Chandrawat & Partners

INDIA– BRAZIL

DOUBLE TAXATION AVOIDANCE AGREEMENT

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PREFACE

Double Tax Avoidance Agreement ("DTAA") is a tax treaty signed between two or more countries to help taxpayers avoid paying double taxes on the same income. A DTAA becomes applicable in cases where an individual is a resident of one nation, but earns income in another. DTAAs can either be comprehensive, encapsulating all income sources or limited to certain areas. India presently has DTAA with 120+ countries.

The government of India and the government of the Federative Republic of Brazil signed a DTAA on 26th April, 1988 (ratified on 11 March, 1992) for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income. Thereafter, amendments were introduced through the amending protocol in order to bring the DTAA in consonance with the international standards and practices on 15 October, 2013. Another amending protocol has been signed between the countries on 24 August, 2022 however, its provisions shall come into effect after the protocol has been ratified by both the countries which is in-progress.

The articles of India- Brazil DTAA are aligned with 'Base Erosion and Profit Shifting ("BEPS") and 'The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting' ("MLI") in order to curb tax evasion/ avoidance, treaty shopping practices, etc. Now, the companies resident in India as well as Brazil are able to take shelter under the treaty, thereby, avoiding double taxation and/ or taxation at higher rates.

There are numerous provisions in this DTAA due to which it is considered beneficial. The DTAA contains clauses like minimum standards, BEPS, principal purpose test, general anti abuse provision along with a simplified limitation of benefits (LOB) clause, upon the recommendations of G-20 Organisation for Economic Co-operation and Development ("OECD") which has resulted in curbing tax planning strategies and mismatches in tax rules. Overall, the India- Brazil relations have strengthened with an augment in the flow of investments, mainly due to the lower tax rates with respect to source state on interest, royalties and fees for technical services.

KEY HIGHLIGHTS

The DTAA provides significant relief to investors looking for avenues of cross-border investment i.e. Indian investors looking to invest in Brazil and vice-versa. Clear allocation of taxing rights between the states has provided tax certainty to investors and businesses in both countries.

Highlights of the tax treaty are as follows:

01 TAXES COVERED

In Brazil, DTAA applies to-

- the federal income-tax, excluding the supplementary income-tax and the tax on activities of minor importance;
- Individual and corporate income taxes;
- Withholding income tax;
- Social contribution on net profits.

In India, DTAA applies to-

- the income-tax including any surcharge thereon;
- the surtax.

02 APPLICABLE RATES

Following are the applicable withholding tax rates:

- Dividends – 15%; however, dividends paid to Brazilian or foreign recipients are exempt from withholding tax in Brazil;
- Interest – 15%; however, dividend and interest earned by the government or any other specified institution is exempt from taxation in the country of source;
- Royalties– (a) 25% for trademark use, and (b) 15% for all other cases (including payments for technical services and technical assistance).

03 RESIDENTIAL STATUS

The general rule is that an individual is deemed to be a resident of the state where his permanent home is available. If a person is a resident of both contracting states, then residence will be determined as follows:

- A permanent home in both states- deemed to be a resident of the country in which personal and economic relations are closer;
- If the above rule is not determinable or no permanent home in either state is there- deemed to be resident of which he is a habitual abode;
- If he is a habitual abode in both states- then he is deemed to be a resident of the country which is his nationality;
- In case, the assess is a national of both states or neither of them- the competent authorities shall determine the residential status by mutual agreement.

04 CAPITAL GAINS

Capital gains are taxable in both the contracting states and there is no withholding limitation mentioned in the DTAA. However, gains obtained from alienation of ships or aircrafts operated in international traffic are taxable only in the country where the headquarters of the company are located. Withholding tax on capital gains earned by non-residents are:

- 15% on the part of the capital gains up to a maximum limit of BRL 5,000,000.00 (five million reais);
- 17.5% on the part of the capital gains between BRL 5,000,000.00 (five million reais) and BRL 10,000,000.00 (ten million reais);
- 20% on the part of the capital gains between BRL 10,000,000.00 (ten million reais) and BRL 30,000,000.00 (thirty million reais); and
- 22.5% on the part of the capital gains above 30,000,000.00 (thirty million reais).

05 EXCHANGE OF INFORMATION

The states shall exchanges any and all information that is foreseeably relevant for carrying out the provisions and management of the DTAA with regards to taxation. Information shared shall be treated as confidential information.

06 TAX SPARING

The DTAA contains a reciprocal tax sparing clause, which requires India to grant tax credits at a deemed withholding rate for specific payments made by Brazilian residents and vice-versa. The rates are:

- For interest, a tax sparing credit of 25%;
- For royalties not derived from trademark use, a tax sparing credit of 25%.

INDIA-BRAZIL DTAA

The original text of the DTAA as signed between India and Brazil can be referred to below:

BRAZIL

AGREEMENT FOR AVOIDANCE OF DOUBLE TAXATION AND PREVENTION OF FISCAL EVASION WITH FOREIGN COUNTRIES - BRAZIL

WHEREAS the annexed Convention between the Government of the Republic of India and the Government of the Federative Republic of Brazil for avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income has been ratified and the instruments of ratification exchanged at Brasilia on 11th March, 1992 as required by Article 28 of the said Convention :

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

Notification : No.GSR 381(E), Dated 31-3-1992, as amended by Notification No. S.O. 93(E) [F.NO.500/101/2006-FT&TR-V], dated 4-1-2018

ANNEXURE

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

The Government of the Republic of India and the Government of the Federative Republic of Brazil.

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

Have agreed as follows :

ARTICLE 1

PERSONAL SCOPE

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

ARTICLE 2

TAXES COVERED

1. The taxes to which the Convention shall apply are :

(a) in the case of Brazil :

- the federal income-tax, excluding the supplementary income-tax and the tax on activities of minor importance;

(hereinafter referred to as "Brazilian tax");

(b) in the case of India :

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

(ii) the surtax;

(hereinafter referred to as "Indian tax").

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

ARTICLE 3

GENERAL DEFINITIONS

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

(a) the term "nationals" means :

I. all individuals possessing the nationality of a Contracting State;

II. all legal persons, partnerships and associations deriving their status as such from the law in force in a Contracting State;

(b) the terms "a Contracting State" and "the other Contracting State" mean Brazil or India, as the context requires;

(c) 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 States;

(d) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

(e) 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;

(f) 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;

(g) the term "tax" means Brazilian tax or Indian tax, as the context requires;

(h) the term "competent authority" means :

I. in Brazil :

the Minister of Finance, the Secretary of Federal Revenue or their authorized representative;

II. in India :

the Central Government in the Ministry of Finance (Department of Revenue) or their authorized representative.

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

ARTICLE 4

FISCAL DOMICILE

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the law of that State, is liable to tax therein by reason of his domicile, residence, 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 status shall be determined as follows :

(a) he shall be deemed to be a 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 neither 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.
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 State in which its place of effective management is situated.

ARTICLE 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term "permanent establishment" includes especially :
(a) a place of management;
(b) a branch;
(c) an office;
(d) a factory;
(e) a workshop;
(f) a mine, an oil or gas well, a quarry or other place of extraction of natural resources;
(g) a building site or construction or assembly project which exists for more than six months;
(h) an installation, drilling rig or ship used for the exploration or exploitation of natural resources, but only if so used for a period of more than six months.
3. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include :
(a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods 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 2, where a person - other than an agent of an 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 in the name 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 those mentioned in paragraph 3 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.
5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise itself or on behalf of that enterprise and other enterprises controlling, controlled by, or subject to the same common control, as that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.
6. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6

INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in 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 terms 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 and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

ARTICLE 7

BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, in accordance with the provisions of and subject to the limitations of the taxation laws of the Contracting State

concerned.

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

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

ARTICLE 8

SHIPPING AND AIR TRANSPORT

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

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

4. The term "operation of ships or aircraft" shall mean business of transportation of persons, mail, livestock or goods carried on by the owners or lessees or charterers of the ships or aircraft, including the sale of tickets for such transportation on behalf of other enterprises.

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 a company which is the beneficial owner of the dividends the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

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

3. The term "dividends" as used in this Article means income from shares, "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 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, and the holding by virtue of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Where a resident of India has a permanent establishment in Brazil, this permanent establishment may be subject to a tax withheld at source in accordance with Brazilian law. However, such a tax cannot exceed 15 per cent of the gross amount of the profits of that permanent establishment determined after the payment of the corporate tax related to such profits.

6. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistri-buted 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 also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraphs 1 and 2 :

(a) interest arising in a Contracting State and paid to the Government of the other Contracting State, a political sub-division thereof or any agency (including a financial institution) wholly owned by that Government, or political sub-division shall be exempt from tax in the first-mentioned State, unless sub-paragraph (b) applies;

(b) interest from securities, bonds or debentures issued by the Government of a Contracting State, a political sub-division thereof or any agency (including a financial institution) wholly owned by that Government or political sub-division shall be taxable only in that State.

4. The term "interest" as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and debt-claims of every kind as well as other income assimilated to income from money lent by the taxation law of the Contracting State in which the income arises.

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 and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

6. The tax rate limitation provided for in paragraph 2 shall not apply to interest arising in a Contracting State and paid to a permanent establishment of an enterprise of the other Contracting State which is situated in a third State.

7. 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 in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

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

ARTICLE 12

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 :

(a) 25 per cent of the gross amount of the royalties arising from the use or the right to use trade marks;

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

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

4. The provisions of paragraphs 1 and 2 shall not apply if the 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, and the right of property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 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 in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment 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 Convention.

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, which is 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, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in the other State. However, gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

3. Gains from the alienation of any property other than that referred to in paragraphs 1 and 2, may be taxed in both Contracting States.

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, unless the remuneration for such services or activities is paid by a resident of the other Contracting State or is borne by a permanent establishment situated therein. In such case, the income may be taxed in that other State.

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

ARTICLE 15

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16, 18, 19 and 20, 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 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 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 may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

ARTICLE 16

DIRECTORS' FEES

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the

board of directors or of any council of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 17

ARTISTS 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 theatre, motion picture, radio or television artists, 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 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. The provisions of paragraphs 1 and 2 of this Article shall not apply to income derived from activities performed in a Contracting State by an entertainer or an athlete if the visit to that Contracting State is substantially supported by public funds of, or sponsored by the other Contracting State, including those of any political sub-division or local authority.

ARTICLE 18

PENSIONS AND SOCIAL SECURITY PAYMENTS

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration, alimony and annuities paid to a resident of a Contracting State may be taxed in that State.

2. However, such pensions and other similar remuneration, alimony and annuities may also be taxed in the other Contracting State if the payment is made by a resident of that other State or a permanent establishment situated therein.

3. Notwithstanding the provisions of paragraphs 1 and 2, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State or a political sub-division or a local authority thereof shall be taxable only in that State.

4. As used in this Article :

(a) the term 'pensions and other similar remuneration' means periodic payments made in consideration of past employment or by way of compensation for injuries in connection with past employment;

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

ARTICLE 19

GOVERNMENT PAYMENTS

1. Remuneration not including pensions, paid by a Contracting State, a political sub-division or a local authority thereof to an individual in respect of services rendered to that State, to a political sub-division or local authority shall be taxable only in that State.

However, such remuneration shall be taxable only in the Contracting State of which the recipient is a resident if the services are rendered in that State and the recipient of the remuneration is a resident of that State who:

(a) is a national of that State, or

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

2. Pensions paid by, or out of funds created by, a Contracting State, a political sub-division or a local authority thereof to

an individual in respect of services rendered to that State, to a political sub-division or a local authority thereof may be taxed in that State.

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

ARTICLE 20

TEACHERS AND RESEARCHERS

1. An individual who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who, at the invitation of the Government of the first-mentioned State or of a university, college, school, museum or other cultural institution of that first-mentioned State or under an official programme of cultural exchange, is present in that State for a period not exceeding two consecutive years solely for the purpose of teaching, giving lectures or carrying out research at such institution shall be exempt from tax in that State on his remuneration for such activity, provided that the payment of such remuneration is derived by him from outside that State.

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 21

STUDENT 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.

3. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article, for more than five consecutive years from the date of his first arrival in that State.

ARTICLE 22

OTHER INCOME

Items of income of a resident of a Contracting State, arising in the other Contracting State and not dealt with in the foregoing Articles of this Convention, may be taxed in that other State.

ARTICLE 23

METHODS FOR THE ELIMINATION OF DOUBLE TAXATION

1. Subject to the provisions of paragraphs 3 and 4, where a resident of a Contracting State derives income which, in accordance with the provisions of this Convention may be taxed in the other Contracting State, the first-mentioned State shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in that other State. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to the income which may taxed in that other State.

2. For the deduction mentioned in paragraph 1, the tax paid in that other State shall always be deemed to have been paid at the rate of 25 per cent of the gross amount of interest referred to in paragraph 2 of Article 11 and of royalties referred to in paragraph 2(b) of Article 12, provided however, that the tax so deemed to have been paid shall not exceed the tax leviable on that income in the first-mentioned State.

3. Where a company which is a resident of a Contracting State derives dividends which, in accordance with the provisions of paragraph 2 of Article 10 may be taxed in the other Contracting State, the first-mentioned State shall exempt such dividends from tax.

4. Where a resident of India derives profits which, in accordance with the provisions of paragraph 5 of Article 10 may be taxed in Brazil, India shall exempt such profits from tax.

ARTICLE 24

NON-DISCRIMINATION

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

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

3. 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 State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of a third State, are or may be subjected.

4. In this Article the term "taxation" means taxes to which this Convention applies.

ARTICLE 25

MUTUAL AGREEMENT PROCEDURE

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

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

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

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

1[ARTICLE 26

EXCHANGE OF INFORMATION

1. The competent authorities of the contracting States shall exchange such information as is foreseeable relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation there under is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2, but applies only to federal taxes in the case of Brazil.

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

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

A. to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

B. to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

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

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

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

ARTICLE 27

DIPLOMATIC AGENTS AND CONSULAR OFFICERS

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

ARTICLE 28

ENTRY INTO FORCE

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Brasilia as soon as possible.

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

(a) in Brazil :

I. in respect of taxes withheld at source, to amounts paid or credited on or after the first day of January of the calendar year immediately following that in which the Convention enters into force;

II. in respect of other taxes covered by the Convention, for the taxable year beginning on or after the first day of January of the calendar year immediately following that in which the Convention enters into force;

(b) in India :

in respect of income arising in any previous year beginning on or after the first day of April immediately following the calendar year in which the Convention enters into force.

INDO - BRAZIL TREATY

ARTICLE 29

TERMINATION

Either Contracting State may terminate this Convention after a period of five years from the date on which the Convention enters into force by giving to the other Contracting State, through diplomatic channels, a written notice of termination, provided that any such notice shall be given only on or before the thirtieth day of June in any calendar year.

In such case, the Convention shall cease to have effect :

(a) in Brazil :

I. in respect of taxes withheld at source, to amounts paid or cedited on or after the first day of January of the calendar year immediately following that in which the notice of termination is given :

II. in respect of other taxes, for taxable years beginning on or after the first day of January of the calendar year immediately following that in which the notice of termnination is given;

(b) in India :

in respect of income arising in any previous year beginning on or after the first day of April immediately following the calendar year in which the notice is given.

PROTOCOL

Whereas, the Protocol, amending the Convention and the Protocol between the Government of the Republic of India and the Government of the Federative Republic of Brazil for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed at New Delhi on the 26th April, 1988, was signed at Brasilia on the 15th day of October, 2013, as set out in the Annexure appended to this notification and hereinafter referred to as the said amending Protocol;

And whereas the said amending Protocol entered into force on the 6th day of August, 2017, being thirty days after the date of receipt of later of the notifications of the completion of the procedures required by laws of the Contracting States for bringing into force of the said amending Protocol;

Now, therefore, in exercise of the powers conferred by section 90 of the Income -tax Act, 1961 (43 of 1961), the Central Government hereby notifies that all the provisions of said amending protocol shall have effect in the Union of India with effect from the 6th day of August, 2017.

PROTOCOL AMENDING THE CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIAAND THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, SIGNED AT NEW DELHI ON 26 APRIL, 1988

PREAMBLE

The Government of the Republic of India and the Government of the Federative Republic of Brazil;

Desiring to amend the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, signed at New Delhi on 26 April, 1988 (hereinafter referred to as "the Convention");

Have agreed as follows:

ARTICLE I

Article 26 of the Agreement shall be deleted and replaced by the following:

"ARTICLE 26

EXCHANGE OF INFORMATION

1. The competent authorities of the contracting States shall exchange such information as is foreseeable relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation there under is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2, but applies only to federal taxes in the case of Brazil.

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

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 Contra cting State;

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

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

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

ARTICLE II

Each Contracting State shall notify the other in writing, through the diplomatic channel, of the completion of the procedures required by its laws for the bringing into force of this Protocol. The Protocol shall enter into force 30 days after the date of receipt of the later of these notifications and its provisions shall have effect on that date.

ARTICLE III

This Protocol, which shall form an integral part of the Convention, shall remain in force as long as the Convention remains in force and shall apply as long as the Convention itself is applicable.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed this Protocol.

DONE in duplicate at Brasilia, this 15 day of October, 2013, in the Hindi, Portuguese and English languages, all three texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

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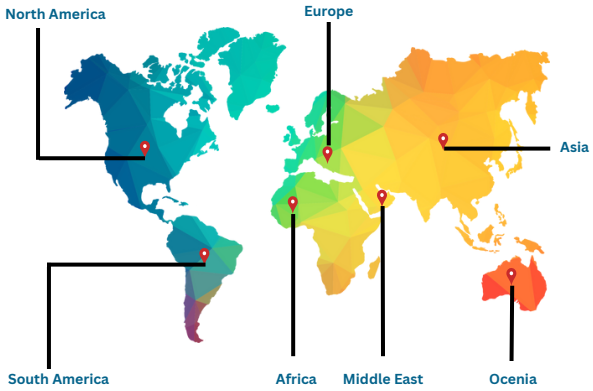

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