Chandrawat & Partners

INDIA- JAPAN

DOUBLE TAXATION AVOIDANCE AGREEMENT

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PREFACE

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

The government of India had entered into a DTAA with the government of Japan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital which came into force from 29 December, 1989. It was thereafter amended by protocols in 19990, 2000, 2006, 2008 and 2016 and a synthesised text complementing the provisions agreed to in the DTAA has also been issued.

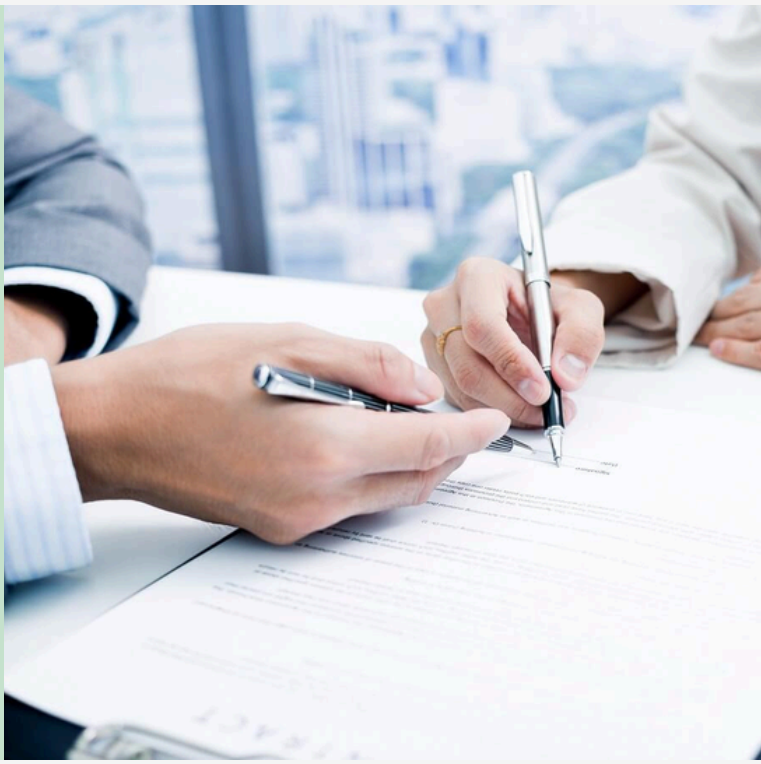
The amending protocol issued in 2016 was part of a broader mission of promoting cooperation between NITI Aayog and Institute of Energy Economics (IEEJ) for the purpose of analysing issues related to energy sector and to further examine and understand other issues in the world such as resource availability, production, consumption, sectoral demands, local and global environmental impacts and implications of changes in energy prices and technology. All these amendments had been made with the view to stimulate effective exchange of information including banking information between India and Japan and with the hope that the DTAA will act as a deterrent and help in reducing tax avoidance and evasion.

As per the DTAA, all persons who are resident in one or of both the countries can take advantage of the DTAA. The DTAA is beneficial for all those who are liable to tax therein by reason of his domicile, residence, place of head office or main office or any other similar criteria.

The DTAA consists of various clauses which are being widely included in DTAAs like the exchange of information, assistance in collection of taxes and mutual agreement procedure, which are also common in the international parlance. With the inclusion of such clauses, the DTAA was brought in alignment with the international standards as laid down by the Organization for Economic Cooperation and Development's ("OECD") Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("MLI").

KEY HIGHLIGHTS

The DTAA makes provision for elimination on double taxation by granting exclusive right to tax to one of the countries, limiting the rate of taxation of each country and by granting right to resident of another country to obtain credit for taxes paid in the source country. The main features of the India- Japan DTAA are as follows:



01

APPLICABILITY OF THE DTAA

The DTAA is applicable to income tax and corporate tax in Japan, while it covers and is applicable on income tax and its related surcharges in India.

02

RESIDENTIAL STATUS

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

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

03 APPLICABLE RATES

The withholding tax rate of 10% has been agreed to in the DTAA between India and Japan in respect of dividend, royalty, interests and fees for technical services. However, an exemption has been granted to the interest and dividend earned by government institutions. It further specifies that the interests shall be taxable in the state of residence and regarding business profits:

- In case the Japanese entity has a permanent establishment in India- then, it shall be taxed in India;
- In case of a Japan based entity- then, it shall be taxed as per its permanent establishment, that would most probably be Japan itself.

04 CAPITAL GAINS

Capital gains shall be taxable as per the DTAA. The DTAA provides the following in this regard:

- Immovable property shall be taxable in the jurisdiction where it is situated;
- Movable property like shares, forming part of business property of a Japanese and deriving capital gains on its sale, may be taxed in India;
- Shares (other than above) deriving capital gains upon its sale may be taxable in the resident state;
- Any asset (other than specified above) deriving capital gains earned by resident of Japan on any other asset shall be taxable only in the contracting state in which transferor is a resident.

05 MUTUAL AGREEMENT PROCEDURE

Competent authorities of contracting states shall determine by mutual agreement, the contracting state of which that person shall be deemed to be a resident. Also, all disputes regarding any of the provisions of the DTAA shall be resolved by a mutual decision.

06 EXCHANGE OF INFORMATION

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

07 METHODS FOR ELIMINATION OF DOUBLE TAXATION

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

INDIA-JAPAN DTAA

(COMPREHENSIVE AGREEMENT)

India and Japan signed a comprehensive DTAA. Thereafter, a synthesised text complementing the DTAA has also been released. The original text of the comprehensive agreement as signed between India and Japan can be referred to below:

JAPAN

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

Whereas the annexed Convention between the Government of the Republic of India and the Government of Japan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income has come into force on the 29th December, 1989 after the exchange of Instruments of Ratification as required by paragraph 1 of Article 28 of the said Convention.

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

Notification : No. GSR 101(E), Dated 1-3-1990, As Amended by Notifications Nos. S.O. 753(E), Dated 16-8-2000; S.O. 1136(E), Dated 19-7-2006; S.O. 2528(E), Dated 8-10-2008 and S.O. 3346(E) No.102/2016(F.NO.506/69/81-FTD-I), Dated 28-10-2016

ANNEXURE

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

The Government of Japan and the Government of the Republic of India, desiring to conclude a new Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows :

ARTICLE 1

PERSONAL SCOPE

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

ARTICLE 2

TAXES COVERED

1. The taxes which are the subject of this Convention are :

(a) In Japan :

(i) the income-tax ; and

(ii) the corporation tax

(hereinafter referred to as "Japanese tax") ;

(b) In India :

the income-tax including any surcharge thereon

(hereinafter referred to as "Indian tax").

2. This Convention shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Convention in addition to, or in place of those referred to in paragraph 1. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws within a reasonable period of time after such changes.

ARTICLE 3

DEFINITIONS

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

(a) the term 'Japan', when used in a geographical sense, means all the territory of Japan, including its territorial sea, in which the laws relating to Japanese tax are in force, and all the area beyond its territorial sea, including the sea-bed and subsoil thereof, over which Japan has jurisdiction in accordance with international law and in which the laws relating to Japanese tax are in force ;

(b) the term 'India' means the territory of India including the territorial sea and any other maritime zone in which India has sovereign rights according to the Indian law and in accordance with International law ;

(c) the terms 'a Contracting State' and 'the other Contracting State' mean Japan or India, as the context requires ;

(d) the term 'tax' means Japanese tax or Indian tax, as the context requires ;

(e) the term 'person' includes an individual, a company and any other body of persons ;

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

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

(h) the term 'nationals' means :

(i) in respect of Japan :

all individuals possessing the nationality of Japan and all juridical persons created or organised under the laws of Japan and all organisations without juridical personality treated for the purposes of Japanese tax as juridical persons created or organised under the laws of Japan ;

(ii) in respect of India :

(a) all individuals possessing the nationality of India ;

(b) all legal persons, partnerships and associations deriving their status as such from the laws in force in India ;

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

(j) the term 'Competent authority' means :

(i) in Japan, the Minister of Finance or his authorised representative ;

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

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

ARTICLE 4

RESIDENTS

1. For the purposes of this Convention, the term 'resident of a Contracting State' means any person who, under the laws of that Contracting State, is liable to tax therein by reason of his domicile, residence, place of head or main office or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph 1 a person is a resident of both Contracting States, then the competent authorities of Contracting States shall determine by mutual agreement the Contracting State of which that person shall be deemed to be a resident for the purposes of this Convention.

ARTICLE 5

PERMANENT ESTABLISHMENT

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

2. The term 'permanent establishment' includes especially :

(a) a place of management ;

(b) a branch ;

(c) an office ;

(d) a factory ;

(e) a workshop ;

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

(g) a warehouse in relation to a person providing storage facilities for others;

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

(i) a store or other sales outlet ; and

(j) an installation or structure used for the exploration of natural resources, but only if so used for a period of more than six months.

3. A building site or construction, installation or assembly project constitutes a permanent establishment only if it lasts for more than six months.

4. An enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it carries on supervisory activities in that Contracting State for more than six months in connection with a building site or construction, installation or assembly project which is being undertaken in that Contracting State.

5. Notwithstanding the provisions of paragraphs 3 and 4 an enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it provides services or facilities in that Contracting State for more than six months in connection with the exploration, exploitation or extraction of mineral oils in that Contracting State.

6. Notwithstanding the provisions of the preceding paragraphs of this article, the term 'permanent establishment' shall be deemed not to include :

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

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

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

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise ;
(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character.
7. Notwithstanding the provisions of paragraphs 1 and 2, where a person other than an agent of an independent status to whom paragraph 8 applies - is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State, if
(a) he has and habitually exercises in that Contracting State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to those mentioned in paragraph 6 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph ;
(b) he has no such authority, but habitually maintains in the first-mentioned Contracting State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise ; or
(c) he habitually secures orders in the first-mentioned Contracting State, wholly or almost wholly for the enterprise itself or for the enterprise and other enterprises controlling, controlled by, or subject to the same common control as that enterprise.
8. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that Contracting State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.
9. 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.

ARTICLE 6

INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property situated in the other Contracting State may be taxed in that other Contracting State.
2. The term 'immovable property' 'shall have the meaning which it has under the laws 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 immovable property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

ARTICLE 7

BUSINESS PROFITS

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

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

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere.

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

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

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

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

ARTICLE 8

AIR TRANSPORT

1. Profits from the operation of aircraft in international traffic carried on by an enterprise of a Contracting State shall be taxable only in that Contracting State.

2. Profits from the operation of ships in international traffic carried on by an enterprise of a Contracting State shall be taxable only in that Contracting State.

3. Notwithstanding the provisions of paragraph 2, such profits may be taxed in the other Contracting State from which they are derived during a period of first ten taxable years or 'previous years', as the case may be, for which this Convention shall have effect provided that the tax so charged shall not exceed—

(a) during the first five years, 50 per cent,

(b) during the remaining five years, 25 per cent,

of the tax otherwise imposed by the taxation law of that other Contracting State.

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

5. The provisions of this article shall, notwithstanding the provisions of article 2, apply to the enterprise tax in Japan and to any tax similar to the said enterprise tax if and when such a tax is imposed in India.

ARTICLE 9

ASSOCIATED ENTERPRISES

1. Where :

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

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

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

2. Where a Contracting State includes in the profits of an enterprise of that Contracting State and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other Contracting State and where the competent authorities of the Contracting States agree, upon consultations, that all or part of 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 agreed profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention.

ARTICLE 10

DIVIDENDS

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

1[2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

The provisions of this paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.]

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

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

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other Contracting State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other Contracting State or insofar as the holding in respect of which the dividends

are paid is effectively connected with a permanent establishment or a fixed base situated in that other Contracting State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other Contracting State.

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1. Substituted by Notification No. SO 1136(E), dated 19-7-2006, w.r.e.f. 28-6-2006.

ARTICLE 11

INTEREST

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

1[2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.]

2[3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be taxable only in the other Contracting State if:

(a) the interest is derived and beneficially owned by the Government of that other Contracting State, a political sub-division or local authority thereof, or the central bank of that other Contracting State or any financial institution wholly owned by that Government; or

(b) the interest is derived and beneficially owned by a resident of that other Contracting State with respect to debt-claims guaranteed, insured or indirectly financed by the Government of that other Contracting State, a political sub-division or local authority thereof, or the central bank of that other Contracting State or any financial institution wholly owned by that Government.]

3[4. For the purposes of paragraph 3, the terms "the central bank" and "financial institution wholly owned by that Government" mean :

(a) in the case of Japan:

(i) the Bank of Japan;

(ii) the Japan Bank for International Cooperation;

(iii) the Japan International Cooperation Agency;

(iv) the Nippon Export and Investment Insurance; and

(v) such other financial institution the capital of which is wholly owned by the Government of Japan as may be agreed upon from time to time between the Government of the Contracting States;

(b) in the case of India:

(i) Reserve Bank of India;

(ii) Export-Import Bank of India

(iii) General Insurance Corporation of India;

(iv) New India Assurance Company Limited; and

(v) such other financial institution the capital of which is wholly owned by the Government of India as may be agreed upon from time to time between the Governments of the Contracting States.]

5. 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.

6. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of article 7 or article 14, as the case may be, shall apply.

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

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

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1. Substituted by Notification No. SO 1136(E), dated 19-7-2006, w.r.e.f. 28-6-2006.

2. Paragraph 3 substituted by Notification No. SO 3346(E) [No.102/2016 (F.No.506/69/81-FTD-I), dated 28-10-2016, w.e.f. 29-10-2016. Prior to its substitution, said paragraph read as under :

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

3. Paragraph 4 substituted by Notification No. SO 3346(E) [No.102/2016 (F.No.506/69/81-FTD-I), dated 28-10-2016, w.e.f. 29-10-2016. Prior to its substitution, said paragraph; as amended by Notification No.19/2012, dated 24-5-2012, w.r.e.f. 1-4-2012 and Notification No.96/2008, dated 8-10-2008, w.r.e.f. 1-10-2008; read as under :

"4. For the purposes of paragraph 3, the terms 'the Central Bank' and 'financial institution wholly owned by the Government' mean :

(a) in the case of Japan—

(i) the Bank of Japan;

(ii) Japan Bank for International Co-operation;

(iii) the Japan International Co-operation Agency; and

(iv) such other financial institutions the capital of which is wholly owned by the Government of Japan as may be agreed

from time to time between the Governments of the two Contracting States;
(b) in the case of India:
(i) the Reserve Bank of India;
(ii) the Export-Import Bank of India;
(iii) such other financial institution the capital of which is wholly owned by the Government of India as may be agreed upon from time to time between the Governments of the two Contracting States."

ARTICLE 12

ROYALTIES

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 Contracting 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 Contracting State, but if the recipient is the beneficial owner of the royalties or fees for technical services, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties or fees for technical services.]
3. The term 'royalties' as used in this article means 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 and films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.
4. The term 'fees for technical services' as used in this article means payments of any amount to any person other than payments to an employee of a person making payments and to any individual for independent personal services referred to in article 14, in consideration for the services of a managerial, technical or consultancy nature, including the provisions of services of technical or other personnel.
5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services arise, through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the right, property or contract in respect of which the royalties or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of article 7 or article 14, as the case may be, shall apply.
6. Royalties and fees for technical services shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political sub-division, a local authority thereof or a resident of that Contracting State. Where, however, the person paying the royalties or fees for technical services, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.
7. Where, by reason of special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties or fees for technical services, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In such case, the

excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

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1. Substituted by Notification No. S.O. 1136(E), dated 19-7-2006, w.r.e.f. 28-6-2006.

ARTICLE 13

CAPITAL GAINS

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

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

3. Unless the provisions of paragraph 2 are applicable, gains derived by a resident of a Contracting State from the alienation of shares of a company which is a resident of the other Contracting State may be taxed in that other Contracting State.

4. Gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic and any property, other than immovable property, pertaining to the operation of such ships or aircraft shall be taxable only in that Contracting State.

5. Gains derived by a resident of a Contracting State from the alienation of any property other than that referred to in paragraphs 1 to 4, shall be taxable only in that Contracting State.

ARTICLE 14

INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that Contracting State unless he has a fixed base regularly available to him in the Contracting State for the purpose of performing his activities or he is present in that other Contracting State for a period or periods exceeding in the aggregate 183 days during any taxable year or 'previous year' as the case may be. If he has such a fixed base or remains in that other Contracting State for the aforesaid period or periods, the income may be taxed in that Contracting State but only so much of it as is attributable to that fixed base or is derived in that other Contracting State during the aforesaid period or periods.

2. The term 'professional services' includes especially 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, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that Contracting State unless the

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

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

(a) the recipient is present in that other Contracting State for a period or periods not exceeding in the aggregate 183 days during any taxable year or 'previous year', as the case may be ; and

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

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

(3) Notwithstanding the provisions of paragraphs 1 and 2, remuneration 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 Contracting State.

ARTICLE 16

DIRECTOR'S FEES

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

ARTICLE 17

ENTERTAINERS AND ATHLETES

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

Such income shall, however, be exempt from tax in that other Contracting State if such activities are exercised by an individual who is a resident of the first-mentioned Contracting State pursuant to a special programme for cultural exchange agreed upon between the Governments of the two Contracting States.

2. Where income in respect of personal activities exercised in a Contracting State by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person who is a resident of the other Contracting State, that income may notwithstanding the provisions of articles 7, 14 and 15, be taxed in the first-mentioned Contracting State.

Such income shall, however, be exempt from tax in the first-mentioned Contracting State if such activities are exercised pursuant to a special programme for cultural exchange agreed upon between the Governments of the two Contracting States.

ARTICLE 18

PENSION AND OTHER SIMILAR REMUNERATION

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

ARTICLE 19

REMUNERATION AND PENSION IN RESPECT OF GOVERNMENT SERVICES

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 Contracting State, or a political sub-division or a local authority thereof, in the discharge of functions of a governmental nature, shall be taxable only in that Contracting State.

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

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

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

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

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

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

ARTICLE 20

STUDENTS AND APPRENTICES

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall be exempt from tax in the first-mentioned Contracting State, provided that such payments are made to him from outside that first-mentioned Contracting State.

ARTICLE 21

PROFESSORS AND TEACHERS

1. A professor or teacher who makes a temporary visit to a Contracting State for a period not exceeding two years for the purpose of teaching or conducting research at a university, college, school or other accredited educational institution, and who is, or immediately before such visit was, a resident of the other Contracting State shall be taxable only in that other Contracting State in respect of remuneration for such teaching or research.

2. The article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

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 Convention shall be taxable only in that Contracting State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other Contracting State

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

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

ARTICLE 23

ELIMINATION OF DOUBLE TAXATION

1. The laws in force in either of the Contracting States shall continue to govern the taxation of income in the respective Contracting State except where express provisions to the contrary are made in this Convention.

2. Double taxation shall be avoided in the case of India as follows :

(a) Where a resident of India derives income which, in accordance with the provisions of this Convention, may be taxed in Japan, India shall allow as a deduction from the tax on the income of that resident an amount equal to the Japanese tax paid in Japan, whether directly or by deduction. Such deduction in either case shall not, however, exceed that part of the income-tax (as computed before the deduction is given) which is attributable, as the case may be, to the income which may be taxed in Japan. Further, where such resident is a company by which surtax is payable in India, the deduction in respect of income-tax paid in Japan 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 this Convention, shall be taxable only in Japan, 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, as the case may be, to the income derived from Japan.

3. Subject to the laws of Japan regarding the allowance as a credit against Japanese tax of tax payable in any country other than Japan :

(a) Where a resident of Japan derives income from India which may be taxed in India in accordance with the provisions of this Convention, the amount of Indian tax payable in respect of that income shall be allowed as a credit against the Japanese tax imposed on that resident. The amount of credit, however, shall not exceed that part of the Japanese tax which is appropriate to that income.

(b) Where the income derived from India is a dividend paid by a company which is a resident of India to a company which is a resident of Japan and which owns not less than 25 per cent either of the voting shares of the company paying the dividend, or of the total shares issued by that company, the credit shall take into account the Indian tax payable by the company paying the dividend in respect of its income.

(c) 1[***]

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1. Sub-paragraph (c) omitted by Notification No. S.O. 1136(E), dated 19-7-2006, w.r.e.f. 28-6-2006.

ARTICLE 24

NON-DISCRIMINATION

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

notwithstanding the provisions of article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other Contracting State than the taxation levied on enterprises of that other Contracting State carrying on the same activities.

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

3. Except where the provisions of article 9, paragraph 8 of article 11, or paragraph 7 of article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first mentioned Contracting State.

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

5. In this article, the term 'taxation' means taxes which are the subject of this Convention.

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 Convention, he may, irrespective of the remedies provided by the domestic laws of those Contracting States present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at 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 not in accordance with the provisions of this Convention. 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 this Convention. They may also consult together for the elimination of double taxation in cases not provided for in this Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs of this article.

1[ARTICLE 26

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information (including documents or certified copies of the documents) as is foreseeably relevant for carrying out the provisions of this Convention or to the

administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political sub-divisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

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

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

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

(b) to supply information 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.

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

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

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1. Article 26 substituted by Notification No. S.O. 3346(E) [No.102/2016 (F.No.506/69/81-FTD-I), dated 28-10-2016, w.e.f. 29-10-2016. Prior to its substitution, said Article read as under :

"ARTICLE 26

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is not contrary to the provisions of this Convention, or for the prevention of fiscal evasion or fraud with respect to such taxes. Any information so exchanged shall be treated as secret and shall be disclosed only to persons or authorities, including Courts, involved in the assessment or collection of, the enforcement or prosecution in respect of, the taxes covered by this Convention or the determination of appeals in relation thereto.

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

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

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or

of the other Contracting State ; or

(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."

1[ARTICLE 26A

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

2. The term "revenue claim" as used in this Article means an amount owed in respect of the taxes covered by Article 2 and the following taxes imposed on behalf of the Contracting States, or of their political sub-divisions or local authorities, insofar as the taxation thereunder is not contrary to this Convention or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount:

(a) in Japan:

(i) the consumption tax;

(ii) the inheritance tax; and

(iii) the gift tax;

(b) in India:

(i) the wealth tax;

(ii) the excise duty;

(iii) the service tax;

(iv) the sales tax; and

(v) the value added tax;

(c) any other tax agreed upon between the Governments of the Contracting States.

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

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

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

accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that Contracting State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. Notwithstanding the provisions of paragraph 5, acts carried out by a Contracting State in the collection of a revenue claim accepted by that Contracting State for purposes of paragraph 3 or 4, which, if they were carried out by the other Contracting State, would have the effect of suspending or interrupting the time limits applicable to the revenue claim according to the laws of that other Contracting State, shall have such effect under the laws of that other Contracting State. The first-mentioned Contracting State shall inform the other Contracting State about such acts.

7. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

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

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

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

9. In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:

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

(b) to carry out measures which would be contrary to public policy;

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

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

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1. Article 26A inserted by Notification No. S.O. 3346(E) [No.102/2016 (F.No.506/69/81-FTD-I), dated 28-10-2016, w.e.f. 29-10-2016.

ARTICLE 27

DIPLOMATIC AND CONSULAR ACTIVITIES

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

ARTICLE 28

ENTRY INTO FORCE

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

2. This Convention shall enter into force on the thirtieth day after the date of the exchange of instruments of ratification

and shall have effect :

(a) In Japan :

as regards income for any taxable year beginning on or after the first day of January of the calendar year next following that in which this Convention enters into force ; and

(b) in India :

as regards income for any 'previous year' beginning on or after the first day of April of the calendar year next following that in which this Convention enters into force.

3. The Agreement between Japan and India for the Avoidance of Double Taxation in respect of Taxes on Income signed at New Delhi on January 5, 1960 shall terminate and cease to have effect in respect of income to which this Convention applies under the provisions of paragraph 2.

ARTICLE 29

TERMINATION

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

(a) In Japan :

as regards income for any taxable year beginning on or after the first day of January of the calendar year next following that in which in notice of termination is given; and

(b) In India :

as regards income for any 'previous year' beginning on or after the first day of April of the calendar year next following that in which the notice of termination is given.

IN WITNESS whereof the undersigned, being duly authorised thereto by their respective Governments, have signed this Convention.

DONE at New Delhi in duplicate on this seventh day of March, 1989 in the Hindi, Japanese and English languages, all the three texts being equally authentic. In case of any divergence of interpretations, the English text shall prevail.

(Indian Note)

Excellency,

I have the honour to refer to sub-paragraph (c) of paragraph 3 of article 23 of the Convention between the Government of the Republic of India and the Government of Japan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income which was signed today and to confirm, on behalf of the Government of the Republic of India, the following understanding reached between the Government of the Republic of India and the Government of Japan :

The measures set forth in the following sections of the Income-tax Act, 1961 (43 of 1961) of India, are "the special incentive measures designed to promote economic development in India, effective on the date of signature of this Convention" referred to in the said sub-paragraph :

(i) Section 10(15)(iv)

- relating to exemption from tax on certain interest ;

(ii) Section 10A

- relating to special, provision in respect of newly established industrial undertakings in free trade zones ;

(iii) Section 32AB

- relating to investment deposit account, etc., with respect to investment in plant and machinery, etc. ;

(iv) Section 80HH

- relating to reduction in respect of profits and gains from newly established industrial undertakings or hotel business in backward areas ;

(v) Section 80-I

- relating to reduction in respect of profits and gains from industrial undertakings after a certain date, etc.

I have further the honour to request Your Excellency to be good enough to confirm the foregoing undertaking on behalf of the Government of Japan.

I avail myself to this opportunity to extend to Your Excellency the assurance of my highest consideration.

(Japanese Note)

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's Note of today's date which reads as follows :

"(Indian Note)"

I have further the honour to confirm the undertaking contained in Your Excellency's Note, on behalf of the Government of Japan.

I avail myself of this opportunity to renew to Your Excellency, the assurance of my highest consideration.

(Japanese Note)

Excellency,

I have the honour to refer to the Convention between the Government of Japan and the Government of the Republic of India for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income which was signed today and to confirm, on behalf of the Government of Japan the following understanding reached between the two Governments :

1. With reference to sub-paragraph (b) of Paragraph 1 of Article 2 of the Convention, any taxes which are identical or substantially similar to the surtax imposed under the Companies (Profits) Surtax Act, 1964, but abolished subsequently, and which are imposed in India after the date of signature of the Convention shall be regarded as the identical or substantially similar taxes referred to in Paragraph 2 of Article 2 of the Convention.

2. With reference to sub-paragraph (d) of paragraph 1 of article 3 of the Convention the term 'tax' shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty imposed relating to these taxes.

3. With reference to sub-paragraph (e) of paragraph 1 of article 3 of the Convention, in the case of India, the term 'person' shall include a partnership and a Hindu undivided family.

4. With reference to paragraph 5 of article 5 of the Convention, the term "services or facilities" referred to therein shall include the supply of plant and machinery on hire or to be used in the exploration, exploitation or extraction of mineral oils.

5. It is understood that the provisions of paragraph 6 of article 5 of the Convention shall apply to the use of facilities solely for the purpose of delivery of goods or merchandise belonging to the enterprise or to the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of delivery unless sales of such goods or merchandise

are effected in that other Contracting State.

6. With reference to paragraph 1 of article 7 of the Convention, it is understood that by using the term 'directly or indirectly attributable to the permanent establishment', profits arising from transactions in which the permanent establishment has been involved shall be regarded as attributable to the permanent establishment to the extent appropriate to the part played by the permanent establishment in those transactions. It is also understood that profits shall be regarded as attributable to the permanent establishment to the above-mentioned extent, even when the contract or order relating to the sale or provision of goods or services in question is made or placed directly with the overseas head office of the enterprise rather than with the permanent establishment.

7. With reference to paragraph 3 of article 7 of the Convention, it is understood that in India the deductions in respect of the executive and general administrative expenses as referred to in the said paragraph shall be allowed in accordance with the domestic law of India, but such deductions shall in no case be less than what are allowable under the Indian Income-tax Act as effective on the date of signature of this Convention.

8. With reference to paragraph 3 of article 7 of the Convention, no deduction shall be allowed in respect of amounts paid or charged (other than reimbursement of actual expenses) by a permanent establishment of an enterprise to the head office of the enterprise or any other offices thereof, by way of :

(a) royalties, fees or other similar payments in return for the use of patents or other rights, or for the use of know-how;

(b) commission or other charges, for specific services performed or for management; and

(c) interest on moneys lent to the permanent establishment; except where the enterprise is a banking institution.

9. With reference to article 8 of the Convention,—

(i) interests on funds temporarily deposited in connection with the operation of ships or aircrafts 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; and

(ii) income from the operation of ships or aircraft includes income derived from the use maintenance or rental of containers (including traders and related equipment for the transport of containers) in connection with the transport of goods or merchandise in international traffic.

10. With reference to paragraph 5 of article 8 of the Convention, if a local authority of India thereof introduces any taxes of a character substantially similar to the enterprise tax in Japan after the date of signature of this Convention, the two Governments shall consult with a view to amending paragraph 5 of article 8 on a reciprocal basis in such manner as may be considered appropriate.

I have further the honour to request Your Excellency to be good enough to confirm the foregoing understanding on behalf of Your Excellency's Government.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

(Indian Note)

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's Note of today's date which reads as follows :

"(Japanese Note)"

I have further the honour to confirm the understanding contained in Your Excellency's Note, on behalf of the Government of the Republic of India.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed this Convention.

Done at New Delhi in duplicate on this seventh day of March, 1989, in the Hindi, Japanese and English languages, all the three texts being equally authentic. In case of any divergence of interpretations, the English text shall prevail.

Excellency,

I have the honour to refer to sub-paragraph (c) of paragraph 3 of article 23 of the Convention between the Government of the Republic of India and the Government of Japan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income which was signed today and to confirm, on behalf of the Government of the Republic of India, the following understanding reached between the Government of the Republic of India and the Government of Japan :

The measures set forth in the following sections of the Income-tax Act, 1961 (43 of 1961) of India, are "the special incentive measures designed to promote economic development in India, effective on the date of signature of this Convention" referred to in the said sub-paragraph :

(i) Section 10(15)(iv)

- relating to exemption from tax on certain interest;

(ii) Section 10A

- relating to special provision in respect of newly established industrial undertakings in free trade zones;

(iii) Section 32AB

- relating to investment deposit account, etc., with respect to investment in plant and machinery, etc.;

(iv) Section 80HH

- relating to deduction in respect of profits and gains from newly established industrial undertakings or hotel business in backward areas;

(v) Section 80-I

- relating to deduction in respect of profits and gains from industrial undertakings after a certain date, etc.;

I have further the honour to request Your Excellency to be good enough to confirm the foregoing understanding on behalf of the Government of Japan.

I avail myself of this opportunity to extend to Your Excellency the assurance of my highest consideration.

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I have the honour to acknowledge the receipt of Your Excellency's Note of today's date which reads as follows :

'I have the honour to refer to sub-paragraph (c) of paragraph 3 of article 23 of the Convention between the Government of the Republic of India and the Government of Japan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income which was signed today and to confirm, on behalf of the Government of the Republic of India, the following understanding reached between the Government of the Republic of India and the Government of Japan :

The measures set forth in the following sections of the Income-tax Act, 1961 (43 of 1961), of India are "the special incentive measures designed to promote economic development in India, effective on the date of signature of this Convention" referred to in the said sub-paragraph :

(i) Section 10(15)(iv)

- relating to exemption from tax on certain interest;

(ii) Section 10A

- relating to special provision in respect of newly established industrial undertakings in free trade zones;

(iii) Section 32AB

- relating to investment deposit account, etc., with respect to investment in plant and machinery, etc.;

(iv) Section 80HH

- relating to deduction in respect of profits and gains from newly established industrial undertakings or hotel business in backward areas;

(v) Section 80-I

- relating to deduction in respect of profits and gains from industrial undertakings after a certain date, etc.;

I have further the honour to request Your Excellency to be good enough to confirm the foregoing understanding on behalf of the Government of Japan. I have further the honour to confirm the understanding contained in Your Excellency's Note on behalf of the Government of Japan.

I avail myself of this opportunity to extend to Your Excellency the assurance of my highest consideration.

Excellency,

I have the honour to refer to the Convention between the Government of Japan and the Government of the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income which was signed today and to confirm, on behalf of the Government of Japan, the following understanding reached between the two Governments :

1. With reference to sub-paragraph (b) of paragraph 1 of article 2 of the Convention, any taxes which are identical or substantially similar to the surtax imposed under the Companies (Profits) Surtax Act, 1964 but abolished subsequently, and which are imposed in India after the date of signature of the Convention shall be regarded as the identical or, substantially similar taxes referred to in paragraph 2 of article 2 of the Convention.

2. With reference to sub-paragraph (d) of paragraph 1 of article 3 of the Convention, the term 'tax' shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which the Convention applies or which represents a penalty imposed relating to these taxes.

3. With reference to sub-paragraph (e) of paragraph 1 of article 3 of the Convention, in the case of India, the term 'person' shall include a partnership and Hindu undivided family.

4. With reference to paragraph 5 of article 5 of the Convention, the term 'services or facilities' referred to therein shall include the supply of plant and machinery on hire used or to be used in the exploration, exploitation or extraction of mineral oils.

5. It is understood that the provisions of paragraph 6 of article 5 of the Convention shall apply to the use of facilities solely for the purpose of delivery of goods or merchandise belonging to the enterprise or to the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of delivery unless sales of such goods or merchandise are effected in that other Contracting State.

6. With reference to paragraph 1 of article 7 of the Convention, it is understood that by using the term 'directly or indirectly attributable to the permanent establishment', profits arising from transactions in which the permanent establishment has been involved shall be regarded as attributable to the permanent establishment to the extent appropriate to the part played by the permanent establishment in those transactions. It is also understood that profits shall be regarded as attributable to the permanent establishment to the above-mentioned extent, even when the contract or order relating to the sale or provision of goods or services in question is made or placed directly with the overseas head office of the enterprise rather than with the permanent establishment.

7. With reference to paragraph 3 of article 7 of the Convention, it is understood that in India the deductions in respect of the executive and general administrative expenses as referred to in the said paragraph shall be allowed in accordance with the domestic law of India, but such deductions shall in no case be less than what are allowable under the Indian Income-tax Act as effective on the date of signature of the Convention.

8. With reference to paragraph 3 of article 7 of the Convention, no deduction shall be allowed in respect of amounts paid or charged (other than reimbursement of actual expenses) by a permanent establishment of an enterprise to the head office of the enterprise or any other offices thereof, by way of :

(a) royalties, fees or other similar payments in return for the use of patents or other rights, or for the use of know-how;

(b) commission or other charges, for specific services performed or for management; and

(c) interest on moneys lent to the permanent establishment; except where the enterprise is a banking institution.

9. With reference to article 8 of the Convention,—

(i) interest on funds temporarily deposited in connection 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; and

(ii) income from the operation of ships or aircraft 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 transport of goods or merchandise in international traffic.

10. With reference to paragraph 5 of article 8 of the Convention, if a local authority of India introduces any taxes of a character substantially similar to the enterprise tax in Japan after the date of signature of the Convention, the two Governments shall consult with a view to amending paragraph 5 of article 8 on a reciprocal basis in such manner as may be considered appropriate.

I have further the honour to request Your Excellency to be good enough to confirm the foregoing understanding on behalf of Your Excellency Government.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

His Excellency Mr. G.N. Gupta,

Chairman,

Central Board of Direct Taxes,

Ministry of Finance.

New Delhi, March 7, 1989.

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's Note of today's date which reads as follows :

"I have the honour to refer to the Convention between the Government of Japan and the Government of the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income which was signed today and to confirm, on behalf of the Government of Japan, the following understanding reached between the two Governments :

1. With reference to sub-paragraph (b) of paragraph 1 of article 2 of the Convention, any taxes which are identical or substantially similar to the surtax imposed under the Companies (Profits) Surtax Act, 1964 but abolished subsequently, and which are imposed in India after the date of signature of the Convention shall be regarded as the identical or, substantially similar taxes referred to in paragraph 2 of article 2 of the Convention.

2. With reference to sub-paragraph (d) of paragraph 1 of article 3 of the Convention, the term 'tax' shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which the Convention applies or which represents a penalty imposed relating to these taxes.

3. With reference to sub-paragraph (e) of paragraph 1 of article 3 of the Convention, in the case of India, the term 'person' shall include a partnership and a Hindu undivided family.

4. With reference to paragraph 5 of article 5 of the Convention, the term 'services or facilities' referred to therein shall

include the supply of plant and machinery on hire used or to be used in the exploration, exploitation or extraction of mineral oils.

5. It is understood that the provisions of paragraph 6 of article 5 of the Convention shall apply to the use of facilities solely for the purpose of delivery of goods or merchandise belonging to the enterprise or to the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of delivery unless sales of such goods or merchandise are effected in that other Contracting State.

6. With reference to paragraph 1 of article 7 of the Convention, it is understood that by using the term 'directly or indirectly attributable to the permanent establishment', profits arising from transactions in which the permanent establishment has been involved shall be regarded as attributable to the permanent establishment to the extent appropriate to the part played by the permanent establishment in those transactions. It is also understood that profits shall be regarded as attributable to the permanent establishment to the above-mentioned extent, even when the contract or order relating to the sale or provision of goods or services in question is made or placed directly with the overseas head office of the enterprise rather than with the permanent establishment.

7. With reference to paragraph 3 of article 7 of the Convention, it is understood that in India the deductions in respect of the executive and general administrative expenses as referred to in the said paragraph shall be allowed in accordance with the domestic law of India, but such deductions shall in no case be less than what are allowable under the Indian Income-tax Act as effective on the date of signature of the Convention.

8. With reference to paragraph 3 of article 7 of the Convention, no deduction shall be allowed in respect of amounts paid or charged (other than reimbursement of actual expenses) by a permanent establishment of an enterprise to the head office of the enterprise or any other offices thereof, by way of :

(a) royalties, fees or other similar payments in return for the use of patents or other rights, or for the use of know-how;

(b) commission or other charges, for specific services performed or for management; and

(c) interest on moneys lent to the permanent establishment; except where the enterprise is a banking institution.

9. With reference to the article 8 of the Convention,—

(i) interest on funds temporarily deposited in connection 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; and

(ii) income from the operation of ships or aircraft 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 transport of goods or merchandise in international traffic.

10. With reference to paragraph 5 of article 8 of the Convention, if a local authority of India introduces any taxes of a character substantially similar to the enterprise tax in Japan after the date of signature of the Convention, the two Governments shall consult with a view to amending paragraph 5 of article 8 on a reciprocal basis in such manner as may be considered appropriate.

I have further the honour to request Your Excellency to be good enough to confirm the foregoing understanding on behalf of Your Excellency's Government.

I have further the honour to confirm the understanding contained in Your Excellency's Note, on behalf of the Government of the Republic of India.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

(Sd.) G.N. Gupta,
Chairman,
Central Board of Direct Taxes,
Ministry of Finance.

His Excellency Mr. Eijiro Noda,
Ambassador of Extraordinary and
Plenipotentiary of Japan to India.

(Sd.) P.K. Appachoo,
Joint Secretary to the
Government of India.

PROTOCOL

(Indian Note)

Excellency,

I have the honour to refer to sub-paragraph (c) of paragraph 3 of article 23 of the Convention between the Government of the Republic of India and the Government of Japan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income which was signed today and to confirm, on behalf of the Government of the Republic of India, the following understanding reached between the Government of the Republic of India and the Government of Japan :

The measures set forth in the following sections of the Income-tax Act, 1961 (43 of 1961) of India, are "the special incentive measures designed to promote economic development in India, effective on the date of signature of this Convention" referred to in the said sub-paragraph :

(i) Section 10(15)(iv)

- relating to exemption from tax on certain interest ;

(ii) Section 10A

- relating to special, provision in respect of newly established industrial undertakings in free trade zones ;

(iii) Section 32AB

- relating to investment deposit account, etc., with respect to investment in plant and machinery, etc. ;

(iv) Section 80HH

- relating to reduction in respect of profits and gains from newly established industrial undertakings or hotel business in backward areas ;

(v) Section 80-I

- relating to reduction in respect of profits and gains from industrial undertakings after a certain date, etc.

I have further the honour to request Your Excellency to be good enough to confirm the foregoing undertaking on behalf of the Government of Japan.

I avail myself to this opportunity to extend to Your Excellency the assurance of my highest consideration.

(Japanese Note)

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's Note of today's date which reads as follows :

"(Indian Note)"

I have further the honour to confirm the undertaking contained in Your Excellency's Note, on behalf of the Government of Japan.

I avail myself of this opportunity to renew to Your Excellency, the assurance of my highest consideration.

(Japanese Note)

Excellency,

I have the honour to refer to the Convention between the Government of Japan and the Government of the Republic of India for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income which was signed today and to confirm, on behalf of the Government of Japan the following understanding reached between the two Governments :

2. With reference to sub-paragraph (d) of paragraph 1 of article 3 of the Convention the term 'tax' shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty imposed relating to these taxes.

3. With reference to sub-paragraph (e) of paragraph 1 of article 3 of the Convention, in the case of India, the term 'person' shall include a partnership and a Hindu undivided family.

4. With reference to paragraph 5 of article 5 of the Convention, the term "services or facilities" referred to therein shall include the supply of plant and machinery on hire or to be used in the exploration, exploitation or extraction of mineral oils.

5. It is understood that the provisions of paragraph 6 of article 5 of the Convention shall apply to the use of facilities solely for the purpose of delivery of goods or merchandise belonging to the enterprise or to the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of delivery unless sales of such goods or merchandise are effected in that other Contracting State.

6. With reference to paragraph 1 of article 7 of the Convention, it is understood that by using the term 'directly or indirectly attributable to the permanent establishment', profits arising from transactions in which the permanent establishment has been involved shall be regarded as attributable to the permanent establishment to the extent appropriate to the part played by the permanent establishment in those transactions. It is also understood that profits shall be regarded as attributable to the permanent establishment to the above-mentioned extent, even when the contract or order relating to the sale or provision of goods or services in question is made or placed directly with the overseas head office of the enterprise rather than with the permanent establishment.

7. With reference to paragraph 3 of article 7 of the Convention, it is understood that in India the deductions in respect of the executive and general administrative expenses as referred to in the said paragraph shall be allowed in accordance with the domestic law of India, but such deductions shall in no case be less than what are allowable under the Indian Income-tax Act as effective on the date of signature of this Convention.

8. With reference to paragraph 3 of article 7 of the Convention, no deduction shall be allowed in respect of amounts paid or charged (other than reimbursement of actual expenses) by a permanent establishment of an enterprise to the head office of the enterprise or any other offices thereof, by way of :

(a) royalties, fees or other similar payments in return for the use of patents or other rights, or for the use of know-how;

(b) commission or other charges, for specific services performed or for management; and

(c) interest on moneys lent to the permanent establishment; except where the enterprise is a banking institution.

9. With reference to article 8 of the Convention,—

(i) interests on funds temporarily deposited in connection with the operation of ships or aircrafts 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; and

(ii) income from the operation of ships or aircraft includes income derived from the use maintenance or rental of containers (including traders and related equipment for the transport of containers) in connection with the transport of goods or merchandise in international traffic.

10. With reference to paragraph 5 of article 8 of the Convention, if a local authority of India thereof introduces any taxes of a character substantially similar to the enterprise tax in Japan after the date of signature of this Convention, the two Governments shall consult with a view to amending paragraph 5 of article 8 on a reciprocal basis in such manner as may be considered appropriate.

I have further the honour to request Your Excellency to be good enough to confirm the foregoing understanding on behalf of Your Excellency's Government.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

(Indian Note)

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's Note of today's date which reads as follows :

"(Japanese Note)"

I have further the honour to confirm the understanding contained in Your Excellency's Note, on behalf of the Government of the Republic of India.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed this Convention.

Done at New Delhi in duplicate on this seventh day of March, 1989, in the Hindi, Japanese and English languages, all the three texts being equally authentic. In case of any divergence of interpretations, the English text shall prevail.

For the Government of the Republic of India.

For the Government of Japan

(Sd.) G.N. Gupta

(Sd.) Eijiro Noda

New Delhi, March 7, 1989.

Excellency,

I have the honour to refer to sub-paragraph (c) of paragraph 3 of article 23 of the Convention between the Government of the Republic of India and the Government of Japan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income which was signed today and to confirm, on behalf of the Government of the Republic of India, the following understanding reached between the Government of the Republic of India and the Government of Japan :

The measures set forth in the following sections of the Income-tax Act, 1961 (43 of 1961) of India, are "the special incentive measures designed to promote economic development in India, effective on the date of signature of this Convention" referred to in the said sub-paragraph :

(i) Section 10(15)(iv)

- relating to exemption from tax on certain interest;

(ii) Section 10A

- relating to special provision in respect of newly established industrial undertakings in free trade zones;

(iii) Section 32AB

- relating to investment deposit account, etc., with respect to investment in plant and machinery, etc.;

(iv) Section 80HH

- relating to deduction in respect of profits and gains from newly established industrial undertakings or hotel business in backward areas;

(v)Section 80-I

- relating to deduction in respect of profits and gains from industrial undertakings after a certain date, etc.;

I have further the honour to request Your Excellency to be good enough to confirm the foregoing understanding on behalf of the Government of Japan.

I avail myself of this opportunity to extend to Your Excellency the assurance of my highest consideration.

(Sd.) G.N. Gupta,

Chairman,

Central Board of Direct Taxes,

Ministry of Finance

His Excellency Mr. Eijiro Noda,
Ambassador Extraordinary and
Plenipotentiary of Japan to India.

New Delhi, March 7, 1989

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's Note of today's date which reads as follows :

'I have the honour to refer to sub-paragraph (c) of paragraph 3 of article 23 of the Convention between the Government of the Republic of India and the Government of Japan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income which was signed today and to confirm, on behalf of the Government of the Republic of India, the following understanding reached between the Government of the Republic of India and the Government of Japan :

The measures set forth in the following sections of the Income-tax Act, 1961 (43 of 1961), of India are "the special incentive measures designed to promote economic development in India, effective on the date of signature of this Convention" referred to in the said sub-paragraph :

(i) Section 10(15)(iv)

- relating to exemption from tax on certain interest;

(ii) Section 10A

- relating to special provision in respect of newly established industrial undertakings in free trade zones;

(iii) Section 32AB

- relating to investment deposit account, etc., with respect to investment in plant and machinery, etc.;

(iv) Section 80HH

- relating to deduction in respect of profits and gains from newly established industrial undertakings or hotel business in backward areas;

(v) Section 80-I

- relating to deduction in respect of profits and gains from industrial undertakings after a certain date, etc.;

I have further the honour to request Your Excellency to be good enough to confirm the foregoing understanding on behalf of the Government of Japan. I have further the honour to confirm the understanding contained in Your Excellency's Note on behalf of the Government of Japan.

I avail myself of this opportunity to extend to Your Excellency the assurance of my highest consideration.

(Sd.) Eijiro Noda,
Ambassador Extraordinary and
Plenipotentiary of Japan to India

His Excellency Mr. G.N. Gupta,
Chairman,
Central Board of Direct Taxes,
Ministry of Finance.

New Delhi, March 7, 1989.

Excellency,

I have the honour to refer to the Convention between the Government of Japan and the Government of the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income which

was signed today and to confirm, on behalf of the Government of Japan, the following understanding reached between the two Governments :

1. With reference to sub-paragraph (b) of paragraph 1 of article 2 of the Convention, any taxes which are identical or substantially similar to the surtax imposed under the Companies (Profits) Surtax Act, 1964 but abolished subsequently, and which are imposed in India after the date of signature of the Convention shall be regarded as the identical or, substantially similar taxes referred to in paragraph 2 of article 2 of the Convention.

2. With reference to sub-paragraph (d) of paragraph 1 of article 3 of the Convention, the term 'tax' shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which the Convention applies or which represents a penalty imposed relating to these taxes.

3. With reference to sub-paragraph (e) of paragraph 1 of article 3 of the Convention, in the case of India, the term 'person' shall include a partnership and Hindu undivided family.

4. With reference to paragraph 5 of article 5 of the Convention, the term 'services or facilities' referred to therein shall include the supply of plant and machinery on hire used or to be used in the exploration, exploitation or extraction of mineral oils.

5. It is understood that the provisions of paragraph 6 of article 5 of the Convention shall apply to the use of facilities solely for the purpose of delivery of goods or merchandise belonging to the enterprise or to the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of delivery unless sales of such goods or merchandise are effected in that other Contracting State.

6. With reference to paragraph 1 of article 7 of the Convention, it is understood that by using the term 'directly or indirectly attributable to the permanent establishment', profits arising from transactions in which the permanent establishment has been involved shall be regarded as attributable to the permanent establishment to the extent appropriate to the part played by the permanent establishment in those transactions. It is also understood that profits shall be regarded as attributable to the permanent establishment to the above-mentioned extent, even when the contract or order relating to the sale or provision of goods or services in question is made or placed directly with the overseas head office of the enterprise rather than with the permanent establishment.

7. With reference to paragraph 3 of article 7 of the Convention, it is understood that in India the deductions in respect of the executive and general administrative expenses as referred to in the said paragraph shall be allowed in accordance with the domestic law of India, but such deductions shall in no case be less than what are allowable under the Indian Income-tax Act as effective on the date of signature of the Convention.

8. With reference to paragraph 3 of article 7 of the Convention, no deduction shall be allowed in respect of amounts paid or charged (other than reimbursement of actual expenses) by a permanent establishment of an enterprise to the head office of the enterprise or any other offices thereof, by way of :

(a) royalties, fees or other similar payments in return for the use of patents or other rights, or for the use of know-how;

(b) commission or other charges, for specific services performed or for management; and

(c) interest on moneys lent to the permanent establishment; except where the enterprise is a banking institution.

9. With reference to article 8 of the Convention,—

(i) interest on funds temporarily deposited in connection 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; and

(ii) income from the operation of ships or aircraft 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 transport of

goods or merchandise in international traffic.

10. With reference to paragraph 5 of article 8 of the Convention, if a local authority of India introduces any taxes of a character substantially similar to the enterprise tax in Japan after the date of signature of the Convention, the two Governments shall consult with a view to amending paragraph 5 of article 8 on a reciprocal basis in such manner as may be considered appropriate.

I have further the honour to request Your Excellency to be good enough to confirm the foregoing understanding on behalf of Your Excellency Government.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

(Sd.) Eijiro Noda,
Ambassador Extraordinary and
Plenipotentiary of Japan to India

His Excellency Mr. G.N. Gupta,
Chairman,
Central Board of Direct Taxes,
Ministry of Finance.

New Delhi, March 7, 1989.

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's Note of today's date which reads as follows :

"I have the honour to refer to the Convention between the Government of Japan and the Government of the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income which was signed today and to confirm, on behalf of the Government of Japan, the following understanding reached between the two Governments :

1. With reference to sub-paragraph (b) of paragraph 1 of article 2 of the Convention, any taxes which are identical or substantially similar to the surtax imposed under the Companies (Profits) Surtax Act, 1964 but abolished subsequently, and which are imposed in India after the date of signature of the Convention shall be regarded as the identical or, substantially similar taxes referred to in paragraph 2 of article 2 of the Convention.

2. With reference to sub-paragraph (d) of paragraph 1 of article 3 of the Convention, the term 'tax' shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which the Convention applies or which represents a penalty imposed relating to these taxes.

3. With reference to sub-paragraph (e) of paragraph 1 of article 3 of the Convention, in the case of India, the term 'person' shall include a partnership and a Hindu undivided family.

4. With reference to paragraph 5 of article 5 of the Convention, the term 'services or facilities' referred to therein shall include the supply of plant and machinery on hire used or to be used in the exploration, exploitation or extraction of mineral oils.

5. It is understood that the provisions of paragraph 6 of article 5 of the Convention shall apply to the use of facilities solely for the purpose of delivery of goods or merchandise belonging to the enterprise or to the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of delivery unless sales of such goods or merchandise are effected in that other Contracting State.

6. With reference to paragraph 1 of article 7 of the Convention, it is understood that by using the term 'directly or indirectly attributable to the permanent establishment', profits arising from transactions in which the permanent establishment has been involved shall be regarded as attributable to the permanent establishment to the extent

appropriate to the part played by the permanent establishment in those transactions. It is also understood that profits shall be regarded as attributable to the permanent establishment to the above-mentioned extent, even when the contract or order relating to the sale or provision of goods or services in question is made or placed directly with the overseas head office of the enterprise rather than with the permanent establishment.

7. With reference to paragraph 3 of article 7 of the Convention, it is understood that in India the deductions in respect of the executive and general administrative expenses as referred to in the said paragraph shall be allowed in accordance with the domestic law of India, but such deductions shall in no case be less than what are allowable under the Indian Income-tax Act as effective on the date of signature of the Convention.

8. With reference to paragraph 3 of article 7 of the Convention, no deduction shall be allowed in respect of amounts paid or charged (other than reimbursement of actual expenses) by a permanent establishment of an enterprise to the head office of the enterprise or any other offices thereof, by way of :

(a) royalties, fees or other similar payments in return for the use of patents or other rights, or for the use of know-how;

(b) commission or other charges, for specific services performed or for management; and

(c) interest on moneys lent to the permanent establishment; except where the enterprise is a banking institution.

9. With reference to the article 8 of the Convention,—

(i) interest on funds temporarily deposited in connection 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; and

(ii) income from the operation of ships or aircraft 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 transport of goods or merchandise in international traffic.

10. With reference to paragraph 5 of article 8 of the Convention, if a local authority of India introduces any taxes of a character substantially similar to the enterprise tax in Japan after the date of signature of the Convention, the two Governments shall consult with a view to amending paragraph 5 of article 8 on a reciprocal basis in such manner as may be considered appropriate.

I have further the honour to request Your Excellency to be good enough to confirm the foregoing understanding on behalf of Your Excellency's Government.

I have further the honour to confirm the understanding contained in Your Excellency's Note, on behalf of the Government of the Republic of India.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

(Sd.) G.N. Gupta,
Chairman,
Central Board of Direct Taxes,
Ministry of Finance.

His Excellency Mr. Eijiro Noda,
Ambassador of Extraordinary and
Plenipotentiary of Japan to India.

(Sd.) P.K. Appachoo,
Joint Secretary to the
Government of India.

Amendment Notification No. S.O. 753(E), dated 16-8-2000

WHEREAS the Convention between the Government of the Republic of India and the Government of Japan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income has come into force on the 29th December, 1989 after the exchange of instruments of ratification as required by paragraph 1 of Article 28 of the said Convention and the said Convention has been notified in G.S.R. 101(E), dated 1-3-1990;

AND WHEREAS, clause (a) of paragraph 4 of Article 11 provides the details regarding 'Central Bank' and 'financial institution wholly owned by the Government' in the case of Japan which will not be subject to tax in respect of interest arising to it in the other Contracting State;

AND WHEREAS, sub-clause (v) of clause (a) of said paragraph also provides that the 'Central Bank' and 'financial institution wholly owned by the Government' mean 'such other financial institution the capital of which is wholly owned by the Government of Japan as may be agreed upon from time to time between the Governments of the two Contracting States';

AND WHEREAS, both the Government of India and the Government of Japan have now agreed to omit, 'the Export-Import Bank of Japan' and the 'Overseas Economic Co-operation Fund' from sub-clauses (ii) and (iii) respectively of clause (a) of paragraph 4 of Article 11 and substitute 'Japan Bank for International Co-operation' instead;

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 amendments shall be made in the Convention notified vide G.S.R. 101(E), dated 1st March, 1990, namely :—

1. In the said Notification, in Article 11, in para 4, for clause (a), the following clause shall be substituted, namely :—

"(a) in the case of Japan

(i) the Bank of Japan;

(ii) Japan Bank for International Co-operation;

(iii) the Japan International Co-operation Agency; and

(iv) such other financial institutions the capital of which is wholly owned by the Government of Japan as may be agreed upon from time to time between the Governments of the two Contracting States."

2. This shall be deemed to have taken effect from 1st October, 1999.

Amendment Notification No. S.O. 2528(E), dated 8-10-2008

WHEREAS the Convention between the Government of the Republic of India and the Government of Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on income has come into force on the 29th day of December, 1989 after the exchange of instruments of ratification as required by paragraph 1 of article 28 of the said Convention;

AND WHEREAS, the said Convention was notified by the Central Government under section 90 of the Income-tax Act, 1961 (43 of 1961) in the Gazette of India vide G.S.R. 101(E) dated 1st March, 1990;

AND WHEREAS, clause (a) of paragraph 4 of Article 11 of the said Convention provides the details regarding 'Central Bank' and 'financial institution wholly owned by the Government' in the case of Japan which will not be subject to tax under paragraph 3 of the said article, in respect of interest arising to it in the other Contracting State;

AND WHEREAS, sub-clause (ii) of clause (a) of paragraph 4 of Article 11 refers to Japan Bank for International Cooperation as one of the financial institutions wholly owned by the Government.

AND WHEREAS, both the Government of India and the Government of Japan have now agreed to omit "Japan Bank for International Co-operation" from sub-clause (ii) of clause (a) of paragraph 4 of Article 11 and substitute therein

"International business unit of Japan Finance Corporation";

NOW, THEREFORE, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961, the Central Government hereby directs that the following amendments shall be made in the said notification as follows:—

In the said notification, in the Annexure, in Article 11 of the Convention, in paragraph 4, in clause (a), for sub-clause (ii), the following sub-clause shall be substituted, namely:—

"(ii) International business unit of Japan Finance Corporation;".

2. This shall be deemed to have taken effect from 1st October, 2008.

Amendment Notification No. SO 1136(E), dated 19-7-2006

Whereas the annexed Protocol amending the Convention between the Government of the Republic of India and the Government of Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income shall enter into force on the 28th day of June, 2006 in accordance with paragraph I of Article V of the Protocol amending the Convention for giving effect to the provisions of the said Protocol;

NOW, THEREFORE, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Protocol amending the Convention between the Government of the Republic of India and the Government of Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income shall be given effect to in the Union of India with effect from the 28th day of June, 2006.

ANNEXURE

Protocol Amending the Convention between the Government of the Republic of India and the Government of Japan 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 Japan,

Desiring to amend the Convention between the Government of the Republic of India and the Government of Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed at New Delhi on 7th March, 1989 (hereinafter referred to as 'the Convention'),

Have agreed as follows :

ARTICLE I

Paragraph 2 of Article 10 of the Convention shall be deleted and replaced by the following :

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

The provisions of this paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid."

ARTICLE II

Paragraph 2 of Article 11 of the Convention shall be deleted and replaced by the following :

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

ARTICLE III

Paragraph 2 of Article 12 of the Convention shall be deleted and replaced by the following :

"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 Contracting State, but if the recipient is the beneficial owner of the royalties or fees for technical services, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties or fees for technical services."

ARTICLE IV

Sub-paragraph (c) of paragraph 3 of Article 23 of the Convention shall be deleted.

ARTICLE V

1. This Protocol shall be approved in accordance with the legal procedures of each of the Contracting States and shall enter into force on the thirtieth day after the date of exchange of diplomatic notes indicating such approval.

2. This Protocol shall be applicable :

(a) in Japan :

(i) with respect to taxes withheld at source :

(aa) for amounts taxable on or after 1st July of the calendar year in which the Protocol enters into force, if the Protocol enters into force before 1st July of a calendar year;

or

(bb) for amounts taxable on or after 1st January of the calendar year next following the year in which the Protocol enters into force, if the Protocol enters into force after 30th June of a calendar year; and

(ii) with respect to taxes on income which are not withheld at source, as regards income for any taxable year beginning on or after 1st January of the calendar year next following that in which the Protocol enters into force; and

(b) in India :

(i) with respect to taxes withheld at source, for amounts paid or credited on or after 1st April of the calendar year next following that in which the Protocol enters into force;

and

(ii) with respect to taxes on income for any previous year beginning on or after 1st April of the calendar year next following that in which the Protocol enters into force.

3. This Protocol shall remain in effect as long as the Convention remains in force.

IN WITNESS whereof the undersigned, duly authorized thereto by their respective Governments, have signed this Protocol.

DONE in duplicate at Tokyo on this 24th day of February, 2006 in the Hindi, Japanese and English languages, each text being equally authentic. In case of any divergence of interpretations, the English text shall prevail.

For the Government of the	For the Government of Japan : Republic of India :
Sd/-	Sd/-
(M.L. Tripathi)	(TAROASO)

INDIA-JAPAN DTAA

(SYNTHESISED TEXT)

The original text of the synthesised text as issued in pursuance of the DTAA between India and Japan can be referred to below:

JAPAN

SYNTHESISED TEXT
OF THE MLI AND
THE CONVENTION BETWEEN
THE GOVERNMENT OF JAPAN AND
THE GOVERNMENT OF THE REPUBLIC OF INDIA
FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME

This document presents the synthesised text for the application of the Convention between the Government of Japan and the Government of the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on March 7, 1989, as amended by the Protocol signed on February 24, 2006 and the Protocol signed on December 11, 2015 (hereinafter referred to as "the Convention"), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by Japan and India on June 7, 2017 (hereinafter referred to as "the MLI").

This document was prepared on the basis of the reservations and notifications submitted to the Depositary (the Secretary-General of the Organisation for Economic Co-operation and Development) by Japan on September 26, 2018 and by India on June 25, 2019 respectively.

The sole purpose of this document is to facilitate the understanding of the application of the MLI to the Convention and the document does not constitute a source of law. The authentic texts of the Convention and the MLI are the only legal texts applicable.

The provisions of the MLI that are applicable with respect to the provisions of the Convention are included in boxes throughout this document in the context of the relevant provisions of the Convention.

In this document, 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 Convention (such as changes from "Covered Tax Agreement" to "Convention" and changes from "Contracting Jurisdiction" to "Contracting State"). Similarly, changes have been made to parts of provisions of the MLI that describe existing provisions of the Convention by replacing such descriptive language with the article and paragraph numbers or language of the existing provisions. These changes are intended to increase the readability of the document and are not intended to change the substance of the provisions of the MLI.

Unless the context otherwise requires, references made to the provisions of the Convention will be understood as referring to the provisions of the Convention as modified by the provisions of the MLI.

Entry into force and entry into effect of the MLI

The MLI enters into force for Japan on January 1, 2019 and for India on October 1, 2019 and has effect as follows:

The provisions of the MLI shall have effect in each Contracting State with respect to the Convention:

(a) in Japan:

(i) 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 January 1, 2020; and

(ii) with respect to all other taxes levied by Japan, for taxes levied with respect to taxable periods beginning on or after April 1, 2020; and

(b) in India:

(i) 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 April 1, 2020; and

(ii) with respect to all other taxes levied by India, for taxes levied with respect to taxable periods beginning on or after April 1, 2020.

Note that the application of consolidated parts of the texts of the Convention and its amending Protocols contained in this document is subject to the provisions regarding entry into effect provided for in the amending Protocols.

CONVENTION

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

The Government of Japan and the Government of the Republic of India,

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

The following preamble text described in paragraph 1 of Article 6 of the MLI is included in the preamble of the Convention:

Article 6 – Purpose of a Covered Tax Agreement

Intending to eliminate double taxation with respect to the taxes covered by the Convention without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in the Convention for the indirect benefit of residents of third jurisdictions),

Have agreed as follows:

ARTICLE 1

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

ARTICLE 2

1. The taxes which are the subject of this Convention are:

(a) In Japan:

(i) the income tax; and

(ii) the corporation tax

(hereinafter referred to as "Japanese tax");

(b) In India:
the income-tax including any surcharge thereon
(hereinafter referred to as "Indian tax").
2. This Convention shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Convention in addition to, or in place of, those referred to in paragraph 1. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws within a reasonable period of time after such changes.

ARTICLE 3

1. For the purposes of this Convention, unless the context otherwise requires:
(a) the term "Japan", when used in a geographical sense, means all the territory of Japan, including its territorial sea, in which the laws relating to Japanese tax are in force, and all the area beyond its territorial sea, including the seabed and subsoil there of, over which Japan has jurisdiction in accordance with international law and in which the laws relating to Japanese tax are in force;
(b) the term "India" means the territory of India including the territorial sea and any other maritime zone in which India has sovereign rights according to the Indian law and in accordance with international law;
(c) the terms "a Contracting State" and "the other Contracting State" mean Japan or India, as the context requires;
(d) the term "tax" means Japanese tax or Indian tax, as the context requires;
(e) the term "person" includes an individual, a company and any other body of persons;
(f) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
(g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
(h) the term "nationals" means:
(i) in respect of Japan:
all individuals possessing the nationality of Japan and all juridical persons created or organized under the laws of Japan and all organizations without juridical personality treated for the purposes of Japanese tax as juridical persons created or organized under the laws of Japan;
(ii) in respect of India:
(aa) all individuals possessing the nationality of India;
(bb) ll legal persons, partnerships and associations deriving their status as such from the laws in force in India;
(i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State; and
(j) the term "competent authority" means:
(i) in Japan, the Minister of Finance or his authorized representative;
(ii) in India, the Central Government in the Ministry of Finance, Department of Revenue, or their authorized representative.
2. As regards the application of this Convention by aContracting State, any term not defined therein shall,unless the context otherwise requires, have the meaningwhich it has under the laws of that Contracting Stateconcerning the taxes to which this Convention applies.

ARTICLE 4

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that Contracting State, is liable to tax therein by reason of his domicile, residence, place of head or main office or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph 1 a person is a resident of both Contracting States, then the competent authorities of the Contracting States shall determine by mutual agreement the Contracting State of which that person shall be deemed to be a resident for the purposes of this Convention.

The following paragraph 1 (as modified by subparagraph e) of paragraph 3) of Article 4 of the MLI replaces paragraph 2 of Article 4 of the Convention (only to the extent that the provisions of that paragraph relate to a person other than an individual):

Article 4 – Dual Resident Entities

1.Where by reason of the provisions of paragraph 1 of Article 4 of the Convention a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavor to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of the Convention, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by the Convention.

ARTICLE 5

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

2. The term "permanent establishment" includes especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

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

(g) a warehouse in relation to a person providing storage facilities for others;

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

(i) a store or other sales outlet; and

(j) an installation or structure used for the exploration of natural resources, but only if so used for a period of more than six months.

3. A building site or construction, installation or assembly project constitutes a permanent establishment only if it lasts more than six months.

4. An enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it carries on supervisory activities in that Contracting State for more than six months in connection with a building site or construction, installation or assembly project which is being undertaken in that Contracting State.

5. Notwithstanding the provisions of paragraphs 3 and 4 an enterprise shall be deemed to have a permanent establishment

in a Contracting State and to carry on business through that permanent establishment if it provides services or facilities in that Contracting State for more than six months in connection with the exploration, exploitation or extraction of mineral oils in that Contracting State.

The following paragraph 2 of Article 13 of the MLI replaces paragraph 6 of Article 5 of the Convention:
Article 13 – Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions
2.Notwithstanding the provisions of Article 5 of the Convention, the term "permanent establishment" shall be deemed not to include:
(a) (i) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
(ii) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
(iii) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
(iv) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
(b) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any activity not described in subparagraph a);
(c) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) and b),
provided that such activity or, in the case of subparagraph c), the overall activity of the fixed place of business, is of a preparatory or auxiliary character.
The following paragraph 4 of Article 13 of the MLI applies to paragraph 6 of Article 5 of the Convention modified by Paragraph 2 of Article 13 of the MLI:
Article 13 – Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions
4.Paragraph 6 of Article 5 of the Convention, as modified by Paragraph 2 of Article 13 of the MLI, shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same Contracting State and:
(a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of Article 5 of the Convention; 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.

7. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 8 applies - is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State, if
(a) he has and habitually exercises in that Contracting State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to those mentioned in paragraph 6 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph;

(b) he has no such authority, but habitually maintains in the first-mentioned Contracting State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise; or
(c) he habitually secures orders in the first-mentioned Contracting State, wholly or almost wholly for the enterprise itself or for the enterprise and other enterprises controlling, controlled by, or subject to the same common control as that enterprise.

The following paragraph 1 of Article 12 of the MLI applies in respect of subparagraph (a) of paragraph 7 of Article 5 of the Convention:
Article 12 – Artificial Avoidance of Permanent Establishment Status through Commissionaire Arrangements and Similar Strategies
1. Notwithstanding the provisions of paragraphs 1 and 2 of Article 5 of the Convention, but subject to paragraph 8 of Article 5 of the Convention 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 the Convention.

The following paragraph 2 of Article 12 of the MLI replaces paragraph 8 of Article 5 of the Convention:
Article 12 – Artificial Avoidance of Permanent Establishment Status through Commissionaire Arrangements and Similar Strategies
2.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.

9. 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 Convention:
Article 15 – Definition of a Person Closely Related to an Enterprise

1.For the purposes of the provisions of Article 5 of the Convention, a person is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise.

ARTICLE 6

1. Income derived by a resident of a Contracting State from immovable property situated in the other Contracting State may be taxed in that other Contracting State.
2. The term "immovable property" shall have the meaning which it has under the laws 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 immovable property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

ARTICLE 7

1. The profits of an enterprise of a Contracting State shall be taxable only in that Contracting 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 that other Contracting State but only so much of them as is directly or indirectly attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere.
4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
6. For the purposes of the provisions of the preceding paragraphs of this Article, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
7. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8

1. Profits from the operation of aircraft in international traffic carried on by an enterprise of a Contracting State shall be taxable only in that Contracting State.
2. Profits from the operation of ships in international traffic carried on by an enterprise of a Contracting State shall be taxable only in that Contracting State.
3. Notwithstanding the provisions of paragraph 2, such profits may be taxed in the other Contracting State from which they are derived during a period of first ten taxable years or "previous years", as the case may be, for which this Convention shall have effect provided that the tax so charged shall not exceed:
(a) during the first five years, 50 per cent,
(b) during the remaining five years, 25 per cent,
of the tax otherwise imposed by the taxation law of that other Contracting State.
4. The provisions of the preceding paragraphs of this Article shall also apply to profits from the participation in a pool, a joint business or an international operating agency.
5. The provisions of this Article shall, notwithstanding the provisions of Article 2, also apply to the enterprise tax in Japan and to any tax similar to the said enterprise tax if and when such a tax is imposed in India.

ARTICLE 9

1. Where
(a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,
and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by 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 replaces paragraph 2 of Article 9 of the Convention:
Article 17 – Corresponding Adjustments
1.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 the Convention and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10

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

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

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

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

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

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

ARTICLE 11

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

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

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be taxable only in the other Contracting State if:

(a) the interest is derived and beneficially owned by the Government of that other Contracting State, a political sub-division or local authority thereof, or the central bank of that other Contracting State or any financial institution wholly owned by that Government; or

(b) the interest is derived and beneficially owned by a resident of that other Contracting State with respect to debt-claims

guaranteed, insured or indirectly financed by the Government of that other Contracting State, a political sub-division or local authority thereof, or the central bank of that other Contracting State or any financial institution wholly owned by that Government.

4. For the purposes of paragraph 3, the terms "the central bank" and "financial institution wholly owned by that Government" mean:

(a) in the case of Japan:

(i) the Bank of Japan;

(ii) the Japan Bank for International Cooperation;

(iii) the Japan International Cooperation Agency;

(iv) the Nippon Export and Investment Insurance; and

(v) such other financial institution the capital of which is wholly owned by the Government of Japan as may be agreed upon from time to time between the Governments of the Contracting States;

(b) in the case of India:

(i) Reserve Bank of India;

(ii) Export-Import Bank of India;

(iii) General Insurance Corporation of India;

(iv) New India Assurance Company Limited; and

(v) such other financial institution the capital of which is wholly owned by the Government of India as may be agreed upon from time to time between the Governments of the Contracting States.

5. 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.

6. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

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

ARTICLE 12

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 Contracting 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 Contracting State, but if the recipient is the beneficial owner of the royalties or fees for technical services, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties or fees for technical services.

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

4. The term "fees for technical services" as used in this Article means payments of any amount to any person other than payments to an employee of a person making payments and to any individual for independent personal services referred to in Article 14, in consideration for the services of a managerial, technical or consultancy nature, including the provisions of services of technical or other personnel.

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

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

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

ARTICLE 13

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

2. Gains from the alienation of any property, other than immovable 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 any

property, other than immovable property, pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in that other Contracting State.

3. Unless the provisions of paragraph 2 are applicable, gains derived by a resident of a Contracting State from the alienation of shares of a company which is a resident of the other Contracting State may be taxed in that other Contracting State.

4. Gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic and any property, other than immovable property, pertaining to the operation of such ships or aircraft shall be taxable only in that Contracting State.

5. Gains derived by a resident of a Contracting State from the alienation of any property other than that referred to in paragraphs 1 to 4, shall be taxable only in that Contracting State.

The following paragraph 4 of Article 9 of the MLI applies to Article 13 of the Convention:

Article 9 – Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property

4.For purposes of the Convention, gains derived by a resident of a Contracting State from the alienation of shares or comparable interests, such as interests in a partnership or trust, may be taxed in the other Contracting State if, at any time during the 365 days preceding the alienation, these shares or comparable interests derived more than 50 per cent of their value directly or indirectly from immovable property (real property) situated in that other Contracting State.

ARTICLE 14

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that Contracting State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities or he is present in that other Contracting State for a period or periods exceeding in the aggregate 183 days during any taxable year or "previous year", as the case may be. If he has such a fixed base or remains in that other Contracting State for the aforesaid period or periods, the income may be taxed in that other Contracting State but only so much of it as is attributable to that fixed base or is derived in that other Contracting State during the aforesaid period or periods.

2. The term "professional services" includes especially 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

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

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

(a) the recipient is present in that other Contracting State for a period or periods not exceeding in the aggregate 183 days

during any taxable year or "previous year", as the case may be; and

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

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

3. Notwithstanding the provisions of paragraphs 1 and 2,remuneration in respect of an employment exercised aboard aship or aircraft operated in international traffic by anenterprise of a Contracting State may be taxed in that Contracting State.

ARTICLE 16

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 of a company which is a resident of the other Contracting State may be taxed in that other Contracting State.

ARTICLE 17

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

Such income shall, however, be exempt from tax in that other Contracting State if such activities are exercised by an individual who is a resident of the first-mentioned Contracting State pursuant to a special programme for cultural exchange agreed upon between the Governments of the two Contracting States.

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

Such income shall, however, be exempt from tax in the first-mentioned Contracting State if such activities are exercised pursuant to a special programme for cultural exchange agreed upon between the Governments of the two Contracting States.

ARTICLE 18

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

ARTICLE 19

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 Contracting State, or a political sub-division or a local authority thereof, in the discharge of functions of a governmental nature, shall be taxable only in that Contracting State.

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

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

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

2. (a) Any pension paid by, or out of funds to which

contributions are made by, a Contracting State, or a political sub-division or a local authority thereof, to an individual in respect of services rendered to that Contracting State, or a political sub-division or a local authority thereof, shall be taxable only in that Contracting State.

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

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

ARTICLE 20

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall be exempt from tax in the first-mentioned Contracting State, provided that such payments are made to him from outside that first-mentioned Contracting State.

ARTICLE 21

1. A professor or teacher who makes a temporary visit to a Contracting State for a period not exceeding two years for the purpose of teaching or conducting research at a university, college, school or other accredited educational institution, and who is, or immediately before such visit was, a resident of the other Contracting State shall be taxable only in that other Contracting State in respect of remuneration for such teaching or research.

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

ARTICLE 22

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

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

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

ARTICLE 23

1. The laws in force in either of the Contracting States shall continue to govern the taxation of income in the respective Contracting State except where express provisions to the contrary are made in this Convention.

2. Double taxation shall be avoided in the case of India as follows:

(a) Where a resident of India derives income which, in accordance with the provisions of this Convention, may be taxed in

Japan, India shall allow as a deduction from the tax on the income of that resident an amount equal to the Japanese tax paid in Japan, whether directly or by deduction. Such deduction in either case shall not, however, exceed that part of the income tax (as computed before the deduction is given) which is attributable, as the case may be, to the income which may be taxed in Japan. Further, where such resident is a company by which surtax is payable in India, the deduction in respect of income tax paid in Japan 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 this Convention, shall be taxable only in Japan, 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, as the case may be, to the income derived from Japan.

3. Subject to the laws of Japan regarding the allowance as a credit against Japanese tax of tax payable in any country other than Japan:

(a) Where a resident of Japan derives income from India which may be taxed in India in accordance with the provisions of this Convention, the amount of Indian tax payable in respect of that income shall be allowed as a credit against the Japanese tax imposed on that resident. The amount of credit, however, shall not exceed that part of the Japanese tax which is appropriate to that income.

(b) Where the income derived from India is a dividend paid by a company which is a resident of India to a company which is a resident of Japan and which owns not less than 25 per cent either of the voting shares of the company paying the dividend, or of the total shares issued by that company, the credit shall take into account the Indian tax payable by the company paying the dividend in respect of its income.

ARTICLE 24

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other Contracting State in the same circumstances are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other Contracting State than the taxation levied on enterprises of that other Contracting State carrying on the same activities.

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

3. Except where the provisions of Article 9, paragraph 8 of Article 11, or paragraph 7 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned Contracting State.

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

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

ARTICLE 25

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 Convention, he may, irrespective of the remedies provided by the domestic laws of those Contracting States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Convention.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at 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 not in accordance with the provisions of this Convention. 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 this Convention. They may also consult together for the elimination of double taxation in cases not provided for in this Convention.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs of this Article.

ARTICLE 26

1. The competent authorities of the Contracting States shall exchange such information (including documents or certified copies of the documents) as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political sub-divisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.
2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that Contracting State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both Contracting States and the competent authority of the supplying Contracting State authorises such use.
3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:
(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
(b) to supply information 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.
4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use

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

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

ARTICLE 26 A

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

2. The term "revenue claim" as used in this Article means an amount owed in respect of the taxes covered by Article 2 and the following taxes imposed on behalf of the Contracting States, or of their political sub-divisions or local authorities, insofar as the taxation thereunder is not contrary to this Convention or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount:

(a) in Japan:

(i) the consumption tax;

(ii) the inheritance tax; and

(iii) the gift tax;

(b) in India:

(i) the wealth tax;

(ii) the excise duty;

(iii) the service tax;

(iv) the sales tax; and

(v) the value added tax;

(c) any other tax agreed upon between the Governments of the Contracting States.

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

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

the first-mentioned Contracting State or is owed by a person who has a right to prevent its collection.

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

6. Notwithstanding the provisions of paragraph 5, acts carried out by a Contracting State in the collection of a revenue claim accepted by that Contracting State for purposes of paragraph 3 or 4, which, if they were carried out by the other Contracting State, would have the effect of suspending or interrupting the time limits applicable to the revenue claim according to the laws of that other Contracting State, shall have such effect under the laws of that other Contracting State. The first-mentioned Contracting State shall inform the other Contracting State about such acts.

7. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

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

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

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

9. In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:

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

(b) to carry out measures which would be contrary to public policy;

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

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

ARTICLE 27

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

The following paragraphs 1 through 3 of Article 10 of the MLI apply to the Convention:

Article 10 – Anti-abuse Rule for Permanent Establishments Situated in Third Jurisdictions

1.Where:

(a) an enterprise of a Contracting State derives income from the other Contracting State and the first-mentioned

Contracting State treats such income as attributable to a permanent establishment of the enterprise situated in a third jurisdiction; and

(b) the profits attributable to that permanent establishment are exempt from tax in the first- mentioned Contracting State,

the benefits of the Convention shall not apply to any item of income on which the tax in the third jurisdiction is less than 60 per cent of the tax that would be imposed in the first-mentioned Contracting State on that item of income if that permanent establishment were situated in the first-mentioned Contracting State. In such a case, any income to which the provisions of this paragraph apply shall remain taxable according to the domestic law of the other Contracting State, notwithstanding any other provisions of the Convention.

2.Paragraph 1 shall not apply if the income derived from the other Contracting State described in paragraph 1 is derived in connection with or is incidental to the active conduct of a business carried on through the permanent establishment (other than the business of making, managing or simply holding investments for the enterprise's own account, unless these activities are banking, insurance or securities activities carried on by a bank, insurance enterprise or registered securities dealer, respectively).

3.If benefits under the Convention are denied pursuant to paragraph 1 with respect to an item of income derived by a resident of a Contracting State, the competent authority of the other Contracting State may, nevertheless, grant these benefits with respect to that item of income if, in response to a request by such resident, such competent authority determines that granting such benefits is justified in light of the reasons such resident did not satisfy the requirements of paragraphs 1 and 2. The competent authority of the Contracting State to which a request has been made under the preceding sentence by a resident of the other Contracting State shall consult with the competent authority of that other Contracting State before either granting or denying the request.

The following paragraph 1 of Article 7 of the MLI applies to the Convention:

Article 7 – Prevention of Treaty Abuse

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

ARTICLE 28

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

2. This Convention shall enter into force on the thirtieth day after the date of the exchange of instruments of ratification and shall have effect:

(a) in Japan:

as regards income for any taxable year beginning on or after the first day of January of the calendar year next following that in which this Convention enters into force; and

(b) in India:

as regards income for any "previous year" beginning on or after the first day of April of the calendar year next following that in which this Convention enters into force.

3. The Agreement between Japan and India for the Avoidance of Double Taxation in respect of Taxes on Income signed at

New Delhi on January 5, 1960 shall terminate and cease to have effect in respect of income to which this Convention applies under the provisions of paragraph 2.

ARTICLE 29

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

(a) in Japan:

as regards income for any taxable year beginning on or after the first day of January of the calendar year next following that in which the notice of termination is given; and

(b) in India:

as regards income for any "previous year" beginning on or after the first day of April of the calendar year next following that in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Convention.

DONE at New Delhi in duplicate on this seventh day of March, 1989 in the Japanese, Hindi and English languages, all the three texts being equally authentic. In case of any divergence of interpretations, the English text shall prevail.

For the Government of Japan:
Eijiro Noda

For the Government of the Republic of India:
G.N.Gupta

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