Chandrawat & Partners

INDIA– BELGIUM

DOUBLE TAXATION AVOIDANCE AGREEMENT

TABLE OF CONTENTS

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 the Kingdom of Belgium for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income which came into effect from 01 October, 1997. An amending protocol was signed, which came into effect with a notification dated 19 January, 2001.

The synthesised text complementing the DTAA between India and Belgium was prepared by the parties in 2017 and was then submitted for ratification in 2019 after which it entered into force. Along the same lines, an amendment was introduced in 2019 so as to bring into force the provisions of the Multilateral Agreement to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("MLI"). The protocol broadened the scope of the existing framework of exchange of tax related information, which has, in turn, helped with curbing tax evasion and tax avoidance between the two countries and enabled mutual assistance in collection of taxes.

The DTAA covers income tax and its surcharges in India and the individual income-tax, corporate tax, special levy assimilated to the individual income-tax (including the prepayments, the surcharges on these taxes and prepayments, and the supplements to the individual income-tax) in Belgium. A withholding tax rate of 15% on dividend, 10% of royalties and fees for technical services and a 15% (10% if loan is if granted by a bank) on interests has been agreed to in the DTAA. The DTAA consists of all standard MLI articles like exchange of information, assistance in collection of taxes, mutual agreement procedure and credit method system for avoidance of double taxation.

INDIA-BELGIUM DTAA

(COMPREHENSIVE AGREEMENT)

India and Belgium 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:

BELGIUM

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

Whereas the annexed Agreement between the Government of the Republic of India and the Government of the Kingdom of Belgium for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income has come into force on the first day of October, 1997, the thirtieth day after the receipt of later of notifications by both the Contracting States to each other of the completion of the procedures required for bringing into force of the said Agreement in accordance with paragraph 1 of Article 29 of the said Agreement;

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

Notification : No. GSR 632(E), dated 31-10-1997*, as amended by Notification No. S.O. 54(E), dated 19-1-2001.

ANNEXURE

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE KINGDOM OF BELGIUM FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of India and the Government of the Kingdom of Belgium, 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 :

*** For earlier agreement see vide GSR 323(E), dated 6-6-1975, which was later amended by GSR 321(E), dated 2-3-1988. Circular No. 553, dated 13-2-1990 dealt with the old agreement. It read as under :**

Procedure regarding application of the Agreement between India and Belgium dated February 7, 1974 as modified by the Supplementary Protocol of October 20, 1984

1. The Supplementary Protocol (signed on October 20, 1984) modifying the existing Agreement between the Government of India and the Government of Belgium for the Avoidance of Double Taxation and the prevention of fiscal evasion with respect to taxes on income and the Protocol signed on February 7, 1974, was notified in the Gazette of India, Extraordinary; vide GSR No. 321(E), dated March 2, 1988. The Supplementary Protocol has effect in India in respect of income derived during any "previous year" beginning on or after the 1st January, 1987.

2. Under the new article 10 (Dividends), the source country tax rate on dividends has been limited to 15 per cent of the gross dividends. This lower rate of tax applies only if the beneficial owner of dividends is a company and the dividends arise out of the investments made after 23-1-1988. Article 11 (Interest) provides that the source country tax rate on interest will be limited to 15 per cent of the gross interest, provided it is in respect of a loan advanced or debt created after

23-1-1988. Under article 12 (Royalties and fees for technical services), the source country tax rate on royalties and fees for technical services has been restricted to 30 per cent of the gross royalties or fees. This rate applies only if the royalties and fees for technical services are paid in respect of a right of property which is granted, or under a contract which is signed after 23-1-1988. The terms "dividends", "interest", "royalties and fees for technical services" have been defined in the respective articles. The rates of tax mentioned above will be applicable provided the beneficial owner is a resident of the other country under article 4 of the Agreement; and

(a) the shares in respect of which the dividends are paid; or

(b) the loan or debt in respect of which the interest is paid; or

(c) the right, property or contract under which the royalty or fees for technical services are paid,

is not effectively connected with a permanent establishment or a fixed base which the beneficial owner has in the source country.

3. The competent authorities of the two countries have finalised the procedure to be followed by the residents of India and Belgium for obtaining the tax relief in the other country under the new articles 10, 11 and 12 of the Agreement. The procedure will be as follows:—

I. RELIEF FROM BELGIAN TAX TO THE INDIAN RESIDENTS

Relief to the Indian residents from Belgian tax in respect of dividends and interest income arising in Belgium, may be granted in two ways. Under the first procedure, the tax is levied at source in accordance with the Belgian law, the excess amount of tax being refunded afterwards. Under the second procedure, the Belgian withholding tax is forthwith limited to the Agreement rate, when the income is paid. Irrespective of how the reduction is applied, the beneficial owner of dividends or interest income has to make an application to the Belgian tax office in Form No. 276 Div.-Aut. for dividends and Form No. 276 Int-Aut. for interest. These forms have to be filed by the Indian residents in duplicate; one copy is for the Belgian tax administration and the other for the concerned Income-tax/Assessing Officer in India. Relief from the Belgian tax will be granted only if a certificate is granted by the concerned Assessing Officer in India that the beneficial owner of income is a resident of India under article 4 of the Agreement. For this purpose, the Indian residents must complete Parts I & II of both copies of these forms and present the two signed copies to the concerned Assessing Officer in India. The Assessing Officer, after completing the required certification in Part IV of the first copy of the form (meant for Belgian tax authorities) will return this to the claimant and keep the second copy for his record. For claiming reduction or exemption of tax directly at source, the first copy of the duly certified claim must reach the payer of the income within ten days after the date of payment of dividends or the date of maturity of the interest, as the case may be. If, for any reason, it has not been possible for the reduction or exemption to be applied at source, the refund of excess tax can be obtained by sending the first copy of the forms mentioned above duly certified by the Indian tax authorities to the Bureau Central de Taxation Bruxelles - "Etranger", Boulevard Saint Lazare 10, bte. 1, 1210, Bruxelles, Belgium. The claim has to be filed before the expiry of a period of three years from the 1st January of the year following that of the payable date of dividends or the maturity of the interest, as the case may be.

Forms 276 Div.-Aut. and 276 Int.-Aut. (and also explanatory notes) can be obtained free of charge from the Bureau Central de Taxation Bruxelles "Etranger" Boulevard Saint Lazare 10, bte. 1, 1210, Bruxelles, Belgium.

In respect of royalties arising in Belgium, the withholding tax rate of 25 per cent will be applicable in accordance with the Belgian law. With regard to fees for technical services, no tax is deductible at source and the Agreement limitation if applicable shall be granted without any social procedure when the final tax liability of the Indian resident is assessed.

II. RELIEF FROM INDIAN TAX TO THE BELGIAN RESIDENTS

In respect of dividends, interest, royalties and fees for technical services arising in India to a resident of Belgium, the

payer of these incomes can deduct the tax at source at the reduced rates specified in article 10, 1 1 or 12 of the Agreement, as the case may be. The lower rate of tax will be applicable only if a certificate is granted by the concerned Belgian tax office that the beneficial owner of income is a resident of Belgium under article 4 of the Agreement. For this purpose, the Belgian resident will be required to obtain a certificate of residence from the Belgian tax office in Form No. 276, Conv. One copy of this form must be submitted to the concerned Assessing Officer and the second copy must be filed with the Indian payer of the income. The No Objection Certificate for the remittance of these items of income from India will be issued by the Assessing Officer only after tax has been deducted at source by the payer. If, for any reason, tax is deducted at source at the rate higher than that prescribed in the Agreement, a refund of the excess tax can be obtained by lodging an income-tax return with the concerned Income-tax/Assessing Officer as soon as possible and in any case before the expiry of a period of two years from the end of the relevant assessment year.

CHAPTER I

SCOPE OF THE AGREEMENT

ARTICLE 1

PERSONAL SCOPE

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

ARTICLE 2

TAXES COVERED

1. This Agreement shall apply to all taxes imposed on total income or on elements of income including taxes on gains from the sale, exchange or transfer of movable or immovable property and taxes on the total amounts of wages or salaries paid by enterprises.

The term "taxes" shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which the Agreement applies or which represents a penalty imposed relating to those taxes.

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

(a) in the case of India :

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

(ii) the surtax,

(hereinafter referred to as "Indian tax");

(b) in the case of Belgium :

(i) the individual income-tax (I'impot des personnes physiques; de personenbelasting);

(ii) the corporate income-tax (I'impot des societes; de vennoot-schapsbelasting);

(iii) the income-tax on legal entities (I'impot des personnes morales; de rechtspersonenbelasting);

(iv) the income-tax on non-residents (I'impot des non-residents; de belasting der niet-verblijfhouders);

(v) the special levy assimilated to the individual income-tax (la cotisation speciale assimilee a I'impot des personnes physiques; de met de personenbelasting gelijkgestelde bijzondere heffing),

including the prepayments, the surcharges on these taxes and prepayments, and the supplements to the individual income-tax,

(hereinafter referred to as Belgian tax).

3. The Agreement shall also apply to any identical or substantially similar tax which is imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States

shall, from time to time, notify to each other any significant changes which have been made in their respective taxation laws.

CHAPTER II

DEFINITIONS

ARTICLE 3

GENERAL DEFINITIONS

1. In this Agreement, unless the context otherwise requires :—

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

(b) the term "Belgium" means the Kingdom of Belgium; when used in a geographical sense, it means the national territory, the territorial sea and any other area in the sea within which Belgium, in accordance with international law, exercises sovereign rights or its jurisdiction;

(c) the terms "a Contracting State" and "the other Contracting State" mean India or Belgium as the context requires;

(d) the term "competent authority" means :—

• in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative, and

• in the case of Belgium, the Minister of Finance or his authorised representative;

(e) the term "tax" means "Indian tax" or "Belgian tax" as the context requires;

(f) the term "person" includes an individual, a company and any other entity which is treated, as a taxable unit under the tax laws in force in the Contracting State of which it is a resident;

(g) the term "company" means in the case of India any entity which is a company or which is treated as a company under the Indian tax law, and in the case of Belgium any entity which is a company or which is treated as a body corporate under the Belgian tax law;

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

(i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

(j) the term "national" means :—

(i) any individual possessing the nationality of a Contracting State;

(ii) any legal person, partnership and association deriving its status as such from the laws in force in a Contracting State.

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

ARTICLE 4

RESIDENT

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is resident of that State for the purposes of the taxes of that State to which the Agreement applies.

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

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

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

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

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

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

ARTICLE 5

PERMANENT ESTABLISHMENT

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

2. The term "permanent establishment" includes especially :

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop or a warehouse;

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

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

(h) the provision of services or facilities in connection with or supply of plant and machinery on hire used or to be used in, the prospecting for, or extraction or production of mineral oils;

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

(j) a building site or construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or activities (together with other such sites, projects or activities, if any) continue for a period of more than six months, or where such project or supervisory activity, being incidental to the sale of machinery or equipment, continues for a period not exceeding six months and the charges payable for the project or supervisory activity exceed 10 per cent of the sale price of the machinery and equipment.

3. The term "permanent establishment" shall not be deemed to include :—

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

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

(c) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for

collecting information, for the enterprise;

(d) the maintenance of a fixed place of business solely for scientific research, for the enterprise.

4. Subject to the provisions of paragraph 5, a person acting in a Contracting State on behalf of an enterprise of the other Contracting State shall be deemed to have a permanent establishment of that enterprise in the first-mentioned State, if :—

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

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

(c) he habitually secures orders in the first-mentioned Contracting State, exclusively or almost exclusively, for the enterprise itself, or for the enterprise and other enterprises which are controlled by it or have a controlling interest in it.

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

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

CHAPTER III

TAXATION OF INCOME

ARTICLE 6

INCOME FROM IMMOVABLE PROPERTY

1. Income from immovable property may be taxed in the Contracting State in which such property is situated.

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

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

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional 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 (a) that permanent establishment; (b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or (c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.

2. Where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall be attributed to such permanent establishment the profits which it might be expected to derive if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.

3. (a) In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere, subject to the limitations of the taxation laws of that State :

Provided that where the law of the State in which the permanent establishment is situated imposes a restriction on the amount of the executive and general administrative expenses which may be allowed, and that restriction is relaxed or overridden by any Convention or Agreement between that State and a third State which is a member of the OECD which enters into force after the date of entry into force of this Agreement, the competent authority of that State shall notify the competent authority of the other Contracting State of the terms of the corresponding paragraph in the Convention or Agreement with that third State immediately after the entry into force of that Convention or Agreement and, if the competent authority of the other Contracting State so requests, the provisions of this sub-paragraph shall be amended by protocol to reflect such terms.

(b) However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission or other charges for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission or other charges for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 or paragraph 3 shall preclude such Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles laid down in this Article.

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

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

7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the

provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8

SHIPPING AND AIR TRANSPORT

1. Income derived from the operation of ships or aircraft in international traffic by an enterprise of a Contracting State shall not be taxed in the other Contracting State.

2. For the purposes of this Article :—

(a) interest on funds directly connected with the operation of ships or aircraft in international traffic shall be regarded as income from the operation of such ships or aircraft and the provisions of Article 11 shall not apply in relation to such interest; accordingly there will be no withholding tax on such income;

(b) income derived from the operation of ships or aircraft in international traffic shall mean income derived by an enterprise described in paragraph 1 from the transportation by sea or air respectively of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of ships or aircraft including :—

(i) the sale of tickets for such transportation on behalf of other enterprises;

(ii) any other activity directly connected with such transportation;

(iii) the leasing of ships or aircraft on charter fully equipped, manned and supplied, or on a bare boat charter basis where the leasing is incidental to any activity directly connected with such transportation;

(c) income derived from the operation of ships in international traffic, includes income derived from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) in connection with the transportation of goods or merchandise in international traffic, where the income is derived from an activity which is incidental to any activity directly connected with such transportation.

3. The provisions of this Article shall also apply to income from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9

ASSOCIATED ENTERPRISES

Where—

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

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

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

ARTICLE 10

DIVIDENDS

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

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends, is a

resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

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

3. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident. This term means also income - even paid in the form of interest - derived from capital invested by the members of a company other than a company with share capital, which is a resident of Belgium.

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

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

ARTICLE 11

INTEREST

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

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

(a) 10 per cent of the gross amount of the interest, if such interest is paid on any loan of whatever kind granted by a bank; and

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

3. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from Government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, however, the term "interest" shall not include for the purpose of this Article interest regarded as dividends under the second sentence of paragraph 3 of Article 10.

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

establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

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

ARTICLE 12

ROYALTIES AND FEES FOR TECHNICAL SERVICES

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

1[2. However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and, according to the laws of that State, but if the beneficial owner of the royalties or fees for technical services is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties or fees for technical services.]

3. 1[(a) The term "royalties" as used in this article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plant, secret formula or process, or for information concerning industrial, commercial or scientific experience.]

(b) The term "fees for technical services" as used in this Article means payments of any kind to any person, other than payments to an employee of the person making the payments and to any individual for independent personal services mentioned in Article 14, in consideration for services of a managerial, technical or consultancy nature, including the provision of services of technical or other personnel.

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

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

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

1. Substituted by Notification No. SO 54(E), dated 19-1-2001, w.r.e.f. 1-4-1998 (for India) and 1-1-1998 (for Belgium).

ARTICLE 13

CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

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

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.

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

5. Gains from the alienation of shares other than those mentioned in paragraph 4, forming part of a participation of at least 10 per cent of the capital stock of a company which is a resident of a Contracting State may be taxed in that State.

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

ARTICLE 14

INDEPENDENT PERSONAL SERVICES

1. Income derived by an individual who is a resident of a Contracting State from the performance of professional services or other independent activities of a similar character shall be taxable only in that State except in the following circumstances when such income may also be taxed in the other Contracting State :—

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

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

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

ARTICLE 15

DEPENDENT PERSONAL SERVICES

ARTICLE 15 : **Dependent personal services**

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

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

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

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

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

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

ARTICLE 16

DIRECTORS' FEES

1. Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or a similar organ of a company which is a resident of the other Contracting State may be taxed in that other State. This provision shall also apply to payments derived in respect of the discharge of functions which under the laws of the Contracting State of which the company is a resident are treated as functions analogous to those stated hereinbefore.

2. Remuneration derived by a director referred to in paragraph 1 from the company in regard to the discharge of day-to-day functions of a managerial or technical nature and remuneration received by a resident of a Contracting State consequent to some personal activity as partner of a company, other than a company having a share capital which is a resident of the other Contracting State, may be taxed in accordance with the provisions of paragraph 1 of Article 15, as if such remuneration were derived in respect of an employment.

ARTICLE 17

INCOME EARNED BY ENTERTAINERS AND ATHLETES

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

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

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

authorities.

4. Notwithstanding the provisions of paragraph 2 and of Articles 7, 14 and 15, where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such in a Contracting State accrues not to the entertainer or athlete himself but to another person, that income shall be taxable only in the other Contracting State, if that other person is a resident of that other Contracting State and 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

NON-GOVERNMENT PENSIONS AND ANNUITIES

1. Any pension, other than a pension referred to in Article 19, or any annuity derived by a resident of a Contracting State from sources within the other Contracting State shall be taxable only in the first-mentioned Contracting State.

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

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

4. 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

REMUNERATION AND PENSIONS IN RESPECT OF GOVERNMENT SERVICE

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

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

(i) is a national of that State; or

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

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

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

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

ARTICLE 20

TEACHERS AND RESEARCHERS

1. An individual who is a resident of a Contracting State and who, at the invitation of the Government of the other Contracting State or of a university or other recognised educational institution situated in that other Contracting State,

visits such other Contracting State for the primary purpose of teaching or engaging in research, or both, at a university or other recognised educational institution shall not be subject to tax by that other Contracting State on his income from personal services for such teaching or research for a period not exceeding twenty-four months from the date of his arrival in that other Contracting State.

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

3. For the purposes of this Article and Article 21, an individual shall be deemed to be a resident of a Contracting State if he is a resident of that Contracting State in the year in which he visits the other Contracting State or in the year immediately preceding that year.

ARTICLE 21

PAYMENTS RECEIVED BY STUDENTS AND APPRENTICES

1. An individual who is a resident of a Contracting State and visits the other Contracting State solely :—

(a) as a student at a university, college or other recognised educational institution in that other Contracting State, or

(b) as a business apprentice, or

(c) for the purpose of study or research, as a recipient of a grant, allowance or award, from a governmental, religious, charitable, scientific or educational organisation,

shall be exempt from tax in that other Contracting State :—

(i) on all remittances from abroad for the purposes of maintenance, education or training;

(ii) on the grant, allowance or award; and

(iii) in respect of the amount, representing remuneration for an employment in that other Contracting State, if such remuneration does not exceed 100,000 Belgian Francs or its equivalent in Indian Rupees, as the case may be, in any year.

2. An individual who is a resident of a Contracting State and who visits the other Contracting State for a period not exceeding one year as an employee of, or under contract with, an enterprise of the first-mentioned Contracting State or an organisation referred to in paragraph 1 for the primary purpose of acquiring technical, professional or business experience from a person other than such enterprise or organisation shall be exempt from tax in that other Contracting State in respect of the remuneration received from that enterprise or organisation for such period, if such remuneration does not exceed 1,20,000 Belgian Francs or its equivalent in Indian Rupees, as the case may be, in any year.

ARTICLE 22

OTHER INCOME

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

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

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

State.

CHAPTER IV

METHODS FOR ELIMINATION OF DOUBLE TAXATION

ARTICLE 23

ELIMINATION OF DOUBLE TAXATION

1. The laws in force in either of the Contracting States will continue to govern the assessment and taxation of income in the respective Contracting States except where express provision to the contrary is made in this Agreement.

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

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

(b) Where a resident of India derives income which, in accordance with the provisions of the Agreement, shall be taxable only in Belgium, India may include this income in the tax base but shall allow as a deduction from the income-tax that part of the income-tax which is attributable to the income derived from Belgium.

3. In the case of Belgium, double taxation shall be avoided as follows :—

(a) Where a resident of Belgium derives income which may be taxed in India in accordance with the provisions of the Agreement, other than those of paragraph 2 of Article 10, of paragraphs 2 and 6 of Article 11 and of paragraphs 2 and 6 of Article 12, Belgium shall exempt such income from tax but may, in calculating the amount of tax on the remaining income of that resident, apply the rate of tax which would have been applicable if such income had not been exempted.

(b) (i) Where a resident of Belgium derives items of his aggregate income for Belgian tax purposes which are dividends taxable in accordance with paragraph 2 of Article 10, and not exempt from Belgian tax according to sub-paragraph (c), interest taxable in accordance with paragraph 2 or 6 of Article 11, or royalties taxable in accordance with paragraph 2 or 6 of Article 12, the Indian tax levied on that income shall be allowed as a credit against Belgian tax relating to such income in accordance with the existing provisions of Belgian law regarding the deduction from Belgian tax of taxes paid abroad.

(ii) Where a resident of Belgium derives fees for technical services which have been taxed in India in accordance with paragraph 2 or 6 of Article 12, the provisions of Belgian tax law with respect to earned income derived from sources outside Belgium and subject to foreign tax shall apply.

(c) Where a company which is a resident of Belgium owns shares in a company which is a resident of India, the dividends which are paid to it by the latter company and which may be taxed in India in accordance with paragraph 2 of Article 10, shall be exempt from the corporate income-tax in Belgium under the conditions and limits provided for in Belgian law.

(d) Where in accordance with Belgian law, losses incurred by an enterprise carried on by a resident of Belgium in a permanent establishment situated in India have been effectively deducted from the profits of that enterprise for its taxation in Belgium, the exemption provided for in sub-paragraph (a) shall not apply in Belgium to the profits of other taxable periods attributable to that establishment to the extent that those profits have been exempted from tax in India by reason of compensation for the said losses.

(e) For the purposes of sub-paragraph (b)(i), the term "Indian tax levied" shall be deemed to include any amount which

would have been payable as Indian tax under the laws of India and in accordance with the provisions of the Agreement for any year but for a deduction allowed in computing the taxable income or an exemption from or a reduction of tax granted for that year under :—

(i) sections 10(4), 10(4B), 10(15)(iv) and 80L of the Income-tax Act, 1961 (43 of 1961), so far as they were in force on, and have not been modified since, the date of the signature of the Agreement, or have been modified only in minor respects so as not to affect their general character; or

(ii) any other provision which may be enacted after the Agreement enters into force granting a deduction in computing the taxable income or an exemption from or a reduction of tax and which the competent authorities of the Contracting States agree to be for the purposes of economic development of India, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character; the competent authorities may in such a case decide as to the period for which the benefit of this clause shall apply.

CHAPTER V

SPECIAL PROVISIONS

ARTICLE 24

NON-DISCRIMINATION

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances and under the same conditions are or may be taxed. 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. Subject to the provisions of paragraph 3 of Article 7, 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 in the same circumstances or under the same conditions.

3. The provisions of paragraph 2 shall not be construed as preventing :—

(a) a Contracting State from charging the profits of a permanent establishment which an enterprise 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 enterprise of the first-mentioned Contracting State;

(b) Belgium from imposing the movable property prepayment on dividends paid to a permanent establishment in Belgium of a company which is a resident of India.

4. Nothing contained in this Article shall be construed as obliging a Contracting State to grant to persons not resident in that State any personal allowances, reliefs or reductions for tax purposes which are by law available only to persons who are so resident.

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

6. In this Article, the term "taxation" means taxes of every kind as specified in this Agreement.

ARTICLE 25

MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within two years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

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

Provided that the case has been presented within the time period specified in paragraph 1, any agreement reached shall be implemented notwithstanding any time-limits in the domestic laws of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement.

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

ARTICLE 26

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement, insofar as the taxation thereunder is not contrary to the Agreement, in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State. However, if the information is originally regarded as secret in the transmitting State, it shall be disclosed only to persons or authorities (including Courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Agreement. Such persons or authorities shall use the information only for such purposes but may disclose the information in public court proceedings or in judicial decisions. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchanges of information shall be made, including, where appropriate, exchanges of information regarding tax avoidance.

2. Information may be exchanged either spontaneously, on a routine basis or on request with reference to particular cases or both. The competent authorities of the Contracting States shall agree from time to time on 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 a Contracting State the obligation :—

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

(b) to supply information 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.

ARTICLE 27

AID AND ASSISTANCE IN RECOVERY

1. The Contracting States shall lend aid and assistance to each other in order to notify and recover the taxes mentioned in Article 2.

2. The interest due for delay or default in the payment of taxes shall be treated as tax for the purposes of this Article.

3. On the request of the competent authority of a Contracting State, the competent authority of the other Contracting State shall secure, in accordance with the legal provisions and regulations applicable to the notification and recovery of its taxes, the notification and the recovery of taxes referred to in paragraph 1 which are due in the first-mentioned State. Such taxes shall not be considered as preferential claims in the requested State and that State shall not be obliged to apply any means of enforcement which are not authorised by the legal provisions and regulations of the requesting State.

4. Questions concerning any period of limitation of a tax claim shall, notwithstanding the provisions of paragraph 3, be governed solely by the laws of the applicant State.

5. Requests referred to in paragraph 3 shall be supported by an official copy of the instrument permitting the execution, accompanied where appropriate, by an official copy of any final administrative or judicial decision.

6. With regard to taxes which are open to appeal, the competent authority of a Contracting State may, in order to safeguard its rights, request the competent authority of the other Contracting State to take the protective measures provided for in the legislation of that other State; the provisions of paragraphs 1 to 4 shall apply mutatis mutandis to such measures.

7. The Contracting State in which tax is recovered in pursuance of the preceding paragraphs shall immediately thereafter remit the amount so recovered to the other Contracting State.

8. The provisions of paragraph 1 of Article 26 shall also apply to any information which, by virtue of this Article, is supplied to the competent authority of a Contracting State.

ARTICLE 28

DIPLOMATIC AND CONSULAR OFFICIALS

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

CHAPTER VI

FINAL PROVISIONS

ARTICLE 29

ENTRY INTO FORCE

1. The Contracting States shall notify each other in writing through diplomatic channels that the procedures required by their respective laws for the bringing into force of this Agreement have been completed. The Agreement shall enter into force on the thirtieth day after the receipt of the later of these notifications and shall thereupon have effect :—

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

(b) in Belgium :—

(i) in respect of all tax due at source on income credited or payable on or after the first day of January of the calendar year next following the calendar year in which the Agreement enters into force;

(ii) in respect of all tax other than tax due at source on income derived during any taxable period ending on or after the thirty-first day of December of the calendar year next following the calendar year in which the Agreement enters into force.

2. The Agreement between the Government of India and the Government of Belgium for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, and the Protocol thereto, signed on 7th February, 1974 and the Supplementary Protocol modifying the said Agreement and Protocol signed on 20th October, 1984, shall terminate and cease to have effect in respect of the taxes on income to which the present Agreement applies in accordance with the provisions of paragraph 1 of this Article.

ARTICLE 30

TERMINATION

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

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

(b) in Belgium :

(i) in respect of all tax due at source on income credited or payable on or after the first day of January of the calendar year next following the calendar year in which the notice of termination is given;

(ii) in respect of all tax other than tax due at source on income derived during any taxable period ending on or after the thirty-first day of December of the calendar year next following the calendar year in which the notice of termination is given.

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

DONE in duplicate at Brussels, this 26th day of April one thousand nine hundred and ninety-three, in the Hindi, English, French and Dutch languages, all four texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

PROTOCOL

The Government of the Republic of India and the Government of the Kingdom of Belgium,

Having entered into an Agreement for the avoidance of double taxation and the prevention of fiscal with respect to taxes on income,

Have agreed, at the time of signing the said Agreement, on the following provisions which shall constitute an integral part thereof :

1. Ad Articles 5, 7 and 12

If under any Convention or Agreement between India and a third State being a member of the OECD which enters into force after 1st January, 1990, India limits its taxation on royalties or fees for technical services to a rate lower or a scope more restricted than the rate or scope provided for in the present Agreement on the said items of income, the same rate or scope as provided for in that Convention or Agreement on the said items of income shall also apply under the present Agreement with effect from the date from which the present Agreement or the said Convention or Agreement is effective, whichever date is later.

2. Ad Article 7

(a) In the determination of the profits of a permanent establishment in Belgium of an enterprise which is a resident of India, Belgium shall allow as deductions, notwithstanding the provisions of the first sentence of sub-paragraph (a) of paragraph 3 of Article 7, executive and general administrative expenses incurred whether in Belgium or elsewhere insofar as they are reasonably allowable to that permanent establishment.

(b) Where the law of the Contracting State in which a permanent establishment is situated imposes in accordance with the provisions of the first sentence of sub-paragraph (a) of paragraph 3 of Article 7, a restriction on the amount of the executive and general administrative expenses which may be allowed as deductions in determining the profits of such permanent establishment, it is understood that in determining the profits of such permanent establishment the deduction in respect of such executive and general administrative expenses in no case shall be less than what is allowable as on the date of signature of the present Agreement under the law of that Contracting State.

3. Ad Article 23

For the purposes of sub-paragraph (a) of paragraph 2 and sub-paragraph (b) of paragraph 3 of Article 23, it is understood that if, after the date of signature of the Agreement, the law of a Contracting State is amended with regard to the allowance of tax credit or the reduction of tax, the competent authority of that State shall inform the competent authority of the other Contracting State of the amendments so made and, if the competent authority of that other Contracting State so requests, the competent authorities of both States shall consult each other with a view to amend the Agreement, if necessary.

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

DONE in duplicate at Brussels, this 26th day of April, one thousand nine hundred and ninety-three, in the Hindi, English, French and Dutch languages, all four texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

Notification :No. SO 54(E), dated 19-1-2001

Whereas the Agreement between the Government of the Republic of India and the Kingdom of Belgium for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income came into force on the 1st day of October, 1997, after the notification by both the Contracting States to each other of the completion of the procedures required under their laws for bringing into force the said Agreement;

And whereas the Central Government in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of

1961), section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964) and section 44A of the Wealth-tax Act, 1957 (27 of 1957), had directed that all the provisions of the said Agreement annexed to the notification of the Government of India in the Ministry of Finance (Department of Revenue) (Foreign Tax Division) No. G.S.R. 632(E) dated the 31st October, 1997, shall be given effect to in the Union of India;

And whereas paragraph 1 of the Protocol dated the 26th April, 1993, to the aforesaid Agreement, provides that if after the 1st day of January, 1990, under any Convention or Agreement between India and a third State being a member of the Organisation for Economic Co-operation and Development, India should limit its taxation on royalties or fees for technical services to a rate lower or a scope more restricted than the rate or scope provided for in the present agreement on the said items of income, then, as from the date on which the Agreement between India and Belgium or the relevant Indian Convention or Agreement becomes effective, whichever date is later, the same rate or scope as provided for in that Convention or Agreement on the said items of income shall also apply under this Agreement;

And whereas in the Convention between India and Sweden which became effective on the 1st April, 1998, in the case of India, and on the 1st January, 1998, in the case of Sweden, which state is a member of the Organization for Economic Co-operation and Development, the Government of India has limited the taxation at source on royalties and fees for technical services to a rate lower and a scope more restricted than that provided in the Agreement between India and Belgium on the said items of income;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that the following modifications shall be made in the Agreement notified by the said notification which are necessary for implementing the aforesaid Agreement between India and Belgium, namely;

I. With effect from the 1st April, 1998, in India and with effect from the 1st January, 1998, in Belgium for the existing paragraph (2) of Article 12 relating to "Royalties and fees for technical services", the following paragraph shall be substituted, namely :

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

II. With effect from the 1st April, 1998 in India and with effect from the 1st January, 1998, in Belgium for the existing sub-paragraph (a) of paragraph 3 of Article 12 relating to "Royalties and fees for technical services", the following sub-paragraph shall be substituted, namely :

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

INDIA-BELGIUM

(SYNTHESISED TEXT)

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

SYNTHESISED TEXT

OF

THE MULTILATERAL CONVENTION TO IMPLEMENT TAX TREATY RELATED MEASURES TO PREVENT BASE EROSION AND PROFIT SHIFTING (MLI)

AND

THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE KINGDOM OF BELGIUM FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME SIGNED AT BRUSSELS ON 26 APRIL 1993

This document was prepared in consultation between the competent authorities of Belgium and India.

General disclaimer on the 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 the Kingdom of Belgium for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed on 26 April 1993 (the "Agreement"), as modified by the Multilateral Agreement to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by Belgium and India on 7 June 2017 (the "MLI").

The document was prepared on the basis of the MLI position of India submitted to the Depositary upon ratification on 25 June 2019 and of the MLI position of Belgium submitted to the Depositary upon ratification on 26 June 2019. 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 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 Agreement.

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" and "Agreement", "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 authentic legal texts of the MLI (in English) can be found on the MLI Depository (OECD) webpage at the following link:

The MLI:

http://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-BEPS.pdf

The authentic legal text of the Agreement can be found at the following link:

In Belgium (in French and Dutch):

http://reflex.raadvst-consetat.be/reflex/pdf/Mbbs/1998/05/26/50482.pdf

In India (in English):

https://www.incometaxindia.gov.in/Pages/international-taxation/dtaa.aspx

The MLI position of India submitted to the Depositary upon ratification on 25 June 2019 and of the MLI position of Belgium submitted to the Depositary upon ratification on 26 June 2019 can be found on the MLI Depositary (OECD) webpage.

Disclaimer on the entry into effect of the provisions of the MLI

Entry into Effect of the MLI Provisions:

The provisions of the MLI applicable to this Agreement do not take effect on the same dates as the original provisions of the Agreement. Each of provisions 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 Belgium and India in their MLI positions.

Dates of the deposit of instruments of ratification: 25 June 2019 for India and 26 June 2019 for Belgium.

Entry into force of the MLI: 1 October 2019 for both India and Belgium.

Unless it is stated otherwise elsewhere in this document, the provisions of the MLI have effect with respect to the Agreement:

- in India with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 April 2020;
- in Belgium with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2020;
- in Belgium and India with respect to all other taxes on income, for taxes levied with respect to taxable periods beginning on or after 1 April 2020.

THE AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF INDIA

AND

THE GOVERNMENT OF THE KINGDOM OF BELGIUM FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of India

and

The Government of the Kingdom of Belgium,

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 this 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 this Agreement for the indirect benefit of residents of third jurisdictions),

Have agreed as follows:

CHAPTER I. - SCOPE OF THE AGREEMENT

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
[This Agreement] 1 shall not affect the taxation by a [Contracting State] of its residents, except with respect to the benefits granted under [Article 9 of this Agreement as modified by paragraph 1 of Article 17 of the MLI, and Articles 19, 20, 21, 23, 24, 25, and 28 of this Agreement].

Article 2

Taxes covered

1. This Agreement shall apply to all taxes imposed on total income or on elements of income including taxes on gains from the sale, exchange or transfer of movable or immovable property and taxes on the total amounts of wages or salaries paid by enterprises.
The term "taxes" shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which the Agreement applies or which represents a penalty imposed relating to those taxes.
2. The existing taxes to which the Agreement shall apply are:
(a) In the case of India:
(i) the income tax including any surcharge thereon; and
(ii) the surtax,
(hereinafter referred to as "Indian tax").
(b) In the case of Belgium:
(i) the individual income tax (l'impôt des personnes physiques; de personenbelasting);
(ii) the corporate income tax (l'impôt des sociétés; de vennootschapsbelasting);
(iii) the income tax on legal entities (l'impôt des personnes morales; de rechtspersonenbelasting);
(iv) the income tax on non-residents (l'impôt des non-résidents; de belasting der niet-verblijf-houders);
(v) the special levy assimilated to the individual income tax (la cotisation spéciale assimilée à l'impôt des personnes physiques; de met de personenbelasting gelijkgestelde bijzondere heffing),
including the prepayments, the surcharges on these taxes and prepayments, and the supplements to the individual

income tax,

(hereinafter referred to as "Belgian tax").

3. The Agreement shall also apply to any identical or substantially similar tax which is imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall, from time to time, notify to each other any significant changes which have been made in their respective taxation laws.

Chapter II. - DEFINITIONS

Article 3

General definitions

1. In this Agreement, unless the context otherwise requires:

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

(b) the term "Belgium" means the Kingdom of Belgium; when used in a geographical sense, it means the national territory, the territorial sea and any other area in the sea within which Belgium, in accordance with international law, exercises sovereign rights or its jurisdiction;

(c) the terms "a Contracting State" and "the other Contracting State" mean India or Belgium as the context requires;

(d) the term "competent authority" means:

- in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative, and

- in the case of Belgium, the Minister of Finance or his authorised representative;

(e) the term "tax" means "Indian tax" or "Belgian tax" as the context requires;

(f) the term "person" includes an individual, a company and any other entity which is treated as a taxable unit under the tax laws in force in the Contracting State of which it is a resident;

(g) the term "company" means in the case of India any entity which is a company or which is treated as a company under the Indian tax law, and in the case of Belgium any entity which is a company or which is treated as a body corporate under the Belgian tax law;

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

(i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

(j) the term "national" means:

(i) any individual possessing the nationality of a Contracting State;

(ii) any legal person, partnership and association deriving its status as such from the laws in force in a Contracting State.

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

Article 4

Resident

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is a resident of that State for the purposes of the taxes of that State to which the Agreement applies.

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

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

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

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

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

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

Article 5

Permanent establishment

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

2. The term "permanent establishment" includes especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop or a warehouse;

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

(g) an installation or structure used for the exploration or exploitation of natural resources;

(h) the provision of services or facilities in connection with or supply of plant and machinery on hire used or to be used in, the prospecting for, or extraction or production of mineral oils;

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

(j) a building site or construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or activities (together with other such sites, projects or activities, if any) continue for a period of more than six months, or where such project of supervisory activity, being incidental to the sale of machinery or equipment, continues for a period not exceeding six months and the charges payable for the project or supervisory activity exceed 10 per cent. of the sale price of the machinery and equipment.

3. [**Modified by paragraph 4 of Article 13 of the MLI**] [The term "permanent establishment" shall not be deemed to include:

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

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
(c) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
(d) the maintenance of a fixed place of business solely for scientific research, for the enterprise.]

The following paragraph 4 of Article 13 of the MLI applies to paragraph 3 of Article 5 of this Agreement:

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

[Paragraph 3 of Article 5 of this Agreement] 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 this 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.

4. Subject to the provisions of paragraph 5, a person acting in a Contracting State on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment of that enterprise in the first-mentioned State if:
(a) [**MODIFIED by paragraph 1 of Article 12 of the MLI**] [he has and habitually exercises in that State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for that enterprise; or]

The following paragraph 1 of Article 12 of the MLI applies with respect to paragraph [4][a] of Article [5] of this Agreement :

ARTICLE 12 OF THE MLI – ARTIFICIAL AVOIDANCE OF PERMANENT ESTABLISHMENT STATUS THROUGH COMMISSIONNAIRE ARRANGEMENTS AND SIMILAR STRATEGIES

Notwithstanding [Article 5 of this Agreement], but subject to [paragraph 5 of Article 5 of the Agreement as modified by paragraph 2 of Article 12 of the MLI], where a person is acting in a [Contracting State] on behalf of an enterprise and, in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are:
a) in the name of the enterprise; or
b) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use; or
c) for the provision of services by that enterprise,
that enterprise shall be deemed to have a permanent establishment in that [Contracting State] in respect of any activities which that person undertakes for the enterprise unless these activities, if they were exercised by the enterprise through a fixed place of business of that enterprise situated in that [Contracting State], would not cause that fixed place of business to be deemed to constitute a permanent establishment under the definition of permanent establishment included in the

provisions of [Article 5 of this Agreement].

(b) he habitually maintains in the first-mentioned Contracting State a stock of goods or merchandise belonging to the enterprise from which the person regularly delivers goods or merchandise on behalf of the enterprise; or
(c) he habitually secures orders in the first-mentioned Contracting State, exclusively or almost exclusively, for the enterprise itself, or for the enterprise and other enterprises which are controlled by it or have a controlling interest in it.
5. [**Modified by paragraph 2 of Article 12 of the MLI**][An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise itself or on behalf of that enterprise and other enterprises controlling, controlled by, or subject to the same common control, as that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.]

The following paragraph 2 of Article 12 of the MLI applies with respect to paragraph [5] of Article [5] of this Agreement :
ARTICLE 12 OF THE MLI – ARTIFICIAL AVOIDANCE OF PERMANENT ESTABLISHMENT STATUS THROUGH COMMISSIONNAIRE ARRANGEMENTS AND SIMILAR STRATEGIES
[Paragraph 4 of Article 5 of the Agreement as modified by Paragraph 1 of Article 12 of the MLI] shall not apply where the person acting in a [Contracting State] on behalf of an enterprise of the other [Contracting State] carries on business in the first-mentioned [Contracting State] as an independent agent and acts for the enterprise in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.

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

The following paragraph 1 of Article 15 of the MLI applies to the provisions of this Agreement:
ARTICLE 15 OF THE MLI – DEFINITION OF A PERSON CLOSELY RELATED TO AN ENTERPRISE
For the purposes of the provisions of [Article 5 of this Agreement as modified by paragraph 2 of Article 12 and paragraph 4 of Article 13 of the MLI], 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.

CHAPTER III. - TAXATION Of INCOME

Article 6

Income from immovable property

1. Income from immovable property may be taxed in the Contracting State in which such property is situated.

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

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

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

(a) that permanent establishment;

(b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or

(c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.

2. Where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall be attributed to such permanent establishment the profits which it might be expected to derive if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.

3. (a) In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere, subject to the limitations of the taxation laws of that State. Provided that where the law of the State in which the permanent establishment is situated imposes a restriction on the amount of the executive and general administrative expenses which may be allowed, and that restriction is relaxed or overridden by any Convention or Agreement between that State and a third State which is a member of the OECD which enters into force after the date of entry into force of this Agreement, the competent authority of that State shall notify the competent authority of the other Contracting State of the terms of the corresponding paragraph in the Convention or Agreement with that third State immediately after the entry into force of that Convention or Agreement and, if the competent authority of the other Contracting State so requests, the provisions of this subparagraph shall be amended by protocol to reflect such terms.

(b) However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards

reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission or other charges for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission or other charges for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 or paragraph 3 shall preclude such Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles laid down in this Article.

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

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

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

Article 8

Shipping and air transport

1. Income derived from the operation of ships or aircraft in international traffic by an enterprise of a Contracting State shall not be taxed in the other Contracting State.

2. For the purposes of this Article:

(a) interest on funds directly connected with the operation of ships or aircraft in international traffic shall be regarded as income from the operation of such ships or aircraft and the provisions of Article 11 shall not apply in relation to such interest; accordingly there will be no withholding tax on such income;

(b) income derived from the operation of ships or aircraft in international traffic shall mean income derived by an enterprise described in paragraph 1 from the transportation by sea or air respectively of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of ships or aircraft including

(i) the sale of tickets for such transportation on behalf of other enterprises;

(ii) any other activity directly connected with such transportation;

(iii) the leasing of ships or aircraft on charter fully equipped, manned and supplied, or on a bare boat charter basis where the leasing is incidental to any activity directly connected with such transportation;

(c) income derived from the operation of ships in international traffic includes income derived from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) in connection with the transportation of goods or merchandise in international traffic, where the income is derived from an activity which is incidental to any activity directly connected with such transportation.

3. The provisions of this Article shall also apply to income from the participation in a pool, a joint business or an international operating agency.

Article 9

Associated enterprises

Where

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

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

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

The following paragraph 1 of Article 17 of the MLI applies and supersedes the provisions of this Agreement :

ARTICLE 17 OF THE MLI – CORRESPONDING ADJUSTMENTS

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

Article 10

Dividends

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

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 15 per cent. of the gross amount of the dividends.

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

3. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident. This term means also income - even paid in the form of interest - derived from capital invested by the members of a company other than a company with share capital, which is a resident of Belgium.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a

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

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

Article 11

Interest

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

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

(a) 10 per cent. of the gross amount of the interest, if such interest is paid on any loan of whatever kind granted by a bank; and

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

3. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures; however, the term "interest" shall not include for the purpose of this Article interest regarded as dividends under the second sentence of paragraph 3 of Article 10.

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

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

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

shall remain taxable according to the laws of each Contracting State.

Article 12

Royalties and fees for technical services

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

2. However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties or fees for technical services is a resident of the other Contracting State, the tax so charged shall not exceed 20 per cent. of the gross amount of the royalties or fees for technical services.

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

(b)The term "fees for technical services" as used in this Article means payments of any kind to any person, other than payments to an employee of the person making the payments and to any individual for independent personal services mentioned in Article 14, in consideration for services of a managerial, technical or consultancy nature, including the provision of services of technical or other personnel.

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

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

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

Article 13

Capital gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and

situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such fixed base, may be taxed in that other State.
3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.
4. [Modified by subparagraph b) of paragraph 1 of Article 9 of the MLI] [Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.]

The following subparagraph b) of 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 this Agreement] 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 [paragraph 4 of Article 13 of this Agreement].

5. Gains from the alienation of shares other than those mentioned in paragraph 4, forming part of a participation of at least 10 per cent. of the capital stock of a company which is a resident of a Contracting State may be taxed in that State.
6. Gains from the alienation of any property other than that mentioned in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14

Independent personal services

1. Income derived by an individual who is a resident of a Contracting State from the performance of professional services or other independent activities of a similar character shall be taxable only in that State except in the following circumstances when such income may also be taxed in the other Contracting State:
(a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other State; or
(b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in the relevant "previous year" or "taxable period", as the case may be; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.
2. The term "professional services" includes independent scientific, literary, artistic, educational or teaching activities, as well as the independent activities of physicians, surgeons, lawyers, engineers, architects, dentists and accountants.

Article 15

Dependent personal services

1. Subject to the provisions of Articles 16, 17, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is

exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

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

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

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

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

Article 16

Directors' fees

1. Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or a similar organ of a company which is a resident of the other Contracting State may be taxed in that other State. This provision shall also apply to payments derived in respect of the discharge of functions which under the laws of the Contracting State of which the company is a resident are treated as functions analogous to those stated hereinbefore.

2. Remuneration derived by a director referred to in paragraph 1 from the company in regard to the discharge of day-to-day functions of a managerial or technical nature and remuneration received by a resident of a Contracting State consequent to some personal activity as a partner of a company, other than a company having a share capital which is a resident of the other Contracting State, may be taxed in accordance with the provisions of paragraph 1 of Article 15, as if such remuneration were derived in respect of an employment.

Article 17

Income earned by entertainers and athletes

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

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

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

4. Notwithstanding the provisions of paragraph 2 and of Articles 7, 14, and 15, where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such in a Contracting State accrues not to the

entertainer or athlete himself but to another person, that income shall be taxable only in the other Contracting State, if that other person is a resident of that other Contracting State and is supported wholly or substantially from the public funds of that other State, including any of its political subdivisions or local authorities.

Article 18

Non-government pensions and annuities

1. Any pension, other than a pension referred to in Article 19, or any annuity derived by a resident of a Contracting State from sources within the other Contracting State shall be taxable only in the first-mentioned Contracting State.
2. Notwithstanding the provisions of paragraph 1, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State or a political subdivision or a local authority thereof shall be taxable only in that State.
3. The term "pension" means a periodic payment made in consideration of past services, or by way of compensation for injuries received in the course of performance of services.
4. 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

Remuneration and pensions in respect of government service

1.(a) Remuneration, other than a pension, paid by a Contracting State 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.
(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who:
(i) is a national of that State; or
(ii) did not become a resident of that State solely for the purpose of rendering the services.
2.(a) Any pension paid by, or out of funds created by, a Contracting State or a political 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.
(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that other State.
3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 20

Teachers and researchers

1. An individual who is a resident of a Contracting State and who, at the invitation of the Government of the other Contracting State or of a university or other recognised educational institution situated in that other Contracting State, visits such other Contracting State for the primary purpose of teaching or engaging in research, or both, at a university or other recognised educational institution shall not be subject to tax by that other Contracting State on his income from personal services for such teaching or research for a period not exceeding twenty-four months from the date of his arrival in that other Contracting State.

2. This Article shall not apply to income from personal services for research if such research is undertaken primarily for the private benefit of a specific person or persons.
3. For the purposes of this Article and Article 21, an individual shall be deemed to be a resident of a Contracting State if he is a resident of that Contracting State in the year in which he visits the other Contracting State or in the year immediately preceding that year.

Article 21

Payments received by students and apprentices

1. An individual who is a resident of a Contracting State and visits the other Contracting State solely:
(a) as a student at a university, college or other recognised educational institution in that other Contracting State, or
(b) as a business apprentice, or
(c) for the purpose of study or research, as a recipient of a grant, allowance or award, from a governmental, religious, charitable, scientific or educational organisation,
shall be exempt from tax in that other Contracting State:
(i) on all remittances from abroad for the purposes of maintenance, education or training;
(ii)on the grant, allowance or award; and
(iii) in respect of the amount, representing remuneration for an employment in that other Contracting State, if such remuneration does not exceed 100,000 Belgian Francs or its equivalent in Indian Rupees, as the case may be, in any year.
2. An individual who is a resident of a Contracting State and who visits the other Contracting State for a period not exceeding one year as an employee of, or under contract with, an enterprise of the first-mentioned Contracting State or an organisation referred to in paragraph 1 for the primary purpose of acquiring technical, professional or business experience from a person other than such enterprise or organisation shall be exempt from tax in that other Contracting State in respect of the remuneration received from that enterprise or organisation for such period, if such remuneration does not exceed 120,000 Belgian Francs or its equivalent in Indian Rupees, as the case may be, in any year.

Article 22

Other income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be shall apply.
3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of the Agreement and arising in the other Contracting State may also be taxed in that other State.

CHAPTER IV. - METHODS FOR ELIMINATION OF DOUBLE TAXATION

Article 23

Elimination of double taxation

1. The laws in force in either of the Contracting States will continue to govern the assessment and taxation of income in the respective Contracting States except where express provision to the contrary is made in this Agreement .

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

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

(b) Where a resident of India derives income which, in accordance with the provisions of the Agreement, shall be taxable only in Belgium, India may include this income in the tax base but shall allow as a deduction from the income tax that part of the income tax which is attributable to the income derived from Belgium.

3. In the case of Belgium, double taxation shall be avoided as follows:

(a) Where a resident of Belgium derives income which may be taxed in India in accordance with the provisions of the Agreement, other than those of paragraph 2 of Article 10, of paragraphs 2 and 6 of Article 11 and of paragraphs 2 and 6 of Article 12, Belgium shall exempt such income from tax but may, in calculating the amount of tax on the remaining income of that resident, apply the rate of tax which would have been applicable if such income had not been exempted.

(b) (i) Where a resident of Belgium derives items of his aggregate income for Belgian tax purposes which are dividends taxable in accordance with paragraph 2 of Article 10, and not exempt from Belgian tax according to sub-paragraph (c), interest taxable in accordance with paragraphs 2 or 6 of Article 11, or royalties taxable in accordance with paragraphs 2 or 6 of Article 12, the Indian tax levied on that income shall be allowed as a credit against Belgian tax relating to such income in accordance with the existing provisions of Belgian law regarding the deduction from Belgian tax of taxes paid abroad.

(ii) Where a resident of Belgium derives fees for technical services which have been taxed in India in accordance with paragraphs 2 or 6 of Article 12, the provisions of Belgian tax law with respect to earned income derived from sources outside Belgium and subject to foreign tax shall apply.

(c) Where a company which is a resident of Belgium owns shares in a company which is a resident of India, the dividends which are paid to it by the latter company and which may be taxed in India in accordance with paragraph 2 of Article 10, shall be exempt from the corporate income tax in Belgium under the conditions and limits provided for in Belgian law.

(d) Where in accordance with Belgian law, losses incurred by an enterprise carried on by a resident of Belgium in a permanent establishment situated in India have been effectively deducted from the profits of that enterprise for its taxation in Belgium, the exemption provided for in sub-paragraph (a) shall not apply in Belgium to the profits of other taxable periods attributable to that establishment to the extent that those profits have also been exempted from tax in India by reason of compensation for the said losses.

(e) For the purposes of sub-paragraph (b)(i) the term "Indian tax levied" shall be deemed to include any amount which would have been payable as Indian tax under the laws of India and in accordance with the provisions of the Agreement for any year but for a deduction allowed in computing the taxable income or an exemption from or a reduction of tax granted for that year under:

(i) sections 10(4), 10(4B), 10(15)(iv) and 80L of the Income-tax Act,1961 (43 of 1961), so far as they were in force on, and have not been modified since, the date of the signature of the Agreement, or have been modified only in minor respects so as

not to affect their general character; or

(ii) any other provision which may be enacted after the Agreement enters into force granting a deduction in computing the taxable income or an exemption from or a reduction of tax and which the competent authorities of the Contracting States agree to be for the purposes of economic development of India, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character; the competent authorities may in such a case decide as to the period for which the benefit of this clause shall apply

CHAPTER V . - SPECIAL PROVISIONS

Article 24

Non-discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other Sate in the same circumstances and under the same conditions are or may be taxed. 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. Subject to the provisions of paragraph 3 of Article 7, 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 in the same circumstances or under the same conditions.

3. The provisions of paragraph 2 shall not be construed as preventing:

(a) a Contracting State from charging the profits of a permanent establishment which an enterprise 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 enterprise of the first-mentioned Contracting State;

(b) Belgium from imposing the movable property prepayment on dividends paid to a permanent establishment in Belgium of a company which is a resident of India.

4. Nothing contained in this Article shall be construed as obliging a Contracting State to grant to persons not resident in that State any personal allowances, reliefs or reductions for tax purposes which are by law available only to persons who are so resident.

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

6. In this Article, the term "taxation" means taxes of every kind as specified in this Agreement.

Article 25

Mutual agreement procedure

1. **[The second sentence of paragraph 1 of Article 25 of this Agreement is REPLACED by the second sentence of paragraph 1 of Article 16 of the MLI]** Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of

which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. [The case must be presented within two years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.]

The following second sentence of paragraph 1 of Article 16 of the MLI replaces the second sentence of paragraph 1 of Article 25 of this Agreement2 :

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of [this Agreement].

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Provided that the case has been presented within the time period specified in paragraph 1, any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. [Modified by second sentence of paragraph 3 of Article 16 of the MLI] [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.]

The following second sentence of paragraph 3 of Article 16 of the MLI applies to this Agreement3 :

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

They may also consult together for the elimination of double taxation in cases not provided for in [this Agreement.]

---

2 In accordance with paragraph 4 of Article 35 of the MLI, Article 16 of the MLI 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 this Agreement prior to its modification by the MLI, without regard to the taxable period to which the case relates.

3 In accordance with paragraph 4 of Article 35 of the MLI, Article 16 of the MLI 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 this Agreement prior to its modification by the MLI, without regard to the taxable period to which the case relates.

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

Article 26

Exchange of information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement, insofar as the taxation thereunder is not contrary to the Agreement, in particular for the prevention of fraud

or evasion of such taxes. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State. However, if the information is originally regarded as secret in the transmitting State, it shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Agreement. Such persons or authorities shall use the information only for such purposes but may disclose the information in public court proceedings or in judicial decisions. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchanges of information shall be made, including, where appropriate, exchanges of information regarding tax avoidance.

2. Information may be exchanged either spontaneously, on a routine basis or on request with reference to particular cases or both. The competent authorities of the Contracting States shall agree from time to time on 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 a Contracting State the obligation:

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

(b) to supply information 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.

Article 27

Aid and assistance in recovery

1. The Contracting States shall lend aid and assistance to each other in order to notify and recover the taxes mentioned in Article 2.

2. The interest due for delay or default in the payment of taxes shall be treated as tax for the purposes of this Article.

3. On the request of the competent authority of a Contracting State, the competent authority of the other Contracting State shall secure, in accordance with the legal provisions and regulations applicable to the notification and recovery of its taxes, the notification and the recovery of taxes referred to in paragraph 1 which are due in the first-mentioned State. Such taxes shall not be considered as preferential claims in the requested State and that State shall not be obliged to apply any means of enforcement which are not authorised by the legal provisions and regulations of the requesting State.

4. Questions concerning any period of limitation of a tax claim shall, notwithstanding the provisions of paragraph 3, be governed solely by the laws of the applicant State.

5. Requests referred to in paragraph 3 shall be supported by an official copy of the instrument permitting the execution, accompanied where appropriate, by an official copy of any final administrative or judicial decision.

6. With regard to taxes which are open to appeal, the competent authority of a Contracting State may, in order to safeguard its rights, request the competent authority of the other Contracting State to take the protective measures provided for in the legislation of that other State; the provisions of paragraphs 1 to 4 shall apply mutatis mutandis to such measures .

7. The Contracting State in which tax is recovered in pursuance of the preceding paragraphs shall immediately thereafter remit the amount so recovered to the other Contracting State.

8. The provisions of paragraph 1 of Article 26 shall also apply to any information which, by virtue of this Article, is

supplied to the competent authority of a Contracting State.

Article 28

Diplomatic and consular officials

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

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

ARTICLE 7 – PREVENTION OF TREATY ABUSE

(Principal Purpose Test)

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

CHAPTER VI. - FINAL PROVISIONS

Article 29

Entry into force

1. The Contracting States shall notify each other in writing through diplomatic channels that the procedures required by their respective laws for the bringing into force of this Agreement have been completed. The Agreement shall enter into force on the thirtieth day after the receipt of the later of these notifications and shall thereupon have effect:

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

(b) in Belgium:

(i) in respect of all tax due at source on income credited or payable on or after the first day of January of the calendar year next following the calendar year in which the Agreement enters into force;

(ii) in respect of all tax other than tax due at source on income derived during any taxable period ending on or after the thirty-first day of December of the calendar year next following the calendar year in which the Agreement enters into force.

2. The Agreement between the Government of India and the Government of Belgium for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, and the Protocol thereto, signed on 7th February, 1974 and the Supplementary Protocol modifying the said Agreement and Protocol, signed on 20th October, 1984, shall terminate and cease to have effect in respect of the taxes on income to which the present Agreement applies in accordance with the provisions of paragraph 1 of this Article.

Article 30

Termination

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

the Agreement shall cease to have effect:

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

(b) in Belgium:

(i) in respect of all tax due at source on income credited or payable on or after the first day of January of the calendar year next following the calendar year in which the notice of termination is given;

(ii) in respect of all tax other than tax due at source on income derived during any taxable period ending on or after the thirty first day of December of the calendar year next following the calendar year in which the notice of termination is given.

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

Done in duplicate at Brussels this 26th day of April one thousand nine hundred and ninety three, in the Hindi, English, French and Dutch languages, all four texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

For the Government of the Republic of India:

For the Government of the Kingdom of Belgium:

PROTOCOL

The Government of the Republic of India and the Government of the Kingdom of Belgium,

Having entered into an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have agreed, at the time of signing the said Agreement, on the following provisions which shall constitute an integral part thereof:

1. Ad Articles 5, 7 and 12

If under any Convention or Agreement between India and a third State being a member of the OECD which enters into force after 1st January, 1990, India limits its taxation on royalties or fees for technical services to a rate lower or a scope more restricted than the rate or scope provided for in the present Agreement on the said items of income, the same rate or scope as provided for in that Convention or Agreement on the said items of income shall also apply under the present Agreement with effect from the date from which the present Agreement or the said Convention or Agreement is effective, whichever date is later.

2. Ad Article 7

(a) In the determination of the profits of a permanent establishment in Belgium of an enterprise which is a resident of India, Belgium shall allow as deductions, notwithstanding the provisions of the first sentence of subparagraph (a) of paragraph 3 of Article 7, executive and general administrative expenses incurred whether in Belgium or elsewhere insofar as they are reasonably allocable to that permanent establishment.

(b) Where the law of the Contracting State in which a permanent establishment is situated imposes in accordance with the provisions of the first sentence of sub paragraph (a) of paragraph 3 of Article 7 a restriction on the amount of the executive and general administrative expenses which may be allowed as deductions in determining the profits of such permanent establishment, it is understood that in determining the profits of such permanent establishment the deduction in respect of such executive and general administrative expenses in no case shall be less than what is allowable as on the date of signature of the present Agreement under the law of that Contracting State.

3. Ad Article 23

For the purposes of subparagraph (a) of paragraph 2 and subparagraph (b) of paragraph 3 of Article 23, it is understood that if, after the date of signature of the Agreement, the law of a Contracting State is amended with regard to the allowance of tax credit or the reduction of tax, the competent authority of that State shall inform the competent authority of the other Contracting State of the amendments so made and, if the competent authority of that other Contracting State so requests, the competent authorities of both States shall consult each other with a view to amend the Agreement, if necessary.

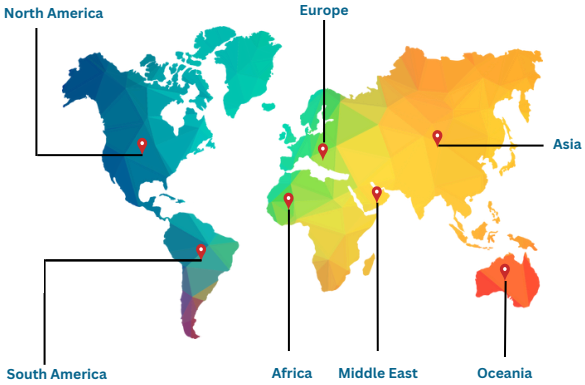
IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed the present Protocol.

Done in duplicate at Brussels this 26th day of April one thousand nine hundred and ninety three, in the Hindi, English, French and Dutch languages, all four texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

For the Government of the Republic of India:

For the Government of the Kingdom of Belgium:

SERVING CLIENTS WORLDWIDE



Key Contact

Surendra Singh Chandrawat

Managing Partner

surendra@chandrawatpartners.com

Connect Surendra on

LinkedIn WhatsApp

Chandrawat & Partners is a leading and rapidly growing full-service firm providing high quality professional and corporate services to foreign and local clients, representing companies and individuals in a wide range of sectors through separate entities established in various countries worldwide.

Follow us on: LinkedIn twitter facebook Instagram