

SPAIN

43. Agreement for avoidance of double taxation and prevention of fiscal evasion with Spain

Whereas the annexed Convention between the Government of the Republic of India and the Kingdom of Spain for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital has entered into force on 12th January, 1995 after the exchange of Instruments of Ratification as required by paragraph 2 of Article 30 of the said Convention ;

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

Notification : No. GSR 356(E), dated 21-4-1995.

ANNEXURE

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

The Government of the Republic of India and the Government of the Kingdom of Spain desiring to conclude a Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income and on capital have agreed as follows :

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

ARTICLE 2 : *Taxes covered - 1.* This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State irrespective of the manner in which they are levied.

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

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

(a) in Spain :

- (i) The Income-tax on Individuals (el Impuesto sobre la Renta de las Personas Físicas);
 - (ii) The Corporation Tax (el Impuesto sobre Sociedades);
 - (iii) The Capital Tax (el Impuesto sobre el Patrimonio);
- (hereinafter referred to as “Spanish tax”).

(b) In India :

- (i) The income-tax including any surcharge thereon;
- (ii) The surtax; and
- (iii) The wealth-tax (hereinafter referred to as “Indian tax”).

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

ARTICLE 3 : *General Definitions - 1.* In this Convention, unless the context otherwise requires :

- (a) the term “Spain” means the territory of Spain and includes the territorial sea and airspace above it. It also includes any other maritime zone in which Spain has sovereign rights, other rights and jurisdiction, according to the Spanish law and in accordance with international law;
- (b) the term “India” means the territory of India and includes the territorial sea and airspace above it. It also includes any other maritime zone in which India has sovereign rights, other rights and jurisdictions, according to the Indian Law and in accordance with international law;
- (c) the terms “a Contracting State” and “the other Contracting State” mean Spain or India as the context requires;
- (d) the term “tax” means “Indian tax” or “Spanish tax”, as the context requires;
- (e) the term “person” includes an individual, a company, any other body of persons or any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting State;
- (f) the term “company” means any body corporate or any entity which is treated as a company or body corporate under the taxation laws in force in the respective Contracting State;
- (g) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean, respectively, an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (h) the term “national” means :
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership and association deriving its status as such from the law in force in a Contracting State;
- (i) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting State except when the ship or aircraft is operated solely between places in the other Contracting State;
- (j) the term “competent authority” means :
 - (i) in the case of Spain, the Minister of Economy and Finance or his authorised representative;
 - (ii) in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or its authorised representative.

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

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

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

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

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

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

2. The term “permanent establishment” includes especially :

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

- (j) an installation or structure used for the exploration or exploitation of natural resources, but only if so used for a period of more than three months;
- (k) a building site or construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or activities (together with other such sites, projects or activities, if any) continue for a period of more than six months in any twelve-months period, or where such project or supervisory activity, being incidental to the sale of machinery or equipment, continues for a period not exceeding six months and the charges payable for the project or supervisory activity exceed 10 per cent of the sale price of the machinery and equipment :

Provided that, for the purpose of this paragraph, an enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it provides services or facilities in connection with or supplies plant and machinery on hire used or to be used in, the prospecting for, or extraction or production of mineral oils in the State if the activities continue for a period of more than thirty days in any twelve-month period.

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

- (a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods and merchandise, or of collecting information for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of advertising, for supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

4. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 5 applies - is acting in a Contracting State on behalf of an enterprise of the other Contracting State that enterprise shall be deemed to have a permanent establishment in the first-mentioned State, if, —

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

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

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

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

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

2. The term “immovable property” shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.

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

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

ARTICLE 7 : Business profits - 1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to (a) that permanent establishment; (b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or (c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.

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

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses, research and development expenses, interest and other similar expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere, in accordance with the provisions of and subject to the limitations of the taxation laws of that State. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

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

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

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

ARTICLE 8 : *Air Transport* - 1. Profits derived by an enterprise of a Contracting State from the operation of aircraft in international traffic shall be taxable only in that State.

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

3. The term "operation of aircraft" shall mean business of transportation by air of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of aircraft, including the sale of tickets for such transportation on behalf of other enterprises, the incidental lease of aircraft and any other activity directly connected with such transportation.

ARTICLE 9 : *Shipping* - 1. Profits derived by an enterprise of a Contracting State from the operation of ships in international traffic shall be taxable only in that State.

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

3. For the purposes of this Article, profits derived from the operation of ships include profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) in connection with the transport of goods or merchandise in the international traffic.

ARTICLE 10 : *Associated enterprises* - Where,

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

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

ARTICLE 11 : *Dividends* - 1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

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

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

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.

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

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

ARTICLE 12 : *Interest* - 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2 :

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

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not, secured by mortgage and whether or not carrying a right to participate in the 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 15, as the case may be, shall apply.

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

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

ARTICLE 13 : *Royalties and fees for technical services* - 1. Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

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

- (i) in the case of royalties relating to the payments for the use of, or the right to use, industrial, commercial or scientific equipment, 10 per cent of the gross amount of the royalties;
- (ii) in the case of fees for technical services and other royalties, 20 per cent of the gross amount of fees for technical services or royalties.

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

4. The term “fees for technical services” as used in this Article means payments of any kind to any person other than payments to an employee of the person making the payments and to any individual for independent personal services mentioned in Article 15 (Independent Personal Services), in consideration for the services of a technical or consultancy nature, including the provision of services of technical or other personnel.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right, property or contract in respect of which the royalties or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

6. Royalties and fees for technical services shall be deemed to arise in a Contracting State when the payer in that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties or fees for technical services whether he is a

resident of a Contracting State or not, has in a Contracting State a permanent establishment or fixed base in connection with which the liability to pay the royalties or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

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

ARTICLE 14 : *Capital gains* - 1. Gains derived by a resident of a Contracting State from the alienation of immovable property, referred to in Article 6, and situated in the other Contracting State may be taxed in that other State.

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

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

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

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

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

ARTICLE 15 : *Independent personal services* - 1. Income derived by a resident of a Contracting State from the performance of professional services or other independent activities of a similar character shall be taxable only in that State except in the following circumstances when such income may also be taxed in the other Contracting State :

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other State; or

(b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in the relevant “taxable year”; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

ARTICLE 16 : *Dependent personal services* - 1. Subject to the provisions of Articles 17, 18, 19, 20, 21 and 22, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

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

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

ARTICLE 17 : *Directors’ fees* - Directors’ fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 18 : *Artistes and athletes* - 1. Notwithstanding the provisions of Articles 15 and 16, income derived by a resident of a Contracting State as an entertainer such as theatre, motion picture, radio or television artiste, or a musician or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. While income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 15 and 16, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived by an entertainer or an athlete who is a resident of a Contracting State from his personal activities as such exercised in the other Contracting State, shall be taxable only in the first-mentioned Contracting State, if the

activities in the other Contracting State are supported wholly or substantially from the public funds of the first-mentioned Contracting State, including any of its political sub-divisions or local authorities.

ARTICLE 19 : *Pensions* - Subject to the provisions of paragraph 2 of Article 20, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

ARTICLE 20 : *Remuneration and pensions in respect of Government services* - 1. (a) Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

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

(i) is a national of that State; or

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

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

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

3. The provisions of Articles 16, 17 and 19 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

ARTICLE 21 : *Students* - Payments which a student or business apprentice who is or was immediately before visiting a Contracting State, a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of this maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

ARTICLE 22 : *Payments received by professors, teachers and research scholars* - 1. A professor or teacher who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at an officially recognised university, college, school or other institution in that other Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival in that other State.

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

ARTICLE 23 : *Other income* - 1. Subject to the provisions of paragraph 2, items of income of a resident of a Contracting State, wherever arising, which are not expressly dealt with in the foregoing Articles of this Convention, shall be taxable only in that Contracting State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment, or fixed base. In such a case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

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

ARTICLE 24 : *Capital* - 1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

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

3. Capital represented by ships or aircraft, operated in international traffic or by movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the enterprise operating such ships, aircraft or property is a resident.

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

5. Capital represented by shares of the capital stock of a company which is a resident of a Contracting State representing a participation of at least 10 per cent in the capital stock of that company may be taxed in that Contracting State.

6. All other elements of capital of a resident of a Contracting State shall be taxable only in that Contracting State.

ARTICLE 25 : *Elimination of double taxation* - 1. The laws in force in either of the Contracting States will continue to govern the taxation of income and capital in the respective Contracting States except where express provisions to the contrary are made in this Convention.

2. In India, double taxation will be avoided in the following manner :

- (a) Where a resident of India derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Spain, India shall allow :
- (i) as a deduction from the tax on the income of that resident, an amount equal to the income-tax paid in Spain, whether directly or by deduction; and
 - (ii) as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in Spain.

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

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

3. In Spain, subject to the provisions of its internal law, double taxation will be avoided in the following manner :

- (a) Where a resident of Spain derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in India, Spain shall allow :
- (i) as a deduction from the tax on the income of that resident, an amount equal to the income-tax paid in India;
 - (ii) as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in India.
- (b) In the case of a dividend paid by a company which is a resident of India to a company which is a resident of Spain and which holds at least 25 per cent of the capital of the company paying the dividend, the deduction shall take into account [in addition to the deduction provided under sub-paragraph (a)] the income-tax paid in India by the company in respect of the profits out of which such dividend is paid provided that such tax is taken into account in calculating the base of the Spanish tax.

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

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

4. For the purposes of deduction referred to in paragraph 3, the term “income-tax paid in India” shall be deemed to include any amount which would have been payable as Indian tax under the laws of India and in accordance with this Convention for any year but for an exemption from, or reduction of, tax granted for that year under :

- (i) Sections 10(4), 10(15)(iv), 10A, 10B, 32A, 32AB, 80HH, 80HHC and 80-I of the Income-tax Act, 1961 (43 of 1961) so far as they were in force on, and have not been modified

since, the date of the signature of this Convention, or have been modified only in minor respects so as not to affect their general character; or

- (ii) any other provisions which may be enacted hereafter granting a deduction in computing the taxable income or an exemption or reduction from tax which the competent authorities of the Contracting States agree to be of a substantially similar character if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character.

5. The provisions of paragraph 4 shall apply for the first 10 years for which this Convention is effective but the competent authorities of the Contracting States may consult each other to determine whether this period shall be extended.

ARTICLE 26 : *Non-discrimination - 1.* The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances and under the same conditions are or may be subjected.

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

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

4. Except where the provisions of Article 10, paragraph 7 of Article 12, or paragraph 7 of Article 13 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

ARTICLE 27 : *Mutual agreement procedure - 1.* Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident, or, if his case comes under paragraph 1 of Article 26, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

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

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention. The competent authorities shall also, by mutual agreement, develop appropriate actions, methods and techniques to improve the exchange of information carried out under Article 28 of this Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

ARTICLE 28 : *Exchange of information - 1.* The competent authorities of the Contracting States shall exchange such information (including copies of documents when relevant) as is necessary for carrying out the provisions of the Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention, insofar as the taxation thereunder is not contrary to the Convention, in particular for the prevention of fraud or tax evasion and of tax avoidance. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State. However, if the information is originally regarded as secret in the transmitting State, it shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes which are the subject of the Convention. Such persons or authorities shall use the information only for such purposes but may disclose the information in public court proceedings or in judicial decisions.

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

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

ARTICLE 29 : *Diplomatic and consular officers* - Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

ARTICLE 30 : *Entry into force - 1.* This Convention shall be ratified and the instruments of ratification shall be exchanged as soon as possible.

2. This Convention shall enter into force upon the exchange of the instruments of ratification and its provisions shall have effect :

(a) in Spain :

in respect of taxes chargeable on income or on capital for any taxable year beginning on or after the first day of January of the calendar year next following that in which the Convention enters into force.

(b) in India :

(i) in respect of income arising in any taxable year beginning on or after the first day of April of the calendar year next following that in which the Convention enters into force,

(ii) in respect of capital which is held on the last day of any taxable year beginning on or after the first day of April of the calendar year next following that in which the Convention enters into force.

ARTICLE 31 : *Termination - 1.* The Convention shall remain in force indefinitely, but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give to the other Contracting State through diplomatic channels, written notice of termination. In such event, the Convention shall cease to have effect :

(a) in Spain, in respect of taxes chargeable for any taxable year beginning on or after the first day of January of the calendar year next following that in which the notice of termination is given;

(b) in India, in respect of income arising in any taxable year beginning on or after the first day of April of the calendar year next following that in which the notice of termination is given and in respect of capital which is held on the last day of any taxable year beginning on or after the first day of April next following the calendar year in which the notice of termination is given.

In witness whereof the undersigned, being duly authorised thereto, have signed the present Convention.

Done in duplicate at New Delhi this 8th day of February, one thousand nine hundred and ninety three in the Hindi, Spanish and English languages, all the texts being equally authentic. In case of divergence between any of the texts, the English text shall be the operative one.

For the Government of the

Republic of India

*For the Government of
the*

Kingdom of Spain

PROTOCOL

At the moment of signing the Convention between the Government of the Republic of India and the Government of the Kingdom of Spain for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income and on capital, the undersigned have agreed upon the following provisions which shall be an integral part of the Convention :

1. In respect of clause (d) of paragraph 1 of Article 3 (General Definitions), it is understood that the term "tax" shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty imposed relating to those taxes.

2. In respect of clause (g) of paragraph 2 of Article 5 (Permanent Establishment), it is understood that this clause refers to a warehouse where space is rented to other persons.

3. In respect of clauses (b) and (c) of paragraph 1 of Article 7 (Business Profits), it is understood that in the case of any doubt as to whether the goods or merchandise sold are of the similar kind as those sold through the permanent establishment or whether the other business activities carried on are of the similar kind as those effected through the permanent establishment, the competent authorities may consult each other with a view to resolving the case by mutual agreement.

4. In respect of paragraph 3 of Article 7 (Business Profits), it is understood that in case of any substantial changes in the provisions of the taxation laws of a Contracting State relating to limitation on the deductibility of the expenses which are incurred for the purposes of the business of a permanent establishment, the competent authorities of the Contracting States shall consult each other on the necessity of modifying the provisions of this paragraph.

5. In respect of Article 8 (Air Transport) and Article 9 (Shipping), it is understood that interest on funds connected with the operation of aircraft or ships in international traffic shall be regarded as profits derived from the operation of such aircraft or ships, as the case may be, and the provisions of Article 12 (Interest) shall not apply in relation to such interest.

6. Paragraph 2 of Article 11 (Dividends), shall not be applicable, in the case of Spain, to the income attributable, whether distributed or not, to the shareholders of the corporations and entities referred to in Article 12.2 of Law 44/1978 of 8 September, 1978, and Article 19 of Law 61/1978 of 27 December, 1978, as long as the said income is not subject to the Spanish Corporation Tax. Such income may be taxed in Spain according to its Internal Law.

7. The competent authorities shall initiate the appropriate procedures to review the provisions of Article 13 (Royalties and fees for technical services) after a period of five years from the date of its entry into force. However, if under any Convention or Agreement between India and a third State which is a Member of the OECD, which enters into force after 1-1-1990, India limits its taxation at source on royalties or fees for technical services to a rate lower or a scope more restricted than the rate or scope provided for in this Convention on the said items of incomes, the same rate or scope as provided for in that Convention or Agreement on the said items of income shall also apply under this Convention with effect from the date on which the present Convention

comes into force or the relevant Indian Convention or Agreement, whichever enters into force later.

8. In respect of paragraph 2 of Article 26 (Non-discrimination), it is understood that the provision of this paragraph shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which an enterprise of the other Contracting State has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar enterprise of the first-mentioned State, nor as being in conflict with the provisions of paragraph 3 of Article 7 (Business Profits) of this Convention. It is also understood that in no case the taxation of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall be less favourably levied than the taxation levied on a permanent establishment of an enterprise of a third State carrying on the same activities under a double taxation Convention concluded by the other Contracting State with that third State.

9. Notwithstanding the provisions of paragraph 4 of Article 26 (Non-discrimination), it is understood that in the case of India, payments by way of interest, royalties and fees for technical services made by an enterprise of India to a resident of Spain, shall not be allowed as a deduction for the purpose of determining the taxable profits of such enterprise unless tax has been paid or deducted at source from such payments under Indian law and in accordance with the provisions of this Convention.

10. For the purposes of this Convention, it is understood that the term “taxable year” in the case of India shall mean the “previous year” as defined in the Income-tax Act, 1961.

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

DONE in duplicate at New Delhi this 8th day of February, one thousand nine hundred and ninety-three in the Hindi, Spanish and English languages, all the texts being equally authentic. In case of divergence between any of the texts, the English text shall be the operative one.

*For the Government of the
Republic of India*

*For the Government of the
Kingdom of Spain*

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