UAE

52. Agreement for avoidance of double taxation and the prevention of fiscal evasion with United Arab Emirates

Whereas the annexed agreement between the Government of the United Arab Emirates and the Government of the Republic of India for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital has entered into force on the 22nd September, 1993 after the notification by both the Contracting States to each other of the completion of the proceedings required by laws for bringing into force of the said agreement in accordance with paragraph 1 of Article 30 of the said agreement.

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964) and section 44A of the Wealth-tax Act, 1957 (27 of 1957), 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 710(E), dated 18-11-1993, as amended by Notification No. SO 2001(E), dated 28-11-2007.*[1]

ANNEXURE

AN AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE UNITED ARAB EMIRATES FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

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

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

ARTICLE 2 - *Taxes covered* - *1.* There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital including taxes on gains from alienation of movable or immovable property as well as on capital appreciation.

2. The existing taxes to which the Agreement shall apply are :

(*a*) In United Arab Emirates :

(*i*) income-tax ;

(*ii*) corporation tax ;

(*iii*) wealth-tax

(hereinafter referred to as "U.A.E. tax") ;

(*b*) In India :

(*i*) the income-tax including any surcharge thereon ;

(*ii*) the surtax ; and

(*iii*) the wealth-tax

(hereinafter referred to as "Indian tax").

3. This Agreement shall also apply to any identical or substantially similar taxes on income or capital which are imposed at Federal or State level by either Contracting State in addition to, or in place of, the taxes referred to in paragraph 2 of this Article. The competent authorities of the Contracting State shall notify each other of any substantial changes which are made in their respective taxation laws.

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

(*a*) the term "India" means the territory of India and includes the territorial sea and air space above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdictions, according to the Indian law and in accordance with international law ;

(*b*) the term "U.A.E." means the United Arab Emirates and when used in a geographical sense, means all the territory of the United Arab Emirates including its territorial sea in which the U.A.E. laws relating to taxation apply and any area beyond its territorial sea within which the United Arab Emirates has sovereign rights of exploration or the exploitation or resources of the seabed and its sub-soil and superjacent water resources in accordance with international law ;

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

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

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

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

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

(*h*) the term "national" means :

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

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

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

(*j*) the term "competent authority" means :

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

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

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

ARTICLE 4 - *Resident* - *1.* For the purposes of this Agreement the term 'resident of a Contracting State' means:

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

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

2. For the purposes of paragraph 1:

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

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

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

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

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

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

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

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

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

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

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

2. The term "permanent establishment" includes especially :

(*a*) a place of management ;

(*b*) a branch ;

(*c*) an office ;

(*d*) a factory ;

(*e*) a workshop ;

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

(*g*) a farm or plantation ;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent

establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere, in accordance with the provisions of and subject to the limitations of the tax laws of that State.

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

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

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

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

ARTICLE 8 - *Shipping*[1] - *1.* Profits derived by an enterprise of a Contracting State from the operation by that enterprise of ships in international traffic shall be taxable only in that State.

2. For the purposes of this Article, profits from the operation of ships in international traffic shall mean profits derived by an enterprise described in paragraph (*1*) from the transportation by sea of passengers, mail, livestock or goods and shall include :

(*a*) the charter or rental of ships incidental to such transportation ;

(*b*) the rental of containers and related equipments used in connection with the operation of ships in international traffic ;

(*c*) the gains derived from the alienation of ships, containers and related equipments owned and operated by the enterprise in international traffic.

3. For the purposes of this Article, interest on funds connected with the operation of ships in international traffic shall be regarded as profits derived from the operation of such ships and the provisions of Article 11 shall not apply in relation to such interest.

4. The provisions of paragraphs (*1*), (*2*) and (*3*) shall apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9 - *Associated enterprises* - Where :

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

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

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between

independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

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

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

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

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

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

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

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

(*a*) 5 per cent of the gross amount of the interest if such interest is paid on a loan granted by a bank carrying on a *bona fide* banking business or by a similar financial institution ; and

(*b*) 12.5 per cent of the gross amount of the interest in all other cases.

3. Notwithstanding the provisions of paragraph (*2*) interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by :

(*i*) the Government, a political sub-division or a local authority of the other Contracting State ; or

(*ii*) the Central Bank of the other Contracting State.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from Government securities and income from bonds or debentures including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

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

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

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

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

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

3. The term "royalties" as used in this Article means payment of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematography films, or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience but do not include royalties or other payments in respect of the operation of mines or quarries or exploitation of petroleum or other natural resources.

4. The provisions of paragraphs (*1*) and (*2*) shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein or

performs in that other State independent personal services from a fixed base situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

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

ARTICLE 13 - *Capital gains* - *1.* Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in paragraph (*2*) of Article 6 and situated in the other Contracting State may be taxed in that other State.

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

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

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

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

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

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

ARTICLE 15 - *Dependent personal services* - *1.* Subject to the provisions of Articles 16, 17, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

(*a*) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the relevant "previous year" or "year of income", as the case may be ; and

(*b*) the remuneration is paid by, or on behalf on, an employer who is not a resident of the other State ; and

(*c*) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

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

ARTICLE 16 - *Directors' fees* - Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the Board of Directors of a Company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 17 - *Income earned by entertainers and athletes* - *1.* Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer such as a theatre, motion picture, radio or television artiste or a musician or as an athlete, from his personal activities as such exercised in the other Contracting State may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or an athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. Notwithstanding the provisions of paragraph (*1*), income derived by an entertainer or an athlete who 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.

4. Notwithstanding the provisions of paragraph (*2*) and Articles 7, 14 and 15, where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as

such in a Contracting State accrues not to the entertainer or athlete himself but to another person, that income shall be taxable only in the other Contracting State, if that other person is supported wholly or substantially from the public funds of that other State, including any of its political sub-divisions or local authorities.

ARTICLE 18 - *Remuneration and pensions in respect of Government service – 1.* (*a*) Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

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

(*i*) is a national of that State ; or

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

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

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

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

ARTICLE 19 - *Non-Government pensions and annuities - 1.* Any pension, other than a pension referred to in Article 18, or any annuity derived by a resident of a Contracting State from sources within the other Contracting State may be taxed only in the first-mentioned Contracting State.

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

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

ARTICLE 20 - *Students, trainees and apprentices - 1.* An individual who is a resident of a Contracting State and who is temporarily present in the other Contracting State solely as a student at a recognised university, college, school or other educational institution in that other Contracting State or as a business or technical apprentice therein, for a period not exceeding six years from the date of his first arrival in that other Contracting State in connection with that visit, shall be exempt from tax in that other Contracting State on—

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

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

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

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

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

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

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

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

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

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

(*5*) For the purposes of this Article and Article 21,—

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

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

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

ARTICLE 21 - *Professors, teachers and researchers - 1.* An individual who is a resident of a Contracting State immediately before making a visit to the other Contracting State, and who, at the invitation of any university, college, school or other similar educational institution, which is recognised by the Government, a political sub-division or a local or statutory

authority of that State, visits that other Contracting State for a period not exceeding two years solely for the purpose of teaching or research or both at such educational institution, shall be exempt from tax in that other Contracting State on his remuneration for such teaching or research.

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

ARTICLE 22 - *Other income* - *1.* Subject to the provisions of paragraph (*2*), items of income of a resident of a Contracting State, wherever arising, which are not expressly dealt with in the foregoing articles of this Agreement, shall be taxable only in that Contracting State.

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

ARTICLE 23 - *Capital* - *1.* Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that State.

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

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

ARTICLE 24 - *Income of Government and institutions* - *1.* Notwithstanding the provisions of Article 13, the Government of one Contracting State shall be exempt from tax, including capital gains tax, in the other Contracting State in respect of any income derived by such Government from that other Contracting State.

2. For the purposes of paragraph (*1*) of this Article, the term "Government"—

(*a*) in the case of India, means the Government of India, and shall include :

  (*i*) the political sub-divisions, the local authorities, the local administrations, and the local Governments ;

  (*ii*) the Reserve Bank of India ;

  (*iii*) any such institution or body as may be agreed from time to time between the two Contracting States ;

(*b*) in the case of U.A.E., means the Government of the United Arab Emirates, and shall include :

(*i*) the political sub-divisions, the local authorities, the local administrations, and the local Governments ;

(*ii*) The Central Bank of the United Arab Emirates, Abu Dhabi Investment Authority and Abu Dhabi Fund for Economic Development ;

(*iii*) any such institution or body as may be agreed from time to time between the two Contracting States.

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

2. Where a resident of India derives income or owns capital which, in accordance with the provisions of this Agreement, may be taxed in U.A.E., India shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in U.A.E. whether directly or by deduction; and as a deduction from the tax on the capital of that resident an amount equal to the capital tax paid in U.A.E. Such deduction in either case shall not, however, exceed that part of the income-tax or capital tax (as computed before the deduction is given) which is attributable, as the case may be, to the income or the capital which may be taxed in U.A.E. Further, when such resident is a company by which surtax is payable in India, the deduction in respect of income-tax paid in U.A.E. shall be allowed in the first instance from income-tax payable by the company in India and as to the balance, if any, from the surtax payable by it in India.

3. Subject to the laws of the U.A.E. where a resident of the U.A.E. derives income which in accordance with the provisions of this Agreement may be taxed in India, the U.A.E. shall allow as a deduction from the tax on income of that person an amount equal to the tax on income paid in India. Such deduction shall not, however, exceed that part of income-tax as computed before the deduction is given, which is attributable to the income which may be taxed in the U.A.E.

4. For the purpose of paragraph (*3*), the term ‘tax paid in India’ shall be deemed to include the amount of Indian tax which would have been paid if the Indian tax had not been exempted or reduced in accordance with the special incentive measures under the provisions of the Income-tax Act, 1961, which are designed to promote economic development in India, effective on the date of signature of this Agreement, or which may be introduced in the future in modification of, or in addition to, the existing provisions for promoting economic development in India, and such other incentive measures which may be agreed upon from time to time by the Contracting States.

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

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

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

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

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

5. In this Article, the term "taxation" means taxes which are the subject of this Agreement.

ARTICLE 27 - *Mutual agreement procedure* - *1.* Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Agreement, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident. This case must be presented within two years of the date of receipt of notice of the action which gives rise to taxation not in accordance with the Agreement.

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

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. When it seems advisable in order to reach agreement to have an oral exchange of opinion, such exchange may take place through a commission consisting of representatives of the competent authorities of the Contracting States. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of applying this Agreement.

ARTICLE 28 - *Exchange of information* - *1.* The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of the

Agreement or for the prevention or detection of evasion of taxes which are the subject of this Agreement. Any information so exchanged shall be treated as secret but may be disclosed only to persons (including a court or administrative body) concerned with the assessment, collection, enforcement, investigation or prosecution in respect of the taxes which are the subject of this Agreement, or to persons with respect to whom the information relates.

2. The exchange of information may also be on request with reference to particular cases.

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

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

(*b*) to supply information or documents which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State ;

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

ARTICLE 29 - *Limitation of benefits* - An entity which is a resident of a Contracting State shall not be entitled to the benefits of this Agreement if the main purpose or one of the main purposes of the creation of such entity was to obtain the benefits of this Agreement that would not be otherwise available. The cases of legal entities not having *bona fide* business activities shall be covered by this Article.

ARTICLE 30 - *Diplomatic and consular activities* - Nothing in this Agreement shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreements.

ARTICLE 31 - *Entry into force* - *1.* Each of the Contracting States shall notify to the other completion of the proceedings required by its law for the bringing into force of this Agreement. The Agreement shall enter into force on the date of the later of these notifications and shall thereupon have effect—

(*a*) in the United Arab Emirates :

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

(*b*) in India :

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

ARTICLE 32 - *Termination* - This Agreement shall remain in force indefinitely, but either of the Contracting States may, on or before 30th June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give to the other Contracting State, through diplomatic channels written notice of termination. In such event, the Agreement shall cease to have effect—

(*a*) in the United Arab Emirates :

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

(*b*) in India :

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

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

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

PROTOCOL

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

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

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

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

DONE in two originals at New Delhi on this Wednesday, 29th day of April, One Thousand Nine Hundred and Ninety-two corresponding to the 27th day of Shawwal 1412 H in the

Hindi, Arabic and English languages, all texts being equally authentic. In case of divergence amongst the texts, the English text shall be the operative one.

JUDICIAL ANALYSIS

■ Assessee is to be regarded as resident of India within meaning of para 1 of article 4 of DTA between India and UAE if he is liable to tax under Income-tax Act on income accrued or received in India - *Mohsinally Alimohammed Rafik* v. *CIT* [1995] 79 Taxman 75 (AAR - New Delhi).

■ Under tax treaty between India and UAE income received/receivable in India by way of dividend is liable to tax in India at 15 per cent—*Mohsinally Alimohammed Rafik* v. *CIT* [1995] 79 Taxman 75 (AAR - New Delhi).

■ In terms of tax treaty between India and UAE, income received/receivable in India by way of interest on debentures/bonds/balance in capital account in partnership firm, is liable to tax in India at 12.5 per cent—*Mohsinally Alimohammed Rafik* v. *CIT* [1995] 79 Taxman 75 (AAR - New Delhi).

■ Though according to strict interpretation of article 4 of DTA only persons who are actually subjected to tax in UAE can be treated as resident of UAE to qualify for lower rate of tax in India, a liberal interpretation according to which persons who could be made liable to tax in UAE though not actually subjected to tax in UAE can be regarded as residents of UAE so as to be eligible for benefit of lower rate of tax in India, should be adopted—*Mohsinally Alimohammed Rafik* v. *CIT* [1995] 79 Taxman 75 (AAR - New Delhi).

■ Where assessee was non-resident Indian national living and working in Dubai for past seventeen years with short visits to India and he had residential house property in India as well as in Dubai, though applicant could be regarded as resident of both India and UAE, in terms of article 4(2)(*a*), he was to be regarded as resident of Dubai, inasmuch as his centre of vital interests or his personal and economic ties were closer to Dubai than to India—*Mohsinally Alimohammed Rafik* v. *CIT* [1995] 79 Taxman 75 (AAR - New Delhi).

■ DTA between India and UAE came into force on 29-9-1993 and it followed that all income arising to the applicant on or after 1-4-1994 would be governed by the agreement, and therefore, the dates of acquisition of the assets which yielded the income, was irrelvant for purposes of applying agreement—*Mohsinally Alimohammed Rafik* v. *CIT* [1995] 79 Taxman 75 (AAR - New Delhi).

■ *See* also *Dr. Rajni Kant R. Bhatt* v. *CIT* [1996] 89 Taxman 82 (AAR - New Delhi).

Applicable rates of taxes under the Double Taxation Avoidance Agreement betwen India and the United Arab Emirates

1. It has been represented by some Non-Resident Indians in the United Arab Emirates (UAE) that the banks and the U.T.I. have been deducting tax at source on interest and dividend incomes at rates higher than those provided in the Double Taxation Avoidance Agreement between India and the United Arab Emirates. This has forced the Non-Resident Indians to seek remedy by way of refunds. It also appears that in each of such cases where refund was

due and where decision on the applicability of the DTAA was involved, they had been advised to file a petition before the Authority for Advance Rulings.

2. The Board in its Circular No. 728, dated 30th October, 1995 (*see* Annex) have already clarified that in case of a remittance to a country with which a Double Taxation Avoidance Agreement is in force, tax should be deducted at the rates provided in the Finance Act of the relevant year or at the rates provided in the DTAA, whichever is more beneficial to the assessee.

3. Once again it is clarified that in respect of payments to be made to the Non-Resident Indians at the UAE, tax at source must be deducted at the following rates :—

(*i*) Dividends :

(*a*) 5% of the gross amount of the dividends if the beneficial owner is a company which owns at least 10% of the shares of the company paying the dividends.

(*b*) 15% of the gross amount of the dividends in all other cases.

(*ii*) Interest :

(*a*) 5% of the gross amount of the interest if such interest is paid on a loan granted by a bank carrying on a *bona fide* banking business or by a similar financial institution.

(*b*) 12½% of the gross amount of the interest in all other cases.

(*iii*) Royalties :

10% of the gross amount.

4. It is essential that the above rates which are enshrined in the DTAA between India and the UAE are strictly adhered to so as to avoid unnecessary harassment of the taxpayers.

Circular : *No. 734, dated 24-1-1996.*

ANNEX

1. It has been represented to the Board that when making remittances of the nature of royalties and technical fees, tax is being deducted at source at the rates specified in the Finance Act of the relevant year, without taking into account the special rates for taxation of such income provided for under the Double Taxation Avoidance Agreement with the country concerned.

2. The expression "rates in force" has been defined in section 2(*37A*) of the Income-tax Act. Under sub-clause (*iii*) of section 2(*37A*), for the purposes of deduction of tax under section 195, the expression is to mean the rate or rates of income-tax specified in this behalf in the Finance Act in the relevant year or the rates of tax specified in the Double Taxation Avoidance Agreement entered into by the Central Government whichever is applicable by virtue of the provisions of section 90 of the Income-tax Act, 1961.

3. It is hereby clarified that in view of the provisions of sub-section (2) of section 90 of the Act, in the case of a remittance to a country with which a Double Taxation Avoidance Agreement is in force, the tax should be deducted at the rate provided in the Finance Act of the relevant year or at the rate provided in the DTAA, whichever is more beneficial to the assessee.

Circular : *No. 728, dated 30-10-1995.*