

JAPAN

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

Whereas the annexed Convention between the Government of the Republic of India and the Government of Japan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income has come into force on the 29th December, 1989 after the exchange of Instruments of Ratification as required by paragraph 1 of Article 28 of the said Convention.

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

Notification : *No. GSR 101(E), dated 1-3-1990, as amended by Notification Nos. SO 753(E), dated 16-8-2000 (w.r.e.f. 1-10-1999), SO 1136(E), dated 19-7-2006, w.r.e.f. 28-6-2006 and SO 2528(E), dated 8-10-2008, (w.r.e.f. 1-10-2008).*

ANNEXURE

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

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

ARTICLE 1 - This Convention shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2 - 1. The taxes which are the subject of this Convention are :

(a) In Japan :

- (i) the income-tax ; and
- (ii) the corporation tax
(hereinafter referred to as “Japanese tax”) ;

(b) In India :

the income-tax including any surcharge thereon
(hereinafter referred to as “Indian tax”).

2. This Convention shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Convention in addition to, or in place of those referred to in paragraph 1. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws within a reasonable period of time after such changes.

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

- (a) the term 'Japan', when used in a geographical sense, means all the territory of Japan, including its territorial sea, in which the laws relating to Japanese tax are in force, and all the area beyond its territorial sea, including the sea-bed and subsoil thereof, over which Japan has jurisdiction in accordance with international law and in which the laws relating to Japanese tax are in force ;
- (b) the term 'India' means the territory of India including the territorial sea and any other maritime zone in which India has sovereign rights according to the Indian law and in accordance with International law ;
- (c) the terms 'a Contracting State' and 'the other Contracting State' mean Japan or India, as the context requires ;
- (d) the term 'tax' means Japanese tax or Indian tax, as the context requires ;
- (e) the term 'person' includes an individual, a company and any other body of persons ;
- (f) the term 'company' means any body corporate or any entity which is treated as a body corporate for tax purposes ;
- (g) the terms 'enterprise of a Contracting State' and 'enterprise of the other Contracting State' mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State ;
- (h) the term 'nationals' means :
 - (i) in respect of Japan :

all individuals possessing the nationality of Japan and all juridical persons created or organised under the laws of Japan and all organisations without juridical personality treated for the purposes of Japanese tax as juridical persons created or organised under the laws of Japan ;
 - (ii) in respect of India :
 - (a) all individuals possessing the nationality of India ;
 - (b) all legal persons, partnerships and associations deriving their status as such from the laws in force in India ;
- (i) the term 'international traffic' means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State ; and
- (j) the term 'Competent authority' means :
 - (i) in Japan, the Minister of Finance or his authorised representative ;
 - (ii) in India, the Central Government in the Ministry of Finance, Department of Revenue, or their authorised representative.

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

ARTICLE 4 - 1. For the purposes of this Convention, the term 'resident of a Contracting State' means any person who, under the laws of that Contracting State, is liable to tax therein by reason of his domicile, residence, place of head or main office or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph 1 a person is a resident of both Contracting States, then the competent authorities of Contracting States shall determine by mutual agreement the Contracting State of which that person shall be deemed to be a resident for the purposes of this Convention.

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

2. The term 'permanent establishment' includes especially :

- (a) a place of management ;
- (b) a branch ;
- (c) an office ;
- (d) a factory ;
- (e) a workshop ;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources ;
- (g) a warehouse in relation to a person providing storage facilities for others;
- (h) a farm, plantation or other place where agriculture, forestry, plantation or related activities are carried on ;
- (i) a store or other sales outlet ; and
- (j) an installation or structure used for the exploration of natural resources, but only if so used for a period of more than six months.

3. A building site or construction, installation or assembly project constitutes a permanent establishment only if it lasts for more than six months.

4. An enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it carries on supervisory activities in that Contracting State for more than six months in connection with a building site or construction, installation or assembly project which is being undertaken in that Contracting State.

5. Notwithstanding the provisions of paragraphs 3 and 4 an enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it provides services or facilities in that Contracting State for more than six months in connection with the exploration, exploitation or extraction of mineral oils in that Contracting State.

6. Notwithstanding the provisions of the preceding paragraphs of this article, the term 'permanent establishment' shall be deemed not to include :

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

- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise ;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise ;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character.

7. Notwithstanding the provisions of paragraphs 1 and 2, where a person other than an agent of an independent status to whom paragraph 8 applies - is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State, if

- (a) he has and habitually exercises in that Contracting State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to those mentioned in paragraph 6 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph ;
- (b) he has no such authority, but habitually maintains in the first-mentioned Contracting State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise ; or
- (c) he habitually secures orders in the first-mentioned Contracting State, wholly or almost wholly for the enterprise itself or for the enterprise and other enterprises controlling, controlled by, or subject to the same common control as that enterprise.

8. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that Contracting State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

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

ARTICLE 6 - 1. Income derived by a resident of a Contracting State from immovable property situated in the other Contracting State may be taxed in that other Contracting State.

2. The term 'immovable property' shall have the meaning which it has under the laws of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting immovable property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

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

ARTICLE 7 - 1. The profits of an enterprise of a Contracting State shall be taxable only in that Contracting State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in that other Contracting State but only so much of them as is directly or indirectly attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere.

4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this article.

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

6. For the purposes of the provisions of the preceding paragraphs of this article, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other articles of this Convention, then the provisions of those articles shall not be affected by the provisions of this article.

ARTICLE 8 - 1. Profits from the operation of aircraft in international traffic carried on by an enterprise of a Contracting State shall be taxable only in that Contracting State.

2. Profits from the operation of ships in international traffic carried on by an enterprise of a Contracting State shall be taxable only in that Contracting State.

3. Notwithstanding the provisions of paragraph 2, such profits may be taxed in the other Contracting State from which they are derived during a period of first ten taxable years or 'previous years', as the case may be, for which this Convention shall have effect provided that the tax so charged shall not exceed—

(a) during the first five years, 50 per cent,

(b) during the remaining five years, 25 per cent,

of the tax otherwise imposed by the taxation law of that other Contracting State.

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

5. The provisions of this article shall, notwithstanding the provisions of article 2, apply to the enterprise tax in Japan and to any tax similar to the said enterprise tax if and when such a tax is imposed in India.

ARTICLE 9 - 1. Where :

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

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

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

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

ARTICLE 10 - 1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other Contracting State.

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

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

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

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

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

ARTICLE 11 - 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.

¹[2. *However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.*]

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and derived by the Government of the other Contracting State, a political sub-division or a local authority thereof, the Central Bank of that other Contracting State or any financial institution wholly owned by that Government, or by any resident of the other Contracting State with respect to debt-claims guaranteed or indirectly financed by the Government of that other Contracting State, a political sub-division or a local authority thereof, the Central Bank of that other Contracting State or any financial institution wholly owned by that Government shall be exempt from tax in the first-mentioned Contracting State.

4. For the purposes of paragraph 3, the terms ‘the Central Bank’ and ‘financial institution wholly owned by the Government’ mean :

²[(a) in the case of Japan—

(i) the Bank of Japan;

³[(ii) *International business unit of Japan Finance Corporation;*]

- (iii) the Japan International Co-operation Agency; and
- (iv) such other financial institutions the capital of which is wholly owned by the Government of Japan as may be agreed upon from time to time between the Governments of the two Contracting States.]

(b) in the case of India :

- (i) the Reserve Bank of India ;
- (ii) the Export-Import Bank of India ;
- (iii) such other financial institution the capital of which is wholly owned by the Government of India as may be agreed upon from time to time between the Governments of the two Contracting States.

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

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

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

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

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

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

is the beneficial owner of the royalties or fees for technical services, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties or fees for technical services.]

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

4. The term 'fees for technical services' as used in this article means payments of any amount to any person other than payments to an employee of a person making payments and to any individual for independent personal services referred to in article 14, in consideration for the services of a managerial, technical or consultancy nature, including the provisions of services of technical or other personnel.

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

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

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

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

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

3. Unless the provisions of paragraph 2 are applicable, gains derived by a resident of a Contracting State from the alienation of shares of a company which is a resident of the other Contracting State may be taxed in that other Contracting State.

4. Gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic and any property, other than immovable property, pertaining to the operation of such ships or aircraft shall be taxable only in that Contracting State.

5. Gains derived by a resident of a Contracting State from the alienation of any property other than that referred to in paragraphs 1 to 4, shall be taxable only in that Contracting State.

ARTICLE 14 - 1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that Contracting State unless he has a fixed base regularly available to him in the Contracting State for the purpose of performing his activities or he is present in that other Contracting State for a period or periods exceeding in the aggregate 183 days during any taxable year or 'previous year' as the case may be. If he has such a fixed base or remains in that other Contracting State for the aforesaid period or periods, the income may be taxed in that Contracting State but only so much of it as is attributable to that fixed base or is derived in that other Contracting State during the aforesaid period or periods.

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

ARTICLE 15 - 1. Subject to the provisions of articles 16, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that Contracting State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Contracting State.

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

- (a) the recipient is present in that other Contracting State for a period or periods not exceeding in the aggregate 183 days during any taxable year or 'previous year', as the case may be ;
- and

- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of that other Contracting State ; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in that other Contracting State.

(3) Notwithstanding the provisions of paragraphs 1 and 2, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that Contracting State.

ARTICLE 16 - Director's fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other Contracting State.

ARTICLE 17 - 1. Notwithstanding the provisions of articles 14 and 15, income derived by an individual who is a resident of a Contracting State as an entertainer such as a theatre, motion picture, radio or television artist, and a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other Contracting State.

Such income shall, however, be exempt from tax in that other Contracting State if such activities are exercised by an individual who is a resident of the first-mentioned Contracting State pursuant to a special programme for cultural exchange agreed upon between the Governments of the two Contracting States.

2. Where income in respect of personal activities exercised in a Contracting State by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person who is a resident of the other Contracting State, that income may notwithstanding the provisions of articles 7, 14 and 15, be taxed in the first-mentioned Contracting State.

Such income shall, however, be exempt from tax in the first-mentioned Contracting State if such activities are exercised pursuant to a special programme for cultural exchange agreed upon between the Governments of the two Contracting States.

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

ARTICLE 19 - 1. (a) Remuneration other than a pension, paid by a Contracting State, or a political sub-division or a local authority thereof, to an individual in respect of services rendered to that Contracting State, or a political sub-division or a local authority thereof, in the discharge of functions of a governmental nature, shall be taxable only in that Contracting State.

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

- (i) is a national of that other Contracting State; or

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

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

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

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

ARTICLE 20 - Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall be exempt from tax in the first-mentioned Contracting State, provided that such payments are made to him from outside that first-mentioned Contracting State.

ARTICLE 21 - 1. A professor or teacher who makes a temporary visit to a Contracting State for a period not exceeding two years for the purpose of teaching or conducting research at a university, college, school or other accredited educational institution, and who is, or immediately before such visit was, a resident of the other Contracting State shall be taxable only in that other Contracting State in respect of remuneration for such teaching or research.

2. The article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

ARTICLE 22 - 1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing articles of this Convention shall be taxable only in that Contracting State.

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

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

ARTICLE 23 - 1. The laws in force in either of the Contracting States shall continue to govern the taxation of income in the respective Contracting State except where express provisions to the contrary are made in this Convention.

2. Double taxation shall be avoided in the case of India as follows :

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

3. Subject to the laws of Japan regarding the allowance as a credit against Japanese tax of tax payable in any country other than Japan :

- (a) Where a resident of Japan derives income from India which may be taxed in India in accordance with the provisions of this Convention, the amount of Indian tax payable in respect of that income shall be allowed as a credit against the Japanese tax imposed on that resident. The amount of credit, however, shall not exceed that part of the Japanese tax which is appropriate to that income.
- (b) Where the income derived from India is a dividend paid by a company which is a resident of India to a company which is a resident of Japan and which owns not less than 25 per cent either of the voting shares of the company paying the dividend, or of the total shares issued by that company, the credit shall take into account the Indian tax payable by the company paying the dividend in respect of its income.

¹[***]

ARTICLE 24 - 1. Nationals of a Contracting State shall be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other Contracting State in the same circumstances are or may be subjected. This provision shall, notwithstanding the provisions of article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other Contracting State than the taxation levied on enterprises of that other Contracting State carrying on the same activities.

This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of article 9, paragraph 8 of article 11, or paragraph 7 of article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first mentioned Contracting State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned Contracting State are or may be subjected.

5. In this article, the term 'taxation' means taxes which are the subject of this Convention.

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

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the provisions of this Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic laws of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Convention. They may also consult together for the elimination of double taxation in cases not provided for in this Convention.

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

ARTICLE 26 - 1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is not contrary to the provisions of this Convention, or for the prevention of

fiscal evasion or fraud with respect to such taxes. Any information so exchanged shall be treated as secret and shall be disclosed only to persons or authorities, including Courts, involved in the assessment or collection of, the enforcement or prosecution in respect of, the taxes covered by this Convention or the determination of appeals in relation thereto.

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

- (a) to carry out administrative measures at variance with the laws and the administrative practice of that or of the other Contracting State ;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State ; or
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

ARTICLE 27 - Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

ARTICLE 28 - 1. This convention shall be ratified and the instruments of ratification shall be exchanged at Tokyo as soon as possible.

2. This Convention shall enter into force on the thirtieth day after the date of the exchange of instruments of ratification and shall have effect :

- (a) In Japan :
as regards income for any taxable year beginning on or after the first day of January of the calendar year next following that in which this Convention enters into force ; and
- (b) in India :
as regards income for any 'previous year' beginning on or after the first day of April of the calendar year next following that in which this Convention enters into force.

3. The Agreement between Japan and India for the Avoidance of Double Taxation in respect of Taxes on Income signed at New Delhi on January 5, 1960 shall terminate and cease to have effect in respect of income to which this Convention applies under the provisions of paragraph 2.

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

- (a) In Japan :
as regards income for any taxable year beginning on or after the first day of January of the calendar year next following that in which in notice of termination is given; and
- (b) In India :

as regards income for any 'previous year' beginning on or after the first day of April of the calendar year next following that in which the notice of termination is given.

In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed this Convention.

Done at New Delhi in duplicate on this seventh day of March, 1989 in the Hindi, Japanese and English languages, all the three texts being equally authentic. In case of any divergence of interpretations, the English text shall prevail.

For the Government of Japan :

For the Government of the Republic of India :

(Indian Note)

Excellency,

I have the honour to refer to sub-paragraph (c) of paragraph 3 of article 23 of the Convention between the Government of the Republic of India and the Government of Japan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income which was signed today and to confirm, on behalf of the Government of the Republic of India, the following understanding reached between the Government of the Republic of India and the Government of Japan :

The measures set forth in the following sections of the Income-tax Act, 1961 (43 of 1961) of India, are "the special incentive measures designed to promote economic development in India, effective on the date of signature of this Convention" referred to in the said sub-paragraph :

(i) Section 10(15)(iv)

- relating to exemption from tax on certain interest ;

(ii) Section 10A

- relating to special, provision in respect of newly established industrial undertakings in free trade zones ;

(iii) Section 32AB

- relating to investment deposit account, etc., with respect to investment in plant and machinery, etc. ;

(iv) Section 80HH

- relating to reduction in respect of profits and gains from newly established industrial undertakings or hotel business in backward areas ;

(v) Section 80-I

- relating to reduction in respect of profits and gains from industrial undertakings after a certain date, etc.

I have further the honour to request Your Excellency to be good enough to confirm the foregoing undertaking on behalf of the Government of Japan.

I avail myself to this opportunity to extend to Your Excellency the assurance of my highest consideration.

(Japanese Note)

Excellency,

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

“(Indian Note)”

I have further the honour to confirm the undertaking contained in Your Excellency's Note, on behalf of the Government of Japan.

I avail myself of this opportunity to renew to Your Excellency, the assurance of my highest consideration.

(Japanese Note)

Excellency,

I have the honour to refer to the Convention between the Government of Japan and the Government of the Republic of India for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income which was signed today and to confirm, on behalf of the Government of Japan the following understanding reached between the two Governments :

2. With reference to sub-paragraph (*d*) of paragraph 1 of article 3 of the Convention the term 'tax' shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty imposed relating to these taxes.
3. With reference to sub-paragraph (*e*) of paragraph 1 of article 3 of the Convention, in the case of India, the term 'person' shall include a partnership and a Hindu undivided family.
4. With reference to paragraph 5 of article 5 of the Convention, the term "services or facilities" referred to therein shall include the supply of plant and machinery on hire or to be used in the exploration, exploitation or extraction of mineral oils.
5. It is understood that the provisions of paragraph 6 of article 5 of the Convention shall apply to the use of facilities solely for the purpose of delivery of goods or merchandise belonging to the enterprise or to the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of delivery unless sales of such goods or merchandise are effected in that other Contracting State.

6. With reference to paragraph 1 of article 7 of the Convention, it is understood that by using the term 'directly or indirectly attributable to the permanent establishment', profits arising from transactions in which the permanent establishment has been involved shall be regarded as attributable to the permanent establishment to the extent appropriate to the part played by the permanent establishment in those transactions. It is also understood that profits shall be regarded as attributable to the permanent establishment to the above-mentioned extent, even when the contract or order relating to the sale or provision of goods or services in question is made or placed directly with the overseas head office of the enterprise rather than with the permanent establishment.

7. With reference to paragraph 3 of article 7 of the Convention, it is understood that in India the deductions in respect of the executive and general administrative expenses as referred to in the said paragraph shall be allowed in accordance with the domestic law of India, but such deductions shall in no case be less than what are allowable under the Indian Income-tax Act as effective on the date of signature of this Convention.

8. With reference to paragraph 3 of article 7 of the Convention, no deduction shall be allowed in respect of amounts paid or charged (other than reimbursement of actual expenses) by a permanent establishment of an enterprise to the head office of the enterprise or any other offices thereof, by way of :

- (a) royalties, fees or other similar payments in return for the use of patents or other rights, or for the use of know-how;
- (b) commission or other charges, for specific services performed or for management; and
- (c) interest on moneys lent to the permanent establishment; except where the enterprise is a banking institution.

9. With reference to article 8 of the Convention,—

- (i) interests on funds temporarily deposited in connection with the operation of ships or aircrafts in international traffic shall be regarded as income from the operation of such ships or aircraft and the provisions of article 11 shall not apply in relation to such interest; and
- (ii) income from the operation of ships or aircraft includes income derived from the use maintenance or rental of containers (including traders and related equipment for the transport of containers) in connection with the transport of goods or merchandise in international traffic.

10. With reference to paragraph 5 of article 8 of the Convention, if a local authority of India thereof introduces any taxes of a character substantially similar to the enterprise tax in Japan after the date of signature of this Convention, the two Governments shall consult with a view to amending paragraph 5 of article 8 on a reciprocal basis in such manner as may be considered appropriate.

I have further the honour to request Your Excellency to be good enough to confirm the foregoing understanding on behalf of Your Excellency's Government.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

(Indian Note)

Excellency,

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

“(Japanese Note)”

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

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed this Convention.

Done at New Delhi in duplicate on this seventh day of March, 1989, in the Hindi, Japanese and English languages, all the three texts being equally authentic. In case of any divergence of interpretations, the English text shall prevail.

For the Government of the Republic

of India.

(Sd.) G.N. Gupta

For the Government of
Japan

(Sd.) Eijiro Noda

New Delhi, March 7,
1989.

Excellency,

I have the honour to refer to sub-paragraph (c) of paragraph 3 of article 23 of the Convention between the Government of the Republic of India and the Government of Japan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income which was signed today and to confirm, on behalf of the Government of the Republic of India, the following understanding reached between the Government of the Republic of India and the Government of Japan :

The measures set forth in the following sections of the Income-tax Act, 1961 (43 of 1961) of India, are “the special incentive measures designed to promote economic development in India, effective on the date of signature of this Convention” referred to in the said sub-paragraph :

(i) Section 10(15)(iv)

- relating to exemption from tax on certain interest;

(ii) Section 10A

- relating to special provision in respect of newly established industrial undertakings in free trade zones;
- (iii) Section 32AB
- relating to investment deposit account, etc., with respect to investment in plant and machinery, etc.;
- (iv) Section 80HH
- relating to deduction in respect of profits and gains from newly established industrial undertakings or hotel business in backward areas;
- (v) Section 80-I
- relating to deduction in respect of profits and gains from industrial undertakings after a certain date, etc.;

I have further the honour to request Your Excellency to be good enough to confirm the foregoing understanding on behalf of the Government of Japan.

I avail myself of this opportunity to extend to Your Excellency the assurance of my highest consideration.

(Sd.) G.N. Gupta,
Chairman,
Central Board of Direct Taxes,
Ministry of Finance

His Excellency Mr. Eijiro Noda,
Ambassador Extraordinary and
Plenipotentiary of Japan to India.

New Delhi, March 7, 1989

Excellency,

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

'I have the honour to refer to sub-paragraph (c) of paragraph 3 of article 23 of the Convention between the Government of the Republic of India and the Government of Japan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income which was signed today and to confirm, on behalf of the Government of the Republic of India, the following understanding reached between the Government of the Republic of India and the Government of Japan :

The measures set forth in the following sections of the Income-tax Act, 1961 (43 of 1961), of India are “the special incentive measures designed to promote economic development in India, effective on the date of signature of this Convention” referred to in the said sub-paragraph :

- (i) Section 10(15)(iv)
 - relating to exemption from tax on certain interest;
- (ii) Section 10A
 - relating to special provision in respect of newly established industrial undertakings in free trade zones;
- (iii) Section 32AB
 - relating to investment deposit account, etc., with respect to investment in plant and machinery, etc.;
- (iv) Section 80HH
 - relating to deduction in respect of profits and gains from newly established industrial undertakings or hotel business in backward areas;
- (v) Section 80-I
 - relating to deduction in respect of profits and gains from industrial undertakings after a certain date, etc.;

I have further the honour to request Your Excellency to be good enough to confirm the foregoing understanding on behalf of the Government of Japan. I have further the honour to confirm the understanding contained in Your Excellency’s Note on behalf of the Government of Japan.

I avail myself of this opportunity to extend to Your Excellency the assurance of my highest consideration.

(Sd.) Eijiro Noda,
Ambassador Extraordinary
and
Plenipotentiary of Japan to
India

His Excellency Mr. G.N. Gupta,
Chairman,
Central Board of Direct Taxes,
Ministry of Finance.

New Delhi, March 7, 1989.

Excellency,

I have the honour to refer to the Convention between the Government of Japan and the Government of the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income which was signed today and to confirm, on behalf of the Government of Japan, the following understanding reached between the two Governments :

1. With reference to sub-paragraph (*b*) of paragraph 1 of article 2 of the Convention, any taxes which are identical or substantially similar to the surtax imposed under the Companies (Profits) Surtax Act, 1964 but abolished subsequently, and which are imposed in India after the date of signature of the Convention shall be regarded as the identical or, substantially similar taxes referred to in paragraph 2 of article 2 of the Convention.
2. With reference to sub-paragraph (*d*) of paragraph 1 of article 3 of the Convention, the term 'tax' shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which the Convention applies or which represents a penalty imposed relating to these taxes.
3. With reference to sub-paragraph (*e*) of paragraph 1 of article 3 of the Convention, in the case of India, the term 'person' shall include a partnership and Hindu undivided family.
4. With reference to paragraph 5 of article 5 of the Convention, the term 'services or facilities' referred to therein shall include the supply of plant and machinery on hire used or to be used in the exploration, exploitation or extraction of mineral oils.
5. It is understood that the provisions of paragraph 6 of article 5 of the Convention shall apply to the use of facilities solely for the purpose of delivery of goods or merchandise belonging to the enterprise or to the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of delivery unless sales of such goods or merchandise are effected in that other Contracting State.
6. With reference to paragraph 1 of article 7 of the Convention, it is understood that by using the term 'directly or indirectly attributable to the permanent establishment', profits arising from transactions in which the permanent establishment has been involved shall be regarded as attributable to the permanent establishment to the extent appropriate to the part played by the permanent establishment in those transactions. It is also understood that profits shall be regarded as attributable to the permanent establishment to the above-mentioned extent, even when the contract or order relating to the sale or provision of goods or services in question is made or placed directly with the overseas head office of the enterprise rather than with the permanent establishment.
7. With reference to paragraph 3 of article 7 of the Convention, it is understood that in India the deductions in respect of the executive and general administrative expenses as referred to in the said paragraph shall be allowed in accordance with the domestic law of India, but such deductions shall in no case be less than what are allowable under the Indian Income-tax Act as effective on the date of signature of the Convention.

8. With reference to paragraph 3 of article 7 of the Convention, no deduction shall be allowed in respect of amounts paid or charged (other than reimbursement of actual expenses) by a permanent establishment of an enterprise to the head office of the enterprise or any other offices thereof, by way of :

- (a) royalties, fees or other similar payments in return for the use of patents or other rights, or for the use of know-how;
- (b) commission or other charges, for specific services performed or for management; and
- (c) interest on moneys lent to the permanent establishment; except where the enterprise is a banking institution.

9. With reference to article 8 of the Convention,—

- (i) interest on funds temporarily deposited in connection with the operation of ships or aircraft in international traffic shall be regarded as income from the operation of such ships or aircraft and the provisions of article 11 shall not apply in relation to such interest; and
- (ii) income from the operation of ships or aircraft includes income derived from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) in connection with the transport of goods or merchandise in international traffic.

10. With reference to paragraph 5 of article 8 of the Convention, if a local authority of India introduces any taxes of a character substantially similar to the enterprise tax in Japan after the date of signature of the Convention, the two Governments shall consult with a view to amending paragraph 5 of article 8 on a reciprocal basis in such manner as may be considered appropriate.

I have further the honour to request Your Excellency to be good enough to confirm the foregoing understanding on behalf of Your Excellency Government.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

(Sd.) Eijiro Noda,
Ambassador Extraordinary and
Plenipotentiary of Japan to
India

His Excellency Mr. G.N. Gupta,

Chairman,

Central Board of Direct Taxes,

Ministry of Finance.

New Delhi, March 7, 1989.

Excellency,

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

“I have the honour to refer to the Convention between the Government of Japan and the Government of the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income which was signed today and to confirm, on behalf of the Government of Japan, the following understanding reached between the two Governments :

1. With reference to sub-paragraph (*b*) of paragraph 1 of article 2 of the Convention, any taxes which are identical or substantially similar to the surtax imposed under the Companies (Profits) Surtax Act, 1964 but abolished subsequently, and which are imposed in India after the date of signature of the Convention shall be regarded as the identical or, substantially similar taxes referred to in paragraph 2 of article 2 of the Convention.

2. With reference to sub-paragraph (*d*) of paragraph 1 of article 3 of the Convention, the term 'tax' shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which the Convention applies or which represents a penalty imposed relating to these taxes.

3. With reference to sub-paragraph (*e*) of paragraph 1 of article 3 of the Convention, in the case of India, the term 'person' shall include a partnership and a Hindu undivided family.

4. With reference to paragraph 5 of article 5 of the Convention, the term 'services or facilities' referred to therein shall include the supply of plant and machinery on hire used or to be used in the exploration, exploitation or extraction of mineral oils.

5. It is understood that the provisions of paragraph 6 of article 5 of the Convention shall apply to the use of facilities solely for the purpose of delivery of goods or merchandise belonging to the enterprise or to the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of delivery unless sales of such goods or merchandise are effected in that other Contracting State.

6. With reference to paragraph 1 of article 7 of the Convention, it is understood that by using the term 'directly or indirectly attributable to the permanent establishment', profits arising from transactions in which the permanent establishment has been involved shall be regarded as attributable to the permanent establishment to the extent appropriate to the part played by the permanent establishment in those transactions. It is also understood that profits shall be regarded

as attributable to the permanent establishment to the above-mentioned extent, even when the contract or order relating to the sale or provision of goods or services in question is made or placed directly with the overseas head office of the enterprise rather than with the permanent establishment.

7. With reference to paragraph 3 of article 7 of the Convention, it is understood that in India the deductions in respect of the executive and general administrative expenses as referred to in the said paragraph shall be allowed in accordance with the domestic law of India, but such deductions shall in no case be less than what are allowable under the Indian Income-tax Act as effective on the date of signature of the Convention.

8. With reference to paragraph 3 of article 7 of the Convention, no deduction shall be allowed in respect of amounts paid or charged (other than reimbursement of actual expenses) by a permanent establishment of an enterprise to the head office of the enterprise or any other offices thereof, by way of :

- (a) royalties, fees or other similar payments in return for the use of patents or other rights, or for the use of know-how;
- (b) commission or other charges, for specific services performed or for management; and
- (c) interest on moneys lent to the permanent establishment; except where the enterprise is a banking institution.

9. With reference to the article 8 of the Convention,—

- (i) interest on funds temporarily deposited in connection with the operation of ships or aircraft in international traffic shall be regarded as income from the operation of such ships or aircraft and the provisions of article 11 shall not apply in relation to such interest; and
- (ii) income from the operation of ships or aircraft includes income derived from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) in connection with the transport of goods or merchandise in international traffic.

10. With reference to paragraph 5 of article 8 of the Convention, if a local authority of India introduces any taxes of a character substantially similar to the enterprise tax in Japan after the date of signature of the Convention, the two Governments shall consult with a view to amending paragraph 5 of article 8 on a reciprocal basis in such manner as may be considered appropriate.

I have further the honour to request Your Excellency to be good enough to confirm the foregoing understanding on behalf of Your Excellency's Government.

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

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

(Sd.) G.N. Gupta,
Chairman,
Central Board of Direct Taxes,
Ministry of Finance.

His Excellency Mr. Eijiro Noda,
Ambassador of Extraordinary and
Plenipotentiary of Japan to India.

(Sd.) P.K. Appachoo,
Joint Secretary to the
Government of India.

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