respect of income derived from the other Contracting State, then the first-mentioned Contracting State may, in calculating tax on the remaining income of that person, apply the rate of tax which would have been applicable if the income exempted from tax in accordance with this Convention had not been so exempted.

CHAPTER V
SPECIAL PROVISIONS

ARTICLE 24
NON-DISCRIMINATION

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities in the same circumstances.
3. Nothing contained in this Article shall be construed as obliging a Contracting State to grant persons not resident in that State any personal allowances, reliefs, reductions and deductions for taxation purposes which are by law available only to persons who are so resident.
4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected in the same circumstances.
5. In this article, the term "taxation" means taxes which are the subject of this Convention.

ARTICLE 25
MUTUAL AGREEMENT PROCEDURE

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident. This case must be presented within three years of the date of receipt of notice of the action which gives rise to taxation not in accordance with the Convention.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the laws of the Contracting States.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

[ARTICLE 26
EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information (including documents or certified copies thereof) as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.
2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that Contracting 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, 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 authorizes such use.
3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

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

(b) to supply information including documents and certified copies thereof which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

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

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.]

[ARTICLE 26A

ASSISTANCE IN THE COLLECTION OF TAXES

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Article 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

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

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

4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provision 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 owned by a person who has a right to prevent its collection.

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

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

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

(a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or

(b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection, the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

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

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

(b) to carry out measures which would be contrary to public policy (ordre public);

(c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;

(d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.]

ARTICLE 27

DIPLOMATIC AND CONSULAR ACTIVITIES

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

[ARTICLE 27A

LIMITATION OF BENEFITS

1. A resident of a Contracting State shall not be entitled to the benefits of Article 13(3B) of this Convention if its affairs were arranged with the primary purpose to take advantage of the benefits in Article 13(3B) of this Convention.

2. A shell/conduit company that claims it is a resident of a Contracting State shall not be entitled to the benefits of Article 13(3B) of this Convention. A shell/conduit company is any legal entity falling within the definition of resident with negligible or nil business operations or with no real and continuous business activities carried out in that Contracting State.

3. A resident of a Contracting State is deemed to be a shell/conduit company if its expenditure on operations in that Contracting State is less than Mauritian Rs.1,500,000 or Indian Rs. 2,700,000 in the respective Contracting State as the case may be, in the immediately preceding period of 12 months from the date the gains arise.

4. A resident of a Contracting State is deemed not to be a shell/conduit company if:

(a) it is listed on a recognized stock exchange of the Contracting State; or

(b) its expenditure on operations in that Contracting State is equal to or more than MauritianRs.1,500,000 or Indian Rs.2,700,000 in the respective Contracting State as the case may be, in the immediately preceding period of 12 months from the date the gains arise.

Explanation: The cases of legal entities not having bona fide business activities shall be covered by Article27A(1) of the Convention.]

CHAPTER VI

FINAL PROVISIONS

ARTICLE 28

ENTRY INTO FORCE

Each of the Contracting State shall notify to the other completion of the procedures required by its law for the bringing into force of this Convention. The Convention shall enter into force on the date of the later of these notifications and shall thereupon have effect—

(a) in India, in respect of income and capital gains assessable for any assessment year commencing on or after 1st April, 1983 ;

(b) in Mauritius, in respect of income and capital gains assessable for any assessment year commencing on or after 1st July, 1983.

ARTICLE 29

TERMINATION

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

(a) in India, in respect of income and capital gains assessable for the assessment year commencing on 1stday of April in the second calendar year next following the calendar year in which the notice is given, and subsequent years;

(b) in Mauritius, in respect of income and capital gains assessable for the assessment year commencing on 1st day of July in the second calendar year next following the calendar year in which the notice is given, and subsequent years.

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

DONE on this 24th day of August, 1982 at Port Louis on two original copies each in Hindi and English languages, both the texts being equally authentic. In case of divergence between the two texts, the English text shall be the operative one.

PROTOCOL

PROTOCOL AMENDING THE CONVENTION BETWEEN THE GOVERNMENT OF THEREPUBLIC OF INDIA AND THE GOVERNMENT OF MAURITIUS FOR THE AVOIDANCE OFDOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXESON INCOME AND CAPITAL GAINS, AND FOR THE ENCOURAGEMENT OF MUTUAL TRADEAND INVESTMENT, SIGNED AT PORT LOUIS ON 24TH AUGUST 1982

The Government of the Republic of India and the Government of the Republic of Mauritius,

Desiring to amend the Convention between the Government of the Republic of India and the Government of Mauritius for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains, and for the encouragement of mutual trade and investment, signed at Port Louis on 24th August, 1982 (hereinafter referred to as "the Convention");

Have agreed as follows:

ARTICLE 1

Article 5 (Permanent Establishment) of the Convention shall be amended by inserting in paragraph 2 the following new sub-paragraph:

"(j) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or connected project) for a period or periods aggregating more than 90 days within any 12-month period."

ARTICLE 2

Article 11 (Interest) of this Convention shall be amended by:

(i) replacing paragraph 2 with the following:

"However, subject to provisions of paragraphs 3, 3A and 4 of this Article, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 7.5 per cent of the gross amount of the interest,";

(ii) deleting the paragraph 3(c); and

(iii) inserting a new paragraph 3A as follows:

"Interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by any bank resident of the other Contracting State carrying on bona fide banking business. However, this exemption shall apply only if such interest arises from debt- claims existing on or before 31st March, 2017."

ARTICLE 3

The Convention is amended by adding after Article 12 the following new Article:

"ARTICLE 12A
FEES FOR TECHNICAL SERVICES

1. Fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such fees for technical services may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the beneficial owner of the fees for technical services is a resident of

the other Contracting State the tax so charged shall not exceed 10 per cent of the gross amount of the fees for technical services.

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

4. The provisions of paragraph 1 and 2 shall not apply if the beneficial owner of the fees for technical services being a resident of a Contracting State, carries on business in the other Contracting State in which the fees for technical services arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

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

ARTICLE 4

Article 13 (Capital Gains) of the Convention shall be amended with effect from 1.4.2017, by:

(i) inserting - new paragraphs 3A and 3B as follows:

"3A. Gains from the alienation of shares acquired on or after 1st April 2017 in a company which is resident of a Contracting State may be taxed in that State.

3B. However, the tax rate on the gains referred to in paragraph 3A of this Article and arising during the period beginning on 1st April, 2017 and ending on 31st March, 2019 shall not exceed 50% of the tax rate applicable on such gains in the State of residence of the company whose shares are being alienated"; and

(ii) replacing the existing paragraph 4 with the following:

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

ARTICLE 5

Article 22 (Other Income) of the Convention shall be amended by inserting after paragraph 2 the following new paragraph:

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

ARTICLE 6

Article 26 (Exchange of Information or Document) of the Convention shall be replaced by the following Article:

"ARTICLE 26

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information (including documents or certified copies thereof) as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that Contracting 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, 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 authorizes such use.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:
   (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
   (b) to supply information including documents and certified copies thereof which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
   (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).
4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.
5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person."

ARTICLE 7

The Convention is amended by adding after Article 26 the following new Article:

"ARTICLE 26A

ASSISTANCE IN THE COLLECTION OF TAXES

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Article 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.
2. The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political sub-divisions or local authorities, insofar as the taxation thereunder is not contrary to this Convention or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.
3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.
4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provision 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 owned by a person who has a right to prevent its collection.
5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.
6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall only be brought before the courts or administrative bodies of that State. Nothing in this Article shall be construed as creating or providing any right to such proceedings before any court or administrative body of the other Contracting State.

7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be -
   (a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or
   (b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection, the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.
8. In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:
   (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
   (b) to carry out measures which would be contrary to public policy (ordre public);
   (c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
   (d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State."

ARTICLE 8

The Convention is amended by adding after Article 27 the following new Article:

"ARTICLE 27A

LIMITATION OF BENEFITS

1. A resident of a Contracting State shall not be entitled to the benefits of Article 13(3B) of this Convention if its affairs were arranged with the primary purpose to take advantage of the benefits in Article 13(3B) of this Convention.
2. A shell/conduit company that claims it is a resident of a Contracting State shall not be entitled to the benefits of Article 13(3B) of this Convention. A shell/ conduit company is any legal entity falling within the definition of resident with negligible or nil business operations or with no real and continuous business activities carried out in that Contracting State.
3. A resident of a Contracting State is deemed to be a shell/conduit company if its expenditure on operations in that Contracting State is less than Mauritian Rs.1,500,000 or Indian Rs. 2,700,000 in the respective Contracting State as the case may be, in the immediately preceding period of 12 months from the date the gains arise.
4. A resident of a Contracting State is deemed not to be a shell/conduit company if:
   (a) it is listed on a recognized stock exchange of the Contracting State; or
   (b) its expenditure on operations in that Contracting State is equal to or more than MauritianRs.1,500,000 or Indian Rs.2,700,000 in the respective Contracting State as the case may be, in the immediately preceding period of 12 months from the date the gains arise.

Explanation:

The cases of legal entities not having bona fide business activities shall be covered by Article 27A (1) of the Convention.

ARTICLE 9

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 Protocol. This Protocol shall enter into force on the date of the later of these notifications.
2. The provisions of Article 1, 2, 3, 5 and 8 of the Protocol shall have effect:
   (a) in the case of India, in respect of income derived in any fiscal year beginning or after 1 April next following the date on which the Protocol enters into force;
   (b) in the case of Mauritius, in respect of income derived in any fiscal year beginning on or after 1 July next following the date on which the Protocol enters into force;
3. The provisions of Article 4 of this Protocol shall have effect in both Contracting States for assessment year 2018-19 and subsequent assessment years.
4. The provisions of Article 6 and 7 of this Protocol shall have effect from the date of entry into force of the Protocol, without regard to the date on which the taxes are levied or the taxable years to which the taxes relate.

In witness whereof the undersigned, duly authorized, have signed this Protocol.

Done in duplicate at Mauritius this 10th day of May 2016, in the English and Hindi languages, both texts equally authentic. In the case of divergent interpretation of the texts, the English text shall prevail.

Clarification regarding agreement for avoidance of double taxation with Mauritius

1. A Convention for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes of income and capital gains was entered into between the Government of India and the Government of Mauritius and was notified on 6-12-1983. In respect of India, the Convention applies from the assessment year 1983-84and onwards.
2. Article 13 of the Convention deals with taxation of capital gains and it has five paragraphs. The first paragraph gives the right of taxation of capital gains on the alienation of immovable property to the country in which the property is situated. The second and third paragraphs deal with right of taxation of capital gains on the alienation of movable property linked with business or professional enterprises and ships and aircrafts.
3. Paragraph 4 deals with taxation of capital gains arising from the alienation of any property other than those mentioned in the preceding paragraphs and gives the right of taxation of capital gains only to that State of which the person deriving the capital gains is a resident. In terms of paragraph 4, capital gains derived by a resident of Mauritius by alienation of shares of companies shall be taxable only in Mauritius according to Mauritius tax law. Therefore, any resident of Mauritius deriving income from alienation of shares of Indian companies will be liable to capital gains tax only in Mauritius as per Mauritius tax law and will not have any capital gains tax liability in India.
4. Paragraph 5 defines 'alienation' to mean the sale, exchange, transfer or relinquishment of the property or the extinguishment of any rights in it or its compulsory acquisition under any law in force in India or in Mauritius.

SYNTHESISED TEXT OF 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 KINGDOM OF NETHERLANDS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

ARTICLE 10

DIVIDENDS

1. Dividends paid by a company which is a resident of one of the States to a resident of the other State may be taxed in that other State.

[2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.]

3. The competent authorities of the States shall by mutual agreement settle the mode of application of paragraph 2.

4. The provisions of paragraph 2 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

5. The term "dividend" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights participating in profits, as well as income from debt-claims participating in profits and income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

6. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of one of the States, carries on business in the other State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

7. Where a company which is a resident of one of the States derives profits or income from the other State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 13

CAPITAL GAINS

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

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

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the State in which the place of effective management of the enterprise is situated. For the purposes of this paragraph, the provisions of paragraph 3 of Article 8A shall apply.

4. **[MODIFIED by paragraph 1 of Article 9 of the MLI]** [Gains derived by a resident of one of the States from the alienation of shares (other than shares quoted on an approved stock exchange) forming part of a substantial interest in the capital stock of a company which is a resident of the other State, the value of which shares is derived principally from immovable property situated in that other State other than property in which the business of the company was carried on, may be taxed in that other State. A substantial interest exists when the resident owns 25 per cent or more of the shares of the capital stock of a company.]

The following paragraph 1 of Article 9 of the MLI applies with respect to paragraph 4 of Article 13 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

[Paragraph 4 of Article 13 of the Convention]:

(a) shall apply if the relevant value threshold is met at any time during the 365 days preceding the alienation; and

(b) shall apply to shares or comparable interests, such as interests in a partnership or trust (to the extent that such shares or interests are not already covered) in addition to any shares or rights already covered by the provisions [of the Convention].

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

   However, gains from the alienation of shares issued by a company resident in the other State which shares form part of at least a 10 per cent interest in the capital stock of that company, may be taxed in that other State if the alienation takes place to a resident of that other State. However, such gains shall remain taxable only in the State of which the alienator is a resident if such gains are realised in the course of a corporate organisation, reorganization, amalgamation, division or similar transaction, and the buyer or the seller owns at least 10 per cent of the capital of the other.

6. The provisions of paragraph 3 shall not affect the right of each of the States to levy according to its own law at tax on gains from the alienation of shares or 'jouissance' rights in a company, the capital of which is wholly or partly divided into shares and which under the laws of that State is a resident of that State, derived by an individual who is a resident of the other State and has been a resident of the first-mentioned State in the course of the last five years preceding the alienation of the shares or 'jouissance' rights.

PROTOCOL

At the moment of signing the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, this day concluded between the Kingdom of the Netherlands and the Republic of India, the undersigned have agreed that the following provisions shall form an integral part of the Convention.

I. AD ARTICLE 7

1. In respect of paragraphs 1 and 2 of Article 7, where an enterprise of one of the States sells goods or merchandise or carries on business in the other State through a permanent establishment situated therein, the profits of that permanent establishment shall not be determined on the basis of the total amount received by the enterprise, but shall be determined only on the basis of the remuneration which is attributable to the actual activity of the permanent establishment for such sales or business. Especially, in the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, when the enterprise has a permanent establishment, the profits of such permanent establishment shall not be determined on the basis of the total amount of the contract, but shall be determined only on the basis of that part of the contract which is effectively carried out by the permanent establishment in the State where the permanent establishment is situated. The profits related to that part of the contract which is carried out by the head office of the enterprise shall be taxable only in the State of which the enterprise is a resident.

2. It is understood that with respect to paragraph 2 of Article 7, no profits shall be attributed to a permanent establishment by reason of the facilitation of the conclusion of foreign trade or loan agreements or mere signing thereof.

3. Where the law of the State in which a permanent establishment is situated imposes in accordance with the provisions of subparagraph (a) of paragraph 3 of Article 7 a restriction on the amount of the executive and general administrative expenses which may be allowed as a deduction in determining the profits of such permanent establishment, it is understood that in determining the profits of such permanent establishment the deduction in respect of such executive and general administrative expenses in no case shall be less than what is allowable under the Indian Income-tax Act as on the date of signature of this Convention.

II. AD ARTICLE 8A

It is understood that in case the percentage as is specified in section 44B of the Indian Income-tax Act as on the date of signature of this Convention for the purpose of determining the amount of shipping profits is reduced by any change in the Indian law, the percentage as is mentioned in sub-paragraph (b) of paragraph 2 of Article 8A will be reduced in the same proportion.

III. AD ARTICLE 9

It is understood that the fact that associated enterprises have concluded arrangements, such as cost-sharing arrangements or general services agreements, for or based on the allocation of executive, general administrative, technical and commercial expenses, research and development expenses and other similar expenses, is not in itself a condition as meant in paragraph 1 of Article 9.

IV. AD ARTICLES 10, 11 AND 12

1. Where tax has been levied at source in excess of the amount of tax chargeable under the provisions of Article 10, 11 or 12, applications for the refund of the excess amount of tax have to be lodged with the competent authority of the State having levied the tax, within a period of three years after the expiration of the calendar year in which the tax has been levied.
2. If after the signature of this convention under any Convention or Agreement between India and a third State which is a member of the OECD India should limit its taxation at source on dividends, interests, royalties, fees for technical services or payments for the use of equipment to a rate lower or a scope more restricted than the rate or scope provided for in this Convention on the said items of income, then as from the date on which the relevant Indian Convention or Agreement enters into force the same rate or scope as provided for in that Convention or Agreement on the said items of income shall also apply under this Convention.

V. AD ARTICLE 12

It is understood that in case India applies a levy, not being a levy covered by Article 2, such as the Research and Development Cess, on payments meant in Article 12, and if after the signature of this Convention under any Convention or Agreement between India and a third State which is a member of the OECD India should give relief from such levy, directly, by reducing the rate or the scope of the levy, either in full or in part, or, indirectly, by reducing the rate of the scope of the Indian tax allowed under the Convention or Agreement in question on payments as meant in article 12 of this Convention with the levy, either in full or in part, then, as from the date on which the relevant Indian Convention or Agreement enters into force, such relief as provided for in that Convention or agreement shall also apply under this Convention.

VI. AD ARTICLE 16

It is understood that 'bestuurder' or 'commissaris' of a Netherlands company means persons, who are nominated as such by the general meeting of shareholders or by any other competent body of such company and are charged with the general management of the company and the supervision thereof, respectively.

VII. AD ARTICLE 23

It is understood that for the computation of the reduction mentioned in paragraph 2 of Article 23, the items of capital referred to in paragraph 1 of Article 22 shall be taken into account for the value thereof reduced by the value of the debts secured by mortgage on the capital and the items of capital referred to in paragraph 2 of Article 22 shall be taken into account for the value thereof reduced by the value of the debts pertaining to the permanent establishment or fixed base.

IN WITNESS whereof the undersigned, duly authorised thereto, have signed this Protocol. DONE at New Delhi this thirtieth day of July, 1988, in duplicate, in the Hindi, Netherlands and English languages, the three texts being equally authentic. In case of divergence between the Netherlands and Hindi texts, the English text shall be the operative one.

AMENDING NOTIFICATION NO. SO 693(E), DATED 30-8-1999

WHEREAS the Convention between the Republic of India and the Kingdom of the Netherlands for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital came into force on January 21, 1989, after the notification by both the Contracting State 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 1964) 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 Division) Number G.S.R. 382(E), dated March 27, 1989, shall be given effect to in the Union of India;

AND WHEREAS article IV of the protocol dated July 30, 1988, to the aforesaid Convention provides that if after the signature of the aforesaid Convention under any Convention or Agreement 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 relevant Indian Convention or Agreement enters into force the same rate or scope as provided for in that Convention or Agreement on the said items of income shall also apply under this Convention;

AND WHEREAS in the Convention between India and Germany which entered into force on October 26, 1996, the Convention between India and Sweden which entered into force on December 25, 1997, the Convention between India and the Swiss Confederation which entered into force on October 19, 1994, and the Convention between India and the United States of America which entered into force on December 18, 1990, which states are members of the Organisation for Economic Cooperation 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 the Netherlands on the said items of income;

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 modifications shall be made in the Convention notified by the said notification which are necessary for implementing the aforesaid Convention between India and the Netherlands, namely:

I. With effect from April 1, 1997, for the existing paragraph 2 of article 10 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 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 April 1, 1997, for the existing paragraph 2 of article 11 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 10 per cent of the gross amount of the interest."

III. With effect from April 1, 1997, for the existing article 12 relating to royalty, fees for technical services and payments for the use of equipment the following article shall be read:

"ARTICLE 12

ROYALTIES AND FEES FOR TECHNICAL SERVICES

1. Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and according to the laws of that State; but if the beneficial owner of the royalties or fees for technical services is a resident of the other Contracting State, the tax so charged shall not exceed:
   (a) in the case of royalties referred to in sub-paragraph (a) of paragraph 4 and fees for technical services as defined in this article (other than services described in sub-paragraph (b) of this paragraph):
      (i) during the first five taxable years for which this Convention has effect,—
         (A) 15 per cent of the gross amount of the royalties or fees for technical services as defined in this article, where the payer of the royalties or fees is the Government of that Contracting State, a political subdivision or a public sector company; and
         (B) 20 per cent of the gross amount of the royalties or fees for technical services in all other cases; and
      (ii) during the subsequent years, 15 per cent of the gross amount of royalties or fees for technical services; and
   (b) in the case of royalties referred to in sub-paragraph (b) of paragraph 4 and fees for technical services as defined in this article that are ancillary and subsidiary to the enjoyment of the property for which payment is received under paragraph 4(b) of this article, 10 per cent of the gross amount of the royalties or fees for technical services.
3. The competent authorities of the States shall by mutual agreement settle the mode of application of paragraph 2.
4. The term "royalties" as used in this article means:

(a) payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including motion picture films and works on film or video-tape for use in connection with television, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience; and

(b) payments of any kind received as consideration for the use of, or the right to use industrial, commercial or scientific equipment, other than payments derived by an enterprise described in paragraph 1 of articles 8 and 8A (shipping and air transport) from activities described in paragraph 2(a) of article 8 or paragraph 4(b) of article 8A.

5. For purposes of this article, "fees for technical services" means payments of any kind to any person in consideration for the rendering of any technical or consultancy services (including through the provision of services of technical or other personnel) if such services:

(a) are ancillary and subsidiary to the application or enjoyment of the right, property or information for which a payment described in paragraph 4 of this article is received; or

(b) make available technical knowledge, experience, skill, know-how or processes or consist of the development and transfer of a technical plan or technical design.

6. Notwithstanding paragraph 5, "fees for technical services" does not include amounts paid:

(a) for services that are ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of property other than a sale described in paragraph 4(a);

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

(c) for teaching in or by educational institutions;

(d) for services for the personal use of the individual or individuals making the payment; or

(e) to an employee of the person making the payments or to any individual or partnership for professional services as defined in article 14 (independent personal services) of this Convention.

7. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of one of the States, carries on business in the other State, in which the royalties or fees for technical services arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the royalties or fees for technical services are effectively connected with such permanent establishment or fixed base. In such case, the provisions of article 7 or article 14, as the case may be, shall apply.

8. Royalties or fees for technical services shall be deemed to arise in one of the States when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties or fees for technical services, whether he is a resident of one of the States or not, has in one of the States a permanent establishment or a fixed base in connection with which the contract under which the royalties or fees for technical services are paid was concluded, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

9. here, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of royalties or fees for technical services, having regard to the royalties or fees for technical services for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In such case, the excess part of the payment shall remain taxable according to the laws of each State, due regard being had to the other provisions of this Convention."

IV. With effect from April 1, 1995, for paragraph 6 of article 12 relating to royalties and fees for technical services referred to in paragraph III above, the following paragraph shall be read:

"6. Notwithstanding paragraph 5, 'fees for technical services' does not include amounts paid:

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

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

(c) for teaching in or by educational institutions;

(d) for services for the personal use of the individual or individuals, making the payment; or

(e) to an employee of the person making the payments or to any individual or partnership for professional services as defined in article 14 (independent personal services) of this Convention."

V. With effect from April 1, 1997, for paragraph 2 of article 12, relating to royalties and fees for technical services referred to in paragraph III above the following paragraph shall be read:

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

VI. With effect from April 1, 1998, for paragraph 4 of article 12 relating to royalties and fees for technical services referred to in paragraph III above the following paragraph shall be read:

"4. The term 'royalties' as used in this article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trademark, design or model, plan, secret formula or process, for information concerning industrial, commercial or scientific experience."

VII. The memorandum of understanding and the confirmation of understanding, dated September 12, 1989, with reference to paragraph 4 of article 12 of the Indo-USA Double Taxation Avoidance Convention (DTAC), will apply mutatis mutandis for the purpose of paragraphs III, IV, V and VI above.

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 REPUBLIC OF SINGAPORE

FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE

PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

ARTICLE 8

SHIPPING AND AIR TRANSPORT

1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.
2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency engaged in the operation of ships or aircraft.
3. Interest on funds connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft, and the provisions of Article 11 shall not apply in relation to such interest.
4. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall mean profits derived from the transportation by sea or air of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of the ships or aircraft, including profits from:
   (a) the sale of tickets for such transportation on behalf of other enterprises;
   (b) the incidental lease of ships or aircraft used in such transportation;
   (c) the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) in connection with such transportation; and
   (d) any other activity directly connected with such transportation.

ARTICLE 24

LIMITATION OF RELIEF

1. Where this Agreement provides (with or without other conditions) that income from sources in a Contracting State shall be exempt from tax, or taxed at a reduced rate in that Contracting State and under the laws in force in the other Contracting State the said income is subject to tax by reference to the amount thereof which is remitted to or received in that other Contracting State and not by reference to the full amount thereof, then the exemption or reduction of tax to be allowed under this Agreement in the first-mentioned Contracting State shall apply to so much of the income as is remitted to or received in that other Contracting State.
2. However, this limitation does not apply to income derived by the Government of a Contracting State or any person approved by the competent authority of that State for the purpose of this paragraph. The term "Government" includes its agencies and statutory bodies.

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

DONE in duplicate at India this twenty-fourth day of January, one thousand nine hundred and ninety-four in the Hindi and English languages, both texts being equally authentic. In the case of divergence between the two texts, the English text shall be the operative one.

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

The Government of the Republic of Slovenia and the Government of the Republic of India, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and with a view to promoting economic cooperation between the two countries,

ARTICLE 10
DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:
   (a) **[MODIFIED by paragraph 1 of Article 8 of the MLI]** [5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 10 per cent of the capital of the company paying the dividends;]

The following paragraph 1 of Article 8 of the MLI applies to subparagraph a) of paragraph 2 of Article 10 of this Convention:

ARTICLE 8 OF THE MLI
DIVIDEND TRANSFER TRANSACTIONS

[Subparagraph a of paragraph 2 of Article 10 of the Convention] shall apply only if the ownership conditions described in those provisions are met throughout a 365 day period that includes the day of the payment of the dividends (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that holds the shares or that pays the dividends).

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

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

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

IN WITNESS WHEREOF the Plenipotentiaries of the two Contracting States, duly authorized thereto, have signed this Protocol.

DONE in duplicate at Ljubljana on this 13th day of January, 2003, in the Slovenian, Hindi and English languages, all the texts being equally authentic. In case of divergence among the texts, the English text shall be the operative one.

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

AND

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THEGOVERNMENT OF THE UNITED ARAB EMIRATES FOR THE AVOIDANCE OF DOUBLETAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ONINCOME AND ON CAPITAL

The Government of the Republic of India and the Government of the United Arab Emirates desiring to promote mutual economic relations by concluding an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital have agreed as follows:

The following preamble text described in paragraph 1 of Article 6 of the MLI is included in the preamble of the Agreement:

ARTICLE 6 OF THE MLI

PURPOSE OF A COVERED TAX AGREEMENT

Intending to eliminate double taxation with respect to the taxes covered by this Agreement 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 Agreement for the indirect benefit of residents of third jurisdictions)

ARTICLE 1

PERSONAL SCOPE

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

ARTICLE 2

TAXES COVERED

1. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital including taxes on gains from alienation of movable or immovable property as well as on capital appreciation.
2. The existing taxes to which the Agreement shall apply are:
   (a) In United Arab Emirates:
      (i) income-tax;
      (ii) corporation tax;
      (iii) wealth-tax
      (hereinafter referred to as "U.A.E. tax");
   (b) In India:
      (i) the income-tax including any surcharge thereon;
      (ii) the surtax; and
      (iii) the wealth-tax
      (hereinafter referred to as "Indian tax").
3. This Agreement shall also apply to any identical or substantially similar taxes on income or capital which are imposed at Federal or State level by either Contracting State in addition to, or in place of, the taxes referred to in paragraph 2 of this Article. The competent authorities of the Contracting State shall notify each other of any substantial changes which are made in their respective taxation laws.

ARTICLE 3

GENERAL DEFINITIONS

1. In this Agreement, unless the context otherwise requires:
   (a) the term "India" means the territory of India and includes the territorial sea and air space above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdictions, according to the Indian law and in accordance with international law;
   (b) the term "U.A.E." means the United Arab Emirates and when used in a geographical sense, means all the territory of the United Arab Emirates including its territorial sea in which the U.A.E. laws relating to taxation apply and any area beyond its territorial sea within which the United Arab Emirates has

sovereign rights of exploration or the exploitation or resources of the seabed and its sub-soil and superjacent water resources in accordance with international law;

(c) the terms "a Contracting State" and "the other Contracting State" mean U.A.E. or India as the context requires;

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

(e) the term "person" includes an individual, a company, and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting State;

(f) the term "company" means any body corporate or any entity which is treated as a company or body corporate under the taxation laws in force in the respective Contracting States;

(g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively, an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(h) the term "national" means:

(i) in the case of U.A.E. all individuals possessing the nationality of U.A.E. in accordance with U.A.E. laws and any legal person, partnership and other body corporate deriving its status as such from U.A.E. laws;

(ii) in the case of India, any individual possessing the nationality of India and any legal person, partnership, or association deriving its status as such from the laws in force in India;

(i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State except when the ship or aircraft is operated solely between places in the other Contracting State;

(j) the term "competent authority" means:

(i) in the case of U.A.E., the Minister of Finance and Industry of his authorized representative; and

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

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

ARTICLE 4
RESIDENT

1. For the purposes of this Agreement the term 'resident of a Contracting State' means:

(a) in the case of India: any person who, under the laws of India, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. This term, however, does not include any person who is liable to tax in India in respect only of income from sources in India; and

(b) in the case of the United Arab Emirates: an individual who is present in the UAE for a period or periods totalling in the aggregate at least 183 days in the calendar year concerned, and a company which is incorporated in the UAE and which is managed and controlled wholly in UAE.

2. For the purposes of paragraph 1:

(a) The Republic of India, its political sub-divisions or local authority thereof shall be deemed to be resident of the Republic of India;

(b) The United Arab Emirates and its political sub-divisions or local Governments shall be deemed to be resident of the United Arab Emirates;

(c) Government institutions shall be deemed, according to affiliation, to be resident of the Republic of India or the United Arab Emirates. Any institution shall be deemed to be a Government institution which has been created by the Government of one of the Contracting States or of its political sub-divisions or local authority/Governments, which are wholly owned and controlled directly or indirectly by the Government of the Contracting State or political sub-division or local authority/Governments which are recognized as such by mutual agreement of the competent authorities of the Contracting States;

(d) For the purposes of this article, Abu Dhabi Investment Authority is recognized as a resident of the United Arab Emirates.

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

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

(b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;

(c) if he has an habitual abode in both States or in either of them, he shall be deemed to be a resident of the State of which he is a national;

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

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

ARTICLE 5
PERMANENT ESTABLISHMENT

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

2. The term "permanent establishment" includes especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

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

(g) a farm or plantation;

(h) a building site or construction or assembly project or supervisory activities in connection therewith, but only where such site, project or activity continues for a period of more than 9months;

(i) the furnishing of services including consultancy services by an enterprise of a Contracting State through employees or other personnel in the other Contracting State, provided that such activities continue for the same project or connected project for a period or periods aggregating more than 9 months within any twelve-month period.

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

(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

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

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

4. Notwithstanding the provisions of paragraphs (1) and (3), where a person - other than an agent of independent status to whom paragraph (5) applies - is acting on behalf of an enterprise and has, and habitually exercises in a Contracting State an authority to conclude contracts on behalf of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to the purchase of goods or merchandise for the enterprise.

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

ARTICLE 6
INCOME FROM IMMOVABLE PROPERTY

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

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term 'shall in any case' include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph (1) shall also apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraphs (1) and (3) shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

ARTICLE 7
BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph (3), where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it isa permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere, in accordance with the provisions of and subject to the limitations of the tax laws of that State.
4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph (2) shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the methods of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by the permanent establishment of goods or merchandise for the enterprise.
6. For the purposes of preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8
SHIPPING

1. Profits derived by an enterprise of a Contracting State from the operation by that enterprise of ships in international traffic shall be taxable only in that State.
2. For the purposes of this Article, profits from the operation of ships in international traffic shall mean profits derived by an enterprise described in paragraph (1) from the transportation by sea of passengers, mail, livestock or goods and shall include:
   (a) the charter or rental of ships incidental to such transportation;
   (b) the rental of containers and related equipments used in connection with the operation of ships in international traffic;
   (c) the gains derived from the alienation of ships, containers and related equipments owned and operated by the enterprise in international traffic.
3. For the purposes of this Article, interest on funds connected with the operation of ships in international traffic shall be regarded as profits derived from the operation of such ships and the provisions of Article11 shall not apply in relation to such interest.
4. The provisions of paragraphs (1), (2) and (3) shall apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9
ASSOCIATED ENTERPRISES

Where:

(a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

The following paragraph 1 of Article 17 of the MLI applies and supersedes the provisions of 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 Contracting State and the competent authorities of the Contracting State shall if necessary consult each other.

ARTICLE 10
DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed 10 per cent.
3. The term "dividends" as used in this Article means income from shares of other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.
4. The provisions of paragraphs (1) and (2) shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11
INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such interest may be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed:
   (a) 5 per cent of the gross amount of the interest if such interest is paid on a loan granted by a bank carrying on a bona fide banking business or by a similar financial institution; and
   (b) 12.5 per cent of the gross amount of the interest in all other cases.

3. Notwithstanding the provisions of paragraph (2) interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by:
   (i) the Government, a political sub-division or a local authority of the other Contracting State; or
   (ii) the Central Bank of the other Contracting State.
4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from Government securities and income from bonds or debentures including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
5. The provisions of paragraphs (1) and (2) shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
6. Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.
7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 12
ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 10 per cent of the gross amount of such royalties.
3. The term "royalties" as used in this Article means payment of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematography films, or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience but do not include royalties or other payments in respect of the operation of mines or quarries or exploitation of petroleum or other natural resources.
4. The provisions of paragraphs (1) and (2) shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein or performs in that other State independent personal services from a fixed base situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.
6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 13
CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in paragraph (2) of Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such fixed base may be taxed in that other State.
3. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.
4. Gains from the alienation of shares other than those mentioned in paragraph 3 in a company which is a resident of a Contracting State may be taxed in that State.
5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4 above shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14
INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State, except in the following circumstances when such income may also be taxed in the other Contracting State:
   (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or
   (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in the relevant "previous year" or "year of income", as the case may be; in that case only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.
2. The term "professional services" includes independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, surgeons, lawyers, engineers, architects, dentists and accountants.

ARTICLE 15
DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16, 17, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph (1), remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
   (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate183 days in the relevant "previous year" or "year of income", as the case may be; and
   (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
   (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State shall be taxable only in that State.

ARTICLE 16
DIRECTORS' FEES

Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the Board of Directors of a Company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 17
INCOME EARNED BY ENTERTAINERS AND ATHLETES

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer such as a theatre, motion picture, radio or television artiste or a musician or as an athlete, from his personal activities as such exercised in the other Contracting State may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or an athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.
3. Notwithstanding the provisions of paragraph (1), income derived by an entertainer or an athlete who isa resident of a Contracting State from his personal activities as such exercised in the other Contracting State, shall be taxable only in the first-mentioned Contracting State, if the activities in the other Contracting State are supported wholly or substantially from the public funds of the first-mentioned Contracting State, including any of its political sub-divisions or local authorities.
4. Notwithstanding the provisions of paragraph (2) and Articles 7, 14 and 15, where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such in a Contracting State accrues not to the entertainer or athlete himself but to another person, that income shall be taxable only in the other Contracting State, if that other person is supported wholly or substantially from the public funds of that other State, including any of its political sub-divisions or local authorities.

ARTICLE 18
REMUNERATION AND PENSIONS IN RESPECT OF GOVERNMENT SERVICE

1. (a) Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.
   (b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who:
      (i) is a national of that State; or
      (ii) did not become a resident of that State solely for the purpose of rendering the services.
2. (a) Any pension paid by, or out of funds created by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.
   (b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of that other State.
3. The provisions of Articles 15, 16 and 17 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

ARTICLE 19
NON-GOVERNMENT PENSIONS AND ANNUITIES

1. Any pension, other than a pension referred to in Article 18, or any annuity derived by a resident of a Contracting State from sources within the other Contracting State may be taxed only in the first-mentioned Contracting State.
2. The term "pension" means a periodic payment made in consideration of past services or by way of compensation for injuries received in the course of performance of services.
3. The term "annuity" means a stated sum payable periodically at stated times during life of 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 20
STUDENTS, TRAINEES AND APPRENTICES

1. An individual who is a resident of a Contracting State and who is temporarily present in the other Contracting State solely as a student at a recognised university, college, school or other educational institution in that other Contracting State or as a business or technical apprentice therein, for a period not exceeding six years from the date of his first arrival in that other Contracting State in connection with that visit, shall be exempt from tax in that other Contracting State on—
   (a) all remittances from the first-mentioned Contracting State for the purposes of his maintenance, education or training; and

(b) any remuneration (not exceeding 20,000 Indian rupees or its equivalent sum in U.A.E. currency per annum) for personal services rendered in that other Contracting State with a view to supplementing the resources available to him for such purposes.

2. An individual who is a resident of a Contracting State and who is temporarily present in the other Contracting State for the purpose of study, research or training solely as a recipient of a grant, allowance or award from the Government of either of the Contracting States or from a scientific, educational, religious or charitable organisation or under a technical assistance programme entered into by the Government of either of the Contracting States for a period not exceeding three years from the date of his first arrival in that other Contracting State in connection with that visit shall be exempt from tax in that other Contracting State on—

(a) the amount of such grant, allowance or award;

(b) all remittances from the first-mentioned Contracting State for the purposes of his maintenance, education or training; and

(c) any remuneration (not exceeding 20,000 Indian rupees or its equivalent sum in U.A.E. currency per annum) in respect of services in that other Contracting State if the services are performed in connection with his study, research, training or are incidental thereto.

3. An individual who is a resident of a Contracting State and who is temporarily present in the other Contracting State solely as an employee of, or under contract with an enterprise of the first-mentioned Contracting State solely for the purpose of acquiring technical, professional or business experience from a person other than such enterprise, for a period not exceeding twelve months from the date of his first arrival in that other Contracting State in connection with that visit shall be exempt from tax in that other Contracting State on—

(a) all remittances from the first-mentioned Contracting State for the purposes of his maintenance, education or training; and

(b) any remuneration, so far as it is not in excess of 20,000 Indian rupees or its equivalent sum in U.A.E. currency per annum, for personal services rendered in that other Contracting State, provided such services are in connection with the acquisition of such experience.

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

5. For the purposes of this Article and Article 21,

(a) (i) an individual shall be deemed to be a resident of India if he is resident in India in the 'previous year' in which he visits UAE or in the immediately preceding 'previous year';

(ii) an individual shall be deemed to be a resident of UAE if, immediately before visiting India, he is a resident of UAE;

(b) the term "recognised" in relation to a university, college, school or other educational institution in a Contracting State shall, in the case of doubt, be determined by the competent authority of that State.

ARTICLE 21
PROFESSORS, TEACHERS AND RESEARCHERS

1. An individual who is a resident of a Contracting State immediately before making a visit to the other Contracting State, and who, at the invitation of any university, college, school or other similar educational institution, which is recognised by the Government, a political sub-division or a local or statutory authority of that State, visits that other Contracting State for a period not exceeding two years solely for the purpose of teaching or research or both at such educational institution, shall be exempt from tax in that other Contracting State on his remuneration for such teaching or research.

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

ARTICLE 22
OTHER INCOME

1. Subject to the provisions of paragraph (2), items of income of a resident of a Contracting State, wherever arising, which are not expressly dealt with in the foregoing articles of this Agreement, shall be taxable only in that Contracting State.

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

ARTICLE 23
CAPITAL

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that State.

2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.

3. Capital represented by ships operated in international traffic and by movable property pertaining to the operation of such ships, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

ARTICLE 24
INCOME OF GOVERNMENT AND INSTITUTIONS

1. Notwithstanding the provisions of Article 13, the Government of one Contracting State shall be exempt from tax, including capital gains tax, in the other Contracting State in respect of any income derived by such Government from that other Contracting State.
2. For the purposes of paragraph (1) of this Article, the term "Government"—
   (a) in the case of India, means the Government of India, and shall include:
      (i) the political sub-divisions, the local authorities, the local administrations, and the local Governments;
      (ii) the Reserve Bank of India;
      (iii) any such institution or body as may be agreed from time to time between the two Contracting States;
   (b) in the case of U.A.E., means the Government of the United Arab Emirates, and shall include:
      (i) the political sub-divisions, the local authorities, the local administrations, and the local Governments;
      (ii) The Central Bank of the United Arab Emirates, Abu Dhabi Investment Authority and Abu Dhabi Fund for Economic Development;
      (iii) any such institution or body as may be agreed from time to time between the two Contracting States.

ARTICLE 25
ELIMINATION OF DOUBLE TAXATION

1. The laws in force in either of the Contracting States shall continue to govern the taxation of income and capital in the respective Contracting States except where express provisions to the contrary are made in this Agreement.
2. Where a resident of India derives income or owns capital which, in accordance with the provisions of this Agreement, may be taxed in U.A.E., India shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in U.A.E. whether directly or by deduction; and as a deduction from the tax on the capital of that resident an amount equal to the capital tax paid in U.A.E. Such deduction in either case shall not, however, exceed that part of the income-tax or capital tax (as computed before the deduction is given) which is attributable, as the case may be, to the income or the capital which may be taxed in U.A.E. Further, when such resident is a company by which surtax is payable in India, the deduction in respect of income-tax paid in U.A.E. shall be allowed in the first instance from income-tax payable by the company in India and as to the balance, if any, from the surtax payable by it in India.
3. Subject to the laws of the U.A.E. where a resident of the U.A.E. derives income which in accordance with the provisions of this Agreement may be taxed in India, the U.A.E. shall allow as a deduction from the tax on income of that person an amount equal to the tax on income paid in India. Such deductions hall not, however, exceed that part of income-tax as computed before the deduction is given, which is attributable to the income which may be taxed in the U.A.E.
4. For the purpose of paragraph (3), the term 'tax paid in India' shall be deemed to include the amount of Indian tax which would have been paid if the Indian tax had not been exempted or reduced in accordance with the special incentive measures under the provisions of the Income-tax Act, 1961, which are designed to promote economic development in India, effective on the date of signature of this Agreement, or which may be introduced in the future in modification of, or in addition to, the existing provisions for promoting economic development in India, and such other incentive measures which maybe agreed upon from time to time by the Contracting States.

5. Where, in accordance with any provision of the Agreement, income derived or capital owned by a resident of a Contracting State is exempt from tax in that State, such State may, nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

ARTICLE 26
NON-DISCRIMINATION

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances and under the same conditions are or may be subjected.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other Contracting State than the taxation levied on enterprises of that Contracting State carrying on the same activities in the same circumstances or under the same conditions. This provision shall not be construed as preventing a Contracting Statefrom charging the profits of a permanent establishment which a company of the other Contracting State has in the first mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7.
3. The provisions of this Article shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected in the same circumstances and under the same conditions.
5. In this Article, the term "taxation" means taxes which are the subject of this Agreement.

ARTICLE 27
MUTUAL AGREEMENT PROCEDURE

1. **[The second sentence of paragraph 1 of Article 27 of this Agreement is REPLACED 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 Agreement, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident. [This case must be presented within two years of the date of receipt of notice of the action which gives rise to taxation not in accordance with the Agreement.]

The following second sentence of paragraph 1 of Article 16 of the MLI replaces the second sentence of paragraph 1 of Article 27 of this Agreement:

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 Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to avoidance of taxation not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the national laws of the Contracting States.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. When it seems advisable in order to reach agreement to have an oral exchange of opinion, such exchange may take place through a commission consisting of representatives of the competent authorities of the Contracting States. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of applying this Agreement.

ARTICLE 28

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement.
2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.
3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:
   (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
   (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
   (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).
4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.
5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

ARTICLE 29

LIMITATION OF BENEFITS

[REPLACED by paragraph 1 of Article 7 of the MLI] [An entity which is a resident of a Contracting State shall not be entitled to the benefits of this Agreement if the main purpose or one of the main purposes of the creation of such entity was to obtain the benefits of this Agreement that would not be otherwise available. The cases of legal entities not having bona fide business activities shall be covered by this Article.]

The following paragraph 1 of Article 7 of the MLI replaces Article 29 of this Agreement

:

ARTICLE 7 OF THE MLI

PREVENTION OF TREATY ABUSE (PRINCIPAL PURPOSES TEST PROVISION)

Notwithstanding any provisions of the Agreement, a benefit under the Agreement shall not be granted in respect of an item of income 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 Agreement.

ARTICLE 30

DIPLOMATIC AND CONSULAR ACTIVITIES

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

ARTICLE 31

ENTRY INTO FORCE

1. Each of the Contracting States shall notify to the other completion of the proceedings required by its law for the bringing into force of this Agreement. The Agreement shall enter into force on the date of the later of these notifications and shall thereupon have effect—
   (a) in the United Arab Emirates:

in respect of income derived on or after the 1st January next following the calendar year in which the Agreement enters into force and in respect of capital which is held at the expiry of the calendar year next following that in which the agreement enters into force or subsequent years;

(b) in India:

in respect of income arising in any 'previous year' beginning on or after 1st April next following the calendar year in which the Agreement enters into force and in respect of capital which is held at the expiry of any 'previous year' beginning on or after 1st April next following the calendar year in which the Agreement enters into force."

ARTICLE 32

TERMINATION

This Agreement shall remain in force indefinitely, but either of the Contracting States may, on or before30th June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give to the other Contracting State, through diplomatic channels written notice of termination. In such event, the Agreement shall cease to have effect—

(a) in the United Arab Emirates:

in respect of income derived on or after 1st January next following the calendar year in which the notice of termination is given and in respect of capital which is held at the expiry of the calendar year next following that in which the notice of termination is given or subsequent years;

(b) in India:

in respect of income arising in any 'previous year' beginning on or after 1st April next following the calendar year in which the notice of termination is given and in respect of capital which is held at the expiry of any 'previous year' beginning on or after 1st April next following the calendar year in which the notice of termination is given.

IN WITNESS whereof, the undersigned, being duly authorised thereto, have signed this Agreement.

DONE in two originals at New Delhi on this Wednesday, 29th day of April, One Thousand Nine Hundred and Ninety-two corresponding to the 27th day of Shawwal 1412 H in the Hindi, Arabic and English languages, all texts being equally authentic. In case of divergence amongst the texts, the English text shall be the operative one.

PROTOCOL

At the signing today of the Agreement between the Government of the Republic of India and the Government of the United Arab Emirates for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income and on capital, the undersigned have agreed upon the following provisions which shall form an integral part of this Agreement:

(i) Subject to the provisions of Article 5, nothing in this Agreement shall affect the right of the Government of the United Arab Emirates, its political sub-divisions, local authorities or local Governments to apply its own laws related to the taxation of income derived from the petroleum and natural resources; such activities will be taxed according to the laws of the United Arab Emirates;

(ii) Notwithstanding the provisions of Article 6 and Article 23, the residential property owned by a national of a Contracting State and occupied for self-residence in the other Contracting State shall be exempt in the other Contracting State from the taxes covered by this Agreement.

IN WITNESS whereof, the undersigned, being duly authorised thereto, have signed this Protocol.

DONE in two originals at New Delhi on this Wednesday, 29th day of April, One Thousand Nine Hundred and Ninety-two corresponding to the 27th day of Shawwal 1412 H in the Hindi, Arabic and English languages, all texts being equally authentic. In case of divergence amongst the texts, the English text shall be the operative one.

SYNTHESISED TEXT

OF

THE MLI AND THE CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND 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

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 SPECIFIC ACTIVITY 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.

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

ARTICLE 12

ROYALTIES AND FEES FOR INCLUDED SERVICES

1. Royalties and fees for included services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

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

   (a) in the case of royalties referred to in sub-paragraph (a) of paragraph 3 and fees for included services as defined in this Article [other than services described in sub-paragraph (b) of this paragraph]:

      (i) during the first five taxable years for which this Convention has effect,

         (a) 15 per cent of the gross amount of the royalties or fees for included services as defined in this Article, where the payer of the royalties or fees is the Government of that Contracting State, a political sub-division or a public sector company; and

         (b) 20 per cent of the gross amount of the royalties or fees for included services in all other cases; and

      (ii) during the subsequent years, 15 per cent of the gross amount of royalties or fees for included services; and

   (b) in the case of royalties referred to in sub-paragraph (b) of paragraph 3 and fees for included services as defined in this Article that are ancillary and subsidiary to the enjoyment of the property for which payment is received under paragraph 3(b) of this Article, 10 per cent of the gross amount of the royalties or fees for included services.

3. The term "royalties" as used in this Article means:

   (a) payments of any kind received as a consideration for the use of, or the right to use, any copyright of a literary, artistic, or scientific work, including cinematograph films or work on film, tape or other means of reproduction for use in connection with radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience, including gains derived from the alienation of any such right or property which are contingent on the productivity, use, or disposition thereof; and

   (b) payments of any kind received as consideration for the use of, or the right to use, any industrial, commercial, or scientific equipment, other than payments derived by an enterprise described in paragraph 1 of Article 8 (Shipping and Air Transport) from activities described in paragraph 2(c) or 3 of Article 8.

4. For purposes of this Article, "fees for included services" means payments of any kind to any person in consideration for the rendering of any technical or consultancy services (including through the provision of services of technical or other personnel) if such services:

   (a) are ancillary and subsidiary to the application or enjoyment of the right, property or information for which a payment described in paragraph 3 is received; or

   (b) make available technical knowledge, experience, skill, know-how, or processes, or consist of the development and transfer of a technical plan or technical design.

5. Notwithstanding paragraph 4, "fees for included services" does not include amounts paid:

   (a) for services that are ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of property other than a sale described in paragraph 3(a);

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

   (c) for teaching in or by educational institutions;

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

   (e) to an employee of the person making the payments or to any individual or firm of individuals (other than a company) for professional services as defined in Article 15 (Independent Personal Services).

6. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for included services, being a resident of a Contracting State, carries on business in the other Contracting State, in which the royalties or fees for included services arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the royalties or fees for included services are attributable to such permanent establishment or fixed base. In such case the

provisions of Article 7 (Business Profits) or Article 15 (Independent Personal Services), as the case may be shall apply.

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

(b) Where under sub-paragraph (a) royalties or fees for included services do not arise in one of the Contracting States, and the royalties relate to the use of, or the right to use, the right or property, or the fees for included services relate to services performed, in one of the Contracting States, the royalties or fees for included services shall be deemed to arise in that Contracting State.

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

PROTOCOL

At the signing today of the Convention between the United States of America and the Republic of India for the Avoidance of Double Taxation and the prevention of Fiscal Evasion with respect to Taxes on Income, the undersigned have agreed upon the following provisions, which shall form an integral part of the Convention:

I. AD ARTICLE 5

It is understood that where an enterprise of a Contracting State has a permanent establishment in the other Contracting State in accordance with the provisions of paragraph 2(j), 2(k) or 2(l) of Article 5 (Permanent Establishment), and the time period referred to in that paragraph extends over two taxable years, a permanent establishment shall not be deemed to exist in a year, if any, in which the use, site, project or activity, as the case may be, continues for a period or periods aggregating less than 30 days in that taxable year. A permanent establishment will exist in the other taxable year, and the enterprise will be subject to tax in that other Contracting State in accordance with the provisions of Article 7 (Business Profits), but only on income arising during that other taxable year.

II. AD ARTICLE 7

Where the law of the Contracting State in which a permanent establishment is situated imposes, in accordance with the provisions of paragraph 3 of Article 7 (Business Profits), a restriction on the amount of executive and general administrative expenses which may be allowed as a deduction in determining the profits of such permanent establishment, it is understood that in making such a determination of profits the deduction in respect of such executive and general administrative expenses in no case shall be less than that allowable under the Indian Income-tax Act as on the date of signature of this Convention.

III. AD ARTICLES 7, 10, 11, 12, 15 AND 23 –

It is understood that for the implementation of paragraphs 1 and 2 of Article 7 (Business Profits), paragraph 4 of Article 10 (Dividends), paragraph 5 of Article 11 (Interest), paragraph 6 of Article 12 (Royalties and Fees for Included Services), paragraph 1 of Article 15 (Independent Personal Services), and paragraph 2 of Article 23 (Other Income), any income attributable to a permanent establishment or fixed base during its existence is taxable in the Contracting State in which such permanent establishment or fixed base is situated even if the payments are deferred until such permanent establishment or fixed base has ceased to exist.

IV. AD ARTICLE 12

It is understood that fees for included services, as defined in paragraph 4 of Article 12 (Royalties and Fees for Included Services) will, in accordance with United States law, be subject to income-tax in the United States based on net income and, when earned by a company, will also be subject to the taxes described in paragraph 1 of Article 14 (Permanent Establishment Tax). The total of these taxes which may be imposed on such fees, however, may not exceed the amount computed by multiplying the gross fee by the appropriate tax rate specified in sub-paragraph (a) or (b) whichever is applicable or paragraph 2 of Article 12.

V. AD ARTICLE 14

It is understood that references in paragraph 1 of Article 14 (Permanent Establishment tax) to profits that are subject to tax in the United States under Article 6 [Income from Immovable Property (Real Property)], under Article 12 (Royalties and Fees for Included Services), as fees for included services as defined in that Article, or under Article 13 (Gains) of this Convention, are intended to refer only to cases in which the profits in question are subject to United States tax based on net income (i.e., by virtue of being effectively connected, or being treated as effectively connected, with the conduct of a trade or business in the United States). Any income which is subject to tax under those Articles based on gross income is not subject to tax under Article 14.

IN WITNESS whereof, the undersigned, being duly authorised by their respective Governments, have signed this Protocol.

DONE at New Delhi in duplicate, this 12th day of September, 1989, in the English and Hindi languages, both texts equally authentic. In case of divergence between the two texts, the English text shall be the operative one.

Excellency:

I have the honour to refer to the Convention between the Government of the United States of America and the Government of the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income which was signed today (hereinafter referred to as "the Convention") and to confirm, on behalf of the Government of the United States of America, the following understandings reached between the two Governments:

Both sides agree that a tax sparing credit shall not be provided in Article 25 (Relief from Double Taxation) of the convention at this time. However, the Convention shall be promptly amended to incorporate a tax sparing credit provision if the United States hereafter amends its laws concerning the provision of tax sparing credits, or the United States reaches agreement on the provision of a tax sparing credit with any other country.

Both sides also agree that, for purposes of paragraph 4(c) of Article 5 (Permanent Establishment) of the Convention, a person shall be considered to habitually secure orders in a Contracting State, wholly or almost for an enterprise, only if:

1. such person frequently accepts orders for goods or merchandise on behalf of the enterprise;
2. substantially all of such person's sales related activities in the Contracting State consist of activities for the enterprise;
3. such person habitually represents to persons offering to buy goods or merchandise that acceptance of an order by such person constitutes the agreement of the enterprise to supply goods or merchandise under the terms and conditions specified in the order; and
4. the enterprise takes actions that give purchasers the basis for a reasonable belief that such person has authority to bind the enterprise.

I have the honour to request Your Excellency to confirm the foregoing understandings of Yours Excellency's Government.

Accept, Excellency, the renewed assurances of my highest consideration.

Excellency:

I have the honour to acknowledge receipt of Your Excellency's Note of today's date, which reads as follows:

> "I have the honour to refer to the Convention between the Government of the United States of America and the Government of the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income which was signed today (hereinafter referred to as "the Convention") and to confirm, on behalf of the Government of the United States of America, the following understandings reached between the two Governments:
>
> Both sides agree that a tax sparing credit shall not be provided in Article 25 (Relief from Double Taxation) of the Convention at his time. However, the Convention shall be promptly amended to incorporate a tax sparing credit provision if the United States hereafter amends its laws concerning the provision of tax sparing credits, or the United States reaches agreement on the provision of a tax sparing credit with any other country.

Both sides also agree that, for purposes of paragraph 4(c) of Article 5 (Permanent Establishment) of the convention, a person shall be considered to habitually secure orders in a Contracting State, wholly or almost wholly for an enterprise, only if:

1. such person frequently accepts orders for goods or merchandise on behalf of the enterprise;
2. substantially all of such person's sales related activities in the Contracting State consist of activities for the enterprise;
3. such person habitually represents to persons offering to buy goods or merchandise that acceptance of an order by such person constitutes the agreement of the enterprise to supply goods or merchandise under the terms and conditions specified in the order; and

4. the enterprise takes actions that give purchasers the basis for a reasonable belief that such person has authority to bind the enterprise.

I have the honour to confirm the understandings contained in Your Excellency's Note, on behalf of the Government of the Republic of India.

Accept, Excellency, the renewed assurances of my highest consideration.

Embassy of the United States of America

New Delhi, September 12, 1989.

Excellency:

I have the honour to refer to the Convention signed today between the United States of America and the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on Income and to inform you on behalf of the United States of America of the following:

During the course of the negotiations leading to conclusion of the Convention signed today, the negotiators developed and agreed upon a memorandum of understanding intended to give guidance both to the taxpayers and the tax authorities of our two countries in interpreting aspects of Article 12 (Royalties and Fees for Included Services) relating to the scope of included services. This memorandum of understanding represents the current views of the United States Government with respect to these aspects of Article 12, and it is my Government's understanding that it also represents the current views of the Indian Government. It is also my Government's view that as our Government gain experience in administering the Convention, and particularly Article 12, the competent authorities may develop and publish amendments to the memorandum of understanding and further understandings and interpretations of the Convention.

If this position meets with the approval of the Government of the Republic of India, this letter and your reply thereto will indicate that our Governments share a common view of the purpose of the memorandum of understanding relating to Article 12 of the Convention.

Accept, Excellency, the renewed assurances of my highest consideration.

Government of India, Ministry of Finance

(Department of Revenue)

New Delhi, September 12, 1989.

Excellency:

I have the honour to acknowledge receipt of Your Excellency's Note of today's date, which reads as follows:

> "I have the honour to refer to the Convention signed today between the United States of America and the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and to inform on behalf of the United States of America of the following:
>
> During the course of the negotiations leading to conclusion of the Convention signed today, the negotiators developed and agreed upon a memorandum of understanding intended to give guidance both to the taxpayers and the tax authorities of our two countries in interpreting aspects of Article 12 (Royalties and Fees for Included Services) relating to the scope of included services. The memorandum of understanding represents the current views of the United States Government with respect to these aspects of Article 12, and it is my Government's understanding that it also represents the current views of the Indian Government. It is also my Government's view that as our Governments gain experience in administering the Convention, and particularly Article 12, the competent authorities may develop and publish amendments to the memorandum of understanding and further understandings and interpretations of the Convention.
>
> If this position meets with the approval of the Government of the Republic of India, this letter and your reply thereto will indicate that our Governments share a common view of the purpose of the memorandum of understanding relating to Article 12 of the Convention."

I have the honour to confirm the understanding contained in Your Excellency's Note, on behalf of the Government of the Republic of India.

Accept, Excellency, the renewed assurances of my highest consideration.

Paragraph 4 (in general)

This memorandum describes in some detail the category of services defined in paragraph 4 of Article 12 (Royalties and Fees for Included Services). It also provides examples of services intended to be covered within the definition of included services and those intended to be excluded, either because they do not satisfy the tests of paragraph 4, or because, notwithstanding the fact that they meet the tests of paragraph 4, they are dealt with under paragraph 5. The examples in either case are not intended as an exhaustive list but rather as illustrating a few typical cases. For case of understanding, the example in this memorandum described U.S. persons providing services to Indian persons, but the rules of Article 12 are reciprocal in application.

Article 12 includes only certain technical and consultancy services. But technical services, we mean in this context services requiring expertise in a technology. By consultancy services, we mean in this context advisory services. The categories of technical and consultancy services are to some extent overlapping because a consultancy service could also be a technical service. However, the category of consultancy services also includes an advisory service, whether or not expertise in a technology is required to perform it.

Under paragraph 4, technical and consultancy services are considered included services only to the following extent: (1) as described in paragraph 4(a), if they are ancillary and subsidiary to the application or enjoyment of a right, property or information for which are royalty payment is made; or (2) as described in paragraph 4(b), if they make available technical knowledge, experience, skill, know-how, or processes, or consist of the development and transfer of a technical plan or technical design. Thus, under paragraph 4(b), consultancy services which are not of a technical nature cannot be included services.

Paragraph 4(a)

Paragraph 4(a) of Article 12 refers to technical or consultancy services that are ancillary and subsidiary to the application or enjoyment of any right, property, or information for which a payment described in paragraph 3(a) or (b) is received. Thus, paragraph 4(a) includes a technical and consultancy services that are ancillary and subsidiary to the application or enjoyment of an intangible for which a royalty is received under a licence or sale as described in paragraph 3(a), as well as those ancillary and subsidiary to the application or enjoyment of industrial, commercial, or scientific equipment for which a royalty is received under a lease as described in paragraph 3(b).

It is understood that, in order for a service fee to be considered "ancillary and subsidiary" to the application or enjoyment of some right, property, or information for which a payment described in paragraph 3(a) or (b) is received, the service must be related to the application or enjoyment of the right, property, or information. In addition, the clearly predominant purpose of the arrangement under which the payment of the service fee and such other payments are made must be the application or enjoyment of the right, property, or information described in paragraph 3. The question of whether the service is related to the application or enjoyment of right, property, or information described in paragraph 3 and whether the clearly predominant purpose of the arrangement is such application or enjoyment must be determined by reference to the facts and circumstances of each case. Factors which may be relevant to such determination (although not necessarily controlling) include:

1. The extent to which the services in question facilitate the effective application or enjoyment of the right, property, or information described in paragraph 3;
2. The extent to which such services are customarily provided in the ordinary course of business arrangements involving royalties described in paragraph 3;
3. Whether the amount paid for the services (or which would be paid by parties operating at arm's length) is an insubstantial portion of the combined payments for the services and the right, property, or information described in paragraph 3;
4. Whether the payment made for the services and the royalty described in paragraph 3 are made under a single contract (or a set of related contracts); and
5. Whether the person performing the services is the same person as, or a related person to, the person receiving the royalties described in paragraph 3 [for this purpose, persons are considered related if their relationship is described in Article 9 (Associated Enterprises) or if the person providing the service is doing so in connection with an overall arrangement which includes the payer and recipient of the royalties].

To the extent that services are not considered ancillary and subsidiary to the application or enjoyment of some right, property, or information for which a royalty payment under paragraph 3 is made, such services shall be considered "included services" only to the extent that they are described in paragraph 4(b).

Example 1

Facts:

A U.S. manufacturer grants rights to an Indian company to use manufacturing processes in which the transferor has exclusive rights by virtue of process, patents or the protection otherwise extended by law to the owner of a process. As part of the contractual arrangement, the U.S. manufacturer agrees to provide certain consultancy services to the Indian company in order to improve the effectiveness of the latter's use of the processes. Such services include, for example, the provision of information and advice on sources of supply for materials needed in the manufacturing process, and on the development of sales and service literature for the manufactured product. The payment allocable to such services do not form a substantial part of the total consideration payable under the contractual arrangement. Are the payments for these services fees for "included services"?

Analysis:

The payments are fees for included services. The services described in this example are ancillary and subsidiary to the use of manufacturing process protected by law as described in paragraph 3(a) of Article 12 because the services are related to the application or enjoyment of the intangible and the granting of the right to use the intangible as the clearly predominant purpose of the arrangement. Because the services are ancillary and subsidiary to the use of the manufacturing process, the fees for these services are considered for included services under paragraph 4(a) of Article 12, regardless of whether the services are described in paragraph 4(b).

Example 2

Facts:

An Indian manufacturing company produces a product that must be manufactured under sterile conditions using machinery that must be kept completely free of bacterial or other harmful deposits. A U.S. company has developed a special cleaning process for removing such deposits from that type of machinery. The U.S. company enters in to a contract with the Indian company under which the former will clean the latter's machinery on a regular basis. As part

of the arrangement, the U.S. company leases to the Indian company a piece of equipment which allows the Indian company to measure the level of bacterial deposits on its machinery in order for it to known when cleaning is required. Are the payments for the services fees for included services?

Analysis:

In this example, the provision of cleaning services by the U.S. company and the rental of the monitoring equipment are related to each other. However, the clearly predominant purpose of the arrangement is the provision of cleaning services. Thus, although the cleaning services might be considered technical services, they are not "ancillary and subsidiary" to the rental of the monitoring equipment. Accordingly, the cleaning services are not "included services" within the meaning of paragraph 4(a).

Paragraph 4(b)

Paragraph 4(b) of Article 12 refers to technical or consultancy services that make available to the person acquiring the services, technical knowledge, experience, skill, know-how, or processes, or consist of the development and transfer of a technical plant or technical design to such person. (For this purpose, the person acquiring the service shall be deemed to include an agent, nominee, or transferee of such person). This category is narrower than the category described in paragraph 4(a) because it excludes any service that does not make technology available to the person acquiring the service. Generally speaking, technology will be considered "made available" when the person acquiring the service is enabled to apply the technology. The fact that the provision of the service may require technical input by the person providing the service does not per se mean that technical knowledge, skills, etc., are made available to the person purchasing the service, within the meaning of paragraph 4(b). Similarly, the use of a product which embodies technology shall not per se be considered to make the technology available.

Typical categories of services that generally involve either the development and transfer of technical plants or technical designs, or making technology available as described in paragraph 4(b), include:

1. Engineering services (including the sub-categories of bio-engineering and aeronautical, agricultural, ceramics, chemical, civil, electrical, mechanical, metallurgical, and industrial engineering);
2. Architectural services; and
3. Computer software development.

Under paragraph 4(b), technical and consultancy services could make technology available in a variety of settings, activities and industries. Such services may, for examples, relate to any of the following areas:

1. Bio-technical services;
2. Food processing;
3. Environmental and ecological services;
4. Communication through satellite or otherwise;
5. Energy conservation;
6. Exploration or exploitation of mineral oil or natural gas;
7. Geological surveys;
8. Scientific services; and
9. Technical training.

The following examples indicate the scope of the conditions in paragraph 4(b):

Example 3

Facts:

A U.S. manufacturer has experience in the use of a process for manufacturing wallboard for interior walls of houses which is more durable than the standard products of its type. An Indian builder wishes to produce this product for its own use. It rents a plant and contracts with the U.S. company to send experts to India to show engineers in the Indian company how to produce the extra-strong wallboard. The U.S. contractors work with the technicians in the Indian firm for a few months. Are the payments to the U.S. firm considered to be payments for "included services"?

Analysis:

The payments would be fees for included services. The services are of a technical or consultancy nature; in the example, they have elements of both types of services. The services make available to the Indian company technical knowledge, skill and processes.

Example 4

Facts:

A U.S. manufacturer operates a wallboard fabrication plant outside India. An Indian builder hires the U.S. company to produce wallboard at that plant for a fee. The Indian company provides the raw materials, and the U.S. manufacturer fabricates the wallboard in its plant, using advanced technology. Are the fees in this example payments for included services?

Analysis:

The fees would not be for included services. Although the U.S. company is clearly performing a technical service, no technical knowledge, skill, etc., are made available to the Indian company, nor is there any development and transfer of a technical plant or design. The U.S. company is merely performing a contract manufacturing service.

Example 5

Facts:

An Indian firm owns inventory control software for use in its chain of retail outlets throughout India. It expands its sales operation by employing a team of travelling salesmen to travel around the countryside selling the company's wares. The company wants to modify its software to permit the salesmen to assess the company's central computers for information on what products are available in inventory and when they can be delivered. The Indian firm hires a U.S. computer programming firm to modify its software for this purpose. Are the fees which the Indian firm pays treated as fees for included services?

Analysis:

The fees are for included services. The U.S. company clearly performs a technical service for the Indian company, and it transfers to the Indian company the technical plan (i.e., the computer programme) which it has developed.

Example 6

Facts:

An Indian vegetable oil manufacturing company wants to produce a cholesterol-free oil from a plant which produces oil normally containing cholesterol. An American company has developed a process for refining the cholesterol out of the oil. The Indian company contracts with the U.S. company to modify the formulas which it uses so as to eliminate the cholesterol, and to train the employees of the Indian company in applying the new formulas. Are the fees paid by the Indian company for included services?

Analysis:

The fees are for included services. The services are technical, and the technical knowledge is made available to the Indian company.

Example 7

Facts:

The Indian vegetable oil manufacturing firm has mastered the science of producing cholesterol-free oil and wishes to market the product worldwide. It hires an American marketing consulting firm to do a computer simulation of the world market for such oil and to adverse it on marketing strategies. Are the fees paid to the U.S. company for included services?

Analysis:

The fees would not be for included services. The American company is providing a consultancy service which involves the use of substantial technical skill and expertise. It is not, however, making available to the Indian company any technical experience, knowledge or skill, etc., nor is it transferring a technical plan or design. What is transferred to the Indian company through the service contract is commercial information. The fact that technical skills were required by the performer of the service in order to perform the commercial information service does not make the service a technical service within the meaning of paragraph 4(b).

Paragraph 5

Paragraph 5 of Article 12 describes several categories of services which are not intended to be treated as included services even if they satisfy the tests of paragraph 4. Set forth below are examples of cases where fees would be included under paragraph 4, but are excluded because of the conditions of paragraph 5.

Example 8

Facts:

An Indian company purchases a computer from a U.S. computer manufacturer. As part of the purchase agreement, the manufacturer agrees to assist the Indian company in setting up the computer and installing the operating system, and to ensure that the staff of the Indian company is able to operate the computer. Also, as part of the purchase agreement, the seller agrees to provide, for a period of ten years, any updates to the operating system and any training necessary to apply the update. Both of these service elements to the contract would qualify under paragraph 4(b) as an included service. Would either or both be excluded from the category of included services, under paragraph 5(a), because they are ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of the computer?

Analysis:

The installation assistance and initial training are ancillary and subsidiary to the sale of the computer, and they are also inextricably and essentially linked to the sale. The computer would be of little value to the Indian purchaser without these services, which are most readily and usefully provided by the seller. The fees for installation assistance and initial training, therefore/are not fees for included services, since these services are not the predominant purpose of the arrangement.

The services of updating the operating system and providing associated necessary training may well be ancillary and subsidiary to the sale of the computer, but they are not inextricably and essentially linked to the sale. Without the

upgrades, the computer will continue to operate as it did when purchased, and will continue to accomplish the same functions. Acquiring the updates cannot, therefore, be said to be inextricably and essentially linked to the sale of the computer.

Example 9

Facts:

An Indian hospital purchases an X-ray machine from a U.S. manufacturer. As part of the purchase agreement, the manufacturer agrees to install the machine, to perform an initial inspection of the machine in India, to train hospital staff in the use of the machine, and to service the machine periodically during the usual warranty period (2 years). Under an optional service contract purchased by the hospital, the manufacturer also agrees to perform certain other services throughout the life of the machine, including periodic inspections and repair services, advising the hospital about developments in X-ray film or techniques which could improve the effectiveness of the machine, and training hospital staff in the application of those new developments. The cost of the initial installation, inspection, training and warranty service is relatively minor as compared with the cost of the X-ray machine. Is any of the services described here ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of the X-ray machine?

Analysis:

The initial installation, inspection, and training services in India and the periodic service during the warranty period are ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of the X-ray machine because the usefulness of the machine to the hospital depends on the service, the manufacturer has full responsibility during this period and this cost of the services is a relatively minor component of the contract. Therefore, under paragraph 5(a) these fees are not fees for included services, regardless of whether they otherwise would fall within paragraph 4(b).

Neither the post-warranty period inspection and repair services, nor the advisory and training services relating to new developments are "inextricably and essentially linked" to the initial purchase of the X-ray machine. Accordingly, fees for these services may be treated as fees for included services if they meet the tests of paragraph 4(b).

Example 10

Facts:

An Indian automobile manufacturer decides to expand into the manufacturer of helicopters. It sends a group of engineers from its design staff to a course of study conducted by the Massachusetts Institutes of Technology (MIT) for two years to study aeronautical engineering. The Indian firms pays tuition fees to MIT on behalf of the firm's employees. Is the tuition fee a fee for an included service within the meaning of Article 12?

Analysis:

The tuition fee is clearly intended to acquire a technical service for the firm. However, the fee paid is for teaching by an educational institution, and is, therefore, under paragraph 5(c), not an included service. It is irrelevant for this purpose whether MIT conducts the course on its campus or at some other location.

Example 11

Facts:

As in Example 10, the automobile manufacturer wishes to expand into the manufacturer of helicopters. It approaches an Indian university about establishing a course of study in aeronautical engineering. The university contracts with a U.S. helicopter manufacturer to send an engineer to be a visiting professor of aeronautical engineering on its faculty for a year. Are the amounts paid by the university for these teaching services fees for included services?

Analysis:

The fees are for teaching in an educational institution. As such, pursuant to paragraph 5(c), they are not fees for included services.

Example 12

Facts:

An Indian wishes to install a computerized system in his home to control lighting, heating and air-conditioning, a stereo sound system and a burglar and firm alarm system. He hires an American electrical engineering firm to design the necessary wiring system, adapt standard software, and provide instructions for installations. Are the fees paid to the American firm by the Indian individual fees for included services?

Analysis:

The services in respect of which the fees are paid are of the type which would generally be treated as fees for included services under paragraph 4(b). However, because the services are for the personal use of the individual making the payment, under paragraph 5(d) the payments would not be fees for included services.

Indo-US Double Taxation Avoidance Convention (DTAC) - Suspension of Collection during Mutual Agreement Procedure

Article 27 of the Indo-USA DTAC provides for Mutual Agreement Procedure (MAP) for avoidance of double taxation. Paragraph 4 of article 27 authorises the competent authorities to develop appropriate bilateral procedures, conditions, methods and techniques for implementation of MAP provided for in the article. Accordingly, with a view to avoid the unintended hardship to the taxpayers, as well as for the efficient management of collection of revenue, the Competent

Authorities of India and USA had entered into a Memorandum of Understanding (MoU) regarding suspension of collection during the pendency of MAP.

2. This MoU was brought to the notice of field formation vide Instruction No. 2/2003, dated 28-4-2003 (F. No. 500/56/99-FTD) wherein it was stated that the collection of outstanding taxes in the case of a taxpayer, who is a resident of USA and whose request under MAP is under consideration of the Competent Authorities, shall be kept in abeyance subject to furnishing of a bank guarantee of an amount equal to the amount of tax under dispute and interest accruing thereon as per the provisions of the Income-tax Act.

3. Now references have been received for extending the applicability of MoU to Indian resident entities in cases where Mutual Agreement Procedure has been invoked by the US resident. In order to avoid hardship to Indian resident taxpayers especially in cases involving transfer pricing, where the Indian resident entity is liable to pay taxes on such income which may have been charged to tax in the hands of the associated entity in USA, it has been decided to extend the applicability of the MoU to such Indian resident entities during the course of the pendency of the MAP invoked by a resident of USA.

4. On receipt of a formal request for suspension of collection of outstanding tax in terms of the MoU from a taxpayer being, a resident of USA or an Indian resident entity, in a case where MAP has been invoked through US Competent Authority and the same has been admitted by the Indian Competent Authority, the Assessing Officers are required to keep the enforcement of collection of outstanding taxes in abeyance in respect of such taxpayers—

   (i) after obtaining a confirmation regarding pendency of MAP from the Foreign Tax and Tax Research Division of the Central Board of Direct Taxes and

   (ii) on receipt of a bank guarantee in the model draft format annexed to the MoU for an amount calculated in accordance with the manner indicated therein.

5. All the other conditions of MoU as enumerated in Instruction No. 2 of 2003, dated 28-4-2003 shall remain the same.

6. These instructions are issued under section 119 of the Income-tax Act and the same may be brought to the notice of all the officers in your charge.