Chandrawat & Partners

# INDIA-CHINA

## 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 People's Republic of China signed a DTAA, which came into force from 21 November, 1994 for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income. On 26 November, 2018, the countries signed an amending protocol which was notified by India on 17 July, 2019. The protocol updated the existing provisions for exchange of information to the latest international standards.

The articles of India- China DTAA are now aligned with the '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, conduit companies practices, etc. Now, the companies resident in India as well as in China 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 has proved to be successful. The amending protocol further introduced various new articles like principal purpose test, exchange of information, mutual agreement procedure, limitation of benefits, etc. in order to amend the DTAA and bring it in-line with the international practices and standards. Further, changes required to implement the provisions of the Organisation for Economic Co-operation and Development ("OECD") with regards to BEPS and MLI have also been made. The main aim behind the signing of the DTAA was not only to curb the tax evasion practices but also to develop the economic relations and enhance cooperation in tax matters among the contracting countries.

# KEY HIGHLIGHTS

The DTAA provides significant relief to investors looking for avenues of cross-border investment i.e. Indian investors looking to invest in China and vice-versa. Aside from tax relief, there are several other benefits that the India- China DTAA offers to the concerned businesses. Highlights of the tax treaty are as follows:

## 01 TAXES COVERED

In China, following are covered under the DTAA-
(i) the individual income tax;
(ii) the enterprise income tax;
In India, following are covered-
(i) income tax and its surcharges.

## 02 RESIDENTIAL STATUS

The article was updated with the amending protocol to bring it in-line with the OECD's MLI provisions. In case of dual residency for persons other than individuals, the competent authorities shall endeavor to mutually determine its residency based on the following factors:

- Its place of effective management;
- Place where it is incorporated or otherwise constituted;
- Any other relevant factor.

In the absence of agreement between competent authorities, any relief or exemption from tax under the India-China tax treaty shall not be available.

## 03 LIMITATION OF BENEFITS

The benefits of the tax treaty will be denied if it is reasonable to conclude that obtaining benefit was one of the principal purposes of any arrangement or transaction. An exception has been carved out for benefits that are in accordance with the object and purpose of the tax treaty. Further. every cross-border arrangement or transaction which results in any benefit from the tax treaty, would have to satisfy the principal purpose test, which is subject to interpretation and is fact-specific.

## 04 EXCHANGE OF INFORMATION

The DTAA provides that information in relation to all types of taxes shall be exchanged between the states as is considered to be relevant for the purpose of tax matters.

## 05 PERMANENT ESTABLISHMENT

The DTAA covers the following permanent establishments ("PE"):

- Service PE (more than 183 days in any 12 months period);
- Construction PE (183 days threshold);
- Agency PE.

## 06 APPLICABLE RATES

The provisions relating to general anti-avoidance rules (GAAR) have been inserted in dividends, interest, royalty, financial tracking service and capital gains articles. Following are the applicable rates:

- Dividends – 10%;
- Interest – 10% (however interest or dividend earned by any government authority or organisation shall be exempt from tax in the country of its source;
- Royalty– 10%.

## 07 METHODS FOR ELIMINATION OF DOUBLE TAXATION

While granting credit in one jurisdiction for taxes paid in the other jurisdiction, an exception has been provided to the extent that the provisions of the tax treaty allow taxation to the other jurisdiction because such income is also derived by its resident.

# INDIA-CHINA DTAA

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

**CHINA**

**AGREEMENT FOR AVOIDANCE OF DOUBLE TAXATION OF INCOME AND THE PREVENTION OF FISCAL EVASION WITH CHINA***

Whereas the annexed Agreement between the Government of the Republic of India and the Government of the People's Republic of China for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income has come into force on the 21st day of November, 1994 after the notification by both the Contracting States to each other of the completion of the procedures required under their laws for bringing into force of the said Agreement in accordance with Article 28 of the said Agreement;

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

**Notification :** No. GSR 331(E), dated 5-4-1995, as amended by Notification No. S.O. 2562(E) [No.54/2019/F.No. 503/02/2008-FTD-II], Dated 17-7-2019

ANNEXURE

**1[AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA FOR THE ELIMINATION OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND THE PREVENTION OF TAX EVASION AND AVOIDANCE]**

2[The Government of the Republic of India and the Government of the People's Republic of China,

Desiring to further develop their economic relationship and to enhance their cooperation in tax matters,

Intending to eliminate double taxation with respect to taxes on income without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Agreement for the indirect benefit of residents of third States);

Have agreed as follows:]

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* See also Instruction No. 1947, dated 27-4-1998.

1. Substituted by Notification No. S.O. 2562(E) [No.54/2019/F.No. 503/02/2008-FTD-II], Dated 17-7-2019. Prior to its substitution said heading read as under:

"AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME"

2. Substituted by Notification No. S.O. 2562(E) [No.54/2019/F.No. 503/02/2008-FTD-II], Dated 17-7-2019. Prior to its substitution said preamble read as under:

"The Government of the Republic of India and the Government of the People's Republic of China, desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have

agreed as follows:"

1[ARTICLE 1

**PERSONS COVERED**

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

2. For the purposes of this Agreement, income derived by or through an entity or arrangement that is established in either Contracting State and that is treated as wholly fiscally transparent under the tax law of either Contracting State shall be considered to be income of a resident of a Contracting State only to the extent that the income is treated, for the purposes of taxation by that State, as the income of a resident of that State.

3. This Agreement shall not affect the taxation, by a Contracting State, of its residents except with respect to the benefits granted under paragraph 2 of Article 9, paragraph 2 of Article 18 and Articles 19, 20, 21, 23, 24, 25 and 27.]

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1. Article 1 substituted by Notification No. S.O. 2562(E) [No.54/2019/F.No. 503/02/2008-FTD-II], Dated 17-7-2019. Prior to its substitution said Article 1 read as under:

"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. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its political sub-divisions or local authorities, irrespective of the manner in which they are levied.

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

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

1[(a) In China:

(i) the individual income tax;

(ii) the enterprise income tax;

(hereinafter referred to as "Chinese tax").]

(b) in India;

the income-tax including any surcharge thereon;

(hereinafter referred to as "Indian Tax").

4. This Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes referred to in paragraph 3. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws within a reasonable period of time after such changes.

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1. Substituted by Notification No. S.O. 2562(E) [No.54/2019/F.No. 503/02/2008-FTD-II], Dated 17-7-2019. Prior to its substitution said clause (c) read as under:

"(a) in China :

(i) the individual income-tax;
(ii) the income-tax for enterprises with foreign investment and foreign enterprises;
(iii) the local income-tax;
(hereinafter referred to as "Chinese Tax")."

ARTICLE 3

**GENERAL DEFINITIONS**

1. For the purposes of this Agreement, unless the context otherwise requires,—
(a) the term "China" means the People's Republic of China; when used in geographical sense means all the territory of the People's Republic of China, including its territorial sea, in which the Chinese laws relating to taxation apply, and any area beyond its territorial sea, within which the People's Republic of China has sovereign rights of exploration for any exploitation of resources of the sea-bed and its sub-soil and superjacent water resources in accordance with international law;
(b) the term "India" means the territory of the Republic of India and includes the territorial sea and airspace 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;
(c) the terms "a Contracting State" and "the other Contracting State" mean China or India as the context requires;
(d) the term "tax" means Chinese tax or Indian tax, as the context requires;
(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 States;
(f) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
(g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean, respectively, and enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
(h) the term "nationals" means any individual possessing the nationality of a Contracting State and any legal person, partnership or association deriving its status from the laws in force in the Contracting State;
(i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which is a resident of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
(j) the term "competent authority" means, in the case of China, the State Administration of Taxation or its authorized representative, and in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorized representative.
2. As regards the application of this Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State concerning the taxes to which this Agreement applies.

ARTICLE 4

**RESIDENT**

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that Contracting State, is liable to tax therein by reason of his domicile, residence, place of head office 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 Contracting State in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests);

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

(c) If he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;

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

1[3. Where by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of the Agreement, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Agreement except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting States.]

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1. Paragraph 3 substituted by Notification No. S.O. 2562(E) [No.54/2019/F.No. 503/02/2008-FTD-II], Dated 17-7-2019. Prior to its substitution said Paragraph read as under:

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

1[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 warehouse in relation to a person providing storage facilities for others;

(h) a farm, plantation or other place where agriculture, forestry, plantation or related activities are carried on;

(i) an installation or structure used for the exploration or exploitation of natural resources, but only if so used for a period of more than 183 days.

3. The term "permanent establishment" likewise encompasses:

(a) a building site or construction, installation or assembly project or supervisory activities in connection therewith, but

only if such site, project or activities last more than 183 days.

For the sole purpose of determining whether the 183 day period referred to as above has been exceeded,

(i) where an enterprise of a Contracting State carries on activities in the other Contracting State at a place that constitutes a building site or construction, installation or assembly project and these activities are carried on during one or more periods of time that in the aggregate do not exceed 183 days, and

(ii) connected activities are carried on at the same building site or construction, installation or assembly project during different periods of time, each exceeding 30 days, by one or more enterprises closely related to the first-mentioned enterprise,

these different periods of time shall be added to the period of time during which the first-mentioned enterprise has carried on activities at that building site or construction, installation or assembly project.

(b) the furnishing of services other than technical services as defined in Article 12(Royalties and Fees for Technical Services), by an enterprise of a Contracting State through employees or other personnel in the other Contracting state, but only if activities of that nature continue for the same or connected project within that Contracting State for a period or periods aggregating more than 183 days within any twelve-month period commencing or ending in the fiscal year concerned.

4. 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.

5. Notwithstanding the provisions of paragraphs 1 and 2 but subject to the provisions of paragraph 6, where a person is acting in a Contracting State on behalf of an enterprise of the other Contracting State and, in doing so,

(a) habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are—

(i) in the name of the enterprise, or

(ii) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use, or

(iii) for the provision of services by that enterprise; or

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

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 4 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.

6. (a) Paragraph 5 shall not apply where the person acting in a Contracting State on behalf of an enterprise of the other

Contracting State carries on business in the first-mentioned State as an independent agent and acts for the enterprise in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.

(b) For the purposes of this Article, a person or enterprise is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person or enterprise shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person or enterprise possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise or in the two enterprises.

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

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1. Article 5 substituted by Notification No. S.O. 2562(E) [No.54/2019/F.No. 503/02/2008-FTD-II], Dated 17-7-2019. Prior to its substitution said article 5 read as under:

"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 warehouse, in relation to a person providing storage facilities for others;

(h) a farm, plantation or other place where agriculture, forestry, plantation or related activities are carried on;

(i) an installation or structure used for the exploration or exploitation of natural resources, but only if so used for a period of more than 183 days;

(j) a building site or construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or activities (together with other such sites, projects or activities, if any) continue for a period of more than 183 days;

(k) the furnishing of services other than technical services as defined in Article 12 (Royalties and Fees for Technical Services), by an enterprise of a Contracting State through employees or other personnel in the other Contracting State, but only if activities of that nature continue within that other Contracting State for a period or periods aggregating more than 183 days.

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 sock 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 the provisions of paragraph 5 apply - is acting in a Contracting State on behalf of an enterprise of the other Contracting State, has and habitually exercises an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting 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 Contracting State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. 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 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 situated in the other Contracting State may be taxed in that other Contracting State.

2. The term "immovable property" shall have the meaning which it has under the 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 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[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 Contracting State, but only so much of them as is attributable to that permanent establishment.]

The provisions of this paragraph shall, however, not apply if the enterprise proves that the above activities could not have been undertaken by the permanent establishment or have no relation with the 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. Insofar as the tax law of a Contracting State provides with respect to a specific business activity that the profits to be attributed to a permanent establishment are to be determined on the basis of a deemed profit, nothing in paragraph 2 shall preclude that Contracting State from applying those provisions of its law, provided that the result is in accordance with the principles contained in this Article.

4. In determining the profits of a permanent establishment, there shall be allowed as deduction 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 Contracting State in which the permanent establishment is situated or elsewhere in accordance with the provisions of tax law of that Contracting State.

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

6. For the purposes of paragraphs 1 to 5, 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.

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1. Paragraph 1 substituted by Notification No. S.O. 2562(E) [No.54/2019/F.No. 503/02/2008-FTD-II], Dated 17-7-2019. Prior to its substitution said Paragraph 1 read as under:

"1. The profits of an enterprise of a Contracting State shall be taxable only in that Contracting State unless the enterprise carries 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 Contracting State but only so much of them as is directly or indirectly attributable to that permanent establishment."

ARTICLE 8

**SHIPPING AND AIR TRANSPORT**

1. Profits derived by an enterprise which is a resident of a Contracting State from the operation by that enterprise of ships or aircraft in international traffic shall be taxable only in that Contracting State.

2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall mean profits derived by an enterprise described in paragraph 1 from the transportation by sea or air respectively of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of ships or aircraft including :

(a) the sale of tickets for such transportation ;

(b) the rental of ships or aircraft connected with such transportation; and

(c) income from use, maintenance, or rental of containers (including trailers, barges, and related equipment for the transport of containers) operated in international traffic.

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

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

ARTICLE 9

**ASSOCIATED ENTERPRISES**

1. Where—

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

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

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

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

ARTICLE 10

**DIVIDENDS**

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State, may be taxed in that other Contracting 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 Contracting State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 10 per cent of the gross amount of the dividends. The provisions of this paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares, or other rights, not being debt claims,

participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the 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 either Contracting State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base, in such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

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

1[3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to the Government, a political subdivision or a local authority, the Central Bank or any financial institution wholly owned by the Government of the other Contracting State, or paid on loans guaranteed or insured by the Government, a political subdivision or a local authority, the Central Bank or any financial institution wholly owned by the Government of the other Contracting State, shall be exempt from tax in the first-mentioned 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 Contracting State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is the Government of that Contracting State, a political sub-division, a local authority thereof or a resident of that Contracting State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment

or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base. Then such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

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.

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1. Paragraph 3 substituted by Notification No. S.O. 2562(E) [No.54/2019/F.No. 503/02/2008-FTD-II], Dated 17-7-2019. Prior to its substitution said Paragraph 3 read as under:

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

ARTICLE 12

**ROYALTIES AND FEES FOR TECHNICAL SERVICES**

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

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

3. The term "royalties" as used in this Article means 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 cinematograph films and films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. The term "fees for technical services" as used in this Article means any payment for the provision of services of managerial, technical or consultancy nature by a resident of a Contracting State in the other Contracting State, but does not include payment for activities mentioned in paragraph 2(k ) of Article 5 and Article 15 of the Agreement.

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

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

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties or fees for technical services, 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 Article 6 and situated in the other Contracting State may be taxed in that other Contracting State.

2. Gains from the alienation of movable property forming part of 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 a fixed base, may be taxed in that other Contracting State.

3. 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 of which the alienator is a resident.

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

5. Gains from the alienation of any property other than that referred to in the preceding paragraphs of this Article, arising in a Contracting State, may be taxed in that Contracting State.

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 Contracting State except in one of 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;

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

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

ARTICLE 15

**DEPENDENT PERSONAL SERVICES**

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

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

(a) the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in the taxable year concerned; and

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

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

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated by an enterprise which is a resident of a Contracting State in international traffic shall be taxable only in that Contracting State.

ARTICLE 16

**DIRECTORS' FEES**

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

ARTICLE 17

**ARTISTES AND SPORTSPERSONS**

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 a sportsperson, from his personal activities as such exercised in other Contracting State, may be taxed in that other Contracting State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson 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 sportsperson are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived by entertainers or sportsperson who are residents of a Contracting State from the activities exercised in the other Contracting State either as a part of culture exchange between the Contracting States or supported wholly or substantially from the public funds in either of the Contracting States or political sub-divisions or local authorities thereof, shall be exempt from tax in that other Contracting State.

ARTICLE 18

**PENSIONS**

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

2. Notwithstanding the provisions of paragraph 1, pensions, annuity paid and other similar payments made by the Government of a Contracting State or a political sub-division or a local authority thereof under a public welfare scheme of the special security system of that Contracting State shall be taxable only in that Contracting State.

ARTICLE 19

**REMUNERATION AND PENSIONS IN RESPECT OF GOVERNMENT SERVICES**

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

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

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

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

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

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

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

ARTICLE 20

**PAYMENTS RECEIVED BY PROFESSORS, TEACHERS AND RESEARCH SCHOLARS**

1. An individual who is, or immediately before visiting a Contracting State was, a resident of the other Contracting State and is present in the first-mentioned Contracting State for the primary purpose of teaching giving lectures or conducting research at a university, college, school or educational institution or scientific research institution approved by the Government of the first-mentioned Contracting State shall be exempt from tax in the first mentioned Contracting State, for a period of three years from the date of his arrival in the first-mentioned Contracting State, in respect of remuneration for such teaching, lectures 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 21

**PAYMENTS RECEIVED BY STUDENTS, TRAINEES AND APPRENTICE**

1. A student, business apprentice or trainee 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, training shall be exempt from tax in that first-mentioned State on the following payments or income received or derived by him for the purpose of his maintenance, education or training :

(a) payments derived from sources outside that Contracting State for the purpose of his maintenance, education, study, research or training;

(b) grants, scholarships or awards supplied by the Government or a scientific, educational, cultural or other tax-exempt organization; and

(c) income derived from personal services performed in that Contracting State for the purpose of maintenance.

2. 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 Contracting State.

ARTICLE 22

**OTHER INCOME**

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that Contracting State.

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

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

ARTICLE 23

**METHODS FOR THE ELIMINATION OF DOUBLE TAXATION**

1. In China, double taxation shall be eliminated as follows :

1[(a) Where a resident of China derives income from India, the amount of tax on that income payable in India in accordance with the provisions of this Agreement (except to the extent that these provisions allow taxation by India solely because the income is also income derived by a resident of India) may be credited against the Chinese tax imposed on that resident. The amount of the credit, however, shall not exceed the amount of the Chinese tax on that income computed in accordance with the taxation laws and regulations of China.]

(b) Where the income derived from India is a dividend paid by a company which is a resident of India to a company which is a resident of China and which owns not less than 10 per cent of the shares of the company paying the dividend, the credit shall take into account the tax paid to India by the company paying the dividend in respect of its income.

2[2. In India, double taxation shall be eliminated as follows:

Where a resident of India derives income, which may be taxed in China in accordance with the provisions of this Agreement (except to the extent that these provisions allow taxation by China solely because the income is also income derived by a resident of China), India shall allow as deduction from the tax on the income of that resident, an amount

equal to the income - tax paid in China whether directly or by deduction. Such deduction shall not, however, exceed that part of the income-tax (as computed before the deduction is given) which is attributable, as the case may be, to the income which may be taxed in China.]

3. The tax paid in a Contracting State mentioned in paragraphs 1 and 2 of this Article shall be deemed to include the tax which would have been payable but for the legal provisions concerning tax reduction exemption or other tax incentives of the Contracting States for the promotion of economic development.

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1. Substituted by Notification No. S.O. 2562(E) [No.54/2019/F.No. 503/02/2008-FTD-II], Dated 17-7-2019. Prior to its substitution said clause (a) read as under:

"(a) Where a resident of China derives income from India the amount of tax on that income payable in India in accordance with the provisions of this Agreement, may be credited against the Chinese tax imposed on that resident. The amount of credit, however, shall not exceed the amount of the Chinese tax on that income computed in accordance with the taxation laws and regulations of China."

2. Paragraph 2 substituted by Notification No. S.O. 2562(E) [No.54/2019/F.No. 503/02/2008-FTD-II], Dated 17-7-2019. Prior to its substitution said Paragraph 2 read as under:

"2. In India, double taxation shall be eliminated as follows :

Where a resident of India derives income which, in accordance with the provisions of this Agreement, may be taxed in China, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in China whether directly or by deduction. Such deduction shall not, however, exceed that part of the income-tax (as computed before the deduction is given) which is attributable, as the case may be, to the income which may be taxed in China."

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 Contracting 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 Contracting State than the taxation levied on enterprises of that other Contracting State carrying on the same activities in the same circumstances or under the same conditions.

3. Where a Contracting State charges the profits of a permanent establishment which an enterprise of the other Contracting State has in the first-mentioned Contracting State at a rate of tax which is different from that imposed on the profits of a similar enterprise of the first-mentioned Contracting State, it shall not be construed as discrimination under this Article.

4. Nothing contained in this Article shall be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and deductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

5. Except where the provisions of paragraphs 1 of Article 9, paragraph 7 of Article 11, or paragraph 7 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State subject to the provisions of domestic

laws of that Contracting State.

6. 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 are or may be subjected in the same circumstances and under the same conditions.

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

ARTICLE 25

**MUTUAL AGREEMENT PROCEDURE**

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of 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 a satisfactory solution, to resolve, the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the provisions of this Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law 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. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.

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 paragraphs 2 and 3. When it seems advisable for reaching agreement, representatives of the competent authorities of the Contracting States may meet together for an oral exchange of opinions.

1[ARTICLE 26

**EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting States shall exchange such information (including documents) as is foreseeably 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 thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.

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 other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

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

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

(b) to supply information (including documents) 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.]

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1. Article 26 substituted by Notification No. S.O. 2562(E) [No.54/2019/F.No. 503/02/2008-FTD-II], Dated 17-7-2019. Prior to its substitution said article 26 read as under:

"ARTICLE 26

**EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting States shall exchange such information (including documents) as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement, insofar as the taxation thereunder is not contrary to this Agreement, in particular for the prevention of evasion of such taxes. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Agreement. 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.

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

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

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

(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 27

**DIPLOMATIC AGENTS AND CONSULAR OFFICERS**

Nothing in this Agreement 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.

1[ARTICLE 27A

**ENTITLEMENT TO BENEFITS**

Notwithstanding the other provisions of this Agreement, a benefit under this Agreement shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Agreement.]

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1. Inserted by Notification No. S.O. 2562(E) [No.54/2019/F.No. 503/02/2008-FTD-II], Dated 17-7-2019.

ARTICLE 28

**ENTRY INTO FORCE**

This Agreement shall enter into force on the thirtieth day after the date on which diplomatic notes indicating the completion of internal legal procedures necessary in each country for the entry into force of this Agreement have been exchanged. This Agreement shall have effect :

(a) in China, in respect of income arising in any taxable year beginning on or after the first day of January next following the calendar year in which this Agreement enters into force;

(b) in India, in respect of income arising in any previous year beginning on or after the first day of April next following the calendar year in which this Agreement enters into force.

ARTICLE 29

**TERMINATION**

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

(a) in China, in respect of income arising in any taxable year beginning on or after the first day of January next following the calendar year in which the notice of termination is given;

(b) in India, in respect of income arising in any previous year beginning on or after the first day of April next following the calendar year in which the notice is given;

IN WITNESS whereof, the undersigned, being duly authorized thereto, have signed the present Agreement.

DONE in duplicate at New Delhi on this eighteenth day of July, one thousand nine hundred and ninety-four in the Hindi, Chinese and English languages, all three texts being equally authentic. In case of any divergence the English text shall prevail.

Sd/-
For the Government of the Republic of India

Sd/-
For the Government of the People's Republic of China

**PROTOCOL**

At the signing of the Agreement between the Government of the Republic of India and the Government of the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income (hereinafter referred to as "The Agreement") both sides have agreed upon the following which form an integral part of the Agreement :

1. With reference to paragraph (1d) of Article 3 :

It is understood that the term "tax" should not include any penalty imposed for non-compliance of the laws and regulations relating to the taxes to which this Agreement applies.

2. With reference to Article 8, the exemption shall also include:

(i ) in China, the business tax;

(ii) in India, any tax similar to the business tax in China which may be imposed in India after signing of the Agreement.

1[***]

2[3. For the purpose of paragraph 3 of Article 11(Interest):

(a) the term "Central Bank" means, in the case of China, the People's Bank of China, and in the case of India, the Reserve Bank of India;

(b) the term "any financial institution wholly owned by the Government of the other Contracting State" means:

(i) in the case of China:

(A) the China Development Bank;

(B) the Agricultural Development Bank of China;

(C) the Export-Import Bank of China;

(D)the National Council for Social Security Fund;

(E) the China Export & Credit Insurance Corporation;

(F) the China Investment Corporation;

(G) any other institution wholly owned by the Government of China as may be agreed from time to time between the competent authorities of the Contracting States;

(ii) in the case of India:

(A) the Export-Import Bank of India;

(B) the National Housing Bank;

(C) the India Infrastructure Finance Company Limited;

(D) the Export Credit Guarantee Corporation of India Limited;

(E) the National Bank for Agricultural and Rural Development;

(F) any other institution wholly owned by the Government of India as may be agreed from time to time between the competent authorities of the Contracting States.]

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1. Paragraph 3 omitted by Notification No. S.O. 2562(E) [No.54/2019/F.No. 503/02/2008-FTD-II], Dated 17-7-2019. Prior to its substitution said Paragraph 3 read as under:

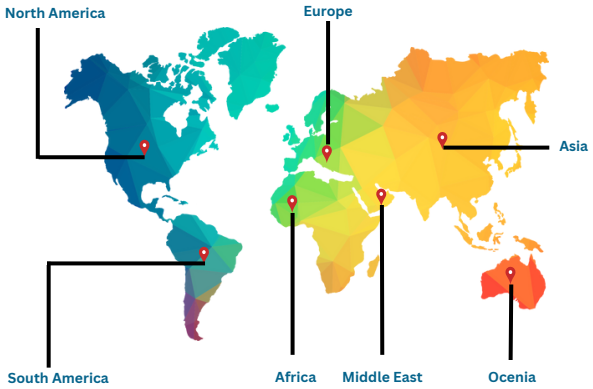
"3. With reference to Article 26:

The competent authorities of the Contracting States shall agree from time to time on the information or documents which shall be necessarily furnished on a routine basis.

IN WITNESS whereof, the undersigned, being duly authorized thereto, have signed the present Protocol.
DONE in duplicate at New Delhi on this eighteenth day of July, one thousand nine hundred and ninety-four in the Hindi, Chinese and English languages, all three texts being equally authentic. In case of any divergence, the English text shall prevail."

2. Inserted by Notification No. S.O. 2562(E) [No.54/2019/F.No. 503/02/2008-FTD-II], Dated 17-7-2019.

## SERVING CLIENTS WORLDWIDE

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