

SWISS CONFEDERATION

Agreement for avoidance of double taxation and prevention of fiscal evasion with Swiss Confederation

Whereas the annexed Agreement between the Government of the Republic of India and the Government of the Swiss Confederation for the avoidance of double taxation with respect to taxes on income has entered into force on 29th December, 1994, after the notification by both the Contracting States to each other of the completion of the procedures required under their laws for bringing into force of the said Agreement in accordance with paragraph 1 of Article 26 of the said Agreement;

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

Notification: No. GSR 357(E), dated 21-4-1995, as amended by Notification No. GSR 74(E), dated 7-2-2001, 62/2011, dated 27-12-2011 w.e.f. 1-4-2012.

ANNEXURE

AGREEMENT BETWEEN THE REPUBLIC OF INDIA AND THE SWISS CONFEDERATION FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME

The Government of the republic of India and the Swiss federal council

Desiring to conclude an Agreement for the avoidance of double taxation with respect to taxes on income,

Have agreed as follows :

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

ARTICLE 2 : *Taxes covered 1.* - The taxes to which this Agreement shall apply are :

(a) in the case of India :

the Income-tax including any surcharge thereon; and

(b) in the case of Switzerland :

the federal, cantonal and communal taxes on income (total income, earned income, income from capital, industrial and commercial profits, capital gains, and other items of income).

2. The Agreement shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of the present Agreement in addition to, or in place of, the taxes referred to in paragraph 1 of this Article.

3. In this Agreement, the term "Indian tax" means tax imposed by India, being tax to which this Agreement applies; the term "Swiss tax" means tax imposed in Switzerland, being tax to

which this Agreement applies; and the term “tax” means Indian tax or Swiss tax, as the context requires; but the taxes in the preceding paragraphs of this Article do not include any penalty or interest imposed under the law in force in either Contracting State relating to the taxes to which this Agreement applies.

4. The competent authorities of the Contracting States shall notify to each other any significant changes which have been made in their relevant respective taxation laws.

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

¹[(a) the term “India” means the territory of India and includes the territorial sea and the air space above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdictions, according to the Indian law and in accordance with international law, including the UN Convention on the Law of the Sea;]

(b) the term “Switzerland” means the Swiss Confederation;

(c) the terms “a Contracting State” and “the other Contracting State” mean India or Switzerland, as the context requires;

(d) the term “person” includes an individual, a company, a body of persons, or any other entity which is taxable under the laws in force in either Contracting State;

(e) the term “company” means any body corporate or any entity which is treated as a company under the taxation laws of the respective Contracting States;

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

(g) the term “competent authority” means, in the case of India, the Central Government in the Department of Revenue or their authorised representative, and, in the case of Switzerland, the Director of the Federal Tax Administration or his authorised representative;

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

²[(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 “operation of aircraft” shall mean business of transportation by air of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of aircraft, including the sale of tickets for such transportation on behalf of other enterprises, the incidental lease of aircraft and any other activity directly connected with such transportation;

(k) the term “fiscal year” means :

(i) in the case of India, the “previous year” as defined in the Income-tax Act of India; and

(ii) in the case of Switzerland, the calendar year.

2. In the application of the provisions of this Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has

under the laws in force in that State relating to the taxes which are the subject of this Agreement.

ARTICLE 4 : *Fiscal domicile 1.* - For the purposes of this Agreement, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to taxation therein by reason of his domicile, residence, place of incorporation, place of management or any other criterion of a similar nature.

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

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

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

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

2. The term “permanent establishment” shall include especially :

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

(k) an installation or structure used for the exploration or development of natural resources for more than 90 days; and

³[(l) the furnishing of technical services, other than services as defined in Article 12, within a Contracting State by an enterprise through employees or other personnel, but only if :-]

(i) activities of that nature continue within that State for a period or periods aggregating more than 90 days within any twelve month period; or

(ii) the services are performed within that State for a related enterprise (within the meaning of paragraph 1 of Article 9) for a period or periods aggregating more than 30 days within any twelve-month period.

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

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

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

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

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

(e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information or for scientific research, being activities solely of a preparatory or auxiliary character in the trade or business of the enterprise.

⁴[(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.]

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

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

(i) he has and habitually exercises in that State, an authority to negotiate and enter into contracts for or on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or

(ii) he habitually maintains in the first-mentioned Contracting State a stock of goods or merchandise from which he regularly delivers goods or merchandise for or on behalf of the enterprise; or

(iii) in so acting, he manufactures or processes in that State for the enterprise goods or merchandise belonging to the enterprise, provided that this provision shall apply only in relation to the goods or merchandise so manufactured or processed.

⁵[6.] An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise or for the enterprise and other enterprises which are controlled by it or have a controlling interest in it, he would not be considered an agent of an independent status within the meaning of this paragraph.

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

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

2. The term “immovable property” shall be defined in accordance with the law of the Contracting State in which the property is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, oilwells, quarries and other places of extraction of natural resources. Ships and aircraft shall not be regarded as immovable property.

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

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

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

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

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions for expenses which are incurred for the purposes of the permanent establishment, whether in the State in which the permanent establishment is situated or elsewhere. Executive

and general administrative expenses shall be allowed as deductions in accordance with the taxation laws of that State. Nothing in this paragraph shall, however, authorise a deduction for expenses which would not be deductible if the permanent establishment were a separate enterprise.

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

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

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

⁸[ARTICLE 8 : Shipping and air transport - 1. *Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.*

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

ARTICLE 9 : *Associated enterprises* 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 profit which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

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

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

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

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

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

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment ¹²[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 undisputed profits consist wholly or partly of profits or income arising in such other State.

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

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

¹³[***]

¹⁴¹⁵[3.] Notwithstanding the provisions of paragraph 2 :

- (a) interest arising in Switzerland and paid to a resident of India shall be taxable only in India if it is paid in respect of a loan made, guaranteed or insured, or a credit extended, guaranteed or insured by the Government, a political sub-division, a statutory body or a local authority of India or the Export-Import Bank of India, the Reserve Bank of India, the Industrial Finance Corporation of India, the Industrial Development Bank of India, the National Housing Bank, the Small Industries Development Bank of India or by any institution specified and agreed in letters exchanged between the competent authorities of the Contracting States;]
- (b) interest arising in India and paid to a resident of Switzerland shall be taxable only in Switzerland if it is paid in respect of a loan made, guaranteed or insured, or credit extended, guaranteed or insured under the Swiss provisions regulating the Export or

Investment Risk Guarantee or by any institution specified and agreed in letters exchanged between the competent authorities of the Contracting States;

¹⁶[(c) *interest arising in a Contracting State and paid to a resident of the other Contracting State engaged in the operation of ships or aircraft in international traffic shall be taxable only in that other State to the extent that such interest is paid on funds connected with such activity;*]

(d) interest arising in India and paid to a resident of Switzerland shall be exempt from Indian tax if the loan or other indebtedness in respect of which the interest is paid is an approved loan. The term “approved loan” means any loan or other indebtedness approved by the Government of India in this behalf.

¹⁵[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.

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

¹⁷[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.]

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

¹⁹[ARTICLE 12 - *Royalties and fees for technical services* 1. - Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

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

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

3. The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of a literary, artistic, or scientific work, including cinematography films or work on film, tape or other means of reproduction for use in connection with radio or television broadcasting, any patent trademark, design or model, plan, secret formula or process, or for the use of, or the right to use, any industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. For purposes of this Article the term “fees for technical services” means payments of any kind to any person in consideration for the rendering of any managerial, technical or consultancy services, including the provision of services by technical or other personnel.

5. Notwithstanding paragraph 4, “fees for technical services” does not include amounts paid:

- (a) for teaching in or by educational institutions;
- (b) for services covered by Article 14 or Article 15, as the case may be.

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

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

8. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties or fees for ²⁰[technical] services paid exceeds the amount which would have been paid in the absence of such relationship, the provisions of this Article shall apply on the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of such Contracting State, due regard being had to the other provisions of this Agreement.

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

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

²²[3. *Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft shall be taxable only in that State.*]

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

²¹[5. Gains from the alienation of shares other than those mentioned in Paragraph 4, of a company which is a resident of a Contracting State:

- (a) shall be taxable only in the Contracting State of which the alienator is a resident;
- (b) notwithstanding the provision of sub-paragraph (a), India may tax gains from the alienation of shares in a company which is a resident of India.

In this case the provisions of sub-paragraph (b) of paragraph 1, of Article 23 shall apply.]

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

²³[ARTICLE 14 - *Independent personal services* 1. - Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State :

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

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

²⁴²⁵[ARTICLE 15] - *Dependent personal services* 1. - Subject to the provisions of Articles 16, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any 12 month period commencing or ending in the fiscal year concerned, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

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

²⁵[ARTICLE 16] : *Directors' fees* - Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the Board of Directors of a company which is a resident of the other Contracting State shall be taxable only in that other Contracting State.

²⁵[ARTICLE 17] : *Artistes and athletes 1.* - Notwithstanding the provisions of Articles 7 and 14, income derived by entertainers (such as stage, motion picture, radio or television artistes and musicians) or athletes, from their personal activities as such shall be taxable only in the Contracting State in which these activities are exercised.

2. Where income as a result of personal activities as such exercised in a Contracting State by an entertainer or athlete accrues not to that entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in that Contracting State.

3. The provisions of paragraphs 1 and 2 shall not apply if the visit to a Contracting State of the entertainer or the athlete is directly or indirectly supported, wholly or substantially, from the public funds of the other Contracting State, including any political sub-division, local authority or statutory body of that other State.

²⁵[ARTICLE 18] : *Pension and annuities 1.* - Any pension (other than a pension referred to in Article 18) or annuity derived by a resident of a Contracting State shall be taxable only in that State.

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

3. The term "annuity" means stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

²⁵[ARTICLE 19] : *Government remuneration and pensions 1.* - Remuneration, other than a pension, paid by the Government of a Contracting State to any individual who is a citizen of that State in respect of services rendered in the discharge of governmental functions in the other Contracting State shall be taxable only in the first-mentioned State.

2. Any pension paid by the Government of a Contracting State to any individual in respect of services rendered shall be taxable only in that Contracting State.

3. The provisions of paragraphs 1 and 2 of this Article shall not apply to payments in respect of services rendered in connection with any business carried on by the Government of either of the Contracting States for the purpose of profit.

4. For the purposes of this Article, the term "Government" shall include any State Government, canton or local or statutory authority of either Contracting State and in particular the Reserve Bank of India and the Swiss National Bank.

²⁵[ARTICLE 20] : *Students and apprentices 1.* - Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

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

²⁵[ARTICLE 21] : *Professors, teachers and researchers 1.* - An individual who is or was a resident of a Contracting State and who visits the other Contracting State for a period not exceeding 24 months for the primary purpose of teaching or engaging in research, or both, at a university or other recognised educational institution shall be exempt from tax in that other Contracting State on his income from personal services for teaching or research at the university or the recognised educational institution.

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

²⁶[ARTICLE 22 - *Other income 1.* - Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.

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

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

betting of any form or nature whatsoever, such income may be taxed in that other Contracting State.]

²⁵[ARTICLE 23] : *Elimination of double taxation 1.* - (a) Subject to any provisions of the law of India which may from time to time be in force and which relates to the relief of taxes paid in a country outside India, where a resident of India derives income which, in accordance with the provisions of this Agreement, may be taxed in Switzerland, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in Switzerland whether directly or by deduction. Such deduction shall not, however, exceed that part of the income-tax (as computed before the deduction is given) which is attributable to the income which may be taxed in Switzerland.

(b) Where a resident of Switzerland derives gains from the alienation of shares which may be taxed in India according to Article 13, paragraph 5, sub-paragraph (b), India shall allow as a deduction from tax on that income, an amount equal to the income-tax paid in Switzerland on these capital gains. The deduction shall not, however, exceed that part of the Indian income-tax, which is imposed on these capital gains.

2. (a) Where a resident of Switzerland derives income which, in accordance with the provisions of this Agreement may be taxed in India, Switzerland shall, subject to the provisions of sub-paragraphs (b) and (c) ²⁷[***] exempt such income from tax but may, in calculating tax on the remaining income of that resident, apply the rate of tax which would have been applicable, if the exempted income had not been so exempted : provided, however, that such exemption shall apply to gains referred to in paragraph of Article 13 only if actual taxation of such gains in India is demonstrated.

(b) Where a resident of Switzerland derives dividends, interest, royalties or fees for ²⁸[technical] services which, in accordance with the provisions of Articles 10, 11 and 12, may be taxed in India, Switzerland shall allow, upon request, a relief to such resident. The relief may consist of,

- (i) a credit from the Swiss tax on the income of that resident of an amount equal to the tax levied in India in accordance with the provisions of Articles 10, 11 and 12, such credit shall not, however, exceed that part of the Swiss tax, as computed before the credit is given, which is appropriate to the income which may be taxed in India; or
- (ii) a lump sum reduction of the Swiss tax; or
- (iii) a partial exemption of such dividends, interest, royalties or fees for technical services from Swiss tax, in any case consisting at least of the deduction of the tax levied in India from the gross amount of the dividends, interest, royalties or fees for technical services.

Switzerland shall determine the applicable relief and regulate the procedure in accordance with the Swiss provisions relating to the carrying out of international Conventions of the Swiss Confederation for the avoidance of double taxation.

³⁰[***]

²⁹³¹[(c)] Where a resident of Switzerland derives interest dealt with in sections 10(4), 10(4B), 10(15)(iv) and 80L of the Indian Income-tax Act of 1961 (43 of 1961) and referred to sub-paragraph (d) of paragraph 3 of Article 11, Switzerland shall allow, upon request, a relief to such resident of an amount equal to 10 per cent of the gross amount of the interest]

³¹[ARTICLE 24] : *Non-discrimination 1.* - ²⁹[Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances and under the same conditions are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.]

³²[2. *The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.*]

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

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

³¹[5.] In this Article, the term “taxation” means taxes which are the subject of this Agreement.

³¹[ARTICLE 25] : *Mutual agreement procedure 1.* - Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Agreement, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident. The case must be presented within three years from the first notification of the action giving rise to taxation not in accordance with the Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement.

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

4. The competent authorities of the Contracting States shall settle the limitations provided for in Articles 10, 11 and 12.

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

³⁴[ARTICLE 26 : Exchange of information 1. - *The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1.*

2. *Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.*

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

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

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

5. *In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. In order to obtain such information, the tax authorities of the requested Contracting State shall, therefore, have the power to enforce the disclosure of information covered by this paragraph, notwithstanding paragraph 3 or any contrary provisions in its domestic laws.]*

³¹[ARTICLE 27] : *Diplomatic and consular officials* - Nothing in this Agreement shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreements.

³¹[ARTICLE 28] : *Entry into force 1.* - This Agreement shall come into force when the Contracting States have notified each other through diplomatic channels that all legal requirements and procedures for giving effect to this Agreement have been satisfied.

2. This Agreement shall enter into force upon the date of such notification and its provisions shall have effect :

- (a) in India, in respect of income arising in any fiscal year beginning on or after the first day of April next following the calendar year in which the Agreement enters into force; and
- (b) in Switzerland, in respect of income arising in any fiscal year beginning on or after the first day of January next following the calendar year in which the Agreement enters into force.

3. The Agreement between the Government of India and the Swiss Federal Council concerning the taxation of enterprises operate aircraft signed at New Delhi on August 28, 1958 (in this Article called “the 1958 Agreement”) shall cease to have effect with respect to taxes to which the Agreement applies when the provisions of this Agreement become effective in accordance with paragraph 2.

4. The 1958 Agreement shall terminate on the expiration of the last date on which it has effect in accordance with the foregoing provisions of this Article.

³¹[ARTICLE 29] : *Termination* - This Agreement shall continue in effect indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year, give notice of termination to the other Contracting State and, in such event, this Agreement shall cease to be effective :

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

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

DONE in duplicate at New Delhi this 2nd day of November, one thousand nine hundred and ninety four in the Hindi, German, and English languages, all the texts being equally authentic, except in the case of doubt when the English text shall prevail.

For the Government of

the Republic of India :

Sd/-

**For the
Swiss**

Federal Council :

Sd/-

PROTOCOL

To the Agreement between the Republic of India and the Swiss Confederation for the avoidance of double taxation with respect to taxes on income.

At the signing of the Agreement concluded today between the Government of the Republic of India and the Swiss Federal Council for the avoidance of double taxation with respect to taxes on income, the undersigned have agreed upon the following additional provisions which shall form an integral part of the said Agreement.

³⁵[With reference to Article 4

1. *It is understood that paragraph 1 of Article 4, the term "resident of a Contracting State" includes a recognized pension fund or pension scheme in that Contracting State. It is further understood that a recognized pension fund or pension scheme of a Contracting State shall be regarded as any pension fund or pension scheme recognized and controlled according to statutory provisions of that State, which is generally exempt from income taxation in that State and which is operated principally to administer or provide pension or retirement benefits.]*

With reference to Article 5

^{35a}[**2.** It is understood that the remuneration for furnishing of services covered by subparagraph (1) of paragraph 2 shall be taxed according to Article 7 or, on request of the enterprise, according to the rates provided for ...³⁶[in paragraph 2 of Article 12.]

With respect to paragraph 3 of Article 5, it is understood that the maintenance of a stock of goods or merchandise for the purpose of delivery, or facilities used for delivery of goods and merchandise do not constitute a permanent establishment as long as the conditions of paragraph 2 or 4 of the same Article are not fulfilled.

³⁷[With respect to paragraph 5] of Article 5, it is understood that a person who habitually secures orders in a Contracting State wholly or almost wholly for the enterprise itself, shall be deemed to be a permanent establishment of that enterprise only if such person habitually represents to persons offering to buy goods or merchandise that acceptance of an order by such person constitutes that agreement of the enterprise to supply goods or merchandise under the terms and conditions specified in the order.

With reference to Article 7

^{35a}[**3.**] ³⁸[***]

In the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, which are carried out by an enterprise having a permanent establishment, in a Contracting State the business profits of such permanent establishment shall not be determined on the basis of the total amount of the contract, but shall be determined only on the basis of that part of the contract which is effectively carried out by the permanent establishment in the State where the permanent establishment is situated; the profits related to that part of the contract which is carried out outside that Contracting State by the head office of the enterprise shall be taxable only in the State of which the enterprise is a resident, provided that the amount payable is not covered under the provisions of Article 12.

³⁹[With reference to paragraph 2 of Article 9

^{35a}[4.] It is understood that Switzerland shall only make an appropriate adjustment after consultation with the competent authority of India and after reaching an agreement on the adjustments of profits in both Contracting States.]

⁴⁰[5.] ⁴¹[With reference to Articles 10, 11, 12 and 22

The provisions of Articles 10, 11, 12 and 22 shall not apply in respect to any dividend, interest, royalty, fees for technical services or other income paid under, or as part of a conduit arrangement. The term "conduit arrangement" means a transaction or series of transactions which is structured in such a way that a resident of a Contracting State entitled to the benefits of the Agreement receives an item of income arising in the other Contracting State but that resident pays, directly or indirectly, all or substantially all of that income (at any time or in any form) to another person who is not a resident of either Contracting State and who, if it received that item of income directly from the other Contracting State, would not be entitled under a Convention or Agreement for the avoidance of double taxation between the State in which that other person is resident and the Contracting State in which the income arises, or otherwise, to benefits with respect to that item of income which are equivalent to, or more favourable than, those available under this Agreement to a resident of a Contracting State; and the main purpose of such structuring is obtaining benefits under this Agreement.

In respect of Articles 10 (Dividends), 11 (Interest) and 12 (Royalties and fees for technical services), if under any Convention, Agreement or Protocol between India and a third State which is a member of the OECD signed after the signature of this Amending Protocol, India limits its taxation at source on dividends, interest, royalties or fees for technical services to a rate lower than the rate provided for in this Agreement on the said items of income, the same rate as provided for in that Convention, Agreement or Protocol on the said items of income shall also apply between both Contracting States under this Agreement as from the date on which such Convention, Agreement or Protocol enters into force.

If after the date of signature this Amending Protocol, India under any Convention, Agreement or Protocol with a third State which is a member of the OECD, restricts the scope in respect of royalties or fees for technical services than the scope for these items of income provided for in Article 12 of this Agreement, then Switzerland and India shall enter into negotiations without undue delay in order to provide the same treatment to Switzerland as that provided to the third State.]

³⁹[With reference to sub-paragraph (b) of paragraph 5 of Article 13

⁴²[6.] It is understood that if at a later stage Switzerland shall introduce a capital gains tax on the alienation of shares of a Swiss company other than shares of a company mentioned in paragraph 4, paragraph 5 of Article 13 shall be replaced by the following :

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

In this case sub-paragraph (b) of paragraph 1 of Article 23 of the Agreement shall be deleted.]

With reference to Article 12

⁴²[7.] It is understood that gains derived from the alienation of a right or a property mentioned in paragraph 3 of Article 12 may be taxed according to Article 7 or Article 13. However, gains derived from the alienation of any such right or property which are contingent on the profits, productivity or use thereof may be taxed according to Article 12.

With reference to paragraph 4 of Article 24

⁴³[8. With reference to paragraph 2 of Article 24

It is understood that the provisions of paragraph 2 of Article 24 shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which a company of the other Contracting State has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first-mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7. However the difference in tax rate shall not exceed 10 percentage points.]

⁴⁴[With reference to Article 25]

⁴⁵[9.] With respect to paragraph 2 it is understood that if the mutual agreement procedure has been introduced within five years from the moment when the tax assessment became final, then any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

⁴⁶[With reference to Article 26

10. (a) *It is understood that an exchange of information will only be requested once the requesting Contracting State has exhausted all normal procedures under its domestic laws to obtain that information.*

(b) *It is understood that the competent authority of the requesting State shall provide the following information to the competent authority of the requested State when making a request for information under Article 26 of the Agreement:*

- (i) *the name of the person(s) under examination or investigation and, if available, other particulars facilitating that person's identification such as address, date of birth, marital status, tax identification number;*
- (ii) *the period of time for which the information is requested;*
- (iii) *a statement of the information sought including its nature and the form in which the requesting State wishes to receive the information from the requested State;*
- (iv) *the tax purpose for which the information is sought;*
- (v) *the name and, if available, address of any person believed to be in possession of the requested information.*

(c) *If specifically requested by the competent authority of the requesting Contracting State, the competent authority of the requested Contracting State shall provide information in the form of authenticated copies of documents.*

(d) *The purpose of referring to information that may be foreseeably relevant is intended to provide for exchange of information in tax matters to the widest possible extent without allowing the Contracting States to engage in "fishing expeditions" or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer. While clause (b) of paragraph 10 contains important procedural requirements that are intended to ensure that*

fishing expeditions do not occur, sub-clauses (i) through (v) nevertheless need to be interpreted in order not to frustrate effective exchange of information.

(e) It is further understood that Article 26 of the Agreement shall not commit the Contracting States to exchange information on an automatic or a spontaneous basis.

(f) It is understood that in case of an exchange of information, the administrative procedural rules regarding taxpayers' rights provided for in the requested Contracting State remain applicable before the information is transmitted to the requesting Contracting State. It is further understood that this provision aims at guaranteeing the taxpayer a fair procedure and not at preventing or unduly delaying the exchange of information process.]

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

DONE in duplicate at New Delhi this 2nd day of November, one thousand nine hundred and ninety four in the Hindi, German and English languages, all the texts being equally authentic, except in the case of doubt when the English text shall prevail.

For the Government of

For the Swiss Federal Council :

The Republic of India :

Sd/-

Sd/-

JUDICIAL ANALYSIS

See Advance Ruling P. No. 8 of 1995, In re [1997] [90 Taxman 47](#) (AAR - New Delhi).