Chandrawat & Partners

INDIA- AUSTRALIA

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 has entered into a DTAA with the government of Australia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income which came into effect from 30 December, 1991. An amendment protocol was also signed in 1992 which came into effect by a notification dated 20 September, 2013.

The DTAA between India and Australia has a wide scope covering income-tax, and the resource rent tax in respect of offshore projects relating to exploration for or exploitation of petroleum resources imposed under the federal law of the Commonwealth of Australia; and income tax and its related surcharges and the surtax imposed on chargeable profits of companies in India. The DTAA includes an anti-double taxation provisions as per which an income shall be taxed only in the country of its origin. Coupled with the wide scope as per the definition of 'royalty', some companies have take advantage which came into light in 2018.

In order to avoid the same, a trade agreement has been signed between the countries this year in which some taxing rights have been given up by India. Further, amendments in the current DTAA have also been agreed to which shall be introduced in the near future. Currently, the withholding tax rates as per DTAA are- 15% for dividends and interests (wherein dividends and interests earned by the government institutions are exempt) and 10% and 15% on royalty and fee for technical fees (which is taxable only in the country of source at the prescribed rates) respectively.

The articles of India-Australia 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, conduit companies practices, etc.

INDIA-AUSTRALIA DTAA

(COMPREHENSIVE AGREEMENT)

India and Australia have signed a comprehensive agreement for avoidance of double taxation of income. Thereafter, a synthesised text was introduced so as to implement the measures to prevent base erosion and profit sharing. The original text of the comprehensive agreement can be referred to below:

AUSTRALIA

AGREEMENT FOR AVOIDANCE OF DOUBLE TAXATION AND PREVENTION OF FISCAL EVASION WITH AUSTRALIA

Whereas the annexed Agreement between the Government of the Republic of India and the Government of Australia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income has entered into force on the 30th day of December, 1991, on the exchange of notes notifying each other that the last of such things has been done as is necessary to give the said Agreement the force of law in India and in Australia, in accordance with paragraph (1) of 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), and section 24A of the Companies (Profits) Sur Tax Act, 1964 (7 of 1964), 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 60(E), dated 22-1-1992 as amended by Notification No.74/2013 [F.No.503/1/2009-FTD-II]/SO 2820(E), dated 20-9-2013*.

ANNEXURE

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF AUSTRALIA 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 Australia, 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 :

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* Earlier Limited Agreement see GSR 850(E), dated 19-11-1983.

ARTICLE 1

PERSONAL SCOPE

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

ARTICLE 2

TAXES COVERED

1. The existing taxes to which this Agreement shall apply are :

(a) in Australia :

the income-tax, and the resource rent tax in respect of offshore projects relating to exploration for or exploitation of petroleum resources, imposed under the federal law of the Commonwealth of Australia;

(b) in India :

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

(ii) the surtax imposed on chargeable profits of companies.

2. This Agreement shall also apply to any identical or substantially similar taxes which are imposed under the federal law of the Commonwealth of Australia or the law of the Republic of India after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in the laws of their respective States relating to the taxes to which this Agreement applies.

ARTICLE 3

GENERAL DEFINITIONS

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

(a) the term "Australia", when used in a geographical sense, excludes all external territories other than :

(i) the Territory of Norfolk Island ;

(ii) the Territory of Christmas Island ;

(iii) the Territory of Cocos (Keeling) Islands ;

(iv) the Territory of Ashmore and Cartier Islands ;

(v) the Territory of Heard Island and McDonald Islands ; and

(vi) the Coral Sea Islands Territory,

and includes any area adjacent to the temtorial limits of Australia [including the territories specified in sub-paragraphs (i) to (vi) inclusive] in respect of which there is for the time being in force, consistently with international law, a law of Australia dealing with the exploitation of any of the natural resources of the seabed and subsoil of the continental shelf;

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

(c) the terms "Contracting State", "one of the Contracting States" and "other Contracting State" mean, as the context requires, Australia or India, the Governments of which have concluded this Agreement;

(d) the term "person" includes an individual, a company, any other body of persons and any other entity which is treated as a taxable unit for tax purposes;

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

(f) the terms "enterprise of one of the Contracting States" and "enterprise of the other Contracting State" mean an enterprise carried on by a resident of Australia or an enterprise carried on by a resident of India, as the context requires;

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

(h) the term :

(i) "Australian tax" means tax imposed by Australia; and

(j) "Indian tax" means tax imposed by India,

being tax to which this Agreement applies by virtue of Article 2, but neither term includes any amount which represents a penalty or fine or interest imposed under the law of either Contracting State relating to its tax;

(i) the term "competent authority" means, in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner and, in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative; and

(ii) the term "year of income", in relation to Indian tax, means "previous year" as defined in the Income-tax Act, 1961.

3 [(k) the term "national", in relation to a Contracting State, means:

(i) any individual possessing the nationality or citizenship of that Contracting State; and

(ii) any legal person, company, partnership or association deriving its status as such from the laws in force in that Contracting State.]

2. In the application of this Agreement by a Contracting State, any term not defined in this Agreement shall, unless the context otherwise requires, have the meaning which it has under the laws of that State from time to time in force relating to the taxes to which this Agreement applies.

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3. Inserted by Notification No.74/2013 [F.No.503/1/2009-FTD-II]/SO 2820(E), dated 20-9-2013.

ARTICLE 4

RESIDENCE

1. For the purposes of this Agreement, a person is a resident of one of the Contracting States if the person is a resident of that Contracting State for the purposes of its tax. However, a person is not a resident of a Contracting State for the purposes of this Agreement if the person is liable to tax in that State in respect only of income from sources in that State.

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

(a) the person shall be deemed to be a resident solely of the Contracting State in which a permanent home is available to the person;

(b) if a permanent home is available to the person in both Contracting States, or in neither of them, the person shall be deemed to be a resident solely of the Contracting State with which the person's personal and economic relations are closer (centre of vital interests).

For the purposes of this paragraph, an individual's citizenship of a Contracting State as well as that person's habitual abode shall be factors in determining the degree of the person's personal and economic relations with that Contracting State.

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 solely of the Contracting State in which its place of effective management is situated.

ARTICLE 5

PERMANENT ESTABLISHMENT

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

2. The term "permanent establishment" shall include especially :

(a) a place of management;

(b) a branch;

(c) an office;

(d) a 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 agricultural, pastoral, forestry or plantation activities are carried on;
(i) premises used as a sales outlet or for receiving or soliciting orders;
(j) an installation or structure, or plant or equipment, used for the exploration for or exploitation of natural resources;
(k) a building site or construction, installation or assembly project, or supervisory activities in connection with such a site or project, where that site or project exists or those activities are carried on (whether separately or together with other sites, projects or activities) for more than 6 months.
4[(3) Notwithstanding the provisions of paragraphs 1 and 2, where an enterprise of a Contracting State:
(a) furnishes services, including consultancy services, through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or connected project) within that other State for a period or periods aggregating more than 183 days in any 12 month period;
(b) carries on activities (including the operation of substantial equipment) in the other State in the exploration for or exploitation of natural resources situated in that other State for a period or periods exceeding in the aggregate 90 days in any 12 month period; or
(c) operates substantial equipment in the other State [including as provided in sub-paragraph (b)] for a period or periods exceeding in the aggregate 183 days in any 12 month period;
such activities shall be deemed to be carried on through a permanent establishment of the enterprise situated in that other State, unless the activities are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this place of business a permanent establishment under the provisions of that "paragraph."]
4. An enterprise shall not be deemed to have a permanent establishment merely by reason of :
(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; or
(e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research, or for similar activities which have a preparatory or auxiliary character, for the enterprise.
However, the preceding provisions of this paragraph shall not apply where an enterprise of one of the Contracting States maintains in the other Contracting State a fixed place of business for any purpose other than those specified in this paragraph.
5. A person acting in one of the Contracting States on behalf of an enterprise of the other Contracting State - other than an agent of an independent status to whom paragraph (6) applies - shall be deemed to be a permanent establishment of that enterprise in the first-mentioned State if :
(a) the person has, and habitually exercises in that State, an authority to conclude contracts on behalf of the enterprise, unless the person's activities are limited to the purchase of goods or merchandise for the enterprise;
(b) the person has no such authority, but habitually maintains in that State a stock of goods or merchandise from which the person regularly delivers goods or merchandise on behalf of the enterprise;
(c) the person habitually secures orders in that State, wholly or principally for the enterprise itself or for the enterprise and other enterprises controlling, or controlled by or subject to the same common control as, that enterprise; or

(d) in so acting, the person manufactures or processes in that State for the enterprise goods or merchandise belonging to the enterprise.

6. An enterprise of one of the Contracting States 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, a general commission agent or any other agent of an independent status, where that person is acting in the ordinary course of the person's business as such a broker or agent. However, when the activities of such a broker or agent are carried on wholly or principally on behalf of that enterprise itself or on behalf of that enterprise and other enterprises controlling, or controlled by or subject to the same common control as, that enterprise, the person will not be considered a broker or agent of an independent status within the meaning of this paragraph.

7. The fact that a company which is a resident of one of the Contracting States 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 make either company a permanent establishment of the other.

8. The principles set forth in the preceding paragraphs of this Article shall be applied in determining for the purposes of paragraph (5) of Article 11 and paragraph (5) of Article 12 of this Agreement whether there is a permanent establishment outside both Contracting States, and whether an enterprise, not being an enterprise of one of the Contracting States, has a permanent establishment in one of the Contracting States.

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4. Substituted by Notification No.74/2013 [F.No.503/1/2009-FTD-II]/SO 2820(E), dated 20-9-2013, w.r.e.f. 2-4-2013. Prior to its substitution, Article 5(3) read as under :

"3. An enterprise shall be deemed to have a permanent establishment in one of the Contracting States and to carry on business through that permanent establishment if :

(a) substantial equipment is being used in that State by, for or under contract with the enterprise;

(b) it carries on activities in that State in connection with the exploration for or exploitation of natural resources in that State; or

(c) it furnishes services, including managerial services and those mentioned in sub-paragraphs (3)(h) to (k) of Article 12 but not those services in respect of which payments or credits that are royalties as defined in Article 12 are made, within one of the Contracting States through employees or other personnel, but only if those services are furnished within that State:

(i) for a period or periods aggregating to more than 90 days within any 12-month period; or

(ii) for another enterprise, if both enterprises are within either of the relationships described in sub-paragraphs (1)(a) and (b) of Article 9."

ARTICLE 6

INCOME FROM REAL PROPERTY (IMMOVABLE PROPERTY)

1. Income from real property may be taxed in the Contracting State in which that property is situated.

2. For the purposes of this Article, the term "real property":

(a) in the case of Australia, has the meaning which it has under the laws of Australia and shall include :

(i) a lease of land and any other interest in or over land, whether improved or not; and

(ii) a right to receive variable or fixed payments either as consideration for the working of or the right to work or explore for, or in respect of the exploitation of, mineral or other deposits, oil or gas wells, quarries or other places of extraction or exploitation of natural resources; and

(b) in the case of India, means such property which, according to the laws of India, is immovable property and shall

include :

(i) property accessory to immovable property;

(ii) rights to which the provisions of the general law respecting landed property apply; and

(iii) usufruct of immovable property and rights to receive variable or fixed payments either as consideration for the working of or the right to work or explore, for, or in respect of exploitation of, mineral or other deposits, oil or gas wells, quarries or other places of extraction or exploitation of natural resources.

3. A lease of land, any other interest in or over land and any rights or property referred to in any of the sub-paragraphs of paragraph (2) shall be regarded as situated where the land, mineral or other deposits, oil or gas wells, quarries, natural resources or property, as the case may be, are situated or where the exploration may take place.

4. The provisions of paragraph (1) shall apply to income-derived from the direct use, letting or use in any other form of real property.

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

ARTICLE 7

BUSINESS PROFITS

5[(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 one of the Contracting States 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 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 or with other enterprises with which it deals.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions, in accordance with and subject to the limitations of the law relating to tax in the Contracting State in which the permanent establishment is situated, expenses of the enterprise, being expenses which are incurred for the purposes of the business of the permanent establishment (including executive and general administrative expenses so incurred), whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.

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 the correct amount of profits attributable to a permanent establishment is incapable of determination by the taxation authority of one of the Contracting States or the ascertaining thereof by that authority presents exceptional difficulties, nothing in this Article shall affect the application of any law of that State relating to the determination of the tax liability of a person, provided that the law shall be applied, so far as the information available to that authority permits, in accordance with the principles of this Article.

6. For the purposes of the preceding paragraphs of this Article, 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.

8. Nothing in this Article shall affect the operation of any law of a Contracting State relating to tax imposed on profits from insurance with non-residents provided that if the relevant law in force in either Contracting State at the date of signature of this Agreement is varied (otherwise than in minor respects so as not to affect its general character) the Contracting States shall consult with each other with a view to agreeing to any amendment of this paragraph that may be appropriate.

9. Where :

(a) a resident of one of the Contracting States is beneficially entitled, whether directly or through one or more interposed trust estates, to a share of the business profits of an enterprise carried on in the other Contracting State by the trustee of a trust estate other than a trust estate which is treated in that other State as a company for tax purposes; and

(b) in relation to that enterprise, that trustee would, in accordance with the principles of Article 5, have a permanent establishment in that other Contracting State,

the enterprise carried on by the trustee shall be deemed to be a business carried on in that other Contracting State by that resident through a permanent establishment situated therein and that share of business profits shall be attributed to that permanent establishment.

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5. Substituted by Notification No.74/2013 [F.No.503/1/2009-FTD-II]/SO 2820(E), dated 20-9-2013. Prior to its substitution, Article 7(1) read as under :

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

(a) that permanent establishment; or

(b) sales within that other Contracting State of goods or merchandise of the same or a similar kind as those sold, or other business activities of the same or a similar kind as those carried on, through that permanent establishment."

ARTICLE 8

SHIPS AND AIRCRAFT

1. Profits from the operation of ships or aircraft, including interest on funds connected with that operation, derived by a resident of one of the Contracting States shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph (1), such profits may be taxed in the other Contracting State where they are profits from the operations of ships or aircraft confined solely to places in that other State.

3. The provisions of paragraphs (1) and (2) shall apply in relation to the share of the profits from the operation of ships or aircraft derived by a resident of one of the Contracting States through participation in a pool service, in a joint transport operating organisation or in an international operating agency.

4. For the purposes of this Article, profits derived from the carriage by ships or aircraft of passengers, livestock, mail, goods or merchandise shipped in a Contracting State for discharge at another place in that State shall be treated as profits from operations of ships or aircraft confined solely to places in that State.

ARTICLE 9

ASSOCIATED ENTERPRISES

1. Where :

(a) an enterprise of one of the Contracting States 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 one of the Contracting States and an enterprise of the other Contracting State,

and in either case conditions operate between the two enterprises in their commercial or financial relations which differ from those which might be expected to operate between independent enterprises dealing wholly independently with one another, then any profits which, but for those conditions, might have been expected to accrue 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.

2. Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person, including determinations in cases where the information available to the taxation authority of that State is inadequate to determine the income to be attributed to an enterprise, provided that that law shall be applied, so far as it is practicable to do so, consistently with the principles of this Article.

3. Where profits on which an enterprise of one of the Contracting States has been charged to tax in that State are also included, by virtue of paragraph (1) or (2), in the profits of an enterprise of the other Contracting State and charged to tax in that other State, and the profits so included are profits which might have been expected to have accrued to that enterprise of the other State if the conditions operative between the enterprises had been those which might have been expected to have operated between independent enterprises dealing wholly independently with one another, then the first-mentioned State shall make an appropriate adjustment to the amount of tax charged on those profits in the first-mentioned State. In determining such an adjustment, due regard shall be had to the other provisions of this Agreement and for this purpose 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 one of the Contracting States for the purposes of its tax, being dividends to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

2. Such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident for the purposes of its tax, and according to the law of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

3. The term "dividends" in this Article means income from shares and other income which is subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the company making the distribution is a resident for the purposes of its tax.

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

5. Dividends paid by a company which is a resident of one of the Contracting States, being dividends to which a person who is not a resident of the other Contracting State is beneficially entitled, shall be exempt from tax in that other State

except insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or fixed base situated in that other State:

Provided that this paragraph shall not apply in relation to dividends paid by any company which is a resident of Australia for the purposes of Australian tax and which is also a resident of India for the purposes of Indian tax.

ARTICLE 11

INTEREST

1. Interest arising in one of the Contracting States, being interest to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

2. Such interest may also be taxed in the Contracting State in which it arises, and according to the law of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

3. The term "interest" in this Article includes interest from Government securities or from bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and interest from any other form of indebtedness as well as all other income assimilated to income from money lent by the law, relating to tax, of the Contracting State in which the income arises, but does not include interest referred to in paragraph (1) of Article 8.

4. The provisions of paragraphs (1) and (2) shall not apply if the person beneficiary entitled to the interest, being a resident of one of the Contracting States, carries on business in the other Contracting State, in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the indebtedness in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Interest shall be deemed to arise in a Contracting State when the payer is that State itself or a political sub-division or local authority of that State or a person who is a resident of that State for the purposes of its tax. Where, however, the person paying the interest, whether the person is a resident of one of the Contracting States or not, has in one of the Contracting States or outside both Contracting States a permanent establishment or 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 State in which the permanent establishment or fixed base is situated.

6. Where, owing to a special relationship between the payer and the person beneficially entitled to the interest, or between both of them and some other person, the amount of the interest paid, having regard to the indebtedness for which it is paid, exceeds the amount which might have been expected to have been agreed upon by the payer and the person so entitled in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the amount of the interest paid shall remain taxable according to the law, relating to tax, of each Contracting State, but subject to the other provisions of this Agreement.

ARTICLE 12

ROYALTIES

1. Royalties arising in one of the Contracting States, being royalties to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

2. Such royalties may also be taxed in the Contracting State in which they arise, and according to the law of that State, but the tax so charged shall not exceed:

(a) in the case of :

(i) royalties referred to in sub-paragraph (3)(b) ;

(ii) payments or credits for services referred to in sub-paragraph (3)(d), subject to sub-paragraphs (3)(h) to (l), that are ancillary and subsidiary to the application or enjoyment of equipment for which payments or credits are made under sub-paragraph (3)(b); or

(iii) royalties referred to in sub-paragraph (3)(f) that relate to equipment mentioned in sub-paragraph (3)(b) ;

10 per cent of the gross amount of the royalties; and

(b) in the case of other royalties :

(i) during the first 5 years of income for which this Agreement has effect :

(a) where the payer is the Government or a political sub-division of that State or a public sector company: 15 per cent of the gross amount of the royalties; and

(b) in all other cases: 20 per cent of the gross amount of the royalties; and

(ii) during all subsequent years of income: 15 per cent of the gross amount of the royalties.

3. The term "royalties" in this Article means payments or credits, whether periodical or not, and however described or computed, to the extent to which they are made as consideration for :

(a) the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trade mark or other like property or right;

(b) the use of, or the right to use, any industrial, commercial or scientific equipment;

(c) the supply of scientific, technical, industrial or commercial knowledge or information;

(d) the rendering of any technical or consultancy services (including those of technical or other personnel) which are ancillary and subsidiary to the application or enjoyment of any such property or right as is mentioned in sub-paragraph (a), or any such equipment as is mentioned in sub-paragraph (b) or any such knowledge or information as is mentioned in sub-paragraph (c);

(e) the use of, or the right to use :

(i) motion picture films;

(ii) films or video tapes for use in connection with television; or

(iii) tapes for use in connection with radio broadcasting;

(f) total or partial forbearance in respect of the use or supply of any property or right referred to in sub-paragraphs (a) to (e);

(g) the rendering of any services (including those of technical or other personnel), which make available technical knowledge, experience, skill, know-how or processes or consist of the development and transfer of a technical plan or design;

but that term does not include payments or credits relating to services mentioned in sub-paragraphs (d) and (g) that are made;

(h) for services that are ancillary and subsidiary, and inextricably and essentially linked, to a sale of property;

(i) for services that are ancillary and subsidiary to the rental of ships, aircraft, containers or other equipment used in connection with the operation of ships or aircraft in international traffic;

(j) for teaching in or by an educational institution;

(k) for services for the personal use of the individual or individuals making the payments or credits; or

(l) to an employee of the person making the payments or credits or to any individual or firm of individuals (other than a company) for professional services as defined in Article 14.

4. The provisions of paragraphs (1) and (2) shall not apply if the person beneficially entitled to the royalties, being a resident of one of the Contracting States, carries on business in the other Contracting State, in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the property, right or services in respect of which the royalties are paid or credited are effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

6. Where, owing to a special relationship between the payer and the person beneficially entitled to the royalties, or between both of them, and some other person, the amount of the royalties paid or credited, having regard to what they are paid or credited for, exceeds the amount which might have been expected to have been agreed upon by the payer and the person so entitled in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the amount of the royalties paid or credited shall remain taxable according to the law, relating to tax, of each Contracting State, but subject to the other provisions of this Agreement.

ARTICLE 13

ALIENATION OF PROPERTY

1. Income or gains derived by a resident of one of the Contracting States from the alienation of real property referred to in Article 6 and, as provided in that Article, situated in the other Contracting State may be taxed in that other State.

2. Income or gains derived from the alienation of property, other than real property referred to in Article 6, that forms part of the business property of a permanent establishment which an enterprise of one of the Contracting States has in the other Contracting State or pertains to a fixed base available to a resident of the first-mentioned State in that other State for the purpose of performing independent personal services, including income or gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such a fixed base, may be taxed in that other State.

3. Income or gains derived from the alienation of ships or aircraft operated in international traffic, or of property other than real property referred to in Article 6 pertaining to the operation of those ships or aircraft, shall be taxable only in the Contracting State of which the enterprise which operated those ships or aircraft is a resident.

4. Income or gains derived from the alienation of shares or comparable interests in a company, the assets of which consist wholly or principally of real property referred to in Article 6 and, as provided in that Article, situated in one of the Contracting States, may be taxed in that State.

5. Income or gains derived from the alienation of shares or comparable interests in a company, other than those referred to in paragraph (4), may be taxed in the Contracting State of which the company is a resident.

6. Nothing in this Agreement affects the application of a law of a Contracting State relating to the taxation of gains of a capital nature derived from the alienation of property other than that to which any of paragraphs (1), (2), (3), (4) and (5) apply.

ARTICLE 14

INDEPENDENT PERSONAL SERVICES

1. Income derived by an individual or a firm of individuals (other than a company) who is a resident of one of the Contracting States in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless :

(a) the individual or firm has a fixed base regularly available to the individual or firm in the other Contracting State for the purpose of performing the individual's or the firm's activities, in which case the income may be taxed in that other State but only so much of it as is attributable to activities exercised from that fixed base; or

(b) the stay by the individual or, in the case of a firm, by one or more members of the firm (alone or together) in the other Contracting State is for a period or periods amounting to or exceeding 183 days in a year of income, in which case only so much of the income as is derived from the activities of the individual, that member or those members, as the case may be, in that other State may be taxed in that other State.

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

ARTICLE 15

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16, 17, 18, 19 and 20, salaries, wages and other similar remuneration derived by an individual who is a resident of one of the Contracting States 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 from that exercise may be taxed in that other State.

2. Notwithstanding the provisions of paragraph (1), remuneration derived by an individual who is a resident of one of the Contracting States 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 that other State for a period or periods not exceeding in the aggregate 183 days in a year of income of that other State;

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

(c) the remuneration is not deductible in determining taxable profits of a permanent establishment or a fixed base which the employer has in that other State.

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

ARTICLE 16

DIRECTORS' FEES

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

ARTICLE 17

ENTERTAINERS

1. Notwithstanding the provisions of Articles 14 and 15, income derived by residents of one of the Contracting States as entertainers, such as theatre, motion picture, radio or television artists, musicians and athletes, from their personal

activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of the personal activities of an entertainer as such accrues not to that entertainer 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 are exercised.

3. Notwithstanding the provisions of paragraph (1), income derived by an entertainer who is a resident of one of the Contracting States, from the entertainer's personal activities as such exercised in the other Contracting State, shall be taxable only in the first-mentioned Contracting State if the activities in the other Contracting State are supported wholly or substantially from the public funds of the first-mentioned Contracting State, including any of its political sub-divisions or local authorities.

4. Notwithstanding the provisions of paragraph (2) and Articles 7, 14 and 15, where income in respect of personal activities exercised by an entertainer in the entertainer's capacity as such in one of the Contracting States accrues not to the entertainer but to another person, that income shall be taxable only in the other Contracting State if that other person is supported wholly or substantially from the public funds of that other State, including any of its political sub-divisions or local authorities.

ARTICLE 18

PENSIONS AND ANNUITIES

1. Pensions (not including pensions referred to in Article 19) and annuities paid to a resident of one of the Contracting States shall be taxable only in that State.

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

ARTICLE 19

GOVERNMENT SERVICE

1. Remuneration, other than a pension or annuity, paid by one of the Contracting States or political sub-division or local authority of that State to any individual in respect of services rendered in the discharge of governmental functions shall be taxable only in that State. However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the recipient is a resident of that other State who :

(a) is a citizen of that State; or

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

2. Any pension paid by, or out of funds created by, one of the Contracting States or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State. However, such pension shall be taxable only in other Contracting State if the recipient is resident and a citizen of that other State.

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

ARTICLE 20

PROFESSORS AND TEACHERS

1. Where a professor or teacher who is a resident of one of the Contracting States visits the other Contracting State for a period not exceeding two years for the purpose of teaching or carrying out advanced study or research at a University, college, school or other educational institution, any remuneration that person receives for such teaching, advanced study or research shall be exempt from tax in that other State to the extent to which such remuneration is, or upon the application of this Article will be, subject to tax in the first-mentioned State.
2. This Article shall not apply to remuneration which a professor or teacher receives for conducting research if the research is undertaken primarily for the private benefit of a specific person or persons.

ARTICLE 21

STUDENTS AND TRAINEES

Where a student or trainee, who is a resident of one of the Contracting States or who was a resident of that State immediately before visiting the other Contracting State and who is temporarily present in that other State solely for the purpose of the student's or trainee's education or training, receives payments from sources outside that other State for the purpose of the student's or trainee's maintenance, education or training, those payments shall be exempt from tax in that other State.

ARTICLE 22

INCOME NOT EXPRESSLY MENTIONED

1. Items of income of a resident of one of the Contracting States which are not expressly mentioned in the foregoing Articles of this Agreement shall be taxable only in that State.
2. However, any such income derived by a resident of one of the Contracting States from sources in the other Contracting State may also be taxed in that other State.
3. The provisions of paragraph (1) shall not apply to income derived by a resident of one of the Contracting States where that income is effectively connected with a permanent establishment or fixed base situated in the other Contracting State. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

ARTICLE 23

SOURCE OF INCOME

1. Income, profits or gains derived by a resident of one of the Contracting States which, under any one or more of Articles 6 to 8, Articles 10 to 20 and Article 22 may be taxed in the other Contracting State, shall for the purpose of the law of that other State relating to its tax, be deemed to be income from sources in that other State.
2. Income, profits or gains derived by a resident of one of the Contracting States which, under any one or more of Articles 6 to 8, Articles 10 to 20 and Article 22 may be taxed in the other Contracting State, shall for the purposes of Article 24 and of the law of the first-mentioned State relating to its tax, be deemed to be income from sources in that other State.

ARTICLE 24

METHODS OF ELIMINATION OF DOUBLE TAXATION

1. (a) Subject to the provisions of the law of Australia from time to time in force which relate to the allowance of a credit against Australian tax or tax paid in a country outside Australia (which shall not affect the general principle hereof), Indian tax paid under the law of India and in accordance with this Agreement, whether directly or by deduction, in respect of income derived by a person who is a resident of Australia from sources in India shall be allowed as a credit

against Australian tax payable in respect of that income.

(b) Where a company which is a resident of India and is not a resident of Australia for the purposes of Australian tax pays a dividend to a company which is a resident of Australia and which controls directly or indirectly not less than 10 per cent of the voting power of the first-mentioned company, the credit referred to in sub-paragraph (a) shall include the Indian tax paid by that first-mentioned company in respect of that portion of its profits out of which the dividend is paid.

2. In paragraph (1), Indian tax paid shall include :

(a) subject to sub-paragraph (b) an amount equivalent to the amount of any Indian tax foregone which, under the law of India relating to Indian tax and in accordance with this Agreement, would have been payable as Indian tax on income but for an exemption from, or reduction of, Indian tax on that income in accordance with :

(i) section 10(4), 10(15)(iv), 10A, 10B, 80HHC, 80HHD or 80-I of the Income-tax Act, 1961, insofar as those provisions were in force on, and have not been modified since, the date of signature of this Agreement, or have been modified only in minor respects so as not to affect their general character; or

(ii) any other provision which may subsequently be made granting an exemption from or reduction of Indian tax which the Treasurer of Australia and the Ministry of Finance of India agree from time to time in letters exchanged for this purpose to be of a substantially similar character, if that provision has not been modified thereafter or has been modified only in minor respects so as not to affect its general character; and

(b) in the case of interest derived by a resident of Australia which is exempted from Indian tax under the provisions referred to in sub-paragraph (a), the amount which would have been payable as Indian tax if the interest had not been so exempt and if the tax referred to in paragraph (2) of Article 11 did not exceed 10 per cent of the gross amount of the interest.

3. Paragraph (2) shall apply only in relation to income derived in any of the first 10 years of income in relation to which this Agreement has effect under sub-paragraph (1)(a)(ii) of Article 28 or in any later year of income that may be agreed by the Contracting States in letters exchanged for this purpose.

4. In the case of India, double taxation shall be avoided as follows :

(a) the amount of Australian tax paid under the laws of Australia and in accordance with the provisions of this Agreement, whether directly or by deduction, by a resident of India in respect of income from sources within Australia which has been subjected to tax both in India and Australia shall be allowed as a credit against the Indian tax payable in respect of such income but in an amount not exceeding that proportion of Indian tax which such income bears to the entire income chargeable to Indian tax; and

(b) for the purposes of the credit referred to in sub-paragraph (a) above, where the resident of India is a company by which surtax is payable, the credit to be allowed against Indian tax shall be allowed in the first instance against the income-tax payable by the company in India and, as to the balance, if any, against the surtax payable by it in India.

5. Where a resident of one of the Contracting States derives income which, in accordance with the provisions of this Agreement shall be taxable only in the other Contracting States, the first-mentioned State may take that income into account in calculating the amount of its tax payable on the remaining income of that resident.

5[ARTICLE 24A

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, in particular with respect to residence, are or may be

subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

(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 individuals who are 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. This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which a company of the other Contracting State has in the first mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7.

(3) Except where the provisions of paragraph 1 of Article 9, paragraph 6 of Article 11 or paragraph 6 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.

(4) Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned 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.

(5) The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

(6) This Article shall not apply to any provision of the laws of a Contracting State which:

(a) is designed to prevent the avoidance or evasion of taxes, including measures designed to address thin capitalization or to ensure that taxes can be effectively collected or recovered; or

(b) provides tax incentives to eligible taxpayers for expenditure on research or development, provided that a company that is a resident of one Contracting State and is wholly or partly owned by residents of the other State can access such incentives on the same terms and conditions as any other company that is a resident of the first-mentioned State; or

(c) is agreed between the Contracting States through an Exchange of Notes.]

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5. Inserted by Notification No.74/2013 [F.No.503/1/2009-FTD-II]/SO 2820(E), dated 20-9-2013, w.r.e.f. 2-4-2013. .

ARTICLE 25

MUTUAL AGREEMENT PROCEDURE

1. Where a person who is a resident of one of the Contracting States considers that the actions of the taxation authority of one or both of the Contracting States result or will result for the person in taxation not in accordance with this Agreement, the person may, notwithstanding the remedies provided by the national laws of those States, present a case to the competent authority of the Contracting State of which the person is a resident. The case must be presented within three years from the first notification of the action giving rise to taxation not in accordance with this Agreement.

2. The competent authority shall endeavour, if the claim appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with this Agreement. The solution so 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 jointly endeavour to resolve any difficulties or doubts arising as to the application of this Agreement.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of giving effect to the provisions of this Agreement.

6[ARTICLE 26

EXCHANGE OF INFORMATION

(1) The competent authorities of the Contracting States shall exchange such information (including documents or certified copies of the 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, 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, or the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorizes 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 or certified copies of the 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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6. Substituted by Notification No.74/2013 [F.No.503/1/2009-FTD-II]/SO 2820(E), dated 20-9-2013, w.r.e.f. 2-4-2013. Prior to its substitution, Article 26 read as under :

"ARTICLE 26

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Agreement or of the domestic laws of the Contracting States concerning the taxes to which this Agreement applies insofar as the taxation thereunder is not contrary to this Agreement, or for the prevention of evasion or avoidance of, or fraud in relation to, such taxes. The exchange of information is not restricted by Article 1. Any information received by the competent authority of 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, enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes to which this Agreement applies and shall be used only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. The competent authorities may, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchange of information shall be made. The exchange of information shall be either on a routine basis or on request with reference to particular cases, or both. The competent authorities of the Contracting States may agree from time to time in the list of the information which shall be furnished on a routine basis.

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

(a) to carry out administrative measures at variance with the laws or the 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 to supply information the disclosure of which would be contrary to public policy."

(a) to carry out administrative measures at variance with the laws or the 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 to supply information the disclosure of which would be contrary to public policy."

7[ARTICLE 26A

ASSISTANCE IN THE COLLECTION OF TAXES

(1) The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

(2) The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, insofar as the taxation thereunder is not contrary to this Agreement or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

(3) When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at

that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

(4) When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

(5) Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

(6) Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall only be brought before the courts or administrative bodies of that State. Nothing in this Article shall be construed as creating or providing any right to such proceedings before any court or administrative body of the other Contracting State.

(7) Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be:

(a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or

(b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

(8) In no case shall the provisions of this Article 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 carry out measures which would be contrary to public policy (ordre public);

(c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;

(d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.]

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7. Inserted by Notification No.74/2013 [F.No.503/1/2009-FTD-II]/SO 2820(E), dated 20-9-2013, w.r.e.f. 18-7-2013.

ARTICLE 27

DIPLOMATIC AND CONSULAR OFFICIALS

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

ARTICLE 28

ENTRY INTO FORCE

1. This Agreement shall enter into force on the date on which the Contracting States exchange notes through the diplomatic channel notifying each other that the last of such things has been done as is necessary to give this Agreement the force of law in Australia and in India, as the case may be, and thereupon this Agreement shall have effect :

(a) in Australia:

(i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after 1 July in the calendar year next following that in which the Agreement enters into force; and

(ii) in respect of other Australian tax, in relation to income, profits or gains of any year of income beginning on or after 1 July in the calendar year next following that in which the Agreement enters into force;

(b) in India, in respect of income, profits or gains arising in any year of income beginning on or after 1 April in the calendar year next following that in which the Agreement enters into force.

2. The Agreement made between the Government of Australia and the Government of the Republic of India for the Avoidance of Double Taxation of Income derived from International Air Transport signed at Canberra on 31 May, 1983 (in this Article called "the 1983 Agreement") shall cease to have effect with respect to taxes to which this Agreement applies when the provisions of this Agreement become effective in accordance with paragraph (1).

3. The 1983 Agreement shall terminate on the expiration of the last date on which it has effect in accordance with the foregoing provisions of this Article.

ARTICLE 29

TERMINATION

This Agreement shall continue in effect indefinitely, but either of the Contracting States may, on or before 30 June in any calendar year beginning after the expiration of 5 years from the date of its entry into force, give to the other Contracting State through the diplomatic channel written notice of termination and, in that event, this Agreement shall cease to be effective :

(a) in Australia :

(i) in respect of withholding tax on income, that is, derived by a non-resident, in relation to income derived on or after 1 July in the calendar year next following that in which the notice of termination is given; and

(ii) in respect of other Australian tax, in relation to income, profits or gains of any year of income beginning on or after 1 July in the calendar year next following that in which the notice of termination is given;

(b) in India, in respect of income, profits or gains arising in any year of income beginning on or after 1 April in the calendar year next following that in which the notice of termination is given.

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

DONE in duplicate at Canberra this twenty-fifth day of July, one thousand nine hundred and ninety-one in the Hindi and English languages, both texts being equally authentic, the English text to be the operative one in any case of doubt.

AMENDMENT NOTIFICATION NO.74/2013 [F.NO.503/1/2009-FTD-II], DATED 20-9-2013

SECTION 90 OF THE INCOME-TAX ACT, 1961 - DOUBLE TAXATION AGREEMENT - AGREEMENT FOR AVOIDANCE OF DOUBLE TAXATION AND PREVENTION OF FISCAL EVASION WITH FOREIGN COUNTRIES – AUSTRALIA – AMENDMENT IN NOTIFICATION NO. GSR 60(E), DATED 22-1-1992

NOTIFICATION NO. 74/2013 [F.NO. 503/1/2009-FTD-II], DATED 20-9-2013

Whereas the annexed Protocol amending the Agreement between the Government of the Republic of India and the Government of Australia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (hereinafter referred to as "Protocol") signed on the 16th day of December, 2011 shall enter into force on the 2nd day of April, 2013, being the date of the later of the notifications after completion of the procedures as required by the laws of the respective countries for the entry into force of the Protocol, in accordance with the provisions of Article 7 of the said Protocol.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the Protocol annexed hereto shall be given effect to and shall be deemed to have been given effect to in the Union of India in accordance with Article 7 of the said Protocol, namely:-

(i) in respect of Articles 1, 2 and 3 of the said Protocol, for the Financial Year 2014-15 and subsequent financial years;

(ii) in respect of Articles 4 and 5 of the said Protocol, from the 2nd day of April, 2013; and

(iii) in respect of Article 6 of the said Protocol, from the 18th day of July, 2013

PROTOCOL

AMENDING THE AGREEMENT
BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF INDIA
AND
THE GOVERNMENT OF AUSTRALIA
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 Australia,

Desiring to amend the Agreement between the Government of the Republic of India and the Government of Australia for the avoidance of double taxation, and the prevention of fiscal evasion with respect to taxes on income signed at Canberra on the 25th day of July 1991 (in this Protocol referred to as "the Agreement"),

Have agreed as follows:

ARTICLE 1

Article 3 of the Agreement is amended by inserting new sub-paragraph (k) in paragraph (1):

'(k) the term "national", in relation to a Contracting State, means:

(i) any individual possessing the nationality or citizenship of that Contracting State; and

(ii) any legal person, company, partnership or association deriving its status as such from the laws in force in that Contracting State.'

ARTICLE 2

Article 5 of the Agreement is amended by omitting paragraph 3 and substituting:

'(3) Notwithstanding the provisions of paragraphs 1 and 2, where an enterprise of a Contracting State:

(a) furnishes services, including consultancy services, through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or connected project) within that other State for a period or periods aggregating more than 183 days in any 12 month period;

(b) carries on activities (including the operation of substantial equipment) in the other State in the exploration for or exploitation of natural resources situated in that other State for a period or periods exceeding in the aggregate 90 days in any 12 month period; or

(c) operates substantial equipment in the other State [including as provided in sub-paragraph (b)] for a period or periods exceeding in the aggregate 183 days in any 12 month period;

such activities shall be deemed to be carried on through a permanent establishment of the enterprise situated in that other State, unless the activities are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this place of business a permanent establishment under the provisions of that "paragraph."'

ARTICLE 3

Article 7 of the Agreement is amended by omitting paragraph 1 and substituting:

"(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."

ARTICLE 4

The Agreement is amended by inserting:

"ARTICLE 24A

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, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

(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 individuals who are 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. This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which a company of the other Contracting State has in the first mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7.

(3) Except where the provisions of paragraph 1 of Article 9, paragraph 6 of Article 11 or paragraph 6 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.

(4) Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned 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.

(5) The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

(6) This Article shall not apply to any provision of the laws of a Contracting State which:

(a) is designed to prevent the avoidance or evasion of taxes, including measures designed to address thin capitalization or to ensure that taxes can be effectively collected or recovered; or

(b) provides tax incentives to eligible taxpayers for expenditure on research or development, provided that a company that is a resident of one Contracting State and is wholly or partly owned by residents of the other State can access such incentives on the same terms and conditions as any other company that is a resident of the first-mentioned State; or

(c) is agreed between the Contracting States through an Exchange of Notes."

ARTICLE 5

The Agreement is amended by omitting Article 26 and substituting:

"ARTICLE 26

EXCHANGE OF INFORMATION

(1) The competent authorities of the Contracting States shall exchange such information (including documents or certified copies of the 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, 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, or the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorizes 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 or certified copies of the 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."

ARTICLE 6

The Agreement is amended by inserting:

"ARTICLE 26A

ASSISTANCE IN THE COLLECTION OF TAXES

(1) The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

(2) The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and

description imposed on behalf of the Contracting States, insofar as the taxation thereunder is not contrary to this Agreement or any other instrument to which the Contracting States are parties, as well as interest administrative penalties and costs of collection or conservancy related to such amount.

(3) When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

(4) When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

(5) Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

(6) Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall only be brought before the courts or administrative bodies of that State. Nothing in this Article shall be construed as creating or providing any right to such proceedings before any court or administrative body of the other Contracting State.

(7) Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be

(a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or

(b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

(8) In no case shall the provisions of this Article 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 carry out measures which would be contrary to public policy (ordre public);

(c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;

(d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State."

ARTICLE 7

ENTRY INTO FORCE

The Contracting States shall notify each other in writing through diplomatic channel of the completion of their domestic requirements for the entry into force of this Protocol. The Protocol, which shall form an integral part of the Agreement, shall enter into force on the date of the last notification, and thereupon shall have effect:

(a) in the case of India, in respect of income derived in any fiscal year beginning on or after 1 April next following the date on which the Protocol enters into force;

(b) in the case of Australia, with regard to Australian tax, in relation to income, profits or gains of any year of income beginning on or after 1 July next following the date on which the Protocol enter into force;

(c) for the purposes of Articles 24A (Non-discrimination) and 26 (Exchange of Information) of the Agreement, from the date of entry into force of this Protocol;

(d) notwithstanding the provisions of sub-paragraphs (a), (b) and (c), Article 26A (Assistance in the Collection of Taxes) of the Agreement shall have effect from the date agreed in an exchange of notes through the diplomatic channel.

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

DONE in duplicate at New Delhi, India this 16th day of December, 2011, in the English and Hindi languages, both texts equally authentic, the English text to be the operative one in any case of doubt.

INDIA-AUSTRALIA DTAA

(SYNTHESISED TEXT)

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

AUSTRALIA

SYNTHESISED TEXT OF THE MULTILATERAL CONVENTION TO IMPLEMENT TAXTREATY RELATED MEASURES TO PREVENT BASE EROSION AND PROFIT SHIFTING(MLI) AND THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OFINDIA AND THE GOVERNMENT OF AUSTRALIA FOR THE AVOIDANCE OF DOUBLETAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXESON INCOME AS AMENDED BY THE AMENDING PROTOCOL

General disclaimer on this synthesised text document

This document presents the synthesised text for the application of the Agreement between the Government of the Republic of India and the Government of Australia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on 25 July 1991 as amended by the Amending Protocol signed on 16 December 2011 (the "Agreement") as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the "MLI") signed by India and Australia on 7 June 2017.

This document was prepared in consultation with the competent authority of Australia and represents our shared understanding of the modifications made to the Agreement by the MLI.

The document was prepared on the basis of the MLI position of India submitted to the Depositary (the Secretary-General of the Organisation for Economic Co-operation and Development) upon ratification on 25 June, 2019 and of the MLI position of Australia submitted to the Depositary upon ratification on 26 September, 2018. These MLI positions are subject to modifications as provided in the MLI. Modifications made to MLI positions could modify the effects of the MLI on this Agreement.

The sole purpose of this document is to facilitate the understanding of the application of the MLI to the Agreement and it does not constitute a source of law. The authentic legal texts of the Agreement and the MLI take precedence and remain the legal texts applicable.

The provisions of the MLI that are applicable with respect to the provisions of the Agreement are included in boxes throughout the text of this document in the context of the relevant provisions of the Agreement. The boxes containing the provisions of the MLI have generally been inserted in accordance with the ordering of the provisions of the 2017 OECD Model Tax Convention.

Changes to the text of the provisions of the MLI have been made to conform the terminology used in the MLI to the terminology used in the Agreement (such as "Covered Tax Agreement", "Agreement" and "Convention", "Contracting Jurisdictions" and "Contracting States"), to ease the comprehension of the provisions of the MLI. The changes in terminology are intended to increase the readability of the document and are not intended to change the substance of the provisions of the MLI. Similarly, changes have been made to parts of provisions of the MLI that describe existing provisions of the Agreement: descriptive language has been replaced by legal references of the existing provisions to ease the readability.

In all cases, references made to the provisions of the Agreement or to the Agreement must be understood as referring to the Agreement as modified by the provisions of the MLI, provided such provisions of the MLI have taken effect.

References

The text of the MLI can be found at the following link: http://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related- measures-to-prevent-BEPS.pdf The text of the Agreement and the Protocol can be found at the following link: https://www.incometaxindia.gov.in/Pages/international-taxation/dtaa.aspxThe MLI position of India submitted to the Depositary upon ratification on 25 June, 2019 and of the MLI position of Australia submitted to the Depositary upon ratification on 26 September, 2018 can be found on the MLI Depositary (OECD) webpage.

Entry Into Effect of the MLI Provisions

The provisions of the MLI applicable to the Agreement do not take effect on the same dates as the original provisions of the Agreement. Each provision of the MLI could take effect on different dates, depending on the types of taxes involved (taxes withheld at source or other taxes levied) and on the choices made by India and Australia in their MLI positions.

Dates of the deposit of instruments of ratification, acceptance or approval:

25 June 2019 for India and26 September 2018 for Australia .

Entry into force of the MLI:

1 October 2019 for India and1 January 2019 for Australia .

In accordance with paragraph 1 of Article 35 of the MLI, the provisions of the MLI (other than Article 16 Mutual Agreement Procedure) have effect with respect to this Agreement:

(a) with respect to taxes withheld at source in India on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or

(b) with respect to taxes withheld at source in Australia on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2020;and

(c) with respect to all other taxes levied by each Contracting State, for taxes levied with respect to taxable periods beginning on or after 1 April 2020.

In accordance with paragraph 4 of Article 35 of the MLI, Article 16 of the MLI (Mutual Agreement Procedure) has effect with respect to this Agreement for a case presented to the competent authority of a Contracting State on or after 1 October 2019, except for cases that were not eligible to be presented as of that date under the Agreement prior to its modification by the MLI, without regard to the taxable period to which the case relates.

AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE REPUBLIC OF INDIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AS AMENDED BY THE AMENDING PROTOCOL

THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE REPUBLIC OF INDIA,

DESIRING to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

The following paragraph 1 of Article 6 of the MLI is included in the preamble of this Agreement:

ARTICLE 6 OF THE MLI – PURPOSE OF A COVERED TAX AGREEMENT

Intending to eliminate double taxation with respect to the taxes covered by the Agreement 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 the Agreement for the indirect benefit of residents of third jurisdictions),

HAVE AGREED as follows:

ARTICLE 1

PERSONAL SCOPE

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

The following paragraph 1 of Article 11 of the MLI applies and supersedes the provisions of this Agreement:

ARTICLE 11 OF THE MLI – APPLICATION OF TAX AGREEMENTS TO RESTRICT A PARTY'S RIGHT TO TAX ITS OWN RESIDENTS

The Agreement shall not affect the taxation by a Contracting State of its residents, except with respect of the benefits granted under paragraph 3 of Article 9, or Articles 19, 20, 21, 24, 24A, 25, or 27 of the Agreement.

ARTICLE 2

TAXES COVERED

1. The existing taxes to which this Agreement shall apply are:

(a) in Australia:

the income tax, and the resource rent tax in respect of offshore projects relating to exploration for or exploitation of petroleum resources, imposed under the federal law of the Commonwealth of Australia;

(b) in India: (i) the income tax including any surcharge thereon; and (ii) the surtax imposed on chargeable profits of companies.

2. This Agreement shall also apply to any identical or substantially similar taxes which are imposed under the federal law of the Commonwealth of Australia or the law of the Republic of India after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in the laws of their respective States relating to the taxes to which this Agreement applies.

ARTICLE 3

GENERAL DEFINITIONS

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

(a) the term "Australia", when used in a geographical sense, excludes all external territories other than:

(i) the Territory of Norfolk Island;

(ii) the Territory of Christmas Island;

(iii) the Territory of Cocos (Keeling) Islands;

(iv) the Territory of Ashmore and Cartier Islands;

(v) the Territory of Heard Island and McDonald Islands; and

(vi) the Coral Sea Islands Territory,

and includes any area adjacent to the territorial limits of Australia (including the Territories specified in subparagraphs (i) to (vi) inclusive) in respect of which there is for the time being in force, consistently with international law, a law of Australia dealing with the exploitation of any of the natural resources of the seabed and subsoil of the continental shelf;

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

accordance with international law;
(c) The terms "Contracting State", "one of the Contracting States" and "other Contracting State" mean, as the context requires, Australia or India, the Governments of which have concluded this Agreement;
(d) the term "person" includes an individual, a company, any other body of persons and any other entity which is treated as a taxable unit for tax purposes;
(e) the term "company" means any body corporate or any entity which is treated as a company or body corporate for tax purposes;
(f) the terms "enterprise of one of the Contracting States" and "enterprise of the other Contracting State" mean an enterprise carried on by a resident of Australia or an enterprise carried on by a resident of India, as the context requires;
(g) the term "tax" means Australian tax or Indian tax, as the context requires;
(h) the term:
(i) "Australian tax" means tax imposed by Australia; and
(ii) "Indian tax" means tax imposed by India
being tax to which this Agreement applies by virtue of Article 2, but neither term includes any amount which represents a penalty or fine or interest imposed under the law of either Contracting State relating to its tax;
(i) the term "competent authority" means, in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner and, in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative; and
(j) the term "year of income", in relation to Indian tax, means "previous year" as defined in the Income-tax Act, 1961.
(k) the term "national", in relation to a Contracting State, means:1
(i) any individual possessing the nationality or citizenship of that Contracting State; and
(ii) any legal person, company, partnership or association deriving its status as such from the laws in force in that Contracting State.
2. In the application of this Agreement by a Contracting State, any term not defined in
this Agreement shall, unless the context otherwise requires, have the meaning which it has under the laws of that State from time to time in force relating to the taxes to which this Agreement applies.

ARTICLE 4

RESIDENCE

1. For the purposes of this Agreement, a person is a resident of one of the Contracting States if the person is a resident of that Contracting State for the purposes of its tax. However, a person is not a resident of a Contracting State for the purposes of this Agreement if the person is liable to tax in that State in respect only of income from sources in that State.
2. Where, by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then the status of that person shall be determined in accordance with the following rules:
(a) the person shall be deemed to be a resident solely of the Contracting State in which a permanent home is available to the person;
(b) if a permanent home is available to the person in both Contracting States, or in neither of them, the person shall be deemed to be a resident solely of the Contracting State with which the person's personal and economic relations are closer (centre of vital interests).
For the purposes of this paragraph, an individual's citizenship of a Contracting State as well as that person's habitual abode shall be factors in determining the degree of the person's personal and economic relations with that Contracting

State.

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 solely of the Contracting State in which its place of effective management is situated.

The following paragraph 1 of Article 4 and subparagraph e) of paragraph 3 of Article 4 of the MLI replace paragraph 3 of Article 4 of this Agreement:

ARTICLE 4 OF THE MLI – DUAL RESIDENT ENTITIES

Where by reason of the provisions of the Agreement 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 the Agreement.

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" shall include 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 agricultural, pastoral, forestry or plantation activities are carried on;

(i) premises used as a sales outlet or for receiving or soliciting orders;

(j) an installation or structure, or plant or equipment, used for the exploration for or exploitation of natural resources;

(k) a building site or construction, installation or assembly project, or supervisory activities in connection with such a site or project, where that site or project exists or those activities are carried on (whether separately or together with other sites, projects or activities) for more than 6 months.

The following paragraph 1 of Article 14 applies and supersedes the provisions of this Agreement:

ARTICLE 14 OF THE MLI – SPLITTING-UP OF CONTRACTS

For the sole purpose of determining whether the period referred to in [subparagraph k) of paragraph 2 of Article 5 of the Agreement] has been exceeded:

(a) where an enterprise of a Contracting State carries on activities in the other Contracting State at a place that constitutes a building site, construction project, installation project or other specific project identified in subparagraph k) of paragraph 2 of Article 5 of the Agreement or carries on supervisory activities in connection with such a place, and these

activities are carried on during one or more periods of time that, in the aggregate exceed 30 days without exceeding the period referred to in subparagraph k) of paragraph 2 of Article 5 of the Agreement; and
(b) where connected activities are carried on in that other Contracting State at (or, where subparagraph k) of paragraph 2 of Article 5 of the Agreement applies to supervisory activities, in connection with) the same building site, construction project, installation project or other specific project identified in subparagraph k) of paragraph 2 of Article 5 of the Agreement 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 aggregate period of time during which the first-mentioned enterprise has carried on activities at that building site, construction project, installation project or other specific project identified in subparagraph k) of paragraph 2 of Article 5 of the Agreement.

3. Notwithstanding the provisions of paragraphs 1 and 2, where an enterprise of a Contracting State2:
(a) furnishes services, including consultancy services, through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or connected project) within that other State for a period or periods aggregating more than 183 days in any 12 month period;
(b) carries on activities (including the operation of substantial equipment) in the other State in the exploration for or exploitation of natural resources situated in that other State for a period or periods exceeding in the aggregate 90 days in any 12 month period; or
(c) operates substantial equipment in the other State (including as provided in subparagraph b)) for a period or periods exceeding in the aggregate 183 days in any 12 month period;
such activities shall be deemed to be carried on through a permanent establishment of the enterprise situated in that other State, unless the activities are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this place of business a permanent establishment under the provisions of that paragraph."
4. An enterprise shall not be deemed to have a permanent establishment merely by reason of:
(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; or
(e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research, or for similar activities which have a preparatory or auxiliary character, for the enterprise.
However, the preceding provisions of this paragraph shall not apply where an enterprise of one of the Contracting States maintains in the other Contracting State a fixed place of business for any purpose other than those specified in this paragraph.

The following paragraph 2 of Article 13 of the MLI modifies paragraph 4 of Article 5 of this Agreement:

ARTICLE 13 OF THE MLI – ARTIFICIAL AVOIDANCE OF PERMANENT ESTABLISHMENT STATUS THROUGH THE SPECIFIC ACTIVITY EXEMPTIONS

(Option A)

Notwithstanding Article 5 of the Agreement, the term "permanent establishment" shall be deemed not to include:

(a) the activities specifically listed in paragraph 4 of Article 5 of the Agreement as activities deemed not to constitute a permanent establishment, whether or not that exception from permanent establishment status is contingent on the activity being of a preparatory or auxiliary character;
(b) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any activity not described in subparagraph a);
(c) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) and b),
provided that such activity or, in the case of subparagraph c), the overall activity of the fixed place of business, is of a preparatory or auxiliary character.
The following paragraph 4 of Article 13 of the MLI applies to paragraph 4 of Article 5 of this Agreement as modified by paragraph 2 of Article 13 of the MLI:
Paragraph 4 of Article 5 of the Agreement, as modified by paragraph 2 of Article 13 of the MLI shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same Contracting State and:
(a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of Article 5 of the Agreement; or
(b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,
provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.

5. A person acting in one of the Contracting States on behalf of an enterprise of the other Contracting State - other than an agent of an independent status to whom paragraph (6) applies - shall be deemed to be a permanent establishment of that enterprise in the first mentioned State if:
(a) the person has, and habitually exercises in that State, an authority to conclude contracts on behalf of the enterprise, unless the person's activities are limited to the purchase of goods or merchandise for the enterprise;
(b) the person has no such authority, but habitually maintains in that State a stock of goods or merchandise from which the person regularly delivers goods or merchandise on behalf of the enterprise;
(c) the person habitually secures orders in that State, wholly or principally for the enterprise itself or for the enterprise and other enterprises controlling, or controlled by or subject to the same common control as, that enterprise; or
(d) in so acting, the person manufactures or processes in that State for the enterprise goods or merchandise belonging to the enterprise.
6. An enterprise of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where that person is acting in the ordinary course of the person's business as such a broker or agent. However, when the activities of such a broker or agent are carried on wholly or principally on behalf of that enterprise itself or on behalf of that enterprise and other enterprises controlling, or controlled by or subject to the same common control as, that enterprise, the person will not be considered a broker or agent of an independent status within the meaning of this paragraph.
7. The fact that a company which is a resident of one of the Contracting States 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 make either company a permanent establishment of the other.

8. The principles set forth in the preceding paragraphs of this Article shall be applied in determining for the purposes of paragraph (5) of Article 11 and paragraph (5) of Article 12 of this Agreement whether there is a permanent establishment outside both Contracting States, and whether an enterprise, not being an enterprise of one of the Contracting States, has a permanent establishment in one of the Contracting States.

The following paragraph 1 of Article 15 applies to this Agreement:

ARTICLE 15 OF THE MLI – DEFINITION OF A PERSON CLOSELY RELATED TO AN ENTERPRISE

For the purposes of Article 5 of the Agreement, a person 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 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 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.

ARTICLE 6

INCOME FROM REAL PROPERTY (IMMOVABLE PROPERTY)

1. Income from real property may be taxed in the Contracting State in which that property is situated.

2. For the purposes of this Article, the term "real property":

(a) in the case of Australia, has the meaning which it has under the laws of Australia and shall include:

(i) a lease of land and any other interest in or over land, whether improved or not; and

(ii) a right to receive variable or fixed payments either as consideration for the working of or the right to work or explore for, or in respect of the exploitation of, mineral or other deposits, oil or gas wells, quarries or other places of extraction or exploitation of natural resources; and

(b) in the case of India, means such property which, according to the laws of India, is immovable property and shall include:

(i) property accessory to immovable property;

(ii) rights to which the provisions of the general law respecting landed property apply; and

(iii) usufruct of immovable property and rights to receive variable or fixed payments either as consideration for the working of or the right to work or explore for, or in respect of exploitation of, mineral or other deposits, oil or gas wells, quarries or other places of extraction or exploitation of natural resources.

3. A lease of land, any other interest in or over land and any rights or property referred to in any of the subparagraphs of paragraph 2 shall be regarded as situated where the land, mineral or other deposits, oil or gas wells, quarries, natural resources or property, as the case may be, are situated or where the exploration may take place.

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

5. The provisions of paragraphs 1, 3 and 4 shall also apply to the income from real property of an enterprise and to income from real 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.3

2. Subject to the provisions of paragraph 3, where an enterprise of one of the Contracting States 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 or with other enterprises with which it deals.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions, in accordance with and subject to the limitations of the law relating to tax in the Contracting State in which the permanent establishment is situated, expenses of the enterprise, being expenses which are incurred for the purposes of the business of the permanent establishment (including executive and general administrative expenses so incurred), whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.

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 the correct amount of profits attributable to a permanent establishment is incapable of determination by the taxation authority of one of the Contracting States or the ascertaining thereof by that authority presents exceptional difficulties, nothing in this Article shall affect the application of any law of that State relating to the determination of the tax liability of a person, provided that the law shall be applied, so far as the information available to that authority permits, in accordance with the principles of this Article.

6. For the purposes of the preceding paragraphs of this Article, 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.

8. Nothing in this Article shall affect the operation of any law of a Contracting State relating to tax imposed on profits from insurance with nonresidents provided that if the relevant law in force in either Contracting State at the date of signature of this Agreement is varied (otherwise than in minor respects so as not to affect its general character) the Contracting States shall consult with each other with a view to agreeing to any amendment of this paragraph that may be appropriate.

9. Where:

(a) a resident of one of the Contracting States is beneficially entitled, whether directly or through one or more interposed trust estates, to a share of the business profits of an enterprise carried on in the other Contracting State by the trustee of a trust estate other than a trust estate which is treated in that other State as a company for tax purposes; and

(b) in relation to that enterprise, that trustee would, in accordance with the principles of Article 5, have a permanent establishment in that other Contracting State, the enterprise carried on by the trustee shall be deemed to be a business carried on in that other Contracting State by that resident through a permanent establishment situated therein and that share of business profits shall be attributed to that permanent establishment.

ARTICLE 8

SHIPS AND AIRCRAFT

1. Profits from the operation of ships or aircraft, including interest on funds connected with that operation, derived by a resident of one of the Contracting States shall be taxable only in that State.
2. Notwithstanding the provisions of paragraph 1, such profits may be taxed in the other Contracting State where they are profits from the operations of ships or aircraft confined solely to places in that other State.
3. The provisions of paragraphs 1 and 2 shall apply in relation to the share of the profits from the operation of ships or aircraft derived by a resident of one of the Contracting States through participation in a pool service, in a joint transport operating organisation or in an international operating agency.
4. For the purposes of this Article, profits derived from the carriage by ships or aircraft of passengers, livestock, mail, goods or merchandise shipped in a Contracting State for discharge at another place in that State shall be treated as profits from operations of ships or aircraft confined solely to places in that State.

ARTICLE 9

ASSOCIATED ENTERPRISES

1. Where:
(a) an enterprise of one of the Contracting States 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 one of the Contracting States and an enterprise of the other Contracting State, and in either case conditions operate between the two enterprises in their commercial or financial relations which differ from those which might be expected to operate between independent enterprises dealing wholly independently with one another, then any profits which, but for those conditions, might have been expected to accrue 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.
2. Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person, including determinations in cases where the information available to the taxation authority of that State is inadequate to determine the income to be attributed to an enterprise, provided that that law shall be applied, so far as it is practicable to do so, consistently with the principles of this Article.
3. Where profits on which an enterprise of one of the Contracting States has been charged to tax in that State are also included, by virtue of paragraph 1 or 2, in the profits of an enterprise of the other Contracting State and charged to tax in that other State, and the profits so included are profits which might have been expected to have accrued to that enterprise of the other State if the conditions operative between the enterprises had been those which might have been expected to have operated between independent enterprises dealing wholly independently with one another, then the firstmentioned State shall make an appropriate adjustment to the amount of tax charged on those profits in the firstmentioned State. In determining such an adjustment, due regard shall be had to the other provisions of this Agreement and for this purpose 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 one of the Contracting States for the purposes of its tax, being dividends to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

2. Such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident for the purposes of its tax, and according to the law of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

3. The term "dividends" in this Article means income from shares and other income which is subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the company making the distribution is a resident for the purposes of its tax.

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

5. Dividends paid by a company which is a resident of one of the Contracting States, being dividends to which a person who is not a resident of the other Contracting State is beneficially entitled, shall be exempt from tax in that other State except insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or fixed base situated in that other State. Provided that this paragraph shall not apply in relation to dividends paid by any company which is a resident of Australia for the purposes of Australian tax and which is also a resident of India for the purposes of Indian tax.

ARTICLE 11

INTEREST

1. Interest arising in one of the Contracting States, being interest to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

2. Such interest may also be taxed in the Contracting State in which it arises, and according to the law of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

3. The term "interest" in this Article includes interest from Government securities or from bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and interest from any other form of indebtedness as well as all other income assimilated to income from money lent by the law, relating to tax, of the Contracting State in which the income arises, but does not include interest referred to in paragraph 1 of Article 8.

4. The provisions of paragraphs 1 and 2 shall not apply if the person beneficially entitled to the interest, being a resident of one of the Contracting States, carries on business in the other Contracting State, in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the indebtedness in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Interest shall be deemed to arise in a Contracting State when the payer is that State itself or a political subdivision or local authority of that State or a person who is a resident of that State for the purposes of its tax. Where, however, the person paying the interest, whether the person is a resident of one of the Contracting States or not, has in one of the Contracting States or outside both Contracting States a permanent establishment or 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 State in which the permanent establishment or fixed base

is situated.

6. Where, owing to a special relationship between the payer and the person beneficially entitled to the interest, or between both of them and some other person, the amount of the interest paid, having regard to the indebtedness for which it is paid, exceeds the amount which might have been expected to have been agreed upon by the payer and the person so entitled in the absence of such relationship, the provisions of this Article shall apply only to the lastmentioned amount. In that case, the excess part of the amount of the interest paid shall remain taxable according to the law, relating to tax, of each Contracting State, but subject to the other provisions of this Agreement.

ARTICLE 12

ROYALTIES

1. Royalties arising in one of the Contracting States, being royalties to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

2. Such royalties may also be taxed in the Contracting State in which they arise, and according to the law of that State, but the tax so charged shall not exceed:

(a) in the case of:

(i) royalties referred to in subparagraph 3(b);

(ii) payments or credits for services referred to in subparagraph 3(d), subject to subparagraphs 3(h) to (l), that are ancillary and subsidiary to the application or enjoyment of equipment for which payments or credits are made under subparagraph 3(b); or

(iii) royalties referred to in subparagraph 3(f) that relate to equipment mentioned in subparagraph 3(b):

10 percent of the gross amount of the royalties; and

(b) in the case of other royalties:

(i) during the first 5 years of income for which this Agreement has effect:

A. where the payer is the Government or a political subdivision of that State or a public sector company: 15 percent of the gross amount of the royalties; and

B. in all other cases: 20 percent of the gross amount of the royalties; and

(ii) during all subsequent years of income: 15 percent of the gross amount of the royalties.

3. The term "royalties" in this Article means payments or credits, whether periodical or not, and however described or computed, to the extent to which they are made as consideration for:

(a) the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trademark, or other like property or right;

(b) the use of, or the right to use, any industrial, commercial or scientific equipment;

(c) the supply of scientific, technical, industrial or commercial knowledge or information;

(d) the rendering of any technical or consultancy services (including those of technical or other personnel) which are ancillary and subsidiary to the application or enjoyment of any such property or right as is mentioned in subparagraph (a), any such equipment as is mentioned in subparagraph (b) or any such knowledge or information as is mentioned in subparagraph (c);

(e) the use of, or the right to use:

(i) motion picture films;

(ii) films or video tapes for use in connection with television; or

(iii) tapes for use in connection with radio broadcasting;

(f) total or partial forbearance in respect of the use or supply of any property or right referred to in subparagraphs (a) to (e); or

(g) the rendering of any services (including those of technical or other personnel) which make available technical knowledge, experience, skill, knowhow or processes or consist of the development and transfer of a technical plan or design;

but that term does not include payments or credits relating to services mentioned in subparagraphs (d) and (g) that are made:

(h) for services that are ancillary and subsidiary, and inextricably and essentially linked, to a sale of property;

(i) for services that are ancillary and subsidiary to the rental of ships, aircraft, containers or other equipment used in connection with the operation of ships or aircraft in international traffic;

(j) for teaching in or by an educational institution;

(k) for services for the personal use of the individual or individuals making the payments or credits; or

(l) to an employee of the person making the payments or credits or to any individual or firm of individuals (other than a company) for professional services as defined in Article 14.

4. The provisions of paragraphs 1 and 2 shall not apply if the person beneficially entitled to the royalties, being a resident of one of the Contracting States, carries on business in the other Contracting State, in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the property, right or services in respect of which the royalties are paid or credited are effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself or a political subdivision or local authority of that State or a person who is a resident of that State for the purposes of its tax. Where, however, the person paying the royalties, whether the person is a resident of one of the Contracting States or not, has in one of the Contracting States or outside both Contracting States a permanent establishment or fixed base in connection with which the liability to pay the royalties was incurred, and the royalties are borne by the permanent establishment or fixed base, then the royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, owing to a special relationship between the payer and the person beneficially entitled to the royalties, or between both of them and some other person, the amount of the royalties paid or credited, having regard to what they are paid or credited for, exceeds the amount which might have been expected to have been agreed upon by the payer and the person so entitled in the absence of such relationship, the provisions of this Article shall apply only to the lastmentioned amount. In that case, the excess part of the amount of the royalties paid or credited shall remain taxable according to the law, relating to tax, of each Contracting State, but subject to the other provisions of this Agreement.

ARTICLE 13

ALIENATION OF PROPERTY

1. Income or gains derived by a resident of one of the Contracting States from the alienation of real property referred to in Article 6 and, as provided in that Article, situated in the other Contracting State may be taxed in that other State.

2. Income or gains derived from the alienation of property, other than real property referred to in Article 6, that forms part of the business property of a permanent establishment which an enterprise of one of the Contracting States has in the other Contracting State or pertains to a fixed base available to a resident of the firstmentioned State in that other State for the purpose of performing independent personal services, including income or gains from the alienation of such

a permanent establishment (alone or with the whole enterprise) or of such a fixed base, may be taxed in that other State.
3. Income or gains derived from the alienation of ships or aircraft operated in international traffic, or of property other than real property referred to in Article 6 pertaining to the operation of those ships or aircraft, shall be taxable only in the Contracting State of which the enterprise which operated those ships or aircraft is a resident.
4. Income or gains derived from the alienation of shares or comparable interests in a company, the assets of which consist wholly or principally of real property referred to in Article 6 and, as provided in that Article, situated in one of the Contracting States, may be taxed in that State.

The following paragraph 1 of Article 9 of the MLI applies to paragraph 4 of Article 13 of this Agreement:

ARTICLE 9 OF THE MLI – CAPITAL GAINS FROM ALIENATION OF SHARES OR INTERESTS OF ENTITIES DERIVING THEIR VALUE PRINCIPALLY FROM IMMOVABLE PROPERTY

Paragraph 4 of Article 13 of the Agreement:
(a) shall apply if the relevant value threshold is met at any time during the 365 days preceding the alienation; and
(b) shall apply to shares or comparable interests, such as interests in a partnership or trust (to the extent that such shares or interests are not already covered) in addition to any shares or rights already covered by the provisions of the Agreement.

5. Income or gains derived from the alienation of shares or comparable interests in a company, other than those referred to in paragraph 4, may be taxed in the Contracting State of which the company is a resident.
6. Nothing in this Agreement affects the application of a law of a Contracting State relating to the taxation of gains of a capital nature derived from the alienation of property other than that to which any of paragraphs 1, 2, 3, 4 and 5 apply.

ARTICLE 14

INDEPENDENT PERSONAL SERVICES

1. Income derived by an individual or a firm of individuals (other than a company) who is a resident of one of the Contracting States in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless:
(a) the individual or firm has a fixed base regularly available to the individual or firm in the other Contracting State for the purpose of performing the individual's or the firm's activities, in which case the income may be taxed in that other State but only so much of it as is attributable to activities exercised from that fixed base; or
(b) the stay by the individual or, in the case of a firm, by one or more members of the firm (alone or together) in the other Contracting State is for a period or periods amounting to or exceeding 183 days in a year of income, in which case only so much of the income as is derived from the activities of the individual, that member or those members, as the case may be, in that other State may be taxed in that other State.
2. The term "professional services" includes services performed in the exercise of independent scientific, literary, artistic, educational or teaching activities as well as in the exercise of the independent activities of physicians, surgeons, lawyers, engineers, architects, dentists and accountants.

ARTICLE 15

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16, 17, 18, 19 and 20, salaries, wages and other similar remuneration derived by an

individual who is a resident of one of the Contracting States 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 from that exercise may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by an individual who is a resident of one of the Contracting States 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 that other State for a period or periods not exceeding in the aggregate 183 days in a year of income of that other State;

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

(c) the remuneration is not deductible in determining taxable profits of a permanent establishment or a fixed base which the employer has in that other State.

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

ARTICLE 16

DIRECTORS' FEES

Directors' fees and similar payments derived by a resident of one of the Contracting States as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 17

ENTERTAINERS

1. Notwithstanding the provisions of Articles 14 and 15, income derived by residents of one of the Contracting States as entertainers, such as theatre, motion picture, radio or television artistes, musicians and athletes, from their personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of the personal activities of an entertainer as such accrues not to that entertainer 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 are exercised.

3. Notwithstanding the provisions of paragraph 1, income derived by an entertainer who is a resident of one of the Contracting States, from the entertainer's personal activities as such exercised in the other Contracting State, shall be taxable only in the first mentioned Contracting State if the activities in the other Contracting State are supported wholly or substantially from the public funds of the first mentioned Contracting State, including any of its political subdivisions or local authorities.

4. Notwithstanding the provisions of paragraph 2 and Articles 7, 14 and 15, where income in respect of personal activities exercised by an entertainer in the entertainer's capacity as such in one of the Contracting States accrues not to the entertainer but to another person, that income shall be taxable only in the other Contracting State if that other person is supported wholly or substantially from the public funds of that other State, including any of its political subdivisions or local authorities.

ARTICLE 18

PENSIONS AND ANNUITIES

1. Pensions (not including pensions referred to in Article 19) and annuities paid to a resident of one of the Contracting

States shall be taxable only in that State.

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

ARTICLE 19

GOVERNMENT SERVICE

1. Remuneration, other than a pension or annuity, paid by one of the Contracting States or a political subdivision or local authority of that State to any individual in respect of services rendered in the discharge of governmental functions shall be taxable only in that State. However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the recipient is a resident of that other State who:

(a) is a citizen of that State; or

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

2. Any pension paid by, or out of funds created by, one of the Contracting States or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State. However, such pension shall be taxable only in the other Contracting State if the recipient is a resident and a citizen of that other State.

3. The provisions of Articles 15, 16 and 18 shall apply, as appropriate in the circumstances, to remuneration and pensions in respect of services rendered in connection with a business carried on by one of the Contracting States or a political subdivision or local authority thereof.

ARTICLE 20

PROFESSORS AND TEACHERS

1. Where a professor or teacher who is a resident of one of the Contracting States visits the other Contracting State for a period not exceeding two years for the purpose of teaching or carrying out advanced study or research at a university, college, school or other educational institution, any remuneration that person receives for such teaching, advanced study or research shall be exempt from tax in that other State to the extent to which such remuneration is, or upon the application of this Article will be, subject to tax in the first mentioned State.

2. This Article shall not apply to remuneration which a professor or teacher receives for conducting research if the research is undertaken primarily for the private benefit of a specific person or persons.

ARTICLE 21

STUDENTS AND TRAINEES

Where a student or trainee, who is a resident of one of the Contracting States or who was a resident of that State immediately before visiting the other Contracting State and who is temporarily present in that other State solely for the purpose of the student's or trainee's education or training, receives payments from sources outside that other State for the purpose of the student's or trainee's maintenance, education or training, those payments shall be exempt from tax in that other State.

ARTICLE 22

INCOME NOT EXPRESSLY MENTIONED

1. Items of income of a resident of one of the Contracting States which are not expressly mentioned in the foregoing Articles of this Agreement shall be taxable only in that State.
2. However, any such income derived by a resident of one of the Contracting States from sources in the other Contracting State may also be taxed in that other State.
3. The provisions of paragraph 1 shall not apply to income derived by a resident of one of the Contracting States where that income is effectively connected with a permanent establishment or fixed base situated in the other Contracting State. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

ARTICLE 23

SOURCE OF INCOME

1. Income, profits or gains derived by a resident of one of the Contracting States which, under any one or more of Articles 6 to 8, Articles 10 to 20 and Article 22 may be taxed in the other Contracting State, shall for the purposes of the law of that other State relating to its tax be deemed to be income from sources in that other State.
2. Income, profits or gains derived by a resident of one of the Contracting States which, under any one or more of Articles 6 to 8, Articles 10 to 20 and Article 22 may be taxed in the other Contracting State, shall for the purposes of Article 24 and of the law of the first mentioned State relating to its tax be deemed to be income from sources in that other State.

ARTICLE 24

METHODS OF ELIMINATION OF DOUBLE TAXATION

1.(a) Subject to the provisions of the law of Australia from time to time in force which relate to the allowance of a credit against Australian tax of tax paid in a country outside Australia (which shall not affect the general principle hereof), Indian tax paid under the law of India and in accordance with this Agreement, whether directly or by deduction, in respect of income derived by a person who is a resident of Australia from sources in India shall be allowed as a credit against Australian tax payable in respect of that income.
(b) Where a company which is a resident of India and is not a resident of Australia for the purposes of Australian tax pays a dividend to a company which is a resident of Australia and which controls directly or indirectly not less than 10 per cent of the voting power of the first mentioned company, the credit referred to in subparagraph (a) shall include the Indian tax paid by that first mentioned company in respect of that portion of its profits out of which the dividend is paid.
2. In paragraph 1, Indian tax paid shall include:
(a) subject to subparagraph (b), an amount equivalent to the amount of any Indian tax forgone which, under the law of India relating to Indian tax and in accordance with this Agreement, would have been payable as Indian tax on income but for an exemption from, or reduction of, Indian tax on that income in accordance with:
(i) section 10(4), 10(15)(iv), 10A, 10B, 80HHC, 80HHD or 80I of the Income-tax Act, 1961, insofar as those provisions were in force on, and have not been modified since, the date of signature of this Agreement, or have been modified only in minor respects so as not to affect their general character; or
(ii) any other provision which may subsequently be made granting an exemption from or reduction of Indian tax which the Treasurer of Australia and the Minister of Finance of India agree from time to time in letters exchanged for this purpose to be of a substantially similar character, if that provision has not been modified thereafter or has been modified only in minor respects so as not to affect its general character; and
(b) in the case of interest derived by a resident of Australia which is exempted from Indian tax under the provisions referred to in subparagraph (a), the amount which would have been payable as Indian tax if the interest had not been so

exempt and if the tax referred to in paragraph 2 of Article 11 did not exceed 10 per cent of the gross amount of the interest.
3. Paragraph 2 shall apply only in relation to income derived in any of the first 10 years of income in relation to which this Agreement has effect under subparagraph 1(a)(ii) of Article 28 or in any later year of income that may be agreed by the Contracting States in letters exchanged for this purpose.
4. In the case of India, double taxation shall be avoided as follows:
(a) the amount of Australian tax paid under the laws of Australia and in accordance with the provisions of this Agreement, whether directly or by deduction, by a resident of India in respect of income from sources within Australia which has been subjected to tax both in India and Australia shall be allowed as a credit against the Indian tax payable in respect of such income but in an amount not exceeding that proportion of Indian tax which such income bears to the entire income chargeable to Indian tax; and
(b) for the purposes of the credit referred to in subparagraph (a) above, where the resident of India is a company by which surtax is payable, the credit to be allowed against Indian tax shall be allowed in the first instance against the income tax payable by the company in India and, as to the balance, if any, against the surtax payable by it in India.
5. Where a resident of one the Contracting States derives income which, in accordance with the provisions of this Agreement shall be taxable only in the other Contracting State, the first mentioned State may take that income into account in calculating the amount of its tax payable on the remaining income of that resident.

ARTICLE 24A4

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, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably 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 individuals who are 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. This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which a company of the other Contracting State has in the first mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7.
3. Except where the provisions of paragraph 1 of Article 9, paragraph 6 of Article 11 or paragraph 6 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.
4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first mentioned 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.

5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

6. This Article shall not apply to any provision of the laws of a Contracting State which:

(a) is designed to prevent the avoidance or evasion of taxes, including measures designed to address thin capitalization or to ensure that taxes can be effectively collected or recovered; or

(b) provides tax incentives to eligible taxpayers for expenditure on research or development, provided that a company that is a resident of one Contracting State and is wholly or partly owned by residents of the other State can access such incentives on the same terms and conditions as any other company that is a resident of the first mentioned State; or

(c) is agreed between the Contracting States through an Exchange of Notes.

ARTICLE 25

MUTUAL AGREEMENT PROCEDURE

1. Where a person who is a resident of one of the Contracting States considers that the actions of the taxation authority of one or both of the Contracting States result or will result for the person in taxation not in accordance with this Agreement, the person may, notwithstanding the remedies provided by the national laws of those States, present a case to the competent authority of the Contracting State of which the person is a resident. The case must be presented within three years from the first notification of the action giving rise to taxation not in accordance with this Agreement.

2. The competent authority shall endeavour, if the claim appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with this Agreement. The solution so 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 jointly endeavour to resolve any difficulties or doubts arising as to the application of this Agreement.

The following paragraph 3 of Article 16 of the MLI applies to this Agreement:

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

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

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of giving effect to the provisions of this Agreement.

ARTICLE 26 5

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information (including documents or certified copies of the documents) as is forseeably 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, 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, or the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorizes 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 or certified copies of the 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.

ARTICLE 26A6

ASSISTANCE IN THE COLLECTION OF TAXES

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and description, imposed on behalf of the Contracting States, insofar as the taxation thereunder is not contrary to this Agreement or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other

Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall only be brought before the courts or administrative bodies of that State. Nothing in this Article shall be construed as creating or providing any right to such proceedings before any court or administrative body of the other Contracting State.

7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first mentioned State, the relevant revenue claim ceases to be

(a) in the case of a request under paragraph 3, a revenue claim of the first mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or

(b) in the case of a request under paragraph 4, a revenue claim of the first mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection the competent authority of the first mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first mentioned State shall either suspend or withdraw its request.

8. In no case shall the provisions of this Article 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 carry out measures which would be contrary to public policy (ordre public);

(c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;

(d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

ARTICLE 27

DIPLOMATIC AND CONSULAR OFFICIALS

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

The following paragraph 1 of Article 7 of the MLI applies and supersedes the provisions of this Agreement:

ARTICLE 7 OF THE MLI – ENTITLEMENT TO BENEFITS (Principal purposes test provision)

Notwithstanding any provisions of the Agreement, a benefit under the 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 the Agreement.

ARTICLE 28

ENTRY INTO FORCE

1. This Agreement shall enter into force on the date on which the Contracting States exchange notes through the diplomatic channel notifying each other that the last of such things has been done as is necessary to give this Agreement the force of law in Australia and in India, as the case may be, and thereupon this Agreement shall have effect:

(a) in Australia:

(i) in respect of withholding tax on income that is derived by a nonresident, in relation to income derived on or after 1 July in the calendar year next following that in which the Agreement enters into force; and

(ii) in respect of other Australian tax, in relation to income, profits or gains of any year of income beginning on or after 1 July in the calendar year next following that in which the Agreement enters into force;

(b) in India, in respect of income, profits or gains arising in any year of income beginning on or after 1 April in the calendar year next following that in which the Agreement enters into force.

2. The Agreement made between the Government of Australia and the Government of the Republic of India for the Avoidance of Double Taxation of Income derived from International Air Transport signed at Canberra on 31 May 1983 (in this Article called "the 1983 Agreement") shall cease to have effect with respect to taxes to which this Agreement applies when the provisions of this Agreement become effective in accordance with paragraph 1.

3. The 1983 Agreement shall terminate on the expiration of the last date on which it has effect in accordance with the foregoing provisions of this Article.

ARTICLE 29

TERMINATION

This Agreement shall continue in effect indefinitely, but either of the Contracting States may, on or before 30 June in any calendar year beginning after the expiration of 5 years from the date of its entry into force, give to the other Contracting State through the diplomatic channel written notice of termination and, in that event, this Agreement shall cease to be effective:

(a) in Australia:

(i) in respect of withholding tax on income that is derived by a nonresident, in relation to income derived on or after 1 July in the calendar year next following that in which the notice of termination is given; and

(ii) in respect of other Australian tax, in relation to income, profits or gains of any year of income beginning on or after 1 July in the calendar year next following that in which the notice of termination is given;

(b) in India, in respect of income, profits or gains arising in any year of income beginning on or after 1 April in the calendar year next following that in which the notice of termination is given.

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

DONE in duplicate at Canberra this twenty-fifth day of July, One thousand nine hundred and ninety-one, in the English and Hindi languages, both texts being equally authentic, the English text to be the operative one in any case of doubt.

FOR THE GOVERNMENT OF **FOR THE GOVERNMENT OF THE REPUBLIC OF**

AUSTRALIA:

JOHN KERIN

INDIA:

AKBAR MIRZA KHALEELI

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1. Inserted by Article 1 of the Protocol amending the Agreement between the Government of Australia and the Government of the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (Amending Protocol).
2. As amended by Article 2 of the Amending Protocol.
3. As amended by Article 3 of the Amending Protocol.
4. Inserted by Article 4 of the Amending Protocol.
5. As amended by Article 5 of the Amending Protocol.
6. Inserted by Article 6 of the Amending Protocol.

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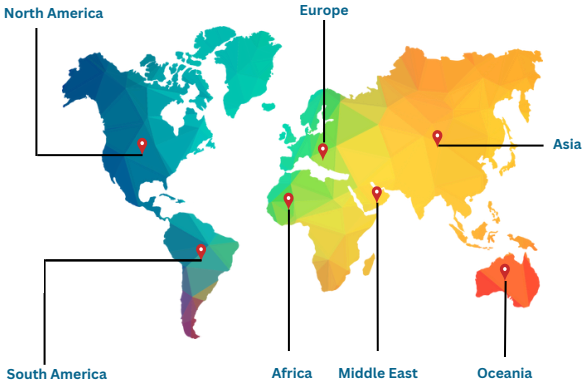

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